

LCB File No. R044-01

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

(This proposed regulation was previously adopted as LCB File No. T016-01)

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

AUTHORITY: NRS 360.419.

NAC 360.400 is hereby amended as follows:

360.400 Waiver or reduction of penalty or interest, *or both*, for *failure to make a timely return or payment of tax* ~~[delinquent payment]~~.

1. The department may waive or reduce the penalty or interest, *or both*, assessed for *failure to make a timely return or* ~~[a delinquent]~~ payment of tax ~~[which was imposed pursuant to NRS 360.417]~~ provided for in chapters 364A, 369, 370, 372, 372A, 374, 375B, 376A, 377, or 377A of NRS, if it finds that the ~~[proximate cause of the delinquent payment was]~~ *late filed return or late payment of tax*:

(a) *Was the result of* circumstances ~~[completely]~~ beyond the *taxpayer's or his agent's* control ~~[of the business that was required to make the payment, or its agents]; and~~

(b) *Occurred despite the exercise of ordinary care and without intent* ~~[Justifiable negligence or inadvertence, and that the business making the payment has no history of habitually delinquent payments; or~~

~~———(c) For good cause shown].~~

2. ~~[Any]~~ *A taxpayer or his agent may request a* ~~[application for]~~ waiver or reduction of ~~[the]~~ penalty or interest, *or both*, ~~[for a delinquent payment]~~ *by filing a written statement, under oath, setting forth the facts upon which he bases his claim and the circumstances that caused the late filing of the return or late tax payment. This statement will be treated the same as a petition for redetermination as contemplated in NRS 360.360, and must be submitted* ~~[filed in writing with]~~ to the department within ~~[60]~~ 45 days after the date the *taxpayer is served with a notice of a deficiency determination, unless the taxpayer files a petition for redetermination within that same 45 day period* ~~[tax is paid setting forth the circumstances which caused the delinquent payment]~~. *When a taxpayer is served with the deficiency notice by mail, 3 days will be added to the time period for filing the statement. For purposes of this section, to meet the requirement of making the statement under oath, it is sufficient for the taxpayer to include in the statement an acknowledgement that the statement was signed under penalty of perjury, or the taxpayer may swear or affirm the statement before a notary public.*

a. If a taxpayer has filed a petition for redetermination, he may request a waiver or reduction of penalty or interest, or both, at any time before a final decision is issued on the petition for redetermination, as set forth in NRS 360.390.

b. If a taxpayer does not file a petition for redetermination and fails to apply for the waiver or reduction of penalty or interest, or both, the taxpayer may apply for a refund of the amount paid as penalty or interest, or both.

c. Any claim for a refund of interest paid must be filed with the Department within 3 years from the date of payment of the interest or the date the deficiency became final, whichever is later. Any claim for refund of a paid penalty imposed pursuant to chapter 372 of NRS must be filed with the Department within 3 years from the date the penalty was paid or the date the deficiency became final, whichever is later.

d. Any claim for a refund of a paid penalty not imposed for a sales and use tax deficiency must be filed with the Department within 2 years from the date the penalty was paid or the date the deficiency became final, whichever is later.

3. In determining whether or not the circumstances which caused the ~~[delinquent]~~ late filing of the return or late tax payment ~~[in any particular case]~~ were ~~[completely]~~ beyond the control of the ~~[business required to make the payment]~~ taxpayer or his agent, the ~~[commission]~~ department shall ~~[will]~~ consider ~~[only]~~ evidence which shows that the ~~[delinquent]~~ late return or payment was ~~[proximately]~~ caused by *some action or event beyond the taxpayer's control and not directly related to the actions of the business. Examples of such circumstances would include, but are not limited to, natural disasters such as fire, earthquake, flood or other acts of God; [,] theft; [,] death or serious illness of the taxpayer or his agent or their immediate families; late filing or payment was due to erroneous written information given the taxpayer by a department officer or employee; provable errors of the United States Postal Service; or, the return was filed on time but inadvertently mailed to another entity. Each case will be evaluated on its merits. The examples listed above are for the purpose of example only, and should not be construed as being presumptive or conclusive of the taxpayer's eligibility for waiver or reduction of penalty or interest, or both. [or similar causes not directly related to the actions of the business that was required to make the payment, whether intentional or negligent.*

~~4. [If the department finds that a delinquent payment was caused by circumstances completely beyond the control of the business required to make the payment, or its agents, and that the tax was paid as soon as reasonably possible thereafter, the penalty imposed for the delinquent payment will be reduced to a total of not more than 1 percent of the tax or the amount of the tax and the interest will be reduced at a rate equal to the reduction in penalty.~~

~~5. If the department finds that the cause of the delinquent payment was justifiable negligence or inadvertence, that the business making the delinquent payment has not submitted more than one other delinquent tax payment in the preceding 12 months and that payment was made as soon as reasonably possible thereafter:~~

~~(a) The penalty for the delinquent payment will be:~~

~~(1) Not more than 2 percent of the tax or the amount of the tax if the payment is not more than 2 days late.~~

~~(2) Not more than 4 percent of the tax or the amount of the tax if the payment is not more than 5 days late.~~

~~(3) Not more than 6 percent of the tax or the amount of the tax if the payment is not more than 10 days late.~~

~~(4) Not more than 8 percent of the tax or the amount of the tax if the payment is not more than 15 days late.~~

~~(5) Not more than 10 percent of the tax or the amount of the tax if the payment is more than 15 days late.~~

~~(b) The interest on the delinquent payment will be reduced by an amount equal to the rate of reduction of the penalty applied by the department pursuant to paragraph (a). If the total penalty and interest after any reduction equals \$5 or less, the penalty and interest will be waived.~~

~~6. In determining whether the proximate cause of the delinquent was for good cause shown, the department will require the taxpayer to submit, without limitation, evidence that:~~
~~(a) The assessment of penalties and interest constitutes an extreme financial hardship;~~
~~(b) The assessment of interest and penalties is equal to or greater than two-thirds of the amount of the tax which is due; or~~
~~(c) The assessment of penalties and interest is extremely unfair or inequitable under the circumstances.~~

~~7. The department will not consider an application to waive or reduce penalties or interest, or both, imposed on a taxpayer if] If the assessment of tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax, [which has become final] *the department shall not consider an application to waive or reduce penalties or interest imposed on a taxpayer, unless the department determines that there is insufficient evidence to show negligence, fraud or intent to evade the tax.*~~

5. If a request for waiver or reduction of interest or penalty, or both, is denied by the department, the taxpayer may appeal the decision by filing a notice of appeal with the department within 30 days after service of the decision upon the taxpayer. An oral hearing shall be heard before a hearing officer, and the taxpayer shall be given 10 days' notice of the time and place of the hearing. The procedure for the hearing shall be the same as for hearings on petitions for redetermination.

6. Except as otherwise provided herein, claims for refund of interest and penalty paid to the department shall be handled in the same manner as claims pursuant to NRS 372.630 to 372.720.

~~[8. For the purposes of this section, "extreme financial hardship" means that the person who owes the tax has the present ability to pay the tax, but payment of the penalties and interest will render the person insolvent and unable to continue in business.]~~

(NEW SECTION)

NAC 360.____ Waiver or reduction of penalty or interest for late payments on monthly or quarterly returns

1. The penalty imposed for a late payment on a monthly or quarterly return will be waived entirely if:

(a) The taxpayer has not submitted any other late tax payment in the 12 months preceding the period for which the late payment was made;

(b) The return was received by the department with full payment of tax due within 45 days after the due date; and

(c) The late payment was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, which circumstances will include the error or misconduct of the taxpayer's employee or accountant, natural disasters such as a flood or earthquake, and delays or losses related to the postal service.

2. If the taxpayer has not submitted more than one other late tax payment in the 12 months preceding the period for which the late payment was made, and the department finds that the late return or tax payment was made as the result of circumstances beyond the control of the taxpayer or his agent and occurred despite the exercise of ordinary care and without intent:

(a) The penalty assessment for the late payment of tax shall be:

- (1) Not more than 2 percent of the tax if the payment is not more than 2 days late.*
- (2) Not more than 4 percent of the tax if the payment is not more than 5 days late.*
- (3) Not more than 6 percent of the tax if the payment is not more than 10 days late.*
- (4) Not more than 8 percent of the tax if the payment is not more than 15 days late.*

(b) The interest on the late payment shall be reduced by the rate of reduction of the penalty applied by the department pursuant to paragraph (a).

(c) If the total penalty and interest assessment amounts to \$5 or less after any reduction made pursuant to this section, the penalty and interest shall be waived.