

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

**LCB File No. R193-05**

December 9, 2005

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

AUTHORITY: §§1-6, NRS 360.090.

A REGULATION relating to business; making various changes regarding the applicability and administration of the requirements for a state business license; and providing other matters properly relating thereto.

**Section 1.** Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

*1. If a person, other than a natural person, has a state business license for the conduct of a business by that person, no natural person is required to obtain a state business license for any activity conducted in furtherance of that business solely because any income, tax deductions or tax credits attributable to that activity may be reported to the Internal Revenue Service as income or loss from a partnership, S corporation, estate, trust or real estate mortgage investment conduit on a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form.*

*2. If a partnership or limited-liability company has a state business license for the conduct of a business by that person, no partner or member thereof is required to obtain a state business license for any activity conducted in furtherance of that business solely because any income, tax deductions or tax credits attributable to that activity may be reported to the Internal Revenue Service as income or loss from:*

*(a) A sole proprietorship on a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form; or*

*(b) A farm on a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form.*

**3. For the purposes of this section:**

*(a) “Limited-liability company” means a person organized pursuant to chapter 86 of NRS or the equivalent laws of another jurisdiction.*

*(b) “Partnership” means any association of two or more persons described in NRS 87.060, regardless of whether that association reports to the Internal Revenue Service partnership income, tax deductions or tax credits on Form 1065, U.S. Return of Partnership Income, or its equivalent or successor form.*

**Sec. 2.** NAC 360.750 is hereby amended to read as follows:

360.750 As used in NAC 360.750 to ~~360.770,~~ 360.768, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 360.752 to 360.758, inclusive, have the meanings ascribed to them in those sections.

**Sec. 3.** NAC 360.760 is hereby amended to read as follows:

360.760 For the purposes of NRS 360.760 to 360.795, inclusive, ~~and~~ NAC 360.750 to ~~360.770,~~ 360.768, inclusive, *and section 1 of this regulation*, the Commission interprets the term ~~to~~:

~~—1. “Activities of a natural person”:~~

~~—(a) To include, without limitation, any activity of a natural person if that activity is conducted in furtherance of the business of:~~

- ~~—(1) A limited liability company which is disregarded, for the purposes of federal income taxation, as an entity separate from its owner; and~~
- ~~—(2) A trust or any portion thereof if the natural person is a substantial owner of the trust or any portion thereof in accordance with the provisions of 26 U.S.C. §§ 671 to 679, inclusive.~~
- ~~—(b) To exclude any activity of a natural person if any income, tax deductions or tax credits attributable to that activity may be reported to the Internal Revenue Service as income or loss from a partnership, S corporation, estate, trust or real estate mortgage investment conduit on Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form.~~
- ~~—2. “Business trust” to mean a business trust organized pursuant to the provisions of chapter 88A of NRS or an equivalent entity organized pursuant to the laws of any other jurisdiction.~~
- ~~—3. “Convention” to mean an event of limited duration primarily attended by members of a particular trade or industry to discuss matters of interest to members of that trade or industry.~~
- ~~—4. “Limited liability company” to exclude any limited liability company which consists of a single member if the limited liability company is disregarded, for the purposes of federal income taxation, as an entity separate from its owner.~~
- ~~—5. “Partnership” to include any association of two or more persons described in NRS 87.060, regardless of whether the partnership reports to the Internal Revenue Service partnership income, tax deductions or tax credits on Form 1065, U.S. Return of Partnership Income, or its equivalent or successor form.~~
- ~~—6. “Person that conducts an activity for profit” to exclude:~~

~~—(a) Any trust or portion thereof for which any income, tax deductions or tax credits are attributable to a grantor or another person as a substantial owner of the trust or portion thereof pursuant to the provisions of 26 U.S.C. §§ 671 to 679, inclusive;~~

~~—(b) Any trust or portion thereof not otherwise described in this section if the only activity conducted by the trust or portion thereof is of a type that would not qualify as a business pursuant to NRS 360.785 if it were conducted by a natural person; and~~

~~—(c) Any estate if the only activity conducted by the estate is of a type that would not qualify as a business pursuant to NRS 360.785 if it were conducted by a natural person.~~

~~—7. “Person]~~ **“person** who operates a business from his home” to mean a natural person who individually operates or a married couple who jointly operate a business from a personal residence if:

~~[(a)]~~ **1.** No part of the personal residence is held open to the general public for use in furtherance of that business; and

~~[(b)]~~ **2.** No real property is owned, leased, rented or licensed by the natural person or the married couple for use in furtherance of that business, other than the personal residence and any real property owned, leased, rented or licensed for the sole purpose of:

~~[(H)]~~ **(a)** Maintaining a post office box;

~~[(H)]~~ **(b)** Posting a business license in accordance with the requirements of a municipal or county ordinance; or

~~[(H)]~~ **(c)** Periodically exhibiting or selling goods or services at a temporary fair, market, show or exhibition.

~~[8. “Trade show” to mean an event of limited duration primarily attended by members of a particular trade or industry to exhibit their merchandise or services to other members of that trade or industry.]~~

**Sec. 4.** NAC 360.766 is hereby amended to read as follows:

360.766 1. The exemption for a home-based business does not apply to a person who operates a business from his home during a federal tax year in which:

(a) He at any time failed to qualify as a person who operates a business from his home, as that term is interpreted pursuant to NAC 360.760; or

(b) His net earnings from that business were greater than 66 2/3 percent of the average annual wage for the most recent calendar year ending before the last day of that federal tax year.

2. Except as otherwise provided in ~~[NAC 360.764,]~~ *section 4 of chapter 9, Statutes of Nevada 2005, 22nd Special Session, at page 124*, a person described in subsection 1 shall obtain a state business license for that business not later than 180 days after the last day of a federal tax year in which the exemption for a home-based business does not apply to him.

3. As used in this section:

(a) “Exemption for a home-based business” means the provisions of paragraph (c) of subsection 2 of NRS 360.765.

(b) “Federal tax year” means a federal tax year ending on or after December 31, 2003.

**Sec. 5.** NAC 360.768 is hereby amended to read as follows:

360.768 1. If a person who operates a business from his home is required to obtain a state business license as a result of his net earnings from that business, his liability for each annual fee required by ~~[subsection 5 of NRS 360.780,]~~ *section 5 of chapter 9, Statutes of Nevada 2005, 22nd Special Session, at page 125*, depends upon the net earnings of the person from that

business for the most recent federal tax year ending before the date on which that fee would otherwise become due. The person is not liable for that fee if he establishes to the reasonable satisfaction of the Department that those net earnings were less than 66 2/3 percent of the average annual wage for the most recent calendar year ending before the date on which that fee would otherwise become due.

2. For the purposes of this section, the Department will accept a copy of a federal income tax return filed with the Internal Revenue Service for a business which a person operates from his home as satisfactory evidence of the net earnings of the person from the business for the period covered by the return.

**Sec. 6.** NAC 360.762, 360.764 and 360.770 are hereby repealed.

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## **TEXT OF REPEALED SECTIONS**

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### **360.762 Entities deemed to be businesses. (NRS 360.090, 360.765, 360.780)**

1. Except as otherwise provided in this section and subsection 2 of NRS 360.765, a corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership or business trust, or its equivalent organized under the laws of this State or another jurisdiction, shall be deemed to constitute a business for the purposes of NRS 360.760 to 360.795, inclusive, and NAC 360.750 to 360.770, inclusive, regardless of:

- (a) Any purpose for which that entity is organized or operated; and
- (b) Whether that entity conducts an activity for profit.

2. The provisions of subsection 1 do not apply to a natural person.

**360.764 Natural persons: Limitation on number of business licenses required. (NRS 360.090, 360.780, 360.785)** A natural person is not required to obtain more than one state business license for any combination of activities conducted by that person which are reported to the Internal Revenue Service for any federal tax year on two or more of the forms described in NRS 360.785.

**360.770 Proration of licensing fees. (NRS 360.090, 360.780)** The Department will not prorate the fees required by NRS 360.780 for any portion of a year during which a business is not conducted in this State.