

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R048-01

Effective November 1, 2001

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

AUTHORITY: §§1-5, NRS 360.090 and 362.120; §6, NRS 360.090 and 362.170.

Section 1. Chapter 362 of NAC is hereby amended by adding thereto a new section to read as follows:

As used in this chapter, unless the context otherwise requires, “department” means the department of taxation.

Sec. 2. NAC 362.010 is hereby amended to read as follows:

362.010 1. For the purposes of assessment and taxation of the net proceeds of ~~mines under~~ *minerals pursuant to* chapter 362 of NRS, the gross value of mineral products must be determined in accordance with the provisions of this section.

2. In those cases where a mineral product is sold by the producer in an arms-length transaction in free market competition, the gross value of the product is an amount equal to the proceeds of the sale of the product. This subsection applies to sales realized on all minerals produced from mining, including , without limitation, reduction, beneficiation or any treatment used by the producer within or outside this state to obtain a mineral product which is commercially marketable.

3. In those cases where a product is exchanged for any thing or service or removed from the state in a form ready for use or sale, but not used or sold during the period covered by the statement ~~[]~~ *required by NRS 362.110 to be filed*, the gross value of the product is:

- (a) ~~[The]~~ *For sales of minerals that do not involve derivative financial transactions, the price stated in the contract or other document of sale if one is in existence; or*
- (b) ~~[An amount]~~ *If minerals are transferred in kind or used to support derivative financial transactions, the closing spot price on the date of the taxable event. The spot price for precious metals will be determined by the department by using a recognized national or international publication of prices ~~[]~~ such as the London PM fix. If no organized commodity exchange exists for a particular mineral product, the price will be the realized sales price of the mineral product.*

4. In those cases where the mineral product is used by the producer or disposed of by him in any kind of transaction which is not at arms-length, including , without limitation , such transactions with associated or affiliated companies, the gross value of the mineral product so used or disposed of will be determined by the department by utilizing information supplied by the producer under this subsection and from such other appropriate sources as the department deems necessary. The mineral producer shall supply the department with the following information for each reporting period:

- (a) The producer's profit and loss statements;
- (b) The proportionate profit reports and the calculations used to prepare them;
- (c) The allocation of income by states;
- (d) The amount used to calculate the percentage of depletion allowances; or

(e) The monthly average price of the product for the months in which it was used in a manufacturing process or to provide a service.

5. Any information submitted pursuant to paragraphs (a) to (d), inclusive, of subsection 4 must be the same as submitted to the Internal Revenue Service.

6. The producer has the burden of proof in any determination under this section of the gross value of mineral products used or disposed of by him.

7. *As used in this section:*

(a) *“Derivative financial transaction” means a financial transaction which uses:*

(1) A financial instrument that has no intrinsic value, but which derives its value from a contract to deliver minerals in the future at a specific price; or

(2) An option that gives a party to the transaction the opportunity to buy minerals from or sell minerals to the other party to the transaction at a prearranged price.

(b) *“Spot price” means the price established for physical delivery of a mineral by an organized commodity exchange on the date of the taxable event.*

(c) *“Transferred in kind” means a transaction in which a mineral product is delivered instead of cash to complete the transaction.*

Sec. 3. NAC 362.030 is hereby amended to read as follows:

362.030 1. All information in the statement which is required by NRS 362.110 to be filed must be submitted on forms supplied by the department or in a manner which is acceptable to the department.

2. The following property must be reported:

(a) Leasehold improvements and buildings ~~§~~ ***that are owned and maintained by the operator of the mine for use as housing for employees;***

- (b) Fixed machinery and equipment;
- (c) Mobile machinery and equipment; and
- (d) Automobiles and light service vehicles such as pickups and panel trucks.

3. Each cost submitted for depreciation must be the complete cost to the taxpayer,

~~including~~ *and must include* all delivery , *taxes* and installation charges.

4. Each asset must be listed on a table which sets forth:

- (a) A clear identification of the asset;
- (b) The cost of ~~its~~ *the* construction or acquisition *of the asset* and the date ~~;~~ *on which the construction of the asset was completed or the asset was acquired;*

(c) The depreciation class, such as buildings, fixed equipment, mobile machinery and equipment , or automobile and light service vehicles;

(d) The total amount of depreciation granted; and

(e) The amount claimed for the present tax period.

FLUSH An integrated processing assembly which consists of components of individual manufacture, and which is installed as a unit, may be reported as a unit. The report must describe the function of the unit and list its principal components in detail.

Sec. 4. NAC 362.050 is hereby amended to read as follows:

362.050 1. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are deductible except as limited by subsection ~~5~~ **6** of NRS 362.120:

(a) The cost of renting equipment if the amount paid as rental is commercially reasonable in the circumstances;

(b) The cost of contracting for all or part of the mine's operations, if the contract price is commercially reasonable in the circumstances;

(c) The cost of services which a Nevada mine receives under contract from its corporate office or the office of a related corporation, if:

- (1) The cost is commercially reasonable in the circumstances; and
- (2) The cost is separately stated in a manner consistent with good accounting practices;

~~and~~

(d) The reasonable cost of management provided to a joint venture by a member, if the fees relate directly to operation of the mine ~~and~~;

(e) The sales and use taxes expended for tangible goods or taxable services to the extent that the cost of such goods or services is an allowable operating cost;

(f) The direct cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing that are incurred by the operator of the mine, but as reduced by any payments received for rental of the property; and

(g) The cost of compensation for employees. As used in this paragraph, "compensation" means wages, salaries, paid vacation leave, paid sick leave, performance-related bonuses, contributions to and administrative costs of qualified pension and retirement plans, 401k and similar deferred benefit plans, dental insurance, medical insurance, accidental death and dismemberment insurance, Medicare contributions, social security payments, medical clinic and hospital expenses, state and federal unemployment compensation contributions or payments, worker's compensation insurance, and post-employment training expenses for training conducted in compliance with the Mine Safety and Health Administration and the division of industrial relations of the department of business and industry or their successor organizations.

2. In computing the costs enumerated in subsection 3 of NRS 362.120, the following specific items are not deductible:

- (a) Cost or expenses which are capitalized;
- (b) Gifts, grants and donations;
- (c) Costs of public relations and influencing or seeking to influence governmental activities;
- (d) Costs of exploration and development related to ore bodies outside the geographic area which can economically provide a source of raw materials to the plant located at the mine; ~~and~~
- (e) Federal income taxes, all property taxes, *the business license tax imposed pursuant to chapter 364A of NRS, and* the tax on net proceeds of ~~mines~~ *minerals, and any other tax that an operator of a mine is required to pay to the Federal Government, this state or any other state, or a political subdivision thereof;*
- (f) *Costs associated with providing health clubs for employees;*
- (g) *Except as otherwise provided in paragraph (f) of subsection 1 and paragraph (a) of subsection 2 of NAC 362.030, costs incurred for preemployment activities, including, without limitation, reimbursement for expenses for housing, moving and relocation;*
- (h) *Except as otherwise provided in paragraph (g) of subsection 1, costs associated with union trust funds;*
- (i) *Costs associated with providing day care facilities for the children of employees;*
- (j) *General liability insurance; and*
- (k) *Excess policies of general liability insurance.*

3. If a cost is partially deductible and partially nondeductible, the deductible portion must be allowed. In determining the portion of such costs which is allowable as a deduction, a reasonable allocation must be made based upon available information.

Sec. 5. NAC 362.060 is hereby amended to read as follows:

362.060 1. The installation of power and light lines is a capital charge, while the upkeep and purchase costs of electric power ~~[is an operating cost.]~~ *are operating costs.*

2. When electric power is generated and distributed to various departments, the upkeep of the power plant must be written off, and the distribution of the power is an operating cost. New engines, boilers and similar equipment are chargeable to a capital account.

Sec. 6. NAC 362.090 is hereby amended to read as follows:

362.090 1. The department shall report to the state controller pursuant to NRS 362.170 on or before ~~[February 15,]~~ May 25 ~~[, August 15 and November 15]~~ the amount of any net proceeds of minerals taxes plus pro rata penalties and interest collected for distribution to each county.

2. The department shall distribute penalties and interest pursuant to NRS 362.170 in the same manner and percentage as computed for the net proceeds of minerals tax for each county.