

**ADOPTED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R109-01

Effective May 13, 2002

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

AUTHORITY: §§1, 6, 8, 9, 10 & 12, NRS 360.750, 364A.170 and 374.357; §3-4, NRS 360.750 and 364A.170; .§ 2, 5, 7 & 11, NRS 360.750 and 374.357.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *“Eligible machinery or equipment” has the meaning ascribed to it in NRS 374.357.*

Sec. 3. *A partial abatement of the taxes imposed pursuant to chapter 364A of NRS that is approved by the commission for an expanded business:*

1. Applies only to the taxes due for the additional employees employed by the business as a result of the expansion of the business.

2. Does not apply to the taxes due for the employees that were employed by the business before the expansion.

Sec. 4. *1. For the purposes of NRS 360.225, to determine eligibility for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, a proposed or expanded business which qualifies as an employer pursuant to NRS 612.055 shall be deemed by the department to have begun operations in this state:*

(a) If the business is a proposed business, on the date on which the business first pays wages to an employee of the business who performs services for the business in this state.

(b) If the business is an expanded business, on the date on which the business first pays wages to an employee of the business who was not employed by the business before the expansion.

2. To determine the amount of capital investment required pursuant to paragraph (d), (e) or (f) of subsection 2 of NRS 360.750 for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS:

(a) A capital investment shall be deemed to be any expenditure for an asset that qualifies as “section 1245 property,” as defined in 26 U.S.C. § 1245, if the asset will be used by the proposed business to establish its operations in this state or by the expanded business to expand its operations in this state; and

(b) The amount paid for such an asset, including any capitalized interest, shall be deemed to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

3. A business for which the commission has approved a partial abatement of the taxes imposed pursuant to chapter 364A of NRS shall, not later than 30 days after the end of the first fourth quarter in which the business has been in operation after the approval of the partial abatement, file with the department on a form prescribed by the department, a statement that the business has complied with the requirements of NRS 360.750. The form must be accompanied by proof that the business has made the capital investment required by the commission pursuant to NRS 360.750.

Sec. 5. 1. *The department shall, pursuant to NRS 360.225, determine if machinery or equipment for which a business claims a partial abatement of the taxes imposed pursuant to*

chapter 374 of NRS qualifies as eligible machinery or equipment pursuant to NRS 374.357.

2. The department shall not determine that machinery or equipment which is leased by a business qualifies for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS.

Sec. 6. *If the commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 364A or 374 of NRS, the applicant must employ the number of employees required by the commission for approval of the application by the last day of the first fourth quarter that the applicant has been in operation after the partial abatement has been approved by the commission and must continue to employ at least that number of employees for:*

1. At least 5 years; or

2. The period specified in the agreement executed by the applicant with the commission pursuant to paragraph (b) of subsection 2 of NRS 360.750, whichever is later, after the last day of that fourth quarter.

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Sec. 7. *If an application is approved by the commission for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the period of abatement begins on the date on which the applicant takes possession of the first delivery of eligible machinery or equipment at the location designated in the certificate of eligibility issued by the commission. Upon taking possession of such eligible machinery or equipment, the applicant shall immediately notify the commission and the Nevada tax commission.*

Sec. 8. *1. If the commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 364A of NRS, the applicant is eligible for a refund of any taxes*

imposed pursuant to chapter 364A of NRS which were paid previously by the applicant and which are subject to the abatement.

2. If the commission approves an application for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the applicant is eligible for a refund of any taxes imposed pursuant to chapter 374 of NRS which were paid previously by the applicant and which are subject to the abatement, if the department determines pursuant to section 5 of this regulation that the machinery or equipment qualifies as eligible machinery or equipment and:

(a) If the machinery or equipment was acquired outside this state from a retailer that is not registered with the Nevada tax commission, the application for the partial abatement was made:

(1) Before the acquisition of the machinery or equipment; or

(2) After the acquisition of the machinery or equipment and within 60 days after the date on which the taxes on the acquisition imposed pursuant to chapter 374 of NRS were due;
or

(b) If the machinery or equipment was acquired from a retailer that is registered with the Nevada tax commission, the application for the partial abatement was made within 60 days after the payment of the taxes on the acquisition imposed pursuant to chapter 374 of NRS.

Sec. 9. 1. *If the department finds that a business for which the commission has approved an application for a partial abatement of the taxes imposed pursuant to chapter 364A or 374 of NRS has failed to continue to meet the requirements for the partial abatement imposed by the commission pursuant to NRS 360.750, the department shall determine the amount of tax owed to the department in the manner prescribed in NRS 360.300 to 360.400, inclusive.*

2. A business against whom the department has made such a determination may, in the manner prescribed in NRS 360.300 to 360.400, inclusive, file an appeal with the Nevada tax commission for a determination whether the business has substantially complied with the requirements for the partial abatement approved by the commission pursuant to NRS 360.750.

Sec. 10. NAC 360.466 is hereby amended to read as follows:

360.466 As used in NAC 360.466 to 360.474, inclusive, *and sections 2 to 9, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 360.468 and 360.470 *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 360.472 is hereby amended to read as follows:

360.472 1. To apply for a partial abatement, a person must submit an application to the commission on a form prescribed by the commission within the period prescribed in subsection 2.

2. If the application is for a partial abatement of the taxes imposed pursuant to chapter 361 or 364A of NRS, the application must be submitted not earlier than 18 months before the business is located or expanded in this state. If the application is for a partial abatement of the taxes imposed pursuant to chapter 374 of NRS, the application must be submitted not later than 60 days after the date of acquisition of the eligible machinery or equipment. ~~[As used in this subsection, “eligible machinery or equipment” has the meaning ascribed to it in NRS 374.357.]~~

3. Except as otherwise provided in subsection 4, the commission will consider an application submitted pursuant to subsection 1 if the application is received:

(a) At least 15 working days before a regularly scheduled meeting of the commission, at that meeting; or

(b) Less than 15 working days before a regularly scheduled meeting of the commission, at the next regularly scheduled meeting immediately following that meeting.

4. If the commission determines that an application submitted pursuant to subsection 1 requires special or additional review and consideration by the commission, the commission may postpone consideration of the application until the next regularly scheduled meeting of the commission.

5. If the commission approves an application for a partial abatement, the commission will forward to the department, with the certificate of eligibility required pursuant to subsection 5 of NRS 360.750, any materials submitted to the commission in support of the application submitted pursuant to subsection 1.

Sec. 12. NAC 361.093, 364A.152, 374.100, 374.105, 374.110, 374.115 and 374.120 are hereby repealed.

TEXT OF REPEALED SECTIONS

361.093 Application: Form required; consideration by commission. (NRS 360.750, 361.0687)

1. A person seeking a partial abatement from property taxes on the personal property of a new or expanded business pursuant to NRS 361.0687 must apply for the abatement on the form prescribed by the commission not more than 1 year before the business begins to develop the site for its expansion or operation in this state.

2. The commission will deny or approve each application for a partial abatement at the first regularly scheduled meeting following receipt of the application if the application is received at least 15 working days before the meeting. An application that is received within that time will be considered at the next regularly scheduled meeting of the commission following the one before which it was received.

3. As used in this section, “commission” means the commission on economic development.

364A.152 Exemption for proposed business: Determination of eligibility; determination of capital investment required.

1. To determine eligibility for the exemption authorized by NRS 364A.170, a proposed business which qualifies as an employer pursuant to NRS 612.055 shall be deemed to have begun operations in this state on the date it first pays wages to an employee of the business who performs services for the business in this state.

2. To determine the amount of capital investment required pursuant to subparagraph (2) of paragraph (a) or (b) of subsection 2 of NRS 364A.170:

(a) A capital investment shall be deemed to be any expenditure for an asset that qualifies as a capital expenditure pursuant to the Internal Revenue Code of 1986, as amended, if the asset will be used by the proposed business to establish its operations in this state.

(b) The amount paid for such an asset, including any capitalized interest, shall be deemed to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

3. A proposed business shall, not later than 30 days after the end of the fourth quarter in which the business is in operation, file with the department on a form prescribed by the department, a statement that the business has complied with the requirements of NRS 364A.170. The form must be accompanied by proof that the business has made the capital investment required by NRS 364A.170.

4. If a proposed business fails to qualify for the exemption authorized by NRS 364A.170, the department shall determine the amount of tax owed to the department in the manner prescribed in NRS 360.300 to 360.400, inclusive.

374.100 Definitions. (NRS 360.750) As used in NAC 374.100 to 374.120, inclusive, unless the context otherwise requires:

1. “Abatement” means the abatement of the taxes imposed by chapter 374 of NRS which is authorized by NRS 374.357.

2. “Commission” means the commission on economic development.

3. “Eligible machinery or equipment” has the meaning ascribed to it in NRS 374.357.

374.105 Commencement of period of abatement; notification of date. (NRS 360.750) If an application is approved by the commission, the period of abatement begins on the date the applicant takes possession of the first delivery of eligible machinery or equipment at the location designated in the certificate of eligibility issued by the commission. Upon so taking possession of such eligible machinery or equipment, the applicant shall immediately notify the commission and the Nevada tax commission.

374.110 Application for abatement: Certain requirements based on location and status of retailer; refund of taxes paid; determination as eligible machinery or equipment. (NRS 360.750)

1. An application for an abatement of taxes on the acquisition of eligible machinery or equipment outside this state from a retailer who is not registered with the Nevada tax commission must be made in advance of the acquisition or, if the eligible machinery or equipment has already been acquired, within 60 days after the date on which the tax was due.

2. An application for an abatement of taxes on the acquisition of eligible machinery or equipment from a retailer registered with the Nevada tax commission must be made within 60 days after the payment of the tax.

3. If an application for an abatement is approved by the commission, the applicant is eligible for a refund of any taxes he paid which are subject to the abatement.

4. The department of taxation may determine if the machinery or equipment purchased by the business qualifies as eligible machinery or equipment pursuant to NRS 374.357.

374.115 Review of certain records by commission. As a condition of approval by the commission of an application for an abatement, the applicant must grant in writing to the commission the right to review employment records, permits and other documents which the commission determines are necessary to verify the eligibility of the applicant for the abatement.

374.120 Consideration and approval of application.

1. The commission will approve or deny at its next regularly scheduled meeting each application for an abatement which is received by the commission at least 15 working days before the meeting.

2. The commission will consider each application on a case-by-case basis.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R109-01

The Nevada Tax Commission adopted regulations assigned LCB File No. R109-01 which pertain to chapters 360, 361, 364A and 374 of the Nevada Administrative Code on April 1, 2002.

Notice date: 2-28-2002
Hearing date: 4-1-2002

Date of adoption by agency: 4-1-2002
Filing date: 5-13-2002

INFORMATIONAL STATEMENT

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 of how other interested persons may obtain a copy of the summary.

Notices of hearing for the adoption and amendment of the proposed regulation were posted at the following locations: Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Nevada State Library, 100 Stewart Street, Carson City, Nevada; The Legislative Building, Capitol Complex, Carson City, Nevada; each County Main Public Library; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Las Vegas, Nevada.

A copy of the notice of hearing and the proposed regulation were placed on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation were also made available and placed on file at the Department of Taxation, 1550 East College Parkway, Carson City, Nevada; Department of Taxation, 4600 Kietzke Lane, Building O, Suite 263, Reno, Nevada; Department of Taxation, 555 East Washington Avenue, Suite 1300, Las Vegas, Nevada; Department of Taxation, 850 Elm Street, No. 2, Elko, Nevada; and in all counties in which an office of the Department of Taxation is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

The hearing was held on April 1, 2002 at the Washoe County Health Department, South Conference Room, 1001 East 9th Street, Reno, Nevada. It appears that due to the primarily procedural nature of the proposed regulation, only affected or interested persons and businesses as set forth in #3 below responded to the proposed regulation and testified at the hearing. A copy of the transcript of the hearing, for which a reasonable fee may be charged, may be obtained by calling the Nevada Department of Taxation at (702) 687-4896, or by writing to the Nevada Department of Taxation at 1550 East College Parkway, Suite 115, Carson City, Nevada, 89706.

The proposed regulation was submitted to the Legislative Counsel Bureau, which completed its review revisions on September 4, 2001. Thus, the proposed regulation, for practical purposes, was discussed at two workshops and has been heard and considered at one public hearing of the Nevada Tax Commission.

2. The number of persons who:

(a) Attended the hearing: 48

(b) Testified at the hearing: 3

(c) Submitted to the Tax Commission written comments: Written comments were submitted to and received by, the Department of Taxation from numerous various businesses, the Executive Director of the Nevada Commission on Economic Development and the Office of the Lieutenant Governor, which were forwarded to the Tax Commission.

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 the notices set forth in #1 above, by direct mail to all county assessors, and by direct mail to the approximately 240 interested businesses and persons on the Department of Taxation's mailing list.

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.

Section 6 paragraphs 2(a) and 3, Section 10 paragraphs 1 & 2, Section 11, and Section 12 of the proposed regulation were modified prior to adoption, due to issues raised by the Department of Taxation, the Attorney General's Office and by affected or interested businesses and persons that testified at the hearing. The remaining sections of the proposed regulation were not changed since no concerns were raised by the public, affected or interested businesses or persons, the Department of Taxation, the Attorney General's Office or Tax Commission members, and the Tax Commission believed no changes other than those made were necessary.

5. The estimated economic effect of the adopted regulation on the business 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 (b) Both immediate and long-term effects.

(a) Adverse and beneficial effects.

The proposed regulation presents no foreseeable or anticipated adverse economic effects to businesses or the public. There will be beneficial economic effects to businesses that qualify for the partial abatement program. Those anticipated benefits are not quantifiable at this time.

(b) Immediate and long-term effects.

Same as #5(a) above.

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

The proposed regulation presents no foreseeable or anticipated cost for enforcement.

7. A description of any regulations of other state or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is

necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulation is particular to the Department of Taxation and the Nevada Commission on Economic Development practices and procedures and does not appear to overlap or duplicate regulations of other state or local governmental agencies.

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

There are no known federal regulations pertaining to state business tax, sales/use tax and local property tax procedures, which are the subject of the proposed regulation.

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 proposed regulation does not provide a new fee or increase an existing fee.