

Assembly Bill No. 23—Committee on Taxation

CHAPTER.....

AN ACT relating to state financial administration; revising provisions governing the crediting and refunding of overpayments of certain taxes and fees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill provides that the amount of any overpayment by a taxpayer or other person of a tax or fee administered by the Department pursuant to title 32 of NRS or NRS 444A.090 or 482.313 must be credited against any other such tax or fee then due from the taxpayer or other person before any portion of the overpayment may be refunded.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

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

Notwithstanding any specific statute to the contrary, if the Department determines that any taxpayer or other person has overpaid any tax or fee administered by the Department pursuant to this title or NRS 444A.090 or 482.313, the amount of the overpayment must be credited against any other such tax or fee then due from the taxpayer or other person before any portion of the overpayment may be refunded.

Sec. 2. NRS 360.233 is hereby amended to read as follows:

360.233 If an officer, employee or agent of the Department determines that a taxpayer is entitled to an exemption or has been taxed or assessed more than is required by law, he shall give written notice of that determination to the taxpayer. The notice must:

1. Be given within 30 days after the officer, employee or agent makes his determination or, if the determination is made as a result of an audit, within 30 days after the completion of the audit; and

2. If appropriate, include:

(a) An explanation that an overpayment ~~may~~ *must, in accordance with section 1 of this act,* be credited against any amount *then* due from the taxpayer; ~~or~~ *and*

(b) Instructions indicating the manner in which the taxpayer may petition for a refund of any overpayment ~~or~~ *or remaining balance thereof.*



Sec. 3. NRS 360.291 is hereby amended to read as follows:

360.291 1. The Legislature hereby declares that each taxpayer has the right:

(a) To be treated by officers and employees of the Department with courtesy, fairness, uniformity, consistency and common sense.

(b) To a prompt response from the Department to each communication from the taxpayer.

(c) To provide the minimum documentation and other information as may reasonably be required by the Department to carry out its duties.

(d) To written explanations of common errors, oversights and violations that taxpayers experience and instructions on how to avoid such problems.

(e) To be notified, in writing, by the Department whenever its officer, employee or agent determines that the taxpayer is entitled to an exemption or has been taxed or assessed more than is required by law.

(f) To written instructions indicating how the taxpayer may petition for:

(1) An adjustment of an assessment;

(2) A refund or credit for overpayment of taxes, interest or penalties; or

(3) A reduction in or the release of a bond or other form of security required to be furnished pursuant to the provisions of this title that are administered by the Department.

(g) Except as otherwise provided in NRS 361.485, *and section 1 of this act*, to recover an overpayment of taxes promptly upon the final determination of such an overpayment.

(h) To obtain specific advice from the Department concerning taxes imposed by the State.

(i) In any meeting with the Department, including an audit, conference, interview or hearing:

(1) To an explanation by an officer, agent or employee of the Department that describes the procedures to be followed and the taxpayer's rights thereunder;

(2) To be represented by himself or anyone who is otherwise authorized by law to represent him before the Department;

(3) To make an audio recording using the taxpayer's own equipment and at the taxpayer's own expense; and

(4) To receive a copy of any document or audio recording made by or in the possession of the Department relating to the determination or collection of any tax for which the taxpayer is



assessed, upon payment of the actual cost to the Department of making the copy.

(j) To a full explanation of the Department's authority to assess a tax or to collect delinquent taxes, including the procedures and notices for review and appeal that are required for the protection of the taxpayer. An explanation which meets the requirements of this section must also be included with each notice to a taxpayer that an audit will be conducted by the Department.

(k) To the immediate release of any lien which the Department has placed on real or personal property for the nonpayment of any tax when:

- (1) The tax is paid;
- (2) The period of limitation for collecting the tax expires;
- (3) The lien is the result of an error by the Department;
- (4) The Department determines that the taxes, interest and penalties are secured sufficiently by a lien on other property;
- (5) The release or subordination of the lien will not jeopardize the collection of the taxes, interest and penalties;
- (6) The release of the lien will facilitate the collection of the taxes, interest and penalties; or
- (7) The Department determines that the lien is creating an economic hardship.

(l) To the release or reduction of a bond or other form of security required to be furnished pursuant to the provisions of this title by the Department in accordance with applicable statutes and regulations.

(m) To be free from investigation and surveillance by an officer, agent or employee of the Department for any purpose that is not directly related to the administration of the taxes administered by the Department.

(n) To be free from harassment and intimidation by an officer, agent or employee of the Department for any reason.

(o) To have statutes imposing taxes and any regulations adopted pursuant thereto construed in favor of the taxpayer if those statutes or regulations are of doubtful validity or effect, unless there is a specific statutory provision that is applicable.

2. The provisions of this title and title 57 of NRS and NRS 244A.820, 244A.870, 482.313 and 482.315 governing the administration and collection of taxes by the Department must not be construed in such a manner as to interfere or conflict with the provisions of this section or any applicable regulations.

3. The provisions of this section apply to any tax administered, regulated and collected by the Department pursuant to the



provisions of this title and title 57 of NRS and NRS 244A.820, 244A.870, 482.313 and 482.315 and any regulations adopted by the Department relating thereto.

Sec. 4. NRS 362.130 is hereby amended to read as follows:

362.130 1. When the Department determines from the annual statement filed pursuant to NRS 362.110 the net proceeds of any minerals extracted, it shall prepare its certificate of the amount of the net proceeds and the tax due and ~~{shall}~~ send a copy *of the certificate* to the owner of the mine, operator of the mine or recipient of the royalty, as the case may be.

2. The certificate must be prepared and mailed not later than:

(a) April 20 immediately following the month of February during which the *annual* statement was filed; or

(b) April 30 immediately thereafter if an amended statement is filed in a timely manner.

3. The tax due as indicated in the certificate ~~{prepared pursuant to this section}~~ must be paid on or before May 10 of the year in which the certificate is received.

4. If an overpayment was made, the overpayment ~~{may}~~ *must* be credited toward the payment due on May 10 of the next calendar year. If the certificate ~~{prepared pursuant to this section}~~ shows a net loss for the year covered by the certificate or an amount of tax due for that year which is less than an overpayment made for the preceding year, the amount or remaining amount of the overpayment must *, after being credited against any amount then due from the taxpayer in accordance with section 1 of this act,* be refunded to the taxpayer within 30 days after the certification was sent to the taxpayer.

Sec. 5. NRS 363A.150 is hereby amended to read as follows:

363A.150 If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must ~~{be credited on any amounts}~~ *, after being credited against any amount* then due from the person ~~{under this chapter, and the balance}~~ *in accordance with section 1 of this act, be* refunded to the person or his successors in interest.

Sec. 6. NRS 363B.140 is hereby amended to read as follows:

363B.140 If the Department determines that any tax, penalty or interest has been paid more than once or has been erroneously or



illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must ~~[be credited on any amounts]~~, *after being credited against any amount* then due from the person ~~[under this chapter, and the balance]~~ *in accordance with section 1 of this act, be* refunded to the person or his successors in interest.

Sec. 7. NRS 368A.250 is hereby amended to read as follows:

368A.250 If the Department determines that any tax, penalty or interest it is required to collect has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in its records and shall certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. If approved by the State Board of Examiners, the excess amount collected or paid must ~~[be credited on any amounts]~~, *after being credited against any amount* then due from the person ~~[under this chapter, and the balance]~~ *in accordance with section 1 of this act, be* refunded to the person or his successors in interest.

Sec. 8. NRS 370.503 is hereby amended to read as follows:

370.503 1. Upon proof satisfactory to the Department ~~[]~~ *and subject to the requirements of section 1 of this act*, a refund must be allowed for the taxes paid pursuant to NRS 370.450, upon products made from tobacco other than cigarettes, that are sold to:

(a) The United States Government for the purposes of the Army, Air Force, Navy or Marine Corps and are shipped to a point within this State to a place which has been lawfully ceded to the United States Government for the purposes of the Army, Air Force, Navy or Marine Corps;

(b) Veterans' hospitals for distribution or sale to servicemen with disabilities or ex-servicemen with disabilities interned therein, but not to civilians or civilian employees;

(c) Any person if sold and delivered on an Indian reservation or colony where an excise tax has been imposed which is equal to or greater than the rate of the tax imposed pursuant to NRS 370.501; or

(d) An Indian if sold and delivered on an Indian reservation or colony where no excise tax has been imposed or the excise tax is less than the rate of the tax imposed pursuant to NRS 370.501.

2. Any refund must be paid as other claims against the State are paid.



Sec. 9. NRS 372.630 is hereby amended to read as follows:

372.630 1. If the Department determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and certify to the State Board of Examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the State Board of Examiners, the excess amount collected or paid must ~~[be credited on any amounts]~~, *after being credited against any amount* then due from the person ~~[under this chapter, and the balance]~~ *in accordance with section 1 of this act, be* refunded to the person, or his successors, administrators or executors.

2. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to sections 34 to 38, inclusive, of the Sales and Use Tax Act (chapter 397, Statutes of Nevada 1955) and NRS 372.210 to 372.255, inclusive, must be credited or refunded by the State to the purchaser ~~[]~~, *subject to the requirements of section 1 of this act.*

Sec. 10. NRS 374.635 is hereby amended to read as follows:

374.635 1. If the Department determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Department shall set forth that fact in the records of the Department and shall certify to the board of county commissioners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the board of county commissioners, the excess amount collected or paid must ~~[be credited on any amounts]~~, *after being credited against any amount* then due from the person ~~[pursuant to this chapter, and the balance must]~~ *in accordance with section 1 of this act*, be refunded to the person ~~[]~~ or his successors, administrators or executors.

2. Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to NRS 374.190 to 374.260, inclusive, and 374.727 ~~[]~~ must be credited or refunded by the county to the purchaser ~~[]~~, *subject to the requirements of section 1 of this act.*

Sec. 11. This act becomes effective on July 1, 2009.

