

**ADOPTED REGULATION OF
THE NEVADA TAX COMMISSION**

LCB File No. R175-08

Effective October 15, 2010

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

AUTHORITY: §§1-6, NRS 360.090 and 360.245.

A REGULATION relating to taxation; making various changes regarding the provision of notice of certain appeals to and the intervention of certain persons in proceedings before the Nevada Tax Commission; and providing other matters properly relating thereto.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *A notice of appeal filed pursuant to paragraph (b) of subsection 1 of NRS 360.245 must:*

1. Identify the decision being appealed, the date on which the decision was rendered and the basis for the appeal; and

2. Include an estimate of the amount of money at issue on the appeal. The estimate is not binding on the Commission, the Department, any party to the appeal or any other person or governmental entity.

Sec. 3. *1. As soon as practicable after a taxpayer or the authorized representative of a taxpayer files a notice of appeal pursuant to paragraph (b) of subsection 1 of NRS 360.245, the Department shall determine whether the appeal is likely to affect the revenue of a county or other local government. The Department shall make that determination based upon:*

(a) The estimate provided pursuant to section 2 of this regulation of the amount of money at issue on the appeal or, if the Department determines that the estimate is inaccurate, based upon the particular facts and circumstances of the appeal; and

(b) The applicable criteria established by the Commission pursuant to subsection 5.

2. If the Department determines pursuant to subsection 1 that an appeal is likely to affect the revenue of a county or other local government, the Department shall:

(a) As soon as practicable after making that determination, provide a copy of the notice of appeal to:

(1) The district attorney and the governing body of the county regarding which the determination is made; and

(2) The governing body of each other local government regarding which the determination is made.

(b) At least 30 calendar days before the date of the first meeting at which the Commission may hear the appeal, notify each person to whom a copy of the notice of appeal was provided pursuant to paragraph (a) of the date of that meeting.

↪ A county or other local government that receives a copy of a notice of appeal pursuant to this subsection may intervene in the appeal in the manner provided in NAC 360.070.

3. If a taxpayer or the authorized representative of a taxpayer files a notice of appeal pursuant to paragraph (b) of subsection 1 of NRS 360.245 and the Executive Director determines that the appeal involves a legal issue of broad applicability to:

(a) A county regarding which a copy of the notice of appeal has not been provided to the district attorney and the governing body of the county pursuant to subsection 2, the Executive

Director may provide a copy of the notice of appeal to that district attorney and governing body.

(b) A local government regarding which a copy of the notice of appeal has not been provided to the governing body of the local government pursuant to subsection 2, the Executive Director may provide a copy of the notice of appeal to that governing body.

4. Each person and local government that receives a copy of a notice of appeal pursuant to this section shall hold and protect the information contained in the notice of appeal and any accompanying materials in accordance with any applicable laws pertaining to the confidentiality of that information, including, without limitation, any applicable provisions of NRS 360.247, 372.750 and 374.755.

5. For the purposes of this section and subsection 6 of NRS 360.245, the Commission will, at least once every 5 years, establish for each county criteria for determining whether an appeal is likely to affect the revenue of the county or another local government within the county, including, without limitation, criteria pertaining to:

(a) The population and distribution of taxes in the county or other local government; and

(b) The ability of the county or other local government to meet its financial obligations.

↪ The Department shall provide the Commission with recommendations for those criteria.

Sec. 4. NAC 360.043 is hereby amended to read as follows:

360.043 1. The provisions of NAC 360.043 to 360.200, inclusive ~~1~~, *and sections 2 and 3 of this regulation:*

(a) Govern the practice and procedure in contested cases before the Commission and Department.

(b) Govern all practice and procedure before the Commission or Department under titles 31 and 32 of NRS.

(c) Will be liberally construed to secure the just, speedy and economical determination of all issues presented to the Commission or Department.

2. In special cases, where good cause appears, not contrary to statute, deviation from these rules, if stipulated to by all parties of record, will be permitted.

Sec. 5. NAC 360.065 is hereby amended to read as follows:

360.065 1. “Appellant” means any party appealing to the Commission from a decision of the hearing officer.

2. “Intervener” means a person *or local government* other than the original party to the proceeding who is directly and substantially affected by the proceeding and who ~~requests in writing, not later than 3 days before a hearing,~~ *is allowed pursuant to NAC 360.070* to appear and present testimony or otherwise participate at the hearing.

3. “Petitioner” means any person who requests or seeks a redetermination, refund or adjustment of any tax, tax liability or the amount of any tax paid by him, an assessment for tax purposes or determination of value for any purpose, or who petitions the Department or Commission for an advisory opinion or to adopt, amend or repeal a regulation.

4. “Respondent” means any person who is required to respond to an appeal of an administrative decision of the Commission.

Sec. 6. NAC 360.070 is hereby amended to read as follows:

360.070 1. A person *or local government* other than the original party to any proceeding who is directly and substantially affected by the proceeding must secure an order from the Commission or the hearing officer granting leave to intervene before being allowed to

participate. *For the purpose of granting leave to intervene, it is presumed that a county or other local government that receives a copy of a notice of appeal pursuant to subsection 2 of section 3 of this regulation and timely files a petition for leave to intervene is directly and substantially affected by the proceeding.* The granting of leave to intervene in any matter or proceeding is not a finding or determination of the Commission or the hearing officer that the party will or may be a party aggrieved by any ruling, order or decision of the Commission or the hearing officer for purposes of court review or appeal.

2. Petitions for leave to intervene must be in writing and must clearly identify the proceeding in which intervention is sought. The petition must set forth the name and address of the petitioner and contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding, stating the manner in which the petitioner will be affected by the proceeding and outlining the matters relied upon by the petitioner as a basis for his request to intervene. If affirmative relief is sought, the petition must contain a clear and concise statement of the relief sought and the basis thereof, together with a statement as to the nature and quantity of evidence the petitioner will present if his petition is granted.

3. ~~[Petitions]~~ *Except as otherwise provided in this subsection, petitions for leave to intervene and proof of service of copies thereof on all other parties of record must be filed not less than ~~[2]~~ 21 working days before the commencement of the hearing . ~~[, or state]~~ The Commission may consider a petition for leave to intervene which is filed less than 21 working days before the commencement of the hearing if:*

(a) The petition and proof of service of copies thereof on all other parties of record are filed not less than 3 working days before the commencement of the hearing; and

(b) The petition states a substantial reason for the delay . ~~[, or it will not be considered.]~~

4. If a petition *for leave* to intervene shows a direct and substantial interest in the subject matter of the proceeding or any part thereof and does not unduly broaden the issues, the Commission or the hearing officer may grant leave to intervene or otherwise appear in the proceeding with respect to the matters set out in the intervening petition, subject to such reasonable conditions as may be prescribed.

5. If it appears during the course of a proceeding that an intervener has no direct or substantial interest in the proceeding and that the public interest does not require his participation therein, the Commission may dismiss him from the proceeding.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

LCB FILE NO. R175-08

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 360.

- 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.**

Copies of the proposed regulations, notice(s) of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of leasing tangible personal property as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Taxation (“Department”), <http://tax.state.nv.us/>, and mailed to all county libraries in Nevada and posted at the following locations:

Department of Taxation
1550 College Parkway, Suite 115
Carson City, Nevada 89706

Department of Taxation
4600 Kietzke Lane, Suite 235
Reno, Nevada 89502

Department of Taxation
555 E. Washington Avenue, Suite 1300
Las Vegas, Nevada 89101

Department of Taxation
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074

Department of Taxation
1010 Ruby Vista Drive, Suite 102
Elko, Nevada 89801

Legislative Building
401 S. Carson Street
Carson City, Nevada 89701

Nevada State Library
100 Stewart Street
Carson City, Nevada 89701

The Department of Taxation, as staff to the Nevada Tax Commission (“Commission”), solicited comment from the public by posting notices of a workshop, dated September 19, 2007, March 19, 2008, and October 20, 2009 to the locations listed above. Three workshops were held on October 12, 2007, April 14, 2008 and November 6, 2009. The minutes of that meeting may be obtained by writing to the Department of Taxation at 1550 College Parkway, Suite 115, Carson City, Nevada 89706. On May 24, 2009, the Executive Director of the Department of Taxation (“Executive Director”) issued a Notice of Intent to Act Upon a Regulation, with the intent to adopt R175-08 as a permanent regulation. The Commission, on June 24, 2010, adopted said regulation.

A copy of the summary of the public response, if any, to the proposed regulation may be obtained from the Nevada Department of Taxation, 1500 College Parkway, Suite 115, Carson City, Nevada 89706, 775-684-2096, or email to **efierro@tax.state.nv.us**.

2. The number persons who:

(a) Attended each hearing/workshop: October 12, 2007 –6 persons; April 14, 2008 – 9 persons; and November 6, 2009 – 8 persons.

(b) Testified at each hearing/workshop: A few individuals testified at the first two workshops, including representatives from local governments. No one testified at the November 6, 2009 workshop.

(c) Submitted to the agency written comments: Two written comments were submitted.

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 locations throughout the state; and at the Main Public Libraries in counties where an office of the Department is not located.

The Department and the general public commented on all of the proposed language changes during the workshop process. In summary, one comments suggested some technical changes, which were relayed to LCB Legal and incorporated into the draft that was adopted by the Commission. Another comment, from a local government, requested that the local governments be given adequate time to determine whether they want to intervene and also requested that the local government be given access to the full administrative record. The Department has addressed some of these concerns in the draft adopted by the Commission.

Moreover, members of the Nevada Tax Commission and staff to the Department commented during the Adoption Hearing.

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Department at (775) 684-2063 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at **efierro@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 on June 24, 2010, which did not include any changes to the draft dated May 5, 2010 that was provided to the Department by LCB Legal.

- 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

The proposed regulations present no reasonably foreseeable or anticipated adverse economic effects to businesses or to the general public. It is anticipated that the modified regulations will allow local governments better notice as to when the Commission will be adjudicating appeals that involve local government money. This in turn will allow local governments to make more informed decisions to determine whether they want to intervene in the appeals.

(b) Both immediate and long-term effects.

The proposed regulations present no reasonably foreseeable or anticipated immediate or long-term economic effects to businesses or to the general public.

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

The Department anticipates little, if any, additional cost to administer the regulations.

- 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 no known state or government agency regulations that the proposed regulation duplicates.

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

There are no known federal regulations regarding the request for a closed hearing.

- 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.