

**ADOPTED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R109-08

Effective December 17, 2008

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

AUTHORITY: §§1-21, NRS 360.090, 361.4722, 361.4723 and 361.4724.

A REGULATION relating to taxation; providing for the administration of an exclusion from certain partial abatements of property taxes for an improvement to or change in the actual or authorized use of property; and providing other matters properly relating thereto.

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 20, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 14, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Agricultural use” has the meaning ascribed to it in NRS 361A.030.*

Sec. 4. *“Commercial use” means the current employment of property for any use other than agricultural use, industrial use, institutional use, mining use, multifamily residential use, open-space use, recreational use, single-family residential use or use as vacant land.*

Sec. 5. *“Industrial use” means the current employment of property for the purpose of:*

- 1. Manufacturing, assembly, processing, fabricating, machining or warehousing; or*
- 2. Extracting sand and gravel, unless the net proceeds thereof are subject to taxation pursuant to chapter 362 of NRS.*

Sec. 6. *“Institutional use” has the meaning ascribed to it in NAC 361.61012.*

Sec. 7. *“Mining use” means the current employment of property for the development or extraction of any mineral on or beneath the surface of land, including metal ores, oil, gas and other hydrocarbons, and geothermal resources.*

Sec. 8. *“Multifamily residential use” means the current employment of property for any residential purpose other than single-family residential use.*

Sec. 9. *“On-site improvement” means a physical change to the land area of any property which makes the site ready for its intended use or development, such as grading or landscaping or the addition of fencing, curbing, paving or walkways. The term does not include:*

- 1. Any off-site improvements, including, but not limited to, sewer or drainage lines, utility hookups, sidewalks or roads which are not located on the property; or*
- 2. Any change in the intensity of use of the property.*

Sec. 10. *“Open-space use” has the meaning ascribed to it in NRS 361A.050.*

Sec. 11. *“Partial abatement” means a partial abatement of taxes provided pursuant to NRS 361.4722, 361.4723 or 361.4724.*

Sec. 12. *“Recreational use” has the meaning ascribed to it in NAC 361.61024.*

Sec. 13. *“Single-family residential use” means the current employment of property as a single-family residence, as that term is defined in NRS 361.4723.*

Sec. 14. *“Vacant land” means any land other than land on which there is an improvement sufficient to allow the identification of or establish actual use.*

Sec. 15. *The provisions of sections 2 to 20, inclusive, of this regulation:*

1. Except as otherwise provided in subsection 2, set forth the methodology required to carry out the provisions of NRS 361.4722, 361.4723 and 361.4724 in determining the amount of any property taxes to be excluded from each partial abatement and added to the tax roll for the current fiscal year attributable to any incremental increase in the assessed value of any property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property.

2. Do not apply to any property of an interstate or intercounty nature regarding which the Commission establishes the valuation thereof for assessment purposes pursuant to subsection 1 of NRS 361.320 or NRS 361.321.

Sec. 16. *Any determination by a county assessor or the Department, as applicable, that there is any improvement to the subject property must be based on a finding that:*

1. There is an appurtenance erected upon or affixed to the land, including any on-site improvement, in the current fiscal year that did not exist in the immediately preceding fiscal year; or

2. The subject property consists in whole or in part of a community unit in a common-interest community and there is:

(a) A common element in that common-interest community; or

(b) An appurtenance erected upon or affixed to a common element in that common-interest community, including any on-site improvement,

↳ that did not exist in the immediately preceding fiscal year.

Sec. 17. *1. Any determination by a county assessor or the Department, as applicable, that there is any change in the actual use of the subject property must be based on a finding that, upon the commencement of the immediately preceding fiscal year:*

(a) The property was vacant land and, as the result of new construction on the property sufficient to allow for an identification of the use of the property, the primary use of the property upon the commencement of the current fiscal year is agricultural use, commercial use, industrial use, institutional use, mining use, multifamily residential use, open-space use, recreational use or single-family residential use;

(b) The primary use of the property as vacant land, agricultural use, commercial use, industrial use, institutional use, mining use, multifamily residential use, open-space use, recreational use or single-family residential use is different from the primary use of the property as vacant land, agricultural use, commercial use, industrial use, institutional use, mining use, multifamily residential use, open-space use, recreational use or single-family residential use upon the commencement of the current fiscal year; or

(c) The property was assessed and taxed as part of a qualified subdivision but is no longer part of that qualified subdivision upon the commencement of the current fiscal year. The amount of any partial abatement that applies to the property must be calculated as if the property had not been assessed and taxed as part of a qualified subdivision during the immediately preceding or any other prior fiscal year. As used in this paragraph, “qualified subdivision” has the meaning ascribed to it in NAC 361.117.

2. If any improvements from which the actual use of the subject property was determined for the purposes of subparagraph (2) of paragraph (a) of subsection 1 of NRS 361.227 are destroyed or otherwise removed from the property, the county assessor or the Department, as applicable, shall consider whether the actual use of the property, as determined from the destroyed or removed improvements, still exists for the current fiscal year.

3. If the subject property has more than one use, the county assessor may determine a single use for each individual portion of the property that is being used for only one use for the purpose of determining whether there is any change in the actual use of that portion of the property.

Sec. 18. 1. Any determination by a county assessor or the Department, as applicable, that there is any change in the authorized use of the subject property must be based on a finding that:

(a) Between the commencement of the immediately preceding fiscal year and the commencement of the current fiscal year, there has been a change in the legal or governmental restrictions on the use of the property;

(b) The change in the legal or governmental restrictions on the use of the property allows the property to be put to a use that was not an allowed use upon the commencement of the immediately preceding fiscal year; and

(c) Either:

(1) The property was vacant land upon the commencement of both the immediately preceding fiscal year and the current fiscal year; or

(2) All the improvements to the property were removed from the property before the commencement of the current fiscal year. No finding may be made pursuant to this subparagraph if the taxpayer shows to the satisfaction of the county assessor or the Department, as applicable, that a reasonably diligent effort is being made to build new improvements to the property that would provide for the same use of the property as was authorized when the former improvements were removed.

2. If a combination of applications or approvals is required for any changes in the legal or governmental restrictions on the use of the subject property, no finding may be made pursuant to subsection 1 until all such applications and approvals have been obtained.

3. For the purposes of each partial abatement, no change in the authorized use of any property may be determined to occur as a result of any change by a governmental entity in:

(a) The categorization or classification of the zoning designation for the property if there is no change in the allowed use of the property; or

(b) Any procedure to apply for an authorized use of the property.

Sec. 19. *1. If a county assessor or the Department, as applicable, does not make a determination in compliance with the provisions of section 16, 17 or 18 of this regulation that there has been any improvement to or change in the actual or authorized use of the subject property, no amount of property taxes may be added to the tax roll for the current fiscal year attributable to any incremental increase in the assessed value of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property.*

2. If a county assessor or the Department, as applicable, makes a determination in compliance with the provisions of section 16, 17 or 18 of this regulation that there has been any improvement to or change in the actual or authorized use of the subject property, the county assessor or the Department, as applicable, in cooperation with the county treasurer, must:

(a) Make a current year calculation for the property as provided in subsection 3;

(b) Make a base year calculation for the property as provided in subsection 4; and

(c) Apply the amount determined pursuant to subsection 3 or 4, whichever is less, as the amount of property taxes to be added to the tax roll for the current fiscal year attributable to any incremental increase in the assessed value of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property.

3. A current year calculation for the subject property must be made as follows:

(a) Determine the taxable value of the property in accordance with the provisions of NRS 362.095, paragraph (b) of subsection 1 of NRS 362.100 and NAC 361.106 to 361.139, inclusive, as applicable, for the current fiscal year based on any improvement to or change in the actual or authorized use of the property from the immediately preceding fiscal year.

(b) Determine the taxable value of the property in accordance with the provisions of NRS 362.095, paragraph (b) of subsection 1 of NRS 362.100 and NAC 361.106 to 361.139, inclusive, as applicable, for the current fiscal year as if there had not been any improvement to or change in the actual or authorized use of the property from the immediately preceding fiscal year.

(c) Subtract the amount determined pursuant to paragraph (b) from the amount determined pursuant to paragraph (a). If the remainder is:

(1) Zero or a negative number, the amount determined pursuant to this subsection shall be deemed to be zero.

(2) A positive number:

*(I) Convert that amount into an assessed value by multiplying that amount by 0.35;
and*

(II) Multiply that assessed value by the applicable rate of property taxes.

4. A base year calculation for the subject property must be made as follows:

(a) Determine the taxable value for the current fiscal year of any new improvements made on the land of the subject property, as determined for that fiscal year pursuant to section 16 of this regulation, in accordance with the provisions of paragraph (b) of subsection 1 of NRS 361.227.

(b) Determine the full cash value of the land of the subject property in accordance with the provisions of paragraph (a) of subsection 1 of NRS 361.227, NRS 362.095 and paragraph (b) of subsection 1 of NRS 362.100, as applicable, for the base year as if any improvement to or change in the actual or authorized use of the property, as determined for the current fiscal year pursuant to sections 16, 17 and 18 of this regulation, had occurred before the base year.

(c) Determine the full cash value of the land of the subject property in accordance with the provisions of paragraph (a) of subsection 1 of NRS 361.227, NRS 362.095 and paragraph (b) of subsection 1 of NRS 362.100, as applicable, for the base year without considering any improvement to or change in the actual or authorized use of the property determined for the current fiscal year pursuant to sections 16, 17 and 18 of this regulation.

(d) Subtract the amount determined pursuant to paragraph (c) from the amount determined pursuant to paragraph (b). If the remainder is:

(1) Zero or a negative number, the amount determined pursuant to this paragraph shall be deemed to be zero.

(2) A positive number, successively increase that number in a compound manner by the abatement percentage applicable to the property for each fiscal year after the base year to and including the current fiscal year.

(e) Add the amounts determined pursuant to paragraphs (a) and (d).

(f) Convert the amount determined pursuant to paragraph (e) into an assessed value by multiplying that amount by 0.35.

(g) Multiply the assessed value determined pursuant to paragraph (f) by the applicable rate of property taxes.

5. In carrying out the provisions of this section, a county assessor and the Department, as applicable, shall ensure that the amount of any property taxes excluded from any partial abatement and added to the tax roll for the current fiscal year attributable to any incremental increase in the assessed value of any property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property:

(a) Is due solely to an incremental increase in the assessed value of the property which is directly attributable to the improvement to or change in the actual or authorized use of the property;

(b) Is not due to any increase in the assessed value of the property as a result of any other cause, including, but not limited to, a general appreciation in the market value of property in the area; and

(c) Is assessed only to the specific property for which the assessed valuation has increased as a result of any improvement to or change in the actual or authorized use of that property.

6. As used in this section:

(a) “Abatement percentage” means, with regard to any property for which the owner thereof is entitled to a partial abatement from taxation pursuant to:

(1) NRS 361.4723 or 361.4724, 3 percent;

(2) Subsection 1 of NRS 361.4722, the percentage determined pursuant to paragraph (b) of that subsection; or

(3) Subsection 2 of NRS 361.4722, the percentage determined pursuant to paragraph (b) of that subsection.

(b) “Base year” means the fiscal year beginning on July 1, 2004, or the fiscal year in which a new parcel first appears on the tax roll, whichever occurs last.

(c) “New parcel” has the meaning ascribed to it in NAC 361.61014.

Sec. 20. *A county assessor shall include with each notice of assessed valuation or amended notice of assessed valuation provided to a taxpayer or an owner of property pursuant to NRS 361.300 a statement of whether any determination has been made that will result in the exclusion of any taxes from any partial abatement that applies to the subject property attributable to any incremental increase in the assessed value of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property. If the statement indicates that such a determination has been made, the statement must:*

- 1. Set forth that determination;*
- 2. Specify the amount of that incremental increase in the assessed value of the property;*
and
- 3. Describe the manner in which detailed instructions may be obtained for appealing the matter to the county board of equalization or the Commission.*

Sec. 21. NAC 361.010 is hereby amended to read as follows:

361.010 As used in NAC 361.010 to 361.61038, inclusive, *and sections 2 to 20, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 361.012 to 361.018, inclusive, have the meanings ascribed to them in those sections.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R109-08

Administration of an exclusion for actual and authorized use from property tax abatement

The Committee on Local Government Finance adopted regulations assigned LCB File No. R109-08 which pertain to chapter 361 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

The following statement is submitted for amendments, additions and deletions, to Nevada Administrative Code (NAC) Chapter 361 adopted by the Nevada Tax Commission, in order to clarify regulations.

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

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>	<u>Representing Businesses</u>
06-25-2007	Workshop	07-18-2007	337	173
10-02-2007	Workshop	10-17-2007	337	173
10-30-2007	Workshop	11-14-2007	337	173
05-30-2008	Workshop	6-17-2008	330	165
05-14-2008	Hearing	6-25-2008	330	165
07-24-2008	Workshop	8-20-2008	330	165
09-03-2008	Workshop	9-19-2008	330	165
09-03-2008	Hearing	10-6-2008	330	165
10-7-2008	Workshop	10-23-2008	134	58
10-7-2008	Workshop	11-06-2008	134	58
11-6-2008	Workshop	11-21-2008	134	58
10-30-2008	Hearing	12-1-2008	330	165

The mailing list included the interested parties list maintained by the Department, as well as officials of local jurisdictions subject to these regulations.

Many oral and two written comments were received at the workshops and hearing. A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **trubald@tax.state.nv.us**.

The Legislative Counsel Bureau completed its review and revisions on November 20, 2008. The Tax Commission further amended the regulation at the hearing on December 1, 2008.

2. The number persons who:

(a) Attended and testified at each workshop:

<u>Date of Workshop</u>	<u>Attended</u>	<u>Testified</u>
7-18-07	24	16
10-17-07	29	14
11-14-07	29	12
6-17-08	20	11
8-20-08	23	13
9-19-08	21	10
10-23-08	13	7
11-06-08	16	9
11-21-08	18	9

(b) Attended and testified at each hearing:

<u>Date of Hearing</u>	<u>Commission/ Public Attended</u>	<u>Public Testified</u>
6-25-2008	8 / 59	9
10-6-2008	8 / 69	15
12-1-2008	8 / 60	13

(c) Submitted to the agency written comments:

<u>Date of Workshop / Hearing</u>	<u>Number Received</u>
Workshop 07-18-2007	3
Workshop 10-17-2007	5
Workshop 11-14-2007	7
Workshop 6-17-2008	4
Hearing 6-25-2008	
Workshop 8-20-2008	4
Workshop 9-19-2008	4
Hearing 10-6-2008	
Workshop 10-23-2008	3
Workshop 11-06-2008	7
Workshop 11-21-2008	4
Hearing 12-1-2008	5

3. A description of how comment was solicited from affected businesses, 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 notices posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct mail to assessors and the interested parties list maintained by the Department. Approximately 51% of the approximately 337 direct mail notices were sent to individuals or associations representing business.

Members of the Nevada Tax Commission, officials of the Nevada Department of Taxation, local government officials, and members of the general public commented on some or all of the proposed language changes during the workshop process and during the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2100 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at trubald@tax.state.nv.us.

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

The permanent regulation was adopted with changes reflecting the verbal and written comments submitted to, or received by, the Department of Taxation primarily from attorneys representing private industry, individual taxpayers, county assessors, and Tax Commission members during the workshops and hearings listed above. The Nevada Tax Commission adopted the permanent regulation as revised at the adoption hearing; and believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation 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.**

The Commission has found that the regulation does not impose a direct and significant burden upon businesses and the public in Nevada. The permanent regulation provides for the administration of the partial property tax abatement when changes occur to the actual or authorized use or an improvement is made to the property.

The regulations present no reasonably foreseeable or anticipated immediate or long-term negative economic effects to businesses. The immediate and long-term effects of the regulation are to provide equitable treatment in the taxation of property.

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

The Department anticipates additional cost for local governments to administer the regulation, primarily because of changes to software/programming.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are not other state or government agency regulations that the proposed amendments duplicate.

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

The Commission is not aware of any provision in this regulation which is also governed by federal regulation.

9. If the regulation provides 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 Nevada Tax Commission is not aware of any provision in this regulation that provides for a new fee, or increases an existing fee.