

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R045-01

Effective November 1, 2001

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

AUTHORITY: §§1, 2, 4 and 5, NRS 360.090; §3, NRS 360.090 and 360.093.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *As soon as practicable after selection of an account for audit, the auditor assigned to the audit shall attempt to contact the taxpayer by telephone to schedule an appointment that is convenient for the taxpayer and the auditor for the purpose of performing the audit. If the auditor is unable to contact the taxpayer by telephone, the auditor shall send a letter to the taxpayer requesting the taxpayer to contact the auditor to schedule an appointment for the purpose of performing the audit.*

2. In scheduling an audit, the auditor and the taxpayer must discuss:

- (a) A date on which to commence the audit;*
- (b) An estimate of the date by which the audit will be completed;*
- (c) The first and last months of the audit period;*
- (d) The nature of the business being audited and the availability of records;*
- (e) The hours during which the records will be available for review by the auditor;*
- (f) The contact person with whom the auditor is to work in conducting the audit and reviewing the results of the audit; and*

(g) The criteria set forth in subsection 4 for changing the period that the audit will cover and extending the commencement date or estimated completion date, or both, of the audit.

3. After contacting the taxpayer pursuant to subsection 1, the auditor shall send a letter to the taxpayer which includes:

(a) The date, time and location of the first appointment for the audit;

(b) The first and last months of the audit period;

(c) The records that the taxpayer must make available for the audit;

(d) The estimated completion date of the audit;

(e) A copy of the Taxpayers' Bill of Rights;

(f) A copy of each statute that authorizes the department to perform an audit and issue a deficiency determination, if necessary, and the process for appealing such a determination; and

(g) The name and telephone number of the auditor and his supervisor.

4. The criteria to be used by the department in determining whether to change the period that the audit will cover and to extend the commencement date or estimated completion date, or both, of the audit include, without limitation:

(a) The time required by the taxpayer to gather records necessary for the audit; and

(b) Circumstances determined by the department to be beyond the control of the taxpayer or the department.

5. A taxpayer may request an extension of the commencement date or estimated completion date, or both, of the audit. Such a request must be submitted in writing to the auditor and must set forth the reason for the request. The auditor shall, on good cause shown, grant a reasonable extension and shall notify the taxpayer in writing of the revised

commencement date or the revised estimated completion date, or both, of the audit. If an extension is granted, the statute of limitations for the finding of a deficiency will not be tolled during the period of the extension and a waiver of the statute of limitations must be obtained from the taxpayer or the audit period must be adjusted to account for the extension.

6. If a taxpayer fails to provide the records necessary to complete an audit by the estimated completion date or revised estimated completion date, the auditor may:

(a) Determine an amount of delinquent taxes due from the records provided;

(b) If the taxpayer has not provided any records, estimate an amount of delinquent taxes due based on information regarding the taxpayer that the department has in its possession, including, without limitation, any returns filed by the taxpayer; or

(c) Request the department to issue a subpoena for the production of records by the taxpayer.

Sec. 3. 1. *If a taxpayer provides written documentation during an audit that indicates that the taxpayer relied to his detriment on written advice provided by an officer, agent or employee of the department, an opinion of the attorney general or the commission, or the written results of an audit of his records conducted by the department, the auditor shall document the facts and circumstances relating to the issue for the audit file and shall continue the audit. Such documentation may include, without limitation:*

(a) An advisory opinion issued by the department pursuant to NAC 360.190, 360.195 and 360.200 in response to the request of the taxpayer for advice on an issue, if the facts contained in the request are similar to the facts of the transactions under review in the current audit;

(b) A letter issued by the department to the taxpayer regarding the manner in which to account for the specific types of transactions under review in the current audit;

(c) Written documentation which establishes that the taxpayer has been audited previously by the department and that the results of that audit conflict with the results of the current audit;

(d) An opinion or decision of the attorney general or the commission that addresses an issue or circumstances that are similar to the specific types of transactions under review in the current audit; and

(e) A letter issued by the department to the taxpayer that defines the items, scope and issues reviewed in a prior audit which are similar to the specific types of transactions under review in the current audit. The occurrence of a prior audit is not conclusive evidence that relieves the taxpayer of liability in the current audit.

2. The director shall review the documents submitted by the taxpayer pursuant to subsection 1 and decide whether to recommend a waiver of the tax, interest or penalty, pursuant to NRS 360.294, to the commission based on the information provided by the taxpayer pursuant to subsection 1.

Sec. 4. *Upon completion of the audit, the department shall issue a letter to the taxpayer setting forth:*

- 1. The issues reviewed in the audit;*
- 2. The period of time under review for each section of the audit, including, without limitation, sample months, if applicable;*
- 3. The results of the audit; and*
- 4. If the taxpayer was using an incorrect method of collecting or accruing tax on a specific transaction reviewed in the audit, the proper method of collecting or accruing tax on the transaction.*

Sec. 5. 1. If, after an audit, the department determines that delinquent taxes are due, the department shall issue to the taxpayer a notice of the deficiency determination. The notice must be issued on or before the estimated completion date or revised estimated completion date of the audit. The department shall include with the notice a form prescribed by the department for filing a petition for redetermination.

2. If the taxpayer wishes to dispute the findings of the audit, the taxpayer must petition the department for a redetermination within 45 days after he is served with the notice of the deficiency determination. A petition for redetermination must be submitted:

(a) On a form prescribed by the department for filing a petition for redetermination; or

(b) In the form of a letter which contains sufficient information to give notice to the department that the taxpayer is disputing the deficiency determination. The letter must include, without limitation, the name of the taxpayer, the account number assigned to the taxpayer by the department and the amount of the tax, interest or penalty in dispute.

3. The director may grant an extension for the filing of a petition for redetermination if the request for an extension is made in writing to the department and the director finds that the petition for redetermination was not filed or was filed late despite the exercise of ordinary care by and without the intent of the taxpayer and that the cause of the failure to file or late filing of the petition was circumstances beyond the control of the taxpayer. Such circumstances include, without limitation, a natural disaster or other disaster beyond the control of the taxpayer and the death or hospitalization of the person responsible for filing the petition for redetermination.

4. A petition for redetermination will be sent to a hearing officer after:

(a) The department has reviewed any additional documentation that the taxpayer has submitted with his petition; and

(b) The taxpayer and the department have not agreed to a settlement based upon such documentation provided by the taxpayer.

5. The hearing officer may request that the parties file prehearing statements. The parties may file a joint prehearing statement. If the parties cannot agree on a joint prehearing statement, each party must file its statement by the date set by the hearing officer. The prehearing statement must be limited to a brief explanation of the issues from the audit for consideration by the hearing officer and must include, without limitation:

(a) A statement of the unresolved issues that will be presented to the hearing officer, the nature of the specific transaction at issue, the amount in dispute and the legal issues involved in the matter.

(b) A statement of the issues that have been resolved by the parties, including, without limitation, the uncontested facts.

(c) A list of exhibits that each party expects to introduce at the hearing and any objections to those exhibits. The exhibits must be marked in advance of the hearing.

(d) A list of the witnesses that each party expects to testify at the hearing.

(e) An estimate of the time required for the hearing.

(f) A statement regarding whether the party will submit a post-hearing brief.

6. A prehearing statement must be filed by the date set by the hearing officer. The hearing officer may grant an extension for filing the prehearing statement if the motion or stipulation requesting the extension is filed with the hearing officer before the date set for filing the

statement. The hearing officer shall issue a written decision on the motion or stipulation requesting the extension.

7. Failure of a party to file a prehearing statement will not delay the scheduling of the hearing. The hearing officer shall provide notice of the hearing to the parties at least 10 days before the date of the hearing.

8. If a party wishes to raise an issue that was not included in its prehearing statement before or during the hearing, the hearing officer shall grant a continuance to allow the opposing party to prepare a response to the issue.

9. The taxpayer may, at any time, withdraw his petition for redetermination by submitting a written request, in the form of a letter, to the department.