

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R152-22

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1 and 2, NRS 360.090; § 3, NRS 360.090 and 360.300.

A REGULATION relating to taxation; revising provisions relating to the voluntary disclosure of a taxpayer's failure to file a tax return with the Department of Taxation; expanding the applicability of those provisions to include taxpayers subject to certain additional taxes and fees; transferring from the Nevada Tax Commission to the Department the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed; revising the requirements to be met by a taxpayer or the taxpayer's representative before the Department may make a determination of voluntary disclosure; authorizing the Executive Director of the Department or a person designated by the Executive Director to extend the time for complying with those requirements; requiring a taxpayer whose tax liability has been determined not to have been voluntarily disclosed to file any additional returns and pay any tax, penalty or interest determined to be owed; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations provide that a taxpayer who fails to file a tax return with the Department of Taxation as required by various provisions of law, and who wishes to voluntarily disclose that fact to the Nevada Tax Commission, must file with the Department an application for voluntary disclosure. Any such application must be filed before the Department has initiated an audit or investigation of the taxpayer. (NAC 360.440) **Section 1** of this regulation expands the applicability of those provisions to include, without limitation, taxpayers who are subject to the modified business tax, the tax imposed on the gross revenue of gold and silver mining businesses, the taxes imposed on transportation network companies and other passenger carriers and the taxes and fees imposed in connection with the operation of peer-to-peer car sharing programs. **Section 1** also sets forth the requirements that must be complied with by a taxpayer or the taxpayer's representative before the Department may consider the tax liability of the taxpayer to have been voluntarily disclosed, and provides that those requirements must generally be met within 90 days after notice is given by the Department of its acceptance of the taxpayer's application for voluntary disclosure. Under those provisions, the taxpayer or the taxpayer's representative must file any required registration and delinquent tax returns for the period being disclosed, pay the tax estimated to be owed for that period and submit any additional information or material required by the Department. Under specified circumstances, **section 1** also authorizes the Executive Director of the Department or a person designated by the Executive Director to grant one extension of time for compliance with those requirements. **Sections 2 and 3** of this

regulation make conforming changes and transfer, from the Commission to the Department, the responsibility for determining in the first instance whether the tax liability of a taxpayer has been voluntarily disclosed.

Under existing regulations, if the Commission determines that a taxpayer has made a good faith effort to comply with the requirements for voluntary disclosure, the Department is prohibited from assessing the penalty and interest otherwise prescribed by statute on the entire amount of the taxpayer's tax liability. If the Commission determines that the taxpayer's tax liability has not been voluntarily disclosed, the Department is required to assess the prescribed penalty and interest on the entire amount of that liability. A taxpayer who wishes to dispute the amount of the assessed penalty or interest must file a petition with the Executive Director for consideration and action by the Commission. (NAC 360.446) **Section 3** eliminates the "good faith effort" language from the existing provisions. If the Department determines that the taxpayer's tax liability has not been voluntarily disclosed, **section 3** requires the Department to notify the taxpayer of that determination and issue a bill for the amount of any tax, penalty or interest owed by the taxpayer. In such a case, **section 3** also: (1) requires the taxpayer to file any additional returns and pay any tax, penalty or interest determined to be owed; and (2) provides that the taxpayer may file a petition with the Department, for review by the Commission, disputing the Department's determination or the amount of any tax, penalty or interest assessed by the Department. **Section 3** further clarifies that any action taken by the Commission or Department under their authority does not affect the right of a taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to regulatory provisions that authorize the Department to grant such a waiver or reduction in extenuating circumstances.

Section 1. NAC 360.440 is hereby amended to read as follows:

360.440 1. If a taxpayer fails to file a return as required by the applicable provisions of chapter 360, **360B**, 362, **363A, 363B**, 363C, **363D**, 369, 370, 372, 372A, **372B**, 374, 377, 377A, **377C** or 444A of NRS, NRS 482.313, **482C.230 or 482C.240**, or chapter 585 or 680B of NRS, ~~and he or she wishes to disclose that fact voluntarily to the Commission,~~ the taxpayer or the taxpayer's representative ~~must~~ **may** file with the Department an application for voluntary disclosure ~~on~~ **in** a form prescribed by the ~~Commission~~ **Department** before the Department has initiated an audit or investigation of the taxpayer. ***An application is deemed to be filed with the Department on the date the application is received by the Department.***

2. ~~The Commission will not accept an application filed pursuant to subsection 1 until the application has been approved and signed by the Director. The Director shall not approve and sign the application until he or she has verified that the Department did not initiate an audit or~~

~~investigation of the taxpayer before the date that the taxpayer filed an application with the Department pursuant to subsection 1. An application is deemed to be filed with the Department on the date the application is received by the Department.~~ *If the Department verifies that it did not initiate an audit or investigation of the taxpayer before the date on which the application was filed, the Department shall accept the application and notify the taxpayer or the taxpayer's representative, as applicable, of the acceptance of the application within 30 days after the date on which the application was filed.*

3. ~~After the Director has signed and approved the application, the Commission will provide the taxpayer with a copy of the approved application.~~

~~4.~~ For the purposes of ~~subsection~~ *subsections 1 and 2*, the Department has initiated an audit or investigation of a taxpayer if the Department has:

(a) Contacted the taxpayer by telephone, in person or in writing regarding a possible tax liability ~~;~~ *or registration requirement; or*

(b) Given the taxpayer written notice that an audit will be conducted by the Department concerning liability for the type of tax that the taxpayer wishes to disclose voluntarily pursuant to this section.

4. Except as otherwise provided in subsection 5, the Department shall not consider the tax liability of a taxpayer as being voluntarily disclosed unless, within 90 days after the date on which notice of acceptance of the taxpayer's application is given pursuant to subsection 2, the taxpayer or the taxpayer's representative complies with the requirements of this subsection.

The taxpayer or the taxpayer's representative must:

(a) File with the Department any required registration and the delinquent tax returns for the tax estimated to be owed for the period being disclosed or, if the period being disclosed

exceeds 8 years, for the 8 years immediately preceding the date on which the application was filed;

(b) Pay the tax estimated to be owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date on which the application was filed; and

(c) Submit any additional information or material required by the Department.

5. If a request for an extension of time to satisfy the requirements of subsection 4 is made in writing to the Department after the filing of an application and within 90 days after the date on which notice of acceptance of the application is given pursuant to subsection 2, the Director or a person designated by the Director may grant a taxpayer or the taxpayer's representative one extension of time, not to exceed 90 days, to satisfy those requirements. The request must be accompanied by proof satisfactory to the Director or his or her designee that the requirements cannot be satisfied within the time otherwise required by subsection 4 despite the exercise of ordinary care by the taxpayer or the taxpayer's representative and because of circumstances beyond the control of the taxpayer or the taxpayer's representative.

6. The circumstances described in subsection 5 include, without limitation:

(a) A natural disaster or other disaster;

(b) The death or hospitalization of the taxpayer or the taxpayer's representative; or

(c) Any other circumstance that could not reasonably have been anticipated at the time the application was filed.

Sec. 2. NAC 360.444 is hereby amended to read as follows:

360.444 The ~~{Commission will}~~ *Department shall* not consider the tax liability of a taxpayer as being voluntarily disclosed if, after filing an application for voluntary disclosure pursuant to NAC 360.440, the taxpayer ~~{}~~ *or the taxpayer's representative:*

~~1. Within 90 days after the taxpayer has received a copy of the approved application, fails to file with the Department the delinquent tax returns for the tax owed for the period being disclosed or, if the period being disclosed exceeds 8 years, for the 8 years immediately preceding the date the application was filed pursuant to NAC 360.440;~~

~~2. Within 90 days after the taxpayer has received a copy of the approved application, fails to pay any tax owed for the period described in subsection 1;~~

~~3. Fails to satisfy the requirements of subsection 4 of NAC 360.440 within the time provided by that subsection or extended pursuant to subsection 5 of NAC 360.440;~~

2. Fails to ~~{make a good faith effort to}~~ comply with the applicable provisions of chapter 360, *360B*, 362, *363A, 363B*, 363C, *363D*, 369, 370, 372, 372A, *372B*, 374, 377, 377A, *377C* or 444A of NRS, NRS 482.313, *482C.230 or 482C.240*, or chapter 585 or 680B of NRS, including, without limitation, registering with the Department, filing tax returns, paying any tax liability and remitting any taxes collected; or

~~{4.}~~ 3. Fails to provide an accurate estimate of his or her tax liability in the application for voluntary disclosure filed pursuant to NAC 360.440. The taxpayer shall be deemed to have provided an inaccurate estimate of his or her tax liability if:

(a) The tax liability provided in the application for voluntary disclosure is less than the taxpayer's actual tax liability by 10 percent or more; and

(b) The taxpayer is unable to demonstrate to the Department that he or she made a good faith effort to report accurately his or her tax liability in the application for voluntary disclosure.

Sec. 3. NAC 360.446 is hereby amended to read as follows:

360.446 1. If the ~~{Commission}~~ *Department* determines that the taxpayer has ~~{made a good faith effort in complying}~~ *complied* with the requirements set forth in NAC *360.440 and 360.444*, the Department shall not assess the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability.

2. If the ~~{Commission does not consider}~~ *Department determines that* the tax liability of a taxpayer ~~{to be}~~ *has not been* voluntarily disclosed pursuant to NAC *360.440 and 360.444*, the Department shall ~~{assess}~~ :

(a) *Assess* the penalty and interest set forth in NRS 360.300 on the entire amount of the tax liability ~~{}~~ ; and

(b) *Notify the taxpayer of its determination and issue a bill for the amount of any tax, penalty or interest owed by the taxpayer. The notice and bill must be sent to the taxpayer by registered or certified mail, return receipt requested.*

3. ~~{A taxpayer who wishes to dispute the amount of any penalty or interest assessed by the Department pursuant to subsection 1 or 2 must}~~ *If the Department determines that the tax liability of a taxpayer has not been voluntarily disclosed and assesses a penalty or interest pursuant to subsection 2 and NRS 360.300, the taxpayer:*

(a) *Shall, within 60 days after receiving the notice and bill described in subsection 2, file any additional returns and pay the amount of any tax, penalty or interest that the Department has determined is owed by the taxpayer; and*

(b) *May, within 45 days after receiving the notice and bill described in subsection 2, file a written petition with the* ~~{Director within 45 days after the taxpayer receives a bill from the Department for that amount.}~~ *Department disputing its determination or the amount of any tax,*

penalty or interest assessed by the Department. The petition must set forth any information that supports the dispute.

4. The Commission will review any petition filed ~~with the Director~~ pursuant to subsection 3 and determine the amount of any tax, penalty or interest owed by the taxpayer. The Commission will notify the taxpayer of its decision by registered or certified mail, return receipt requested.

5. The taxpayer ~~must~~ *shall* file any additional returns and pay the amount of any tax, penalty or interest that the Commission determines is owed by the taxpayer pursuant to subsection 4 within 60 days after he or she receives the notification from the Commission pursuant to subsection 4.

6. Any action taken with respect to a taxpayer by the Department or Commission pursuant to this section does not affect the right of the taxpayer to request a waiver or reduction of a penalty or interest, or both, pursuant to NAC 360.396.