

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R048-01

July 31, 2001

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

AUTHORITY: §§1-4, NRS 360.090 and 362.120; §5, NRS 360.090, 360.419 and 362.160; §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 ~~[The]~~ *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.*

(c) *“Transferred in kind” means a financial 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 ~~§~~, *including, without limitation, housing for employees that is owned and maintained by the operator of the mine;*

(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 *, without limitation,* 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 construction or acquisition and the date ~~§~~ *on which it was constructed or 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 ~~§~~ 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 ~~[]~~ ;

(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 cost of housing for employees that is owned and maintained by the operator of the mine, including, without limitation, any losses to the housing 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 for the children of employees;*

(j) General liability insurance; and

(k) Umbrella policies.

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 362.080 is hereby amended to read as follows:

362.080 ~~[1.—The Nevada tax commission]~~ *The department* may, *pursuant to NRS 360.419*, waive or reduce the penalty or interest imposed on a delinquent payment of the tax on the net proceeds of minerals which was imposed pursuant to NRS 362.160. ~~[—if it finds that the proximate cause of the delinquent payment was:~~

~~—(a) Circumstances completely beyond the control of the taxpayer who was required to make the payment, or the agent of the taxpayer;~~

~~—(b) Justifiable neglect or justifiable inadvertence, and that the taxpayer making the payment has no history of habitually delinquent payments; or~~

~~—(c) Other good cause shown.~~

~~—2.— Any application for the waiver or reduction of the penalty or interest on a delinquent payment of the tax on the net proceeds of minerals must be filed in writing with the commission within 30 days after the tax became due. The application must include a statement of the circumstances which caused the delinquent payment.~~

~~—3.— In determining whether the circumstances which caused the delinquent payment in any particular case were completely beyond the control of the taxpayer required to make the payment, the commission will consider only evidence which shows that the delinquent payment was proximately caused by fire, earthquake, flood or other act of God, theft or a similar cause not directly related to the actions of the taxpayer who was required to make the payment, whether intentional or not.~~

~~—4.— If the commission finds that a delinquent payment was caused by circumstances completely beyond the control of the taxpayer required to make the payment, or the agent of the taxpayer, and that the tax was paid as soon as reasonably possible thereafter, the penalty and interest imposed for the delinquent payment will be waived.~~

~~—5.— If the commission finds that the cause of the delinquent payment of taxes was justifiable neglect or justifiable inadvertence, that the taxpayer making the delinquent payment has not made more than one other delinquent payment in the immediately preceding 24 months, and that the payment was made as soon as reasonably possible thereafter:~~

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

~~—(1) Be reduced to 2 percent if the payment is not more than 2 days late;~~

~~—(2) Be reduced to 4 percent if the payment is more than 2 but not more than 5 days late;~~

~~—(3) Be reduced to 6 percent if the payment is more than 5 but not more than 10 days late;~~

~~—(4) Be reduced to 8 percent if the payment is more than 10 but not more than 15 days late;~~

~~or~~

~~—(5) Not be reduced 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 commission pursuant to paragraph (a).~~

~~—(c) The penalty and interest will be waived if the total penalty and interest after reduction pursuant to this subsection is \$5 or less.~~

~~—6. In determining whether the proximate cause of the delinquent payment was for other good cause shown, the commission 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 extremely inequitable under the circumstances.~~

~~—7. The department shall provide the commission with its recommendation concerning the waiver or reduction of penalties and interest after a review of all of the evidence that has been received from the taxpayer.~~

~~—8. As used in this section, “extreme financial hardship” means that the taxpayer who owes the tax has the present ability to pay the tax but payment of the penalties and interest will render the taxpayer insolvent.]~~

Sec. 7. 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,]~~ 28, May 25 ~~[,]~~ *and* 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.