

Chapter 360 of NAC

LCB File No. T023-04

**ADOPTED TEMPORARY REGULATION
OF THE NEVADA TAX COMMISSION**

Filed with the Secretary of State on December 13, 2004

Explanation: Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: NRS 360.245, NRS 360.4193

Adding new sections to Chapter 360 of the Nevada Administrative Code as follows:

Compromises.

Section 1. *Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 5, inclusive, of this regulation.*

Sec. 2. *If the Commission determines that there are grounds for compromise under this regulation, the Commission may, in the Commission's discretion, compromise a person's liability for any tax, contribution or premium required to be paid to the State by that person in accordance with the provisions of chapter 360, 360B, 362, 363A, 363B, 369, 370, 372, 372A, 374, 377, 377A or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS as administered or audited by the Department. The Commission may compromise a liability under this section only by the affirmative vote of a majority of its members.*

Sec. 3. 1. *The Commission may compromise a liability under section 2 when:*

(a) There is:

(1) Doubt as to the Department's ability to collect the full amount of the liability; or

(2) Doubt as to the existence or correct amount of the liability; and

(b) Considerations of equity and fairness weigh in favor of compromising the liability.

2. *For purposes of subsection 1:*

(a) Doubt as to the Department's ability to collect the full amount of the liability exists in any case where:

(1) A person's assets and income are less than the full amount of his liability;

(2) The person will not have in the foreseeable future the money, assets or means to pay his liability, either in full or by a payment plan; and

(3) No fewer than 5 years have passed since the liability became final.

(b) Doubt as to the existence or correct amount of the liability exists in any case where:

(1) The amount or existence of the liability is dependent upon the outcome of a good-faith dispute over the relevant facts or applicable law; and

(2) The liability has not become final pursuant to the order or judgment of a court of competent jurisdiction, or pursuant to a decision of the Commission that was not timely petitioned in accordance with NRS 233B.130.

(c) Considerations of equity and fairness may include, without limitation, any of the following:

(1) The person's medical condition, or that of a spouse, parent, sibling or child to whom he provided full-time medical care or living assistance, was such that the person was unable to manage his financial affairs during the period for which he incurred the liability.

(2) The person incurred the liability, in whole or in part, as the result of employee misconduct of which the person was unaware.

(3) Notwithstanding the conduct which gives rise to the liability for which a compromise is sought, the person, and any business entities that he has managed, operated or controlled, have a history of compliance with all applicable filing and payment requirements.

(4) The person was the victim of a crime, natural disaster or other unforeseeable occurrence that significantly impacted his ability to pay his financial obligations as they came due in the ordinary course of business.

(5) The person was the victim of a crime, natural disaster or other unforeseeable occurrence that significantly impacted his ability to timely challenge or petition the liability at the time when the liability was originally assessed by the Department.

3. In determining whether a person's assets and income are less than the full amount of his liability, the Commission will determine whether the person has the ability to pay the liability either in full or in reasonable installments. In determining the person's ability to pay, the Commission will make an allowance for the person to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the

person's case. To guide this determination, the Commission may consider guidelines utilized by the Internal Revenue Service on national and local living expense standards.

Sec. 4. *1. A person may request that the Commission compromise a liability under this regulation by submitting to the Department, on a form prescribed by the Department, an offer in compromise of the liability. The offer must include:*

(a) A statement of the grounds upon which the compromise is sought, and any other information tending to support the offer.

(b) Copies of such financial information and documentation as may be required by the Department, including but not limited to financial statements, bank records, accounting ledgers, and a statement or explanation of any assets that may be acquired by virtue of a pending claim, cause of action, settlement, insurance disbursement, or inheritance, or any unsatisfied judgment or court order.

(c) An affirmation, signed under penalty of perjury, attesting to the truthfulness and accuracy of all supporting information and documentation submitted with the offer.

(d) Pending the Commission's acceptance or rejection of the offer, or pending the person's withdrawal of the offer pursuant to subsection 2, a written consent to suspend any and all statutory periods of limitations within which the Department would otherwise be required to take or bring an action to collect the liability, or to seize, attach, garnish, or levy execution upon any property or assets in satisfaction of the liability.

2. When the Department receives an offer submitted by a person pursuant to this section, the Department will review and analyze the offer, and may verify any supporting information and documentation that it deems to be material to the offer before presenting the offer to the Commission for acceptance or rejection. If the offer does not, in the Department's discretion, comply with subsection 1 or include adequate supporting information and documentation, the Department will return the offer with a written explanation of its deficiencies. If the contents of the offer and the supporting documentation clearly indicate, in the Department's discretion, that the offer should be rejected by the Commission, the Department will so advise the person in writing and afford him the opportunity to withdraw the offer before the Department presents it to the Commission. If the person declines to withdraw the offer, the Department will present it to the Commission for action at the Commission's next available meeting. In all

cases where an offer in compromise is presented to the Commission, the Department will recommend a course of action to the Commission.

3. If a person submits an offer in compromise of a liability in compliance with this section, the Department will refrain from taking any action to collect the liability, or to seize, attach, garnish, or levy execution upon any property or assets in satisfaction of the liability, unless the Department determines, in the Department's discretion, that the person submitted the offer to delay or avoid collection of the liability.

4. After reviewing an offer submitted by a person pursuant to this section, the Commission will issue a written decision to that person setting forth the Commission's findings with respect to the offer. The Commission may accept the offer, reject the offer, or make its acceptance of the offer contingent upon the satisfaction of such conditions precedent to acceptance as the Commission deems appropriate, including the condition that all or part of the amount stated in the offer be paid within a specified time frame. The Commission may permit any such amount to be paid in reasonable installments, and may make its acceptance of the offer further contingent upon the person's compliance with a specified schedule of payments. If the Commission makes its acceptance of an offer contingent upon the satisfaction of any conditions, the Commission will specify those conditions in its written decision.

5. If, in accordance with subsection 4, the Commission makes its acceptance of a person's offer in compromise contingent upon the person's satisfaction of specified conditions, the Commission, before finally accepting or rejecting the offer, will hold a hearing for the purpose of determining whether the person has satisfied the conditions. If the Commission determines that the person has failed to satisfy the conditions, the Commission will issue a written decision detailing the manner by which the person has failed to satisfy the conditions. If the Commission determines that the person has satisfied the conditions, the Commission will issue a written decision acknowledging its acceptance of the person's offer in compromise.

6. Once the Commission accepts an offer submitted by a person pursuant to this section, the person's tender of the full amount stated in the offer will be considered an accord and satisfaction as to the person's liability, and will thereby conclusively settle the liability unless the Commission later determines that the Commission's acceptance of the offer was procured through fraud, misrepresentation, concealment, or resulted from a mutual mistake of fact. Before making any such determination, the Commission will afford the person the opportunity

to an evidentiary hearing noticed and conducted in accordance with the provisions of chapters 233B and 241 of NRS. If the Commission determines that its acceptance of the offer was procured through fraud, misrepresentation, concealment, or resulted from a mutual mistake of fact, the Commission may reinstate the liability in the amount originally assessed by the Department. A person aggrieved by a decision of the Commission to reinstate a liability in accordance with this subsection may petition the district court for judicial review of the decision in accordance with NRS 233B.130.

Sec. 5. *The Commission's acceptance of an offer in compromise shall in no way be construed as a limitation upon the Department's rights and remedies with respect to parties not named or identified in the offer in compromise.*

NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T023-04

The Department of Taxation adopted temporary regulations assigned LCB File No. T023-04 which pertain to chapter 360 of the Nevada Administrative Code on December 13, 2004.

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed temporary regulations were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada; and Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada.

A copy of the notice of hearing and the proposed temporary regulations were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed temporary regulations were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 2550 Paseo Verde Parkway, Suite 180, Henderson, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on December 6, 2004 via video conference between the Nevada Department of Transportation at 310 Galletti Way, Reno, Nevada, and 123 East Washington Avenue, Building B, Training Room A, Las Vegas, Nevada. It appears that due to the primarily procedural nature of the proposed temporary regulations, only affected or interested persons and businesses as set forth in #3 below responded to the proposed temporary regulations and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (775) 684-2096 or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed temporary regulations, for practical purposes, was discussed at two workshops and as been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:
(a) Attended the hearing: 51

(b) Testified at the hearing: 2

(c) Submitted to the Tax Commission written comments: No written comments by the general public were submitted to, or received by, the Department of Taxation or the Nevada Tax Commission.

3. A description of how comment was solicited from affected and interested persons, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected and interested businesses and persons by the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

4. If the temporary regulations were adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the temporary regulations without change.

The proposed temporary regulations were modified at public workshops prior to adoption, due to issues raised by the Department of Taxation and by the Attorney General's Office. The proposed temporary regulations were not changed at the public hearing, and the Tax Commission believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted temporary regulations on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed temporary regulations present no foreseeable or anticipated adverse economic effects to businesses or the public. However, the temporary regulations will have a beneficial impact on taxpayers for clarification and procedural purposes with regard to requests associated with compromising established liabilities owed to the State. That effect cannot be quantified at this time.

(b) Immediate and long-term effects.

Same as #5(a) above.

6. The estimated cost to the agency for enforcement of the adopted temporary regulations.

The proposed temporary regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement. However, it appears that there may be some minor additional administrative costs for the Department of Taxation, which cannot be quantified at this time.

7. A description of any regulations of other state or governmental agencies which the temporary regulations overlap or duplicate and a statement explaining why the duplication or overlap is necessary. If the temporary regulations overlap or duplicate a federal regulation, the name of the regulating federal agency.

The proposed temporary regulations are particular to the Department of Taxation practices and procedures and do not appear to overlap or duplicate regulations of other state or local governmental agencies.

8. If the temporary regulations include provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations pertaining to the Tax Commission's ability to compromise established debts to the State, which are the subject of the proposed temporary regulations.

9. If the temporary regulations provide a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed temporary regulations do not provide a new fee or increase an existing fee.