

SECRETARY OF STATE
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Effective date _____

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Agency: Department of Taxation

Permanent Regulation
LCB File No. **R173-22**

Governor's signature

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Classification: ADOPTED BY AGENCY

Brief description of action: The Nevada Tax Commission adopted LCB File No. **R173-22** which establishes procedures for the filing of petitions with the Director of the Department of Taxation for declaratory orders as to the applicability of certain statutory provisions, regulations or administrative decisions; establishes procedures for the disposition of such petitions; and provides other matters properly relating thereto.

Authority citation other than 233B: NRS 360.090

Notice date: September 1, 2022

Date of Adoption by Agency: October 3, 2022

Hearing date: October 3, 2022

**APPROVED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R173-22

Filed December 29, 2022

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

AUTHORITY: §1, NRS 233B.120 and 360.090.

A REGULATION relating to taxation; establishing procedures for the filing of petitions with the Director of the Department of Taxation for declaratory orders as to the applicability of certain statutory provisions, regulations and administrative decisions; establishing procedures for the disposition of such petitions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Nevada Tax Commission to prescribe regulations for carrying on the business of the Commission and the Department of Taxation. (NRS 360.090) Existing law also requires each agency of the Executive Department of State Government to provide by regulation for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any statutory provision, agency regulation or decision of the agency. (NRS 233B.120) This regulation establishes such procedures with respect to statutory provisions, regulations and administrative decisions of the Department or the Commission.

Section 1. Chapter 360 of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. Except as otherwise provided in subsection 3, a person may file a petition with the Director requesting a declaratory order concerning the applicability of any statutory provision, regulation or decision of the Department or Commission.*
- 2. A petition for a declaratory order must include:*

- (a) The name and address of the petitioner;*
- (b) The reason for requesting the declaratory order;*
- (c) A statement of the facts that support the petition for a declaratory order;*
- (d) A clear and concise statement of the question or matter to be decided; and*
- (e) If the petition concerns a decision of the Department or Commission, a copy of the decision.*

3. A person may not file a petition for a declaratory order concerning a question or matter that is an issue in a pending administrative, civil or criminal proceeding in which the person is a party.

4. If the Department determines that a petition is a petition for a declaratory order, the Department shall submit the petition to a hearing officer. The hearing officer may refuse to review a petition for a declaratory order if the petition does not include the information required by subsection 2 or violates the provisions of subsection 3.

5. The hearing officer may:

(a) Conduct a hearing to determine issues of fact or to hear arguments relating to a petition for a declaratory order and may enter reasonable orders that govern the conduct of the hearing.

(b) Request that the petitioner provide additional information or arguments relating to the petition.

(c) Issue a declaratory order based on the contents of the petition and any material submitted with the petition.

(d) Consider, and base his or her decision on, facts set forth in a sworn affidavit or accompanied by comparable indicia of reliability.

(e) Consider any other information that he or she determines is relevant to the question or matter to be decided.

(f) Enter any reasonable order to assist the review of the petition.

6. The Department will maintain a record of each declaratory order that is indexed by subject matter and will mail a copy of the declaratory order to the petitioner within 90 days after:

(a) The petition is filed;

(b) A hearing is conducted concerning the petition; or

(c) Any additional information or written argument is received by the hearing officer,

↪ whichever occurs later.

7. A declaratory order is appealable to the Commission in the same manner as any other appealable decision as provided in NRS 360.245 and NAC 360.172 to 360.185, inclusive.

8. A petition for a declaratory order and any related material, including, without limitation, any exhibit, hearing transcript, briefing to an administrative law judge or resulting declaratory order, is confidential unless disclosed in an appeal to the Commission pursuant to NRS 360.247.

9. If the Department finds that a person who filed a petition for a declaratory order provided inaccurate information in connection with the petition, the person who filed the petition cannot rely on any resulting declaratory order to bar any subsequent regulatory action

by the Department nor may the Department grant a waiver pursuant to NRS 360.294 based upon the declaratory order.

10. A declaratory order issued pursuant to this section does not bar the Department from adopting a different interpretation of the law or pursuing a different policy in a future proceeding, including, without limitation, a petition for a declaratory order, enforcement proceeding or other adjudication.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R173-22

1. A clear and concise explanation of the need for the adopted regulation.

Regulation (R173-22) establishes procedures for the filing of petitions with the Director of the Department of Taxation for declaratory orders as to the applicability of certain statutory provisions, regulations or administrative decisions; establishes procedures for the disposition of such petitions; and provides other matters properly relating thereto.

Existing law requires the Nevada Tax Commission to prescribe regulations for carrying on the business of the Commission and the Department of Taxation. (NRS 360.090) Existing law also requires each agency of the Executive Department of State Government to provide by regulation for the filing and prompt disposition of petitions for declaratory orders as to the applicability of any statutory provision, agency regulation or decision of the agency. (NRS 233B.120) This regulation establishes such procedures with respect to statutory provisions, regulations and administrative decisions of the Department or the Commission.

2. 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.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by issuing a questionnaire to interested parties regarding any impact on small businesses and sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop/Hearing</u>	<u>Number Notified</u>
11/01/21	Workshop	11/15/21	198
9/01/22	Adoption Hearing	10/03/22	198

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; Legislative Counsel Bureau; various Department of Taxation locations throughout the State; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email.

See response to #5 for a summary of the public responses to the Regulation.

A copy of the written and recorded comments, the record of proceedings, and/or the Small Business Impact Statement may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

3. **The number of persons who:**
- (a) **Attended each hearing:**
 - (b) **Testified at each hearing:**
 - (c) **Submitted written comments:**

Workshop date: November 15, 2021

- (a) Number in attendance: 4
- (b) Number testifying: 0
- (c) Written statements submitted: 1

Adoption Hearing date: October 3, 2022

- (a) Number in attendance: 19
- (b) Number testifying: 1
- (c) Written statements submitted: 0

4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Submitted Written Comment:

Name: **Joshua J. Hicks**

Telephone number: **775-788-2000**

Business address: **100 West Liberty Street, Tenth Floor, Reno, NV 89501**

Electronic mail address: jhicks@mcdonaldcarano.com

Name of entity or organization represented: **McDonald Carano**

Testified at Adoption Hearing:

Name: **George Hritz**

Telephone number: **775-882-2697**

Business address: **116 E. 7th Street, Suite 202, Carson City, NV 89701**

Electronic mail address: hritzg@yahoo.com

Name of entity or organization represented: **Nevada Taxpayers Association**

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

See response to #2 for description of how comments were solicited from affected businesses and an explanation of how interested persons may obtain a copy of the summary.

Summary of public responses: Not Applicable

Summary of workshop discussion:

1. Joshua J. Hicks, McDonald Carano:

Provided written comment, requesting consideration of two new subsections.

1) "The index described in subsection 6 shall be available to the public on the Department's website, and any declaratory orders and related materials shall be considered a public record, except that any confidential, proprietary, privileged or otherwise protected information shall be redacted."

2) "Any person who files a petition for a declaratory order pursuant to this section may withdraw the request at any time before a declaratory order is issued by the hearing officer."

Summary of Public Comment at Adoption Hearing:

2. George Hritz, Nevada Taxpayers Association:

Provided oral comment, requesting that the Declaratory Orders should be made available to the public and any Taxpayers confidential information made subject to redaction.

A copy of the recorded comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2059 or by writing to the Department of Taxation, 1550 College Pkwy. Ste 115, Carson City, Nevada 89706, or by e-mailing the Department at sglazner@tax.state.nv.us.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

There were changes made to the regulation. Specifically, the revisions clarified that a petition for a declaratory order that involves a decision of the Department or Commission should include a copy of that decision and any such request will be submitted to a hearing officer. Section 1, Subsection 2(e) and Section 1, Subsection 4. Subsections 8 was added to the regulation to confirm that petitions for declaratory orders and related materials are confidential until disclosed in accordance with an appeal to the Commission. Subsections 9 and 10 were added to confirm that a petitioner who provides inaccurate information with a petition may not rely upon an order in subsequent actions by the Department, and Subsection 10 confirms that declaratory orders do not prevent the Department from adopting different interpretations or policies in future proceedings.

- 7. The estimated economic effect of the regulation on the business which it is to regulate and on the public. This must include adverse, beneficial, immediate and long-term effects.**

(a) Estimated economic effect on the businesses which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to small businesses. The benefits of these regulations are that the industry along with the Department will be provided more clarity in implementing NRS Chapter 360 and 233B.

(b) Estimated economic effect on the public which they are to regulate.

The adopted permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to the public. The benefits of these regulations are that the public along with the Department will be provided more clarity in implementing NRS Chapter 360 and 233B.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

Enforcement of the adopted regulation presents no significant foreseeable or anticipated cost or decrease in costs.

- 9. 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 adopted permanent regulation does not overlap or duplicate any regulation of other state or local governmental entities.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

- 11. 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 adopted permanent regulation does not include new fees or increase an existing fee.