

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R114-24

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

AUTHORITY: § 1, NRS 360.090, 360.093, 360.294, 360.417 and 360.419; § 2, NRS 360.090 and 360.419.

A REGULATION relating to taxation; revising provisions relating to the waiver or reduction of a penalty or interest, or both, for the late payment of certain taxes and fees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

If a taxpayer fails timely to pay certain taxes and fees, existing law provides for the imposition of a penalty and interest, but also authorizes the Department of Taxation to waive all or part of the penalty or interest, or both, in certain circumstances. (NRS 360.294, 360.417, 360.419) Under existing regulations, the Department is required to waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less. (NAC 360.396) **Section 1** of this regulation clarifies that this amount is to be computed as of the date the payment is made.

Existing regulations also authorize the Department to waive or reduce a penalty or interest, or both, for a late payment if the delinquency is determined to have been caused by circumstances beyond the control of the taxpayer or the taxpayer’s agent. (NAC 360.396) **Section 1:** (1) expands the scope of these provisions to include any penalty or interest resulting from the late filing of a return; (2) limits the applicability of any waiver or reduction to any period for which a payment is required to have been made or a return is required to have been filed; and (3) authorizes the Department to consider certain other information when determining whether to grant such a waiver or reduction.

Existing regulations authorize a taxpayer or the taxpayer’s agent to request a waiver or reduction of the penalty or interest, or both, by submitting to the Department a written statement signed under oath by the taxpayer or the taxpayer’s agent which contains certain information. Existing regulations additionally prohibit the Department from considering such a request until the taxpayer has paid in full the tax or fee upon which the interest or penalty is assessed. (NAC 360.397) **Section 2** of this regulation provides an exception from such a prohibition if the Department has determined that the cost of taking any action for the collection of the tax for which the waiver or reduction is requested would exceed the total accumulated amount of all the unpaid taxes for such a tax and any applicable interest and penalties.

Section 1. NAC 360.396 is hereby amended to read as follows:

360.396 1. The Department shall waive or reduce a penalty or interest, or both, for a late payment if the total penalty and interest for the late payment is \$15 or less ~~[-]~~ *as of the date the payment is made.*

2. ~~[The]~~ *With respect to any period for which a payment is required to have been made or a return is required to have been filed, the* Department may waive or reduce a penalty or interest, or both, for a late payment *or the late filing of a return* if the late payment *or late filing* is determined by the Department to have been caused by circumstances beyond the control of the taxpayer or the taxpayer's agent, *including, without limitation, the error of an employee of the taxpayer or the taxpayer's agent,* and occurred despite the exercise of ordinary care and without intent.

3. In determining whether to waive or reduce the penalty or interest, or both, for a late payment *or the late filing of a return* pursuant to subsection 2, the Department may consider:

(a) The *taxpayer's* history of compliance and timely payment ~~[of the taxpayer;]~~ *and filing, subject to the limitations set forth in subsection 4;*

(b) The weight and sufficiency of the evidence supporting the request of the taxpayer to waive or reduce the penalty or interest, or both, for the late payment ~~[-]~~ *or late filing;*

(c) Any evidence which shows that the late payment *or late filing* was caused by circumstances that were not directly related to the actions of the taxpayer or the taxpayer's agent, including, without limitation:

(1) Fire, earthquake, flood or other acts of God, theft, or the death or serious illness of the taxpayer or the taxpayer's agent or a member of the immediate family of the taxpayer;

(2) An error or the misconduct of an employee of the taxpayer ~~[-]~~ *or the taxpayer's agent,* including, without limitation, embezzlement; *and*

(3) Erroneous written information provided to the taxpayer or the taxpayer's agent by the Department; and

~~[(4) The misaddressed but timely mailing of the return or payment; and]~~

(d) Any other factor deemed by the Department to be relevant.

4. In considering the taxpayer's history of compliance and timely payment and filing pursuant to paragraph (a) of subsection 3, the Department may consider the taxpayer's history:

(a) Of previous waiver requests, late filings, late payments, returns showing tax due that were filed without payment of the full tax due or any combination of these, subject to the limitations of paragraph (b); and

(b) Only as it relates to:

(1) The type of tax for which a waiver or reduction is requested; and

(2) Except as otherwise provided in this subparagraph, the period set forth in subsection 1 or 3 of NRS 360.355, as applicable, for serving or mailing a notice of determination of a deficiency or, in the case of a taxpayer's failure to make a return or a claim for an additional amount, the period set forth in subsection 2 or 3 of NRS 360.355, as applicable. The limitations of this subparagraph do not apply to cases of fraud or intentional evasion of the provisions of title 32 of NRS or any regulation adopted pursuant thereto.

Sec. 2. NAC 360.397 is hereby amended to read as follows:

360.397 1. Except as otherwise provided in NAC 360.398 and 363C.250, a taxpayer or the taxpayer's agent may request the waiver or reduction of the penalty or interest, or both, by submitting to the Department a written statement signed under oath by the taxpayer or the

taxpayer's agent which sets forth the facts and circumstances surrounding the failure of the taxpayer to make the payment in a timely manner.

2. ~~The~~ *Except as otherwise provided in this subsection, the* Department shall not consider a request made pursuant to subsection 1 until the taxpayer has paid in full the tax or fee upon which the interest or penalty is assessed. *The Department may consider a request made pursuant to subsection 1 before the taxpayer has made such a payment if the Department determines that the cost of taking any action for the collection of the tax for which the waiver or reduction is requested would exceed the total accumulated amount of all the unpaid taxes for the tax for which the waiver or reduction is requested and any applicable interest and penalties.*