

**SUBCHAPTER 70-40.6  
REVENUE AND TAXATION REGULATIONS**

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Subchapter Authority: 1 CMC §§ 2553 and 2557; PL 14-35 §3 (§ 1104) (to be codified at 4 CMC § 1104); 4 CMC §§ 1701(c); PL 14-35 § 4 (§ 1820) (to be codified at 4 CMC § 1820); PL 14-35 § 4 (§ 2001) (to be codified at 4 CMC § 1901).

Subchapter History: Amdts Adopted 39 Com. Reg. 40374 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 40318 (Oct. 28, 2017); Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003); Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Amdts Emergency and Proposed 24 Com. Reg. 19858 (Dec. 27, 2002) (effective for 120 days from Dec. 2, 2002); Amdts Emergency and Proposed 24 Com. Reg. 19831 (Nov. 27, 2002) (effective for 120 days from Nov. 27, 2002); Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Amdts Adopted 18 Com. Reg. 14031 (Feb. 15, 1996); Amdts Emergency and Proposed 17 Com. Reg. 13850 (Dec. 15, 1995) (effective for 120 days from Nov. 27, 1995); Adopted 17 Com. Reg.

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13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1995 “Revenue and Taxation Regulations No. 2200,” superseded all rules and regulations issued by the Department of Finance published prior to adoption of the 1995 regulations that pertained to taxes, fees, and other laws administered by the Division of Revenue and Taxation. See Revenue and Taxation Regulations No. 2200 § 2200.6, 17 Com. Reg. at 13096 (Apr. 15, 1995), codified at § 70-40.6-025. The 1995 regulations, as amended, are codified in this subchapter. The previous history of the Revenue and Taxation Regulations is discussed in this comment.

1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553 authorizes the Department, among other things, to collect and deposit all local revenues from any source, including taxes, custom duties and license fees. The Department is authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557. 1 CMC § 2571 establishes the Division of Revenue and Taxation, headed by a Chief (now the Director) with supervision over all matters concerning revenue and taxation on a day-to-day basis.

Title 4, division 1 of the Commonwealth Code, 4 CMC §§ 1101-1991, as amended by PL 14-35 (effective Oct. 12, 2004), contains the revenue and taxation laws applicable in the Commonwealth. PL 3-11, the “Revenue and Taxation Act of 1982” took effect, with some exceptions on June 1, 1982. PL 9-22 (effective retroactively January 1, 1995), codified in part as amended at 4 CMC §§ 1201-1717, a comprehensive tax reform measure, repealed and reenacted most of PL 3-11. See the comment to 4 CMC § 1101.

PL 14-35 (effective Oct. 12, 2004) repealed and reenacted 4 CMC §§ 1103-1106, 4 CMC division 1, chapter 8 and 4 CMC division 1, chapter 9. PL 14-35 § 4 (§ 1820), to be codified at 4 CMC § 1820, grants the Secretary of Finance authority to prescribe adopt regulations issued under the U.S. Internal Revenue Code necessary for the proper administration and enforcement of Commonwealth tax laws. PL 14-35 § 4 (§ 2001), to be codified at 4 CMC § 1901, grants the Secretary of Finance broad authority to prescribe necessary rules and regulations to implement the CNMI tax laws.

4 CMC §§ 1503-1510 govern the licensing and use of amusement machines in the Commonwealth. 4 CMC § 1507 directs the Secretary of Finance to promulgate rules and regulations regarding amusement machines.

PL 12-45 (effective Apr. 20, 2001), codified as amended by PL 13-15 (effective July 1, 2002) and PL 14-10 (effective May 28, 2004) at 3 CMC §§ 2171-2175, provides the authority for the March 2004 amendments to this subchapter. See PL 13-15 § 2(J), 3 CMC § 2171(j). The March 2004 amendments are codified at part 1600 of this subchapter.

### History of the Revenue and Taxation Regulations:

The Department of Finance, Division of Revenue and Taxation promulgated Administrative Regulations No. 3901 and Revenue Regulations No. 5901 in 1980. The history of these regulations is as follows:

Amdts Emergency 3 Com. Reg. 1240 (May 20, 1981) (effective retroactively for the 1980 tax year); Adopted 2 Com. Reg. 816 (Mar. 16, 1980); Emergency 2 Com. Reg. 793 (Mar. 16, 1980); Proposed 2 Com. Reg. 476 (Feb. 16, 1980); Adopted 2 Com. Reg. 794 (Mar. 16, 1980); Emergency 2 Com. Reg. 792 (Mar. 16, 1990); Proposed 2 Com. Reg. 453 (Jan. 16, 1980).

The 1980 Revenue Regulations and the 1980 Administrative Regulations stated: “These regulations shall be effective retroactive to January 1, 1979.” See 2 Com. Reg. at 815 (Mar. 16, 1980); 2 Com. Reg. at 833 (Mar. 16, 1980).

In March 1983, the Division of Revenue and Taxation promulgated Revenue and Taxation Regulations No. 8301, which superseded all rules and regulations prior to January 31, 1983, including Administrative Regulations No. 3901 and Revenue Regulations No. 5901. See 5 Com. Reg. at 1809-1810 (Feb. 28, 1983).

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Revenue and Taxation Regulations No. 8301 remained in effect, as amended, until February 1992. The history of Revenue and Taxation Regulations No. 8301 is as follows:

Emergency 13 Com. Reg. 8277 (Nov. 15, 1991) (effective for 120 days from Oct. 22, 1991) (adopting Mar. 31, 1983 Revenue and Taxation Regulations and all subsequent amendments as emergency regulations); Amdts Adopted 13 Com. Reg. 7642 (Feb. 15, 1991); Amdts Proposed 13 Com. Reg. 7566 (Jan 15, 1991); Amdts Emergency and Proposed 12 Com. Reg. 7514 (Dec. 15, 1990) (effective for 120 days from Nov. 30, 1990);\*\* Amdts Adopted 12 Com. Reg. 6890 (Apr. 15, 1990); Amdts Proposed 12 Com. Reg. 6838 (Mar. 15, 1990); Amdts Adopted 12 Com. Reg. 6898 (Apr. 15, 1990); Amdts Proposed 12 Com. Reg. 6857 (Mar. 15, 1990); Amdts Emergency 12 Com. Reg. 6790 (Jan. 15, 1990) (effective for 120 days from Dec. 29, 1989); Amdts Emergency 12 Com. Reg. 6785 (Jan. 15, 1990) (effective for 120 days from Dec. 22, 1989); Amdts Adopted 11 Com. Reg. 6270 (June 15, 1989); Amdts Proposed 11 Com. Reg. 6189 (May 15, 1989); Amdts Emergency 11 Com. Reg. 6169 (May 15, 1989) (effective for 120 days from May 15, 1989); Amdts Adopted 10 Com. Reg. 5714 (Oct. 15, 1988); Amdts Proposed 10 Com. Reg. 5700 (Sept. 15, 1988); Amdts Adopted 9 Com. Reg. 5292 (Dec. 15, 1987); Amdts Proposed 9 Com. Reg. 5285 (Nov. 15, 1987); Amdts Adopted 9 Com. Reg. 5250 (Oct. 15, 1987); Amdts Proposed 9 Com. Reg. 5239 (Sept. 15, 1987); Amdts Proposed 8 Com. Reg. 4701 (Oct. 22, 1986);\*\* Amdts Adopted 8 Com. Reg. 4346 (June 3, 1986); Amdts Emergency 8 Com. Reg. 4335 (Apr. 18, 1986) (effective for 120 days from Apr. 7, 1986); Amdts Proposed 8 Com. Reg. 4225 (Apr. 18, 1986); Amdts Adopted 8 Com. Reg. 4344 (June 3, 1986); Amdts Emergency 8 Com. Reg. 4333 (Apr. 18, 1986) (effective for 120 days from Apr. 4, 1986); Amdts Proposed 8 Com. Reg. 4222 (Apr. 18, 1986); Amdts Adopted 8 Com. Reg. 4205 (Feb. 17, 1986); Amdts Emergency and Proposed 8 Com. Reg. 4198 (Jan. 17, 1986) (effective for 120 days from Jan. 2, 1986); Amdts Adopted 7 Com. Reg. 3610 (May 21, 1985);^ Amdts Proposed 7 Com. Reg. 3548 (Apr. 16, 1985); Amdts Proposed 7 Com. Reg. 3445 (Feb. 15, 1985);\* Correction Adopted 8 Com. Reg. 4203 (Jan. 17, 1986); Amdts Adopted 6 Com. Reg. 2989 (July 16, 1984); Amdts Proposed 6 Com. Reg. 2867 (June 15, 1984); Amdts Adopted 6 Com. Reg. 2865 (June 15, 1984); Amdts Proposed 6 Com. Reg. 2793 (May 15, 1984); Public Notice 6 Com. Reg. 3354 (Nov. 15, 1984) (notification that March 1984 amendments will not be adopted); Amdts Proposed 6 Com. Reg. 2626 (Mar. 15, 1984); Amdts Adopted 6 Com. Reg. 2622 (Mar. 15, 1984); Amdts Emergency and Proposed 6 Com. Reg. 2579 (Feb. 15, 1984) (effective for 120 days from Feb. 15, 1984); Adopted 5 Com. Reg. 1959 (Mar. 31, 1983) (superseding all rules and regulations prior to Jan. 31, 1983); Emergency and Proposed 5 Com. Reg. 1794 (Feb. 28, 1983) (effective for 120 days from Feb. 4, 1983); Emergency 4 Com. Reg. 1617 (Oct. 15, 1982) (effective for 120 days from Sept. 30, 1982) (superseding all rules and regulations prior to June 1, 1982);

\*The February 1985 proposed amendments were repealed without adoption. See 7 Com. Reg. at 3611 (May 21, 1985).

^The May 1985 amendments stated: "The effective date of this regulation shall be January 1, 1985." See 7 Com. Reg. at 3569 (Apr. 16, 1985).

\*\*Notices of adoption for the October 1986 and December 1990 amendments were never published.

The Division proposed completely revised Revenue and Taxation Regulations No. 1200 in February 1992 and adopted the revised regulations on April 15, 1992. The 1992 regulations superseded all rules and regulations published prior to November 15, 1991 including Revenue and Taxation Regulations No. 8301 and all amendments thereto. See 14 Com. Reg. at 8789 (Feb. 15, 1992). The history of the 1992 Revenue and Taxation Regulations No. 1200 is as follows:

Adopted 14 Com. Reg. 9190 (Apr. 15, 1992) (superseding all rules and regulations published prior to Nov. 15, 1991); Emergency 14 Com. Reg. 8934 (Mar. 15, 1992) (effective for 120 days from Feb. 18, 1992); Proposed 14 Com. Reg. 8780 (Feb. 15, 1992).

The notice of adoption for the April 1992 regulations stated: "The Department of Finance withdraws Emergency Revenue and Taxation Regulations No. 9100 (effective February 18, 1992) at the time that Revenue and Taxation Regulations No. 1200 become effective."

Revenue and Taxation Regulations No. 1200 remained in effect until June 1995, when the Division promulgated completely revised Revenue and Taxation Regulations No. 2200, codified in this subchapter.

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On July 22, 1985 the Division proposed Rules and Regulations for the Taxation of Foreign Sales Corporations. See 7 Com. Reg. 3841 (July 22, 1985). A notice of adoption for the 1985 Foreign Sales Corporations Regulations was never published.

On November 15, 1987, the Department of Finance proposed Regulations on the Applicability of Excise Tax to Vessels and Aircraft. See 9 Com. Reg. 5282 (Nov. 15, 1987). A notice of adoption for the 1987 regulations was never published.

On March 15, 1995, the Department of Finance published Announcement No. RT 95-03 regarding the implementation of non-refundable credits under PL 9-22 §§ 1205 and 1307. See 17 Com. Reg. 13070 (Mar. 15, 1995).

### **Part 001 - General Provisions**

#### **§ 70-40.6-001 Authority**

The authority for the promulgation and issuance of Revenue and Taxation Regulations No. 2200, codified in this subchapter, is by virtue of the authority and directions set forth in the Commonwealth code including, but not limited to, 1 CMC § 2553, 1 CMC § 2557, 4 CMC § 1104 [1999], 4 CMC § 1701(c), and 4 CMC § 1818 [1999].

Modified, 1 CMC § 3806(d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: PL 14-35 (effective Oct. 12, 2004) repealed and reenacted 4 CMC §§ 1103-1106, 4 CMC division 1, chapter 8 and 4 CMC division 1, chapter 9. PL 14-35 § 4 (§ 1820), to be codified at 4 CMC § 1820, grants the Secretary of Finance authority to prescribe adopt regulations issued under the U.S. Internal Revenue Code necessary for the proper administration and enforcement of Commonwealth tax laws. PL 14-35 § 4 (§ 2001), to be codified at 4 CMC § 1901, grants the Secretary of Finance broad authority to prescribe necessary rules and regulations to implement the CNMI tax laws.

#### **§ 70-40.6-005 Purpose and Scope**

The purpose of the regulations in this subchapter is to establish policy and procedures to implement and provide uniform enforcement of the tax laws of the Commonwealth of the Northern Mariana Islands and other laws delegated to and administered by the Division of Revenue and Taxation. Unless specifically provided otherwise, these regulations apply to 4 CMC, division 1 except chapter 4 and chapter 10.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-010 Organization**

Revenue and Taxation, a division of the Department of Finance established pursuant to 1 CMC § 2557 shall be headed by a Director. The Director shall be responsible for the day

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to day operations of the Division of Revenue and Taxation. In order to carry out its responsibilities, the Division of Revenue and Taxation hereby establishes the following activity branches:

(a) Technical Research and Appeals Branch. The Technical Research and Appeals Branch shall be headed by a manager and is responsible for:

- (1) The administrative appeal system;
- (2) Research and support service;
- (3) Technical resource and library service;
- (4) Review;
- (5) Disclosure;
- (6) Special procedures.

(b) Compliance Branch. The Compliance Branch shall be headed by a manager and is responsible for:

- (1) Taxpayer assistance service;
- (2) Tax return examinations;
- (3) Taxpayer compliance program;
- (4) Data entry;
- (5) File maintenance;
- (6) Returns processing.

(c) Collection and Remittance Branch. The Collection and Remittance Branch shall be headed by a manager and is responsible for:

- (1) Accounts billing;
- (2) Field collection;
- (3) Cashier function.

(d) Examination Branch. The Examination Branch shall be headed by a manager and is responsible for:

- (1) Review of tax returns;
- (2) Desk audits;
- (3) Field audits;
- (4) Special audits.

(e) Enforcement and Regulatory Branch. The Enforcement and Regulatory Branch shall be headed by a manager and is responsible for:

- (1) Poker machines;
- (2) Pachinko slot machines;
- (3) Amusement machines.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-015 Function**

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The Division of Revenue and Taxation shall administer and enforce all provisions of title 4, division 1 of the Commonwealth code (except those provisions specifically delegated to other agencies, e.g., the Division of Customs), the United States Internal Revenue Code of 1954, as amended, and its accompanying regulations as made applicable to the Commonwealth of the Northern Mariana Islands pursuant to § 601 of the Covenant, and these and other regulations delegated to the Division of Revenue and Taxation.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-020 Rota and Tinian District Offices**

The Division of Revenue and Taxation shall have district offices in Rota and Tinian for its activities in these senatorial districts. The functions of the district operations shall be under the supervision of the Secretary of Finance or his/her designee. Personnel supervision of the district offices shall be under each respective Resident Director of Finance.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-025 Regulations Superseded**

(a) Revenue and Taxation Regulations No. 2200, codified in this subchapter, supersede all rules and regulations issued by the CNMI Department of Finance and/or the CNMI Division of Revenue and Taxation which were published prior to the adoption of Revenue and Taxation Regulations No. 2200 which pertain to taxes, fees, or other laws administered by the Division of Revenue and Taxation, including those rules and regulations issued under Revenue and Taxation Regulations No. 1200, Revenue and Taxation Regulations No. 8301 and all amendments thereto.

(b) Revenue and Taxation Regulations No. 2200, codified in this subchapter, do not supersede any rules or regulations proposed or adopted by the Department of Finance pertaining to the operation of pachinko slot machines in the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (a), the Commission changed “supersedes” to “supersede” to correct a manifest error.

### **§ 70-40.6-030 Definitions**

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- (a) “Business”: The term “business” shall have the same meaning as a “trade or business” as that term is applied under § 162 of the Northern Marianas Territorial Income Tax; thus, “business” normally means any regular and continuous activity carried on by a person for the purpose of earning income or profit. Except as otherwise provided, an employee shall not be considered as operating a business, and a partnership or a corporation shall be considered as operating a business.
- (b) “Calendar month”: The period extending from the date in one month to the same date in the succeeding month.
- (c) “CNMI real property interest”: A “CNMI real property interest” means any “interest (other than as a creditor) in real property” located within the CNMI. An interest in real property includes a fee simple estate, estate for life, a long-term lease including an option to acquire the same, or any interest defined in § 897(c)(1)(A)(ii) of the NMTIT;
- (d) “Director”: The Director of the Division of Revenue and Taxation, unless the context otherwise requires. Any references to the term “chief” as used within this subchapter or the tax laws is deemed to refer to the Director of the Division of Revenue and Taxation.
- (e) “Division”: “Division” means those provisions of title 4 of the Commonwealth code in division 1 but excluding chapter 10, developer infrastructure tax.
- (f) “Employee”: Any individual, who under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Such term shall not include an individual who performs services as either a sole proprietor to himself/herself or a partner to his/her partnership.
- (g) “Employer”: The person for whom an employee performs or performed any service of whatever nature.
- (h) “Gross revenue”: “Gross revenue” is defined by 4 CMC § 1103(k) and § 70-40.6-301 of this subchapter.
- (i) “Gross winnings”: “Gross winnings” means the total amount of money or the value of other property received from each gaming, lottery, raffle, or other gambling event, transaction, or other activity, less the amount of the wager, if any, (but no other cost or expense) which directly results in winnings.
- (j) “Individual”: Unless otherwise provided, a natural person, an estate (including a bankruptcy estate established under title 11 of the United States Code), a trust, or a fiduciary acting for a natural person, trust, or estate.
- (k) “Last known address”: “Last known address” has the same meaning as that term is used within § 6212 of the NMTIT.

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(l) “Manufacturing”: The art of making raw material into a product suitable for use, sale, lease, or rental, and includes the technique and methods of converting finished merchandise into another product for use, sale, lease, or rental.

(m) “Northern Marianas Territorial Income Tax”: Mirrored tax provisions of the U.S. Internal Revenue Code applicable in the CNMI as provided in the Covenant and chapter 7 of 4 CMC, division 1 and as further detailed within § 70-40.6-625 of this subchapter. The Northern Marianas Territorial Income Tax is abbreviated as the NMTIT.

(n) “Person”: Means any individual, firm, corporation, company, joint venture, association, partnership, receiver, club, syndicate, cooperative association, or any other entity.

(o) “Property”: Any interest in real property, tangible personal property, or intangible personal property. Intangible personal property includes licenses, franchises, patents, trademarks, copyrights, stocks, bonds, or other commercial paper and partnership interests.

(p) “Raw material”: An article or merchandise that is changed in form or substance or combined with other article(s) in a manufacturing process to become a part of a finished product or to form a new product which is produced in a factory.

(q) “Rebate”: For purposes of 4 CMC, division 1, chapter 7, “rebate” as defined by 4 CMC § 1103(s) includes only amounts of NMTIT actually paid.

(r) “Resident”: For purposes other than the NMTIT and chapter 7, means:

(1) An individual who is domiciled in the Commonwealth; or

(2) A business or other entity which is located, directed, or managed in the Commonwealth.

(s) “Secretary”: The Secretary of the Department of Finance of the Commonwealth government of the Northern Mariana Islands.

(t) “Wages and salaries”: “Wages and salaries” means that defined by § 70-40.6-101 of this subchapter and 4 CMC § 1103(z).

(u) “Wholesaler”: Any person engaged in the sale of tangible personal property to another for resale for direct or indirect economic benefit.

(v) “Yearly”: A calendar year.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

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Commission Comment: The 1996 amendments amended subsection (r)(2). The Commission placed quotation marks around terms defined.

### § 70-40.6-035 Other Definitions

(a) “Hotel, lodging house, or similar facility”: “hotel, lodging house, or similar facility” shall include any hotel, lodging house, motel, resort motel, apartment, apartment motel, rooming house, condominium, private home, lodging house, living quarters, or mobile home that has been rented, leased or let for consideration to transient occupants, as defined in 4 CMC § 1103(cc).

(b) “Net gaming revenue taxable income”: Net gaming revenue taxable income means the taxable income as defined in the NMTIT attributed to the revenue and expenses derived from the gaming activity.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 39 Com. Reg. 40374 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 40318 (Oct. 28, 2017); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The June 1995 notice of adoption added subsection (a). The Commission created the section title. The Commission placed quotation marks around terms defined.

### § 70-40.6-040 PL 10-73 Educational Tax Credit

In general, 4 CMC §§ 1205(a) and 1306(a) provide that a person may take, as provided in PL 10-73, cash contributions that are made during a tax year to qualifying educational institutions as a nonrefundable credit against the tax imposed by §§ 1201, 1202, and 1301 through 1304.

(a) Definitions.

(1) Cash contributions. For a contribution to qualify as a “cash contribution” as used in 4 CMC § 1205(a) and 4 CMC § 1306(a), the contribution must:

- (i) Not have been paid for tuition or fees charged by the educational institution;
- (ii) Not have been paid for books, computers, supplies, or other items used in attending the educational institution;
- (iii) Have been a “gift,” within the general legal concepts defining a gift for tax purposes;
- (iv) Have been paid in cash, by check, or by credit card;
- (v) Not have been given to the educational institution in exchange for anything of value. For example, a cash contribution would exclude money given for a raffle ticket; and
- (vi) Not be given to the institution with instructions to be applied to a particular expenditure. The institution must have full discretion as to what expenditure to apply the contribution to.

(2) Educational institution. The term “educational institution” as used in 4 CMC § 1205(c)(3) and incorporated in 4 CMC § 1306(c) shall have the same meaning as

“educational organization” under § 170 of the U.S. Internal Revenue Code as applied in the CNMI under § 170 of the Northern Marianas Territorial Income Tax (NMTIT). Subject to all other requirements of the NMTIT’s definition of “educational organization,” an “educational institution” under the CNMI educational tax credit is generally one whose primary function is the presentation of formal instruction and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. An “education institution” includes only the CNMI Public School System, the Northern Marianas College, and those organizations granted exempt status by the CNMI Division of Revenue and Taxation as an “educational organization” or “educational institution” under the NMTIT, the BGRT, or the ET, under the procedures specified in part 400, [entitled] Tax Exempt Organizations, of Rev. and Tax. Regulations No. 2200, codified in this subchapter.

(3) Letter of determination. The term “letter of determination” as used in 4 CMC § 1205(c)(3) and incorporated in § 1306(c) means the determination letter issued by the CNMI Division of Revenue and Taxation granting an organization exempt status as an “educational institution” or “educational organization” under § 501(c)(3) of the U.S. Internal Revenue Code as applied in the CNMI under § 501(c)(3) of the NMTIT and as applied for determining an “educational organization’s” or “institution’s” exempt status under the BGRT and ET.

(b) Documentation Required.

(1) Scope. Under 4 CMC §§ 1205(d) and 1306(d), a taxpayer must furnish the following to obtain the educational tax credit:

(i) A properly documented receipt issued by the recipient institution which must include, at a minimum, the name and tax identification number of the institution, the taxpayer’s name and tax identification number, the date of payment and the amount paid, and the purpose of the donation; and

(ii) A copy of the letter of determination with respect to the exempt status of the recipient institution.

(2) Specific Documentation Required. For each cash contribution regardless of amount, taxpayers are not required to submit the information specified in 4 CMC §§ 1205(d) and 1306(d) and subsection (b)(1) of this section. Instead, taxpayers are required to:

(i) Maintain, for a period of no less than six years,

(A) A written receipt from the educational institution that must include the following information:

(I) The educational institution’s name and tax identification number;

(II) The taxpayer’s name and tax identification number;

(III) The date the contribution was paid to the institution;

(IV) The amount of cash contributed;

(V) The purpose of the contribution; and

(VI) Whether the institution gave the taxpayer any goods or services as a result of the contribution; and if so, a description and good faith estimate of the value of any goods or services provided.

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(B) A copy of the letter of determination with respect to the tax exempt status of the recipient institution, if the recipient organization is other than the Public School System or the Northern Marianas College; and

(ii) Submit information in a form or scheduled as prescribed by the Secretary.

(3) Failure to Comply. No educational tax credit will be allowed under 4 CMC §§ 1205(d) or 1306(d) unless the taxpayer complies with all the applicable provisions of this subsection.

(c) Educational Tax Credit - Allowable Amount Applied Only Against BGRT (with Allocation Rules).

(1) \$5,000 or More Quarterly BGRT Liability. If a person's BGRT liability for any quarter is \$5,000 or more, the person can claim an educational tax credit for contributions made in that quarter up to the lesser of (a) \$5,000 or (b) \$5,000 less any allowable credit claimed in prior quarters in the same taxable year. The calculated allowable credit can be applied entirely to the quarter during which the contribution was made or can be allocated over remaining quarters, if any, in the remaining taxable year; the credit cannot be allocated to previous quarters in the same taxable year (instead, the credit will be adjusted on the person's final BGRT return for that year).

(i) Example No. 1. If a person's BGRT liability for the first quarter is \$8,000 and the person makes a \$5,000 charitable contribution to a qualifying educational institution during the first quarter, the person can claim a \$5,000 educational tax credit during the first quarter to offset the \$8,000 BGRT liability.

(ii) Example No. 2. If a person makes a \$5,000 charitable contribution to a qualifying educational institution during the first quarter, has a \$2,000 BGRT liability for the first quarter, has a \$3,000 BGRT liability for the second quarter, and has claimed a \$2,000 educational tax credit for the first quarter, the person can claim a \$3,000 credit during the second quarter to offset the second quarter liability.

(iii) Example No. 3. Assume the same facts as example no. 2, except that the person has only a \$500 tax liability in the second quarter. Under this scenario, the person can claim only a \$500 credit during the second quarter to offset the second quarter liability, provided that the maximum remaining credit shall be the lesser of \$2,500 or the BGRT for the final two quarters.

(iv) Example No. 4. If a person has a \$5,000 BGRT liability for the first, second and third quarters of a taxable year, has a zero liability for the fourth quarter, and makes a \$5,000 cash contribution to a qualifying educational institution during the fourth quarter, the person would not allocate the educational tax credit to prior quarters; instead the person's fourth quarter BGRT return will be adjusted on the forms prescribed by the Secretary.

(2) Quarterly BGRT Less than \$5,000. If a person's BGRT liability for any quarter is less than \$5,000, the person can claim an educational tax credit for contributions made in that quarter up to the lesser of (a) the amount of that quarter's BGRT liability or (b) \$5,000 less any of the allowable credit claimed in prior quarters in the same taxable year. The calculated allowable credit can be applied entirely to the quarter during which the contribution was made or can be allocated over remaining quarters, if any, in the remaining taxable year; the credit cannot be allocated to previous quarters in the same

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taxable year (instead, the credit will be adjusted on the person's final BGRT return for that year).

(i) Example No. 1. If a person's BGRT liability for the second quarter is \$4,000, the person makes a \$5,000 cash contribution to a qualifying educational institution during the second quarter, and the person has claimed no educational tax credit for the first quarter, the person can claim a \$4,000 educational tax credit for the second quarter to offset the \$4,000 liability. The remaining \$1,000 cash contribution can be carried forward to the third or fourth quarter, provided that the BGRT liability for those quarters equals or exceeds \$1,000.

(ii) Example No. 2. Assume the same facts as example no. 1, except that the person claimed an educational tax credit in the first quarter in the amount of \$3,500. Under this scenario, the person can claim a \$1,500 (\$5,000 less \$3,500) educational tax credit for the second quarter to offset the \$4,000 liability (the lesser of \$4,000 or \$1,500).

(iii) Example No. 3. A person makes a \$5,000 cash contribution to a qualifying educational institution in the first quarter, has a \$1,500 BGRT liability in the first, second, and third quarter, has a \$2,000 liability in the fourth quarter, and wants to use the maximum amount of allowable credit in each quarter, the person can claim the following educational tax credits:

1st quarter: \$1,500 -- is lesser of (\$1,500) or (\$5,000 less \$-0-)

2nd quarter: \$1,500 -- is lesser of (\$1,500) or (\$5,000 less \$1,500 = \$3,500)

3rd quarter: \$1,500 -- is lesser of (\$1,500) or (\$5,000 less \$3,000 = \$2,000)

4th quarter: \$500 -- is lesser of (\$2,000) or (\$5,000 less \$4,500 = \$500)

(iv) Example No. 4. Assume the same facts as example no. 3, except that the person wants to utilize his educational tax credit only in the fourth quarter and, thus, claims no credit in the first, second, or third quarters. Under this scenario, the person is only entitled to a \$2,000 educational tax credit to be applied against the \$2,000 fourth quarter liability; no credit can be applied for prior quarters; (instead, the credit will be adjusted on the person's final BGRT return for that year).

(d) Educational Tax Credit Allowable Amount -- Applied Against BGRT, WST, and ET. Under 4 CMC §§ 1205(a) and 1306(a), a person is entitled to utilize the educational tax credit against the person's wage and salary tax, earnings tax, or business gross revenue tax liability. The maximum annual credit available is the lesser of (a) the sum of the person's WST, ET, and BGRT or (b) \$5,000.

(1) Timing of Credit for WST. A person can claim the educational tax credit against the WST in the allowable amount no earlier than upon the filing of the person's WST return for the corresponding year.

(2) Timing of Credit for ET. A person can claim the educational tax credit against the ET in the allowable amount no earlier than upon the filing of the person's ET return for the corresponding year.

(3) Timing of Credit for BGRT. A person can claim the educational tax credit against the BGRT in the allowable amount under the rules specified in subsection (c) of this section.

(4) Examples.

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(i) Example No. 1. A person has an annual WST liability of \$6,500, an annual ET liability of \$400, and an annual BGRT liability of \$8,000. The person has made a \$5,000 cash contribution to a qualifying educational institution during the same taxable year and has not yet claimed an educational tax credit with respect to the contribution. Because the person's accumulated WST, ET, and BGRT (\$14,900) is greater than the person's cash contribution (\$5,000), the person can choose to allocate the \$5,000 educational tax credit among the WST, ET, and BGRT liabilities at the person's discretion, in amounts not exceeding the liabilities under those taxes up to a maximum accumulated credit for all three taxes of \$5,000.

(ii) Example No. 2. A person has an annual WST, ET, and BGRT liability of \$1,500 each, has made a \$5,000 cash contribution to a qualifying educational institution, and has not claimed an educational tax credit with respect to the contribution. The person can claim a \$1,500 educational tax credit against the WST, ET, and BGRT liability; the remaining \$500 cash contribution cannot be claimed as an educational tax credit in that year or any succeeding or prior years. However, the person may be entitled to use the remaining \$500 as a charitable contribution deduction under the NMTIT, provided the contribution qualifies under § 170 of the NMTIT.

(e) Miscellaneous Rules.

(1) Educational Institutions With Pending Tax Exempt Applications. As specified in 4 CMC § 1205(c)(3) and incorporated in 4 CMC § 1306(c), an educational tax credit is allowed only for contributions made to educational institutions that have been granted tax exempt status by the CNMI Division of Revenue and Taxation before the date of the contribution for which the credit is to be taken. Thus, contributions made to organizations that have not applied for or have applications pending on the date that a contribution is made will not be allowed to be used as an educational tax credit.

(2) Educational Institutions Granted Exempt Status by the U.S. Internal Revenue Service But Not by the CNMI Division of Revenue and Taxation. As specified in 4 CMC § 1205(c)(3) and incorporated in 4 CMC § 1306(c), an educational tax credit is allowed only for contributions made to educational institutions that have been granted tax exempt status by the CNMI Division of Revenue and Taxation. Thus, contributions made to educational organizations that have been granted tax exempt status by the U.S. Internal Revenue Service will only be allowed to be used as an educational tax credit if the recipient organization has received exempt status by the CNMI Division of Revenue and Taxation under § 70-40.6-425 of this subchapter -- [entitled] Application Process -- Previously Granted Tax-Exempt Status by U.S. Internal Revenue Service.

(3) Interaction with NMTIT.

(i) WST and ET Non-refundable Credit. Under 4 CMC § 1205(a), a person may take the WST and ET as a nonrefundable credit against the tax imposed on CNMI sourced income under subtitle A of the NMTIT under chapter 7 of 4 CMC. The amount of the nonrefundable credit allowed shall be reduced by any educational tax credit claimed by the person as a credit against the person's accumulated WST and ET liability. For example, if the person has an accumulated \$8,000 WST and ET liability and offsets that liability with a \$5,000 educational tax credit, the maximum amount of nonrefundable credit that can be applied against the person's NMTIT liability is \$3,000.

(ii) **BGRT Non-refundable Credit.** Under 4 CMC § 1308 as amended by PL 9-59 and PL 10-73, a person may take the BGRT as a nonrefundable credit against the tax imposed on CNMI sourced income under subtitle A of the NMTIT under chapter 7 of 4 CMC. The amount of the nonrefundable credit allowed shall be reduced by any educational tax credit claimed by the person as a credit against the person's BGRT liability. For example, if the person has a \$14,000 BGRT liability and offsets that liability with a \$3,500 educational tax credit, the maximum amount of the nonrefundable credit that can be applied against the person's NMTIT liability is \$10,500.

(iii) **NMTIT Charitable Contribution Deduction.** Under 4 CMC §§ 1205(a) and 1306(a), no educational tax credit shall be allowed for any amount deducted in determining taxable income under the NMTIT as shown on the taxpayer's return. Thus, if a taxpayer has taken the educational tax credit under 4 CMC §§ 1205 or 1306 and the person has claimed a charitable contribution deduction with respect to the same cash contribution under § 170 of the NMTIT, the educational credit shall be disallowed.

(4) **Joint Returns.**

(i) Spouses filing joint or separate returns shall each be entitled only to an annual maximum educational tax credit in the amount of the lesser of the individual spouse's cumulative tax liability under 4 CMC §§ 1201, 1202, and 1301 through 1304, or five thousand dollars. One spouse shall not be entitled, whether filing joint or separate returns, to use his or her educational tax credit as a credit against his or her spouse's tax liability.

(ii) **Example.** Wife makes a \$5,000 cash contribution to an educational institution that qualifies for the education tax credit and the wife has a \$3,000 cumulative tax liability under §§ 1201, 1202, and 1301 through 1304. Husband makes no cash contributions during the same taxable year and has a \$14,000 cumulative tax liability under §§ 1201, 1202, and 1301 through 1304. Wife would be entitled to a \$3,000 educational tax credit; she could not apply and her husband could not claim the remaining \$2,000 cash contribution as an educational tax credit against his \$14,000 tax liability.

(f) **Transitional Rules.**

(1) **Scope.** PL 10-73 became effective on November 12, 1997. Transitional rules are provided to implement the educational tax credit from November 12, 1997, through December 31, 1997. The credit shall be allowed to be applied against the WST, ET, and the BGRT for that period under the following conditions:

(i) The person has satisfied all conditions specified in PL 10-73 and in this subchapter that are applicable to the educational tax credit; and

(ii) The contribution must be made within the "tax year." "Tax year" means January 1, 1997 through December 31, 1997.

(2) **Examples.**

(i) **Example No. 1:** If a person makes a cash contribution to the Public School System on November 15, 1997, and wants to use that contribution as an educational tax credit against his or her fourth quarter 1997 BGRT tax liability that is due on or before January 31, 1998, the person can.

(ii) **Example No. 2:** If a person makes a cash contribution to the Northern Marianas College on December 31, 1997, and wants to use that contribution as an educational tax credit against his 1997 WST or ET liability that is due on or before April 15, 1998, the person can.

(iii) Example No. 3: If a person makes a cash contribution to the Public School System on January 8, 1998, and wants to use that contribution as an educational tax credit against his fourth quarter 1997 BGRT tax liability that is due on or before January 31, 1998, the person cannot. Similarly, the credit would also not be available against the person's 1997 WST or ET liability that must be paid on or before April 15, 1998.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998).

Commission Comment: In subsection (a)(3), the Commission changed "Tax" to "Taxation."

Public Law 15-120, effective Dec. 21, 2007, added the Joeten-Kiyu Public Library to the list of educational institutions able to benefit from education tax credit contributions. 4 CMC § 1205(c). Public Law 16-33, effective Mar. 26, 2009, also added the Northern Marianas Trade Institute to the list of educational institutions able to benefit from education tax credit contributions. 4 CMC § 1205(c). The provisions of PL 15-120 and PL 16-33 supersede subsection(a)(2) to the extent that they conflict.

## **Part 100 - Wages and Salary Tax**

### **§ 70-40.6-101 Wages and Salaries**

Pursuant to 4 CMC § 1201, there is imposed on every employee a yearly tax on the employee's "wages and salaries." "Wages and salaries" is defined pursuant to 4 CMC § 1103(z) and subsection (a).

(a) Inclusions. Except as provided in subsection (b), "wages and salaries" includes compensation for services derived from "sources within the Commonwealth" as determined by § 70-40.6-105 of this subchapter. "Wages and salaries" includes, but is not limited to, payments received by an employee for any of the following:

- (1) Annual leave;
- (2) Sick leave;
- (3) Administrative leave;
- (4) Holiday work; and
- (5) Any other types of compensatory leave.

(b) Exclusions. "Wages and salaries" shall not include the following:

- (1) Wages and salaries received from the United States by active members of the Armed Forces of the United States. This exception shall not include wages and salaries received from the United States by members of the Armed Forces of the United States in reserve status;
- (2) Reasonable per diem and travel allowances to the extent that they do not exceed any comparable Commonwealth government rates;
- (3) Rental value of a home furnished to any employee or a reasonable rental allowance paid to any employee to the extent the allowance is used by the employee to rent or provide a home;

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- (4) Any payment of medical or hospitalization expenses made by an employer or insurance company to or on behalf of an employee or insured;
- (5) Payments made to or on behalf of an employee or to his beneficiary from a trust, annuity, or retirement program;
- (6) Any payment in the form of a scholarship, fellowship, or stipend made to any employee while he is a full-time, bona fide student at an educational institution as defined by § 170(b)(1)(A)(ii) of the NMTIT. Provided, however, that if the payment is made for services rendered, the student must receive college credit(s) for the performance of the services and the services must further the student's education, curriculum, or course of study; and
- (7) Any benefit payment from the United States, Trust Territory, or Northern Marianas Social Security Administration.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In the opening paragraph, the Commission moved the period after "salaries" inside of the closing quotation mark.

### **§ 70-40.6-105 Sources Within the Commonwealth**

(a) In General. Except as provided in subsection (b), the determination of whether wages and salaries are derived from sources within the Commonwealth for purposes of the wage and salary tax shall be made in accordance with 4 CMC § 1103(u) and the sourcing rules of the Northern Marianas Territorial Income Tax at §§ 861, et seq.

(b) Employer Located Within and Without. The determination of source of income as it relates to wages and salaries shall be made in accordance with the following rules:

(1) Employer Within. Wages and salaries paid to an employee from an employer residing within the Commonwealth are considered income from sources within the Commonwealth if:

- (i) The services are performed within the Commonwealth; or
- (ii) The services are performed without the Commonwealth by a resident individual for an aggregate of no more than 90 days during the taxable year.

(iii)(A) Example No. 1. Mr. Sablan is employed by ABC Corporation, a CNMI corporation. Mr. Sablan lives on Saipan but travels to the state of California during the taxable year for a period of 75 days to perform research for his employer, ABC Corporation. After performing such services, Mr. Sablan returns to Saipan. For performing such services, Mr. Sablan receives compensation in the amount of \$3,000. The compensation received by Mr. Sablan in the amount of \$3,000 is deemed income from sources within the Commonwealth.

(B) Example No. 2. Same facts as example no. 1 except that Mr. Sablan performs services for ABC Corporation in the state of California for a period of 95 days. The compensation received by Mr. Sablan in the amount of \$3,000 is not deemed income from sources within the Commonwealth.

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(C) Example No. 3. Ms. Moore is employed by XYZ Corporation, a CNMI corporation with offices located in the states of California and Arizona. Ms. Moore lives in the state of Arizona and performs services in the state of Arizona for the Arizona office of XYZ Corporation for a period of 60 days during the taxable year. After performing such services, Ms. Moore remains in the state of Arizona. For performance of such services, Ms. Moore receives compensation in the amount of \$2,000. The compensation received by Ms. Moore is not deemed income from sources within the Commonwealth.

(2) Employer Without. Wages and salaries paid to an employee from an employer residing outside the Commonwealth are not considered income from sources within the Commonwealth unless:

(i) The services are performed within the Commonwealth; and

(ii)(A) The services are performed by an employee temporarily present in the Commonwealth for a period or periods exceeding a total of 90 days; or

(B) The aggregate compensation received by an employee for services performed in the Commonwealth exceeds \$1,000.

(iii)(A) Example No. 1. Ms. Dorothy Mae, a secretary accompanied Mr. Jason Peter to Saipan on five different occasions in 1990. Both Ms. Mae and Mr. Peter are employees of a food chain business in Hong Kong. Their trips to Saipan were all on business. Ms. Mae was in the CNMI for 45 days and received a salary of \$750 for services performed within Saipan. Mr. Peter received \$1,500 for the same period for services performed within Saipan.

Ms. Mae's compensation is not considered income from sources within the commonwealth for purposes of the wage and salary tax because her employer does not reside in the Commonwealth, she is present in the CNMI for less than 90 days, and her salary is less than \$1,000. She is not required to pay the wage and salary tax on the compensation of \$750 derived from services performed within the Commonwealth. However, Mr. Peter's compensation income is deemed income from sources within the Commonwealth because his salary exceeds the \$1,000 limitation. Mr. Peter is required to pay the wage and salary tax on the compensation of \$1,500.

(B) Example No. 2. Mr. Carlos Anthony, an employee of a manufacturing company in New York, came to Saipan to gather data necessary to determine the feasibility of assembling toys in the Commonwealth for export. Mr. Anthony made several trips to the Commonwealth in 1990 and spent a total of 30 days on Saipan. His annual salary is \$60,000. Mr. Anthony is considered to have income from sources within the Commonwealth in the amount of \$5,000 (i.e., (60,000) H (1/12)). Therefore, Mr. Anthony's income of \$5,000 is deemed from sources within the Commonwealth and thus is subject to the wage and salary tax.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The final paragraphs of subsections (b)(1) and (b)(2) were not designated. The Commission designated subsections (b)(1)(iii) and (b)(2)(iii).

### **§ 70-40.6-110 Withholding; Withholding Tables**

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(a) In General. An employee who is paid or credited wages and salaries from an employer who does not have a place of business in the Commonwealth or an agent within the Commonwealth responsible for making the returns, withholdings, and payments of taxes on compensation under chapter 2 of 4 CMC, shall make quarterly withholding payments as provided by subsection (c) of this section. In all other cases, employers are required to withhold the wage and salary tax from their employees' wages and salaries pursuant to subsection (b) of this section.

(b) CNMI Employers. Employers who have a place of business in the Commonwealth or an agent within the Commonwealth responsible for making the returns, withholdings, and payments of taxes on compensation under chapter 2 of 4 CMC, are required to withhold the wage and salary tax from their employees' wages and salary based on the following withholding tables pursuant to the frequency of the payments:

| Amount Earned - Weekly |           |             |
|------------------------|-----------|-------------|
| <u>From</u>            | <u>To</u> | <u>Rate</u> |
| -0-                    | 19.24     | -0-         |
| 19.25                  | 96.17     | 2.0%        |
| 96.18                  | 134.63    | 3.0%        |
| 134.64                 | 288.48    | 4.0%        |
| 288.49                 | 423.09    | 5.0%        |
| 423.10                 | 576.94    | 6.0%        |
| 576.95                 | 769.24    | 7.0%        |
| 769.25                 | 961.55    | 8.0%        |
| 961.56                 | and over  | 9.0%        |

| Amount Earned - Bi-weekly |           |             |
|---------------------------|-----------|-------------|
| <u>From</u>               | <u>To</u> | <u>Rate</u> |
| -0-                       | 38.49     | -0-         |
| 38.50                     | 192.34    | 2.0%        |
| 192.35                    | 269.26    | 3.0%        |
| 269.27                    | 576.96    | 4.0%        |
| 576.97                    | 846.19    | 5.0%        |
| 846.20                    | 1,153.88  | 6.0%        |
| 1,153.89                  | 1,538.49  | 7.0%        |
| 1,538.50                  | 1,923.11  | 8.0%        |
| 1,923.12                  | and over  | 9.0%        |

| Amount Earned - Semi-monthly |           |             |
|------------------------------|-----------|-------------|
| <u>From</u>                  | <u>To</u> | <u>Rate</u> |
| -0-                          | 41.70     | -0-         |
| 41.71                        | 208.37    | 2.0%        |
| 208.38                       | 291.70    | 3.0%        |
| 291.71                       | 625.04    | 4.0%        |
| 625.05                       | 916.70    | 5.0%        |
| 916.71                       | 1,250.04  | 6.0%        |

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|          |          |      |
|----------|----------|------|
| 1,250.05 | 1,666.70 | 7.0% |
| 1,666.71 | 2,083.37 | 8.0% |
| 2,083.38 | and over | 9.0% |

| Amount Earned - Monthly |           |             |
|-------------------------|-----------|-------------|
| <u>From</u>             | <u>To</u> | <u>Rate</u> |
| -0-                     | 83.41     | -0-         |
| 83.42                   | 416.74    | 2.0%        |
| 416.75                  | 583.41    | 3.0%        |
| 583.42                  | 1,250.08  | 4.0%        |
| 1,250.09                | 1,833.41  | 5.0%        |
| 1,833.42                | 2,500.08  | 6.0%        |
| 2,500.09                | 3,333.41  | 7.0%        |
| 3,333.42                | 4,166.74  | 8.0%        |
| 4,166.75                | and over  | 9.0%        |

(c) Non-CNMI Employers. Employees of employers who do not have a place of business in the Commonwealth or an agent within the Commonwealth responsible for making the returns, withholdings, and payments of taxes on compensation under chapter 2 of 4 CMC, are required to pay the wage and salary tax.

(1) The wage and salary tax shall be paid on a quarterly basis based on the following withholding tables:

| Income Level - First Quarter |           |             |
|------------------------------|-----------|-------------|
| <u>From</u>                  | <u>To</u> | <u>Rate</u> |
| -0-                          | 250.00    | -0-         |
| 250.01                       | 1250.00   | 2.0%        |
| 1,250.01                     | 1,750.00  | 3.0%        |
| 1,750.01                     | 3,750.00  | 4.0%        |
| 3,750.01                     | 5,500.00  | 5.0%        |
| 5,500.01                     | 7,500.00  | 6.0%        |
| 7,500.01                     | 10,000.00 | 7.0%        |
| 10,000.01                    | 12,500.00 | 8.0%        |
| 12,500.01                    | and over  | 9.0%        |

| Income Level - Second Quarter |           |             |
|-------------------------------|-----------|-------------|
| <u>From</u>                   | <u>To</u> | <u>Rate</u> |
| -0-                           | 500.00    | -0-         |
| 500.01                        | 2,500.00  | 2.0%        |
| 2,500.01                      | 3,500.00  | 3.0%        |
| 3,500.01                      | 7,500.00  | 4.0%        |
| 7,500.01                      | 11,000.00 | 5.0%        |
| 11,000.01                     | 15,000.00 | 6.0%        |
| 15,000.01                     | 20,000.00 | 7.0%        |
| 20,000.01                     | 25,500.00 | 8.0%        |
| 25,500.01                     | and over  | 9.0%        |

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| Income Level - Third Quarter |           |             |
|------------------------------|-----------|-------------|
| <u>From</u>                  | <u>To</u> | <u>Rate</u> |
| -0-                          | 750.00    | -0-         |
| 750.01                       | 3,750.00  | 2.0%        |
| 3,750.01                     | 5,250.00  | 3.0%        |
| 5,250.01                     | 11,250.00 | 4.0%        |
| 11,250.01                    | 16,500.00 | 5.0%        |
| 16,500.01                    | 22,500.00 | 6.0%        |
| 22,500.01                    | 30,000.00 | 7.0%        |
| 30,000.01                    | 37,500.00 | 8.0%        |
| 37,500.01                    | and over  | 9.0%        |

| Income Level - Fourth Quarter |           |             |
|-------------------------------|-----------|-------------|
| <u>From</u>                   | <u>To</u> | <u>Rate</u> |
| -0-                           | 1,000.00  | -0-         |
| 1,000.01                      | 5,000.00  | 2.0%        |
| 5,000.01                      | 7,000.00  | 3.0%        |
| 7,000.01                      | 15,000.00 | 4.0%        |
| 15,000.01                     | 22,000.00 | 5.0%        |
| 22,000.01                     | 30,000.00 | 6.0%        |
| 30,000.01                     | 40,000.00 | 7.0%        |
| 40,000.01                     | 50,000.00 | 8.0%        |
| 50,000.01                     | and over  | 9.0%        |

(2) Employees who perform services during the taxable year, both as an employee receiving salary and wages subject to withholding pursuant to 4 CMC § 1804(e) and as an individual receiving compensation not subject to withholding tax pursuant to 4 CMC § 1804(e) are required to pay the wage and salary tax not so withheld. An individual subject to withholding under 4 CMC § 1804(e) must file quarterly returns during the period his/her wages are not subject to withholding taxes pursuant to the tables established in this subsection. The combined wages and salary earned both as an employee subject to withholding tax and as an individual not subject to withholding tax must be reported on the Employee's Annual Wage and Salary Tax Return as provided in § 70-40.62-140 of this subchapter. Forms W-2 and W-2CM must be attached to the tax return. The provisions of this paragraph shall not apply beginning with taxable period after December 31, 1984, to employees paying estimated tax on income not subject to withholding, provided that the tax required under 4 CMC § 1804(e) is included in such estimated tax payment.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-115 Withholding; Non-refundable Credit**

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(a) In General. Except as provided by subsection (d) and pursuant to and as provided by 4 CMC § 1206 as amended by PL 9-59 and PL 10-73, a person may take the tax imposed on wages and salaries as a nonrefundable credit against the tax imposed on Commonwealth source income under subtitle A of the NMTIT pursuant to chapter 7 of title 4. However, no such credit shall be allowed for any amount deducted in determining taxable income under the NMTIT as shown on the taxpayer's return.

(b)(1) Withholding by Employers. In order for 4 CMC § 1206 as amended by PL 9-59 and PL 10-73 to apply at the time withholdings are deducted and remitted by an employer, the items of income subject to the NMTIT and the wage and salary tax must be taxable and/or that withholding must be required at the time the NMTIT and wage and salary tax was withheld or paid.

(2) This subsection may be illustrated by the following examples:

(i) Example No. 1            ABC Company Withholding Tax

| <u>Employee Name</u> | <u>Gross Wages</u> | <u>CH 7 Tax Withheld</u> | <u>CH 2 Tax Computed</u> | <u>CH 2 Tax Tentative Credit</u> | <u>CH 2 Tax Withheld</u> |
|----------------------|--------------------|--------------------------|--------------------------|----------------------------------|--------------------------|
| Employee A           | \$600.00           | \$60.00                  | \$40.00                  | \$40.00                          | \$0.00                   |
| Employee B           | 400.00             | 25.00                    | 40.00                    | 25.00                            | 15.00                    |
| Employee C           | 500.00             | 30.00                    | 30.00                    | 30.00                            | 0.00                     |
| Totals               | \$1,500.00         | \$115.00                 | \$115.00                 | \$95.00                          | \$15.00                  |
| Amount to Remit      | N/A                | \$115.00                 | N/A                      | N/A                              | \$15.00                  |

Note: Figures are for illustrative purposes only

(ii) Example No. 2            XYZ Company Withholding Tax

| <u>Employee Name</u> | <u>Gross Wages</u> | <u>CH 7 Tax Withheld</u> | <u>CH 2 Tax Computed</u> | <u>CH 2 Tax Tentative Credit</u> | <u>CH 2 Tax Withheld</u> |
|----------------------|--------------------|--------------------------|--------------------------|----------------------------------|--------------------------|
| Employee A           | \$800.00           | \$100.00                 | \$75.00                  | \$75.00                          | \$0.00                   |
| Employee B           | 1,000.00           | 75.00                    | 80.00                    | 75.00                            | 5.00                     |
| Employee C           | 500.00             | 40.00                    | 40.00                    | 40.00                            | 0.00                     |
| Totals               | \$2,300.00         | \$215.00                 | \$195.00                 | \$190.00                         | \$5.00                   |
| Amount to Remit      | N/A                | \$215.00                 | N/A                      | N/A                              | \$5.00                   |

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Note: Figures are for illustrative purposes only

(iii) In example no. 2 above, for employee A, the actual tax withheld under chapter 7 (column D) of \$25 was the result of the chapter 2 tax of \$75 (column C) applied as a non-refundable credit against the computed chapter 7 tax (column B) of \$100.00. The amount of the nonrefundable credit allowable is the lesser of the amount of the chapter 2 tax withheld or the chapter 7 tax computed. As the amount of the chapter 2 tax withheld of \$75.00 is less than the amount of the chapter 7 tax computed of \$100.00, the amount of the non-refundable credit is \$75.00.

Employee A’s combined withholding is \$100.00 (\$75.00 for wage and salary tax and \$25.00 for NMTIT), which in effect equals the greater amount of chapters 2 or 7 (NMTIT). XYZ Company shall deduct the \$100.00 from A’s payroll check and classify as indicated above. Allowing the non-refundable credit, in effect, relieves employee A of any chapter 7 (NMTIT) withholding tax to the extent of any wage and salary tax withheld on the same wages and salaries.

(c) Payment by Employees. In order for 4 CMC § 1206 as amended by PL 9-59 and PL 10-73 to apply at the time employees who are required to pay the wage and salary tax under 4 CMC § 1804(e), the items of income subject to the NMTIT and the wage and salary tax must be taxable and/or that chapter 2 payment must be required at the time the NMTIT estimated tax payment was made. This subsection may be illustrated by the following example:

(1) Example No. 1

| Employee Name | Gross Wages | CH 7 Estimated Tax Paid | CH 2 Tax Computed | CH 2 Tax Tentative Credit | CH 2 Tax Paid | Employee Total to Remit |
|---------------|-------------|-------------------------|-------------------|---------------------------|---------------|-------------------------|
| Employee A    | \$800.00    | \$100.00                | \$75.00           | \$75.00                   | \$0.00        | \$100.00                |
| Employee B    | 1,000.00    | 75.00                   | 80.00             | 75.00                     | 5.00          | \$80.00                 |
| Employee C    | 500.00      | 40.00                   | 40.00             | 40.00                     | 0.00          | \$40.00                 |

Note: Figures are for illustrative purposes only

(2) In example no. 1 above, for employee A, the actual tax paid under chapter 7 of \$25.00 is the result of the chapter 2 wage and salary tax paid of \$75.00 applied as a non-refundable credit against the computed chapter 7 estimated tax of \$100.00. The amount of the nonrefundable credit is the lesser of the amount of the chapter 7 estimated tax computed and the chapter 2 tax paid. As the amount of the chapter 7 estimated tax computed of \$100.00 is greater than the amount of the chapter 2 tax paid in the amount of \$75.00, the amount of the non-refundable credit is limited to the amount of \$75.00.

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Employee A's combined chapter 2 and chapter 7 liability is \$100.00 (\$75.00 for chapter 2 wage and salary tax and \$25.00 for chapter 7 NMTIT), which in effect equals the greater amount of chapters 2 or 7 (NMTIT). Employee A shall pay the \$100.00 and classify as indicated above. Allowing the non-refundable credit, in effect, relieves employee A of paying \$75.00 of the chapter 7 NMTIT imposed on wages and salaries received to the extent of the non-refundable credit which arises from the same taxable period.

(d) Reduction of Non-refundable Credit for PL 10-73 Educational Tax Credit. The amount of the nonrefundable credit allowed under subsection (a) and as provided by law shall be reduced by the amount of educational tax credit, allowed under 4 CMC § 1205, that is claimed by a person during the taxable year. See § 70-40.6-040(e)(3).

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (b) and (c) were not designated. The Commission designated subsections (b)(1) and (b)(2) and (c)(1) and (c)(2).

The notice of adoption for the 1995 regulations changed the proposed language of subsection (b). The 1996 amendments deleted and replaced this section in its entirety with numerous amendments. The 1998 amendments added new subsection (d) and amended subsections (a), (b)(1) and (c).

### **§ 70-40.6-120 Wage and Salary Tax Withholding; Time For Tax Payment**

(a) Employer. Every employer required to withhold tax on compensation under chapter 2 and/or chapter 7 of 4 CMC must make a deposit of the taxes withheld as provided for under subsections (a)(1), (a)(2) and (a)(3) below. These deposits shall be made to the Division of Revenue and Taxation on Saipan or the Tinian and Rota District Offices. Payment deposit form 500-WH shall be used when paying taxes for both 4 CMC chapter 2 (wages and salary tax) and 4 CMC chapter 7 (NMTIT).

(1)(i) If the cumulative amount of chapter 2 and chapter 7 tax actually withheld equals or exceeds \$3,000.00, the withholding tax shall be deposited within 3 working days after the accumulated amount reaches \$3,000.00 or more. However, if the \$3,000.00 in cumulative withholding taxes were met as a result of overlapping into the first month of the succeeding quarter, a separate deposit form 500-WH must be made which segregates taxes withheld up to the end of the last month of the quarter. The balance of the withheld taxes must be deposited at the same time and shall be credited to the succeeding quarter's return.

(ii) Example No. 1: Taxpayer P has 150 employees, each of whom has \$20.00 in withholding taxes on a biweekly payroll period. Thus, for each payroll period, the total withholding tax of taxpayer P is equal to \$3,000.

| <u>Payroll Period</u>       | <u>Withholding Amount</u> |
|-----------------------------|---------------------------|
| Month #1, Payroll Period #1 | \$3,000.00                |

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|                             |                   |
|-----------------------------|-------------------|
| Month #1, Payroll Period #2 | <u>\$3,000.00</u> |
|                             | \$6,000.00        |
| Month #2, Payroll Period #1 | \$3,000.00        |
| Month #2, Payroll Period #2 | <u>\$3,000.00</u> |
|                             | \$6,000.00        |
| Month #3, Payroll Period #1 | \$3,000.00        |
| Month #3, Payroll Period #2 | <u>\$3,000.00</u> |
|                             | \$6,000.00        |

Since the withholding tax in the first payroll period equals \$3,000.00, taxpayer P must make a deposit within 3 working days after the first payday and 3 working days after each payday for all subsequent paydays.

(2)(i) If the cumulative amount of chapter 2 and chapter 7 tax actually withheld is less than \$3,000.00 but at least \$500.00 at the end of any given month, the withholding taxes must be deposited within fifteen days after the end of the month in which the taxes were withheld. The deposits for the first and second months of the quarter shall be made on or before the fifteenth day after the end of the month in which the taxes were withheld. The deposit for the third month may be paid with form OS-3705, employers quarterly tax return, as provided in § 70-40.6-125(a) of this subchapter and on or before the due date of the quarterly returns as specified in § 70-40.6-125(a) of this subchapter.

(ii) Example No. 2: Taxpayer Q has 10 employees, each of whom has \$50.00 in withholding taxes for each month of the first quarter. Thus, for each payroll period, the total withholding tax of taxpayer Q is equal to \$500.00.

| <u>Payroll Period</u> | <u>Withholding Amount</u> |
|-----------------------|---------------------------|
| January               | \$500.00                  |
| February              | \$500.00                  |
| March                 | \$500.00                  |

Since the monthly withholding in each month equals \$500.00, taxpayer Q must make a monthly deposit. The deposit for the first calendar month, January, must be made in the amount of \$500.00 on or before February 15. The deposit for the second calendar month, February, must be made in the amount of \$500.00 on or before March 15. The deposit for the third calendar month, March, may be paid with form OS-3705 on or before April 30.

(iii) Example No. 3: Taxpayer R has 5 employees, each of whom has \$20.00 in withholding taxes in the first calendar month of the quarter. Thus, for the first calendar month, the total withholding tax of taxpayer R is equal to \$100.00. In the second month of the quarter taxpayer R hires 20 additional employees, each of whom has \$20.00 in withholding taxes. Thus, for the second calendar month, the total withholding tax of taxpayer R is equal to \$500.00.

| <u>Payroll Period</u> | <u>Withholding Amount</u> |
|-----------------------|---------------------------|
| January               | \$100.00                  |
| February              | \$500.00                  |

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March \$500.00

Taxpayer R does not have to make a deposit on or before February 15 for withholding tax in January since the withholding tax is less than \$500.00. However, taxpayer R must make a deposit in the amount of \$600.00 for withholding for the first and second months on or before March 15. The deposit for the third calendar month, March, may be paid with form OS-3705 on or before April 30.

(3)(i) If the cumulative amount of chapter 2 and chapter 7 tax actually withheld is less than \$500.00 at the end of any calendar month, the employer is not required to make a monthly deposit. Instead, the employer must pay the taxes with form OS-3705, employers quarterly tax return, on or before the due dates of this return as provided in § 70-40.6-125(a) of this subchapter.

(ii) Example No. 4: Taxpayer S has 15 employees, each of whom has \$10.00 in withholding taxes. Thus, for each calendar month, the total withholding tax of taxpayer S is equal to \$150.00.

| <u>Payroll Period</u> | <u>Withholding Amount</u> |
|-----------------------|---------------------------|
| Month #1              | \$150.00                  |
| Month #2              | \$150.00                  |
| Month #3              | \$150.00                  |

Taxpayer S does not have to make monthly deposits since the monthly withholding is less than \$500.00. Instead, taxpayer S must pay the taxes with form OS-3705, employers quarterly tax return, on or before the due dates of this return as provided in § 70-40.6-125(a) of this subchapter.

(b) Employee. An employee required under 4 CMC § 1804(e) to pay the wage and salary tax himself or herself, must make such deposits at the Division of Revenue and Taxation in Saipan or at the Tinian and Rota District Offices. Payment deposit form 500-ES shall be used when paying taxes for both 4 CMC chapter 2 (wages and salary tax) and 4 CMC chapter 7 (NMTIT).

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (a)(1) through (a)(3) were not designated. The Commission designated subsections (a)(1)(i) and (ii), (a)(2)(i) through (iii), and (a)(3)(i) and (ii).

**§ 70-40.6-125 Quarterly Withholding Return, Form OS-3705**

(a) Employer. Every employer required to deduct and withhold any chapter 2 wage and salary tax and/or chapter 7 NMTIT shall on or before the last day of the month following the close of each quarter make a full and correct return showing all wages and salaries paid by the employer during the preceding quarter and showing the tax due and withheld thereon. Form OS-3705 is the return used to report the employee's wages and salaries by the employer and amount of tax withheld. It requires the employee's U.S.

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Social Security number, employee's name, taxable wages, tax withheld for each employee, and all other information required on the form prescribed by the Secretary. Form OS-3705A is the continuation sheet for form OS-3705. Form OS-3705 shall be filed on or before the last day of the date specified below:

| <u>Quarter</u> | <u>Due Date</u> |
|----------------|-----------------|
| First Quarter  | April 30        |
| Second Quarter | July 31         |
| Third Quarter  | October 31      |
| Fourth Quarter | January 31      |

(b) Employee. An employee required under 4 CMC § 1804(e) to pay the wage and salary tax himself or herself is not required to file a quarterly withholding return. Instead, the filing of the payment deposit form 500-ES as provided in § 70-40.6-120(b) of this subchapter fulfills the employee's filing requirements. Payments and form 500-ES shall be made and filed on a quarterly basis on or before the last day of the date specified below:

| <u>Quarter</u> | <u>Due Date</u> |
|----------------|-----------------|
| First Quarter  | April 30        |
| Second Quarter | July 31         |
| Third Quarter  | October 31      |
| Fourth Quarter | January 31      |

(c) Applicability of NMTIT Returns. Quarterly withholding returns required to be filed under the NMTIT, e.g., form 941, are satisfied upon the filing of the quarterly withholding returns under this section.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-130 Annual Wage and Tax Statement**

Every employer paying wages and salaries subject to chapter 2 wage and salary tax and/or chapter 7 NMTIT shall furnish to each employee and file a copy with the Division of Revenue and Taxation on or before January 31 of the succeeding year a written statement showing the wages or salaries paid by the employer to each employee and the amount of the tax deducted and withheld or paid, if any, with respect to such compensation. The statement which satisfies this requirement is form W-2CM required to be issued and filed under the NMTIT.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-135 Annual Reconciliation of Employer's Income Tax Quarterly Withholding**

(a) Employer Return. Every employer required to deduct and withhold any chapter 2 wage and salary tax and/or chapter 7 NMTIT shall file a form OS-3710 "Annual Reconciliation of Employers Income Tax Quarterly Withholding" on or before January 31 after the close of the taxable year with the Division of Revenue and Taxation. Copy A of form W-2CM, wage and tax statement, is required to be attached to form OS-3710. Form OS-3710 replaces IRS form W-3, transmittal of wage and tax statements.

(b) Employee Return. Every employee who is required under 4 CMC § 1804(e) to pay and remit chapter 2 wage and salary tax on a quarterly basis is required to file an annual reconciliation return. However, such requirement is met by filing an employee's annual wage and salary tax return as provided in § 70-40.6-140 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-140 Employee's Annual Wage and Salary Tax Return**

(a) Requirement. Except as provided in subsection (b) and unless as provided otherwise, every employee subject to tax under 4 CMC § 1201 is required to file an "employee's annual wage and salary tax return," form 1040NMI, on or before April 15, after the end of the taxable year. Any additional tax due is payable upon the filing of this return. Any tax determined to be overwithheld or overpaid will be refunded without the necessity of filing an application for refund. Copy 2 of form W-2 or W-2CM must be attached to form 1040NMI. No refund will be made without the wage and tax statement attached.

(b) Exception. An employee required to file an income tax return, form 1040A-CM or form 1040CM, for the taxable year need not file a 1040NMI return. Instead, such 1040NMI return is satisfied by filing with the CNMI government a form 1040A-CM or form 1040CM covering the same taxable period.

(c) Extension. Taxpayers who have requested an automatic 4-month extension of time to file an annual individual income tax return for the same taxable year, are automatically granted the same amount of extension of time to file their form 1040NMI; provided, however, that the taxpayer properly estimates his or her wage and salary tax due (calculated after the 4 CMC § 1205 non-refundable credit) and pays such on or before April 15 of the year succeeding the taxable year to which the return relates.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-145 Effective Date**

Withholding taxes to be deducted and remitted by an employer pursuant to 4 CMC § 1804 shall be calculated based on wages and salaries paid commencing on the first day of each employer's first payroll period beginning after December 31 to the last day of each taxable year. Employers shall not change their customary payroll periods if such change would result in the postponement of the effective date on which to commence withholding the tax on wages and salaries.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**Part 200 - Earnings Tax**

**§ 70-40.6-201 Earnings**

(a) In General. Pursuant to 4 CMC § 1202, there is imposed on every person a yearly tax on such person's total earnings. Except as provided in subsection (c) and (b)(5), "earnings" means those items identified in 4 CMC § 1202(b) and subsection (b) of this section that are not derived in the course of carrying on a business as defined by 4 CMC § 1103(b) and § 70-40.6-030(a). Items that are derived in the course of carrying on a business are subject to the gross revenue tax, as appropriate and applicable, imposed at 4 CMC chapter 3.

(b) Earnings. "Earnings" means the following items, unless otherwise provided, that are not derived in the course of carrying on a business as defined by 4 CMC § 1103(b) and § 70-40.6-030(a):

(1) A gain as determined under § 1001 of the NMTIT received from the sale of personal property, tangible or intangible, by a resident in the Commonwealth. For purposes of this provision, the basis of such personal property may be determined under 4 CMC § 1703(c) subject to the provisions of 4 CMC § 1703 and this subchapter;

(2) One-half of the gain as determined under § 1001 of the NMTIT received from the sale of real property located in the Commonwealth. For purposes of this provision, the basis of such real property may be determined under 4 CMC § 1703(c) subject to the provisions of 4 CMC § 1703 and this subchapter;

(3) One-half of the net income received from leasing real property located in the Commonwealth, including the assignment of any lease. For purposes of this provision, "net income from leasing real property including the assignment of any lease" means the income less expenses from the rental of real property. The expenses allowed as deductions in calculating the net leasing income are only those allowable under the NMTIT;

(4) Gross winnings as defined by § 70-40.6-030(i) from any gaming, lottery, raffle, or other gambling activity in the Commonwealth whether derived in the course of carrying on a business or not derived in the course of carrying on a business. Gross winnings subject to the earnings tax shall not include those exempt from the earnings tax by subsection (c)(9);

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(5) Except as provided in 4 CMC § 1202(b)(6)(i)–(v) and subsection (c) of this section, all other types of income that a resident individual must report in determining his NMTIT.

(c) “Earnings” does not include the following items:

(1) Income which is subject to the wage and salary tax of 4 CMC § 1201;

(2) Wages and salaries received from the United States by active members of the Armed Forces of the United States;

(3) Reasonable per diem and travel allowances to the extent that they do not exceed any comparable Commonwealth government rates;

(4) Rental value of a home furnished to any employee or a reasonable rental allowance paid to any employee to the extent the allowance is used by the employee to rent or provide a home;

(5) Any payment of medical or hospitalization expenses made by an employer or insurance company to or on behalf of an employee or insured;

(6) Payments made to or on behalf of an employee or to his beneficiary to or from a trust, annuity, or retirement program. However, contributions made by an employer on behalf of an employee to a qualified plan as provided in the NMTIT which exceed that allowed as elective deferred compensation under the NMTIT shall not be excluded from the earnings tax.

(7) Any payment in the form of a scholarship, fellowship, grant, stipend, or the like made to any student while he is a full-time, bona fide student at an educational institution as defined by § 170(b)(1)(A)(ii) of the NMTIT: provided, however, that if the payment is made for services rendered, the student must receive college credit(s) for the performance of the services and the services must further the student’s education, curriculum, or course of study.

(8) Any benefit payment from the United States, Trust Territorial, or Northern Marianas Social Security Administration.

(9) Jackpot winnings subject to the gaming machine jackpot tax of 4 CMC § 1505. Any jackpot winnings that are not subject to the gaming machine jackpot tax are, however, subject to the earnings tax as otherwise provided.

(i) Example No. 1: In 1995, taxpayer A wins \$1,000 from playing a poker machine. The gaming machine jackpot tax applicable to A is \$100. Since the entire amount of jackpot winnings earned by A is subject to the gaming machine jackpot tax, A is not subject to the earnings tax on this \$1,000.

(ii) Example No. 2: In 1995, taxpayer B wins \$500 from playing a poker machine. The gaming machine jackpot tax is not applicable to A\*. Therefore, A\* is subject to the earnings tax on this \$500.

(10) Earnings derived by a person granted tax-exempt status by the Division of Revenue and Taxation as an organization exempt under NMTIT §§ 501(c)(3)–(6), 501(c)(8), or 501(c)(10) to the extent allowed under 4 CMC § 1203(a) provided the person is in compliance with part 400; and

(11) Interest and dividends sourced in the Commonwealth not in the course of carrying on a business, to the extent the aggregate amount of such income does not exceed \$2,000.

(12) De Minimis. Earnings which combined with all other earnings for a taxable year of a person do not exceed \$1,000 in total for a complete taxable year.

(d) In no instance shall an item of earnings be subject to taxation under the earnings tax more than once. For example, items subject to the earnings tax under 4 CMC § 1202(b)(1)–(5) shall not be again subject to the earnings tax under 4 CMC § 1202(b)(6).

\* So in original.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Amdts Adopted 39 Com. Reg. 40374 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 40318 (Oct. 28, 2017); Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (c)(9) were not designated. The Commission designated subsections (c)(9)(i) and (ii).

The 1996 amendments amended subsection (b)(6). The 1998 amendments deleted former subsection (b)(4), redesignated former subsections (b)(5) and (b)(6) accordingly, added a new subsection (c)(11) and redesignated former subsection (c)(11) as (c)(12).

In subsection (c)(11), the Commission changed “no” to “not” to correct a manifest error.

#### **§ 70-40.6-205**

[Reserved.]

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-210**

[Reserved.]

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-215 Non-refundable Credit**

(a) In General.

(1) Except as provided by subsection (b) and pursuant to and as provided by 4 CMC § 1206 as amended by PL 9-59 and PL 10-73, a person may take the tax imposed on earnings as a nonrefundable credit against the tax imposed on Commonwealth source income under subtitle A of the NMTIT pursuant to chapter 7 of title 4. However, no such credit shall be allowed for any amount deducted in determining taxable income under the NMTIT as shown on the taxpayer’s return.

(2) Example No. 1: In 1996, taxpayer A has \$100,000 of earnings subject to the earnings tax and the NMTIT. For this taxable year, taxpayer A has no other income, will

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file a joint return, and will claim two personal exemptions. At the close of the taxable year, taxpayer A prepares his form 1040CM and determines the following:

|                                     | <u>Earnings Tax</u> | <u>NMTIT</u> |
|-------------------------------------|---------------------|--------------|
| Gross Income/Earnings               | \$100,000.00        | \$100,000.00 |
| Less: Personal Exemptions           | N/A                 | (5,000.00)   |
| Less: Standard Deduction            | N/A                 | (6,500.00)   |
| Taxable Income/Earnings             | 100,000.00          | 88,500.00    |
| Calculated Tax                      | 9,000.00            | 19,983.00    |
| Less: Non-refundable Credit         | (9,000.00)          | N/A          |
| Balance after Non-refundable Credit | -0-                 | 19,983.00    |
| Tax Underpayment/Overpayment        | -0-                 | 19,983.00    |
| Rebate Base:                        |                     | 10,983.00    |
| Tax Imposed:                        | \$19,983.00         |              |
| Less Credit:                        | (9,000.00)          |              |
| Rebate Base:                        | 10,983.00           |              |
| Amount of Rebate:                   |                     |              |
| \$1,950.00                          |                     |              |
| <u>4,241.50</u> [10,983-2500]x[50%] |                     |              |
| \$6,191.50                          | N/A                 | 6,191.50     |

\*\*Note: Figures are for illustrative purposes only

(b) Reduction of Non-refundable Credit for PL 10-73 Educational Tax Credit. The amount of the nonrefundable credit allowed under (a) and as provided by law shall be reduced by the amount of educational tax credit, allowed under 4 CMC § 1205, that is claimed by a person during the taxable year. See § 70-40.6-040(e)(3).

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (a) were not designated. The Commission designated subsections (a)(1) and (a)(2).

The 1996 amendments deleted and replaced this section in its entirety with numerous amendments. The 1998 amendments amended subsection (a)(1) and added new subsection (b).

**§ 70-40.6-220 Payment**

The earnings tax is due and payable on or before April 15 after the end of the year during which the earnings were received or accrued. The tax is payable upon the filing of the annual earnings tax return as provided in § 70-40.6-225 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-225 Reporting Requirements**

(a) Requirement. Except as provided in subsection (b), every person subject to the earnings tax of 4 CMC § 1202 is required to file an “annual earnings tax return,” form 1040-ET, on or before April 15 after the end of the year during which the earnings were received or accrued. Appropriate copies of forms 1099 and any other necessary forms (e.g., form W-2CM or W-2 for excess deferred compensation) must be attached to form 1040-ET.

(b) Exception. Any person required to file an income tax return, form 1040A-CM or form 1040CM, for the taxable year need not file an annual earnings tax return, form 1040-ET. Such form 1040-ET is satisfied by the filing of a form 1040A-CM or form 1040CM covering the same taxable period.

(c) Extension. Taxpayers who have requested an automatic 4-month extension of time to file an annual individual income tax return for the same taxable year, are automatically granted the same amount of extension of time to file their form 1040-ET; provided, however, that the taxpayer properly estimates his or her earnings tax due (calculated after the 4 CMC § 1205 nonrefundable credit) and pays such on or before April 15 of the year succeeding the taxable year to which the return relates.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (a), the Commission moved the comma after “return” inside of the closing quotation mark.

### **§ 70-40.6-230 Calculation of Wage and Salary Tax and Earnings Tax**

(a) The amount of tax imposed under the wage and salary tax of 4 CMC § 1201 and the earnings tax of 4 CMC § 1202 are determined in accordance with the schedule provided in 4 CMC § 1204. The wage and salary tax and the earnings tax are, however, separate and distinct taxes and therefore are computed separately. Thus, items of income subject to the wage and salary tax are not accumulated with items of income subject to the earnings tax to be taxed at the rate imposed under 4 CMC § 1204.

(b) Example No. 1. In 1995, taxpayer A receives wages and salaries in the amount of \$30,000 and earnings in the amount of \$2,000. Taxpayer A will pay a total of \$1,840 in earnings and wage and salary tax: \$1,800 of wage and salary tax (i.e. \$30,000 at 6%) and \$40 of earnings tax (i.e., \$2,000 at 2%). Taxpayer A will not pay \$2,240 as wage and salary and earnings tax for 1995 (i.e., \$32,000 at 7%).

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

## **Part 300 - Gross Revenue Tax**

### **§ 70-40.6-301 Gross Revenue**

(a) In General. Pursuant to 4 CMC chapter 3, there is imposed on every person a yearly tax on such person's total gross revenues. Except as provided in subsection (c), "gross revenues" means those items identified in 4 CMC § 1103(j) and subsection (b) that are derived in the course of carrying on a business as defined by 4 CMC § 1103(b) and § 70-40.6-030(a). Items that are not derived in the course of carrying on a business are subject to the earnings tax or the wage and salary tax, as appropriate and applicable, imposed at 4 CMC § 1202 or 4 CMC § 1201, respectively.

(b) Gross Revenue. "Gross revenue" includes the following items that are derived in the course of carrying on a business as defined by 4 CMC § 1103(b):

(1) The total amount of money or the value of other consideration, without deduction for any expenses, received from:

(i) Selling or leasing, including the assignment of any lease, real property located in the Commonwealth;

(ii) Selling or leasing any "CNMI real property interest" as defined by 4 CMC § 1103(c);

(iii) Selling personal property, tangible or intangible, in the Commonwealth;

(iv) Leasing personal property, including the assignment of any lease, located in the Commonwealth;

(v) Performing services in the Commonwealth;

(2) The total amount of money or the value of other consideration, received as interest, dividends, royalties, or similar income earned in and derived from a person in the Commonwealth, without deduction for any expenses;

(3) Gross revenues of a partnership;

Example. Partnership ABCD has interest income from a savings account in the amount of \$200, amount realized from the sale of personal property in the amount of \$1,000, and gross revenues derived from the performance of legal services in the amount of \$10,000 all of which are deemed sourced within the CNMI. Partnership ABCD must report the entire \$11,200 as gross revenues and pay the gross revenue tax due thereon.

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(4) That portion of the distributive share of income or gain of a partnership, as provided in the NMTIT, that is derived from the conduct of a business in the Commonwealth to a partner who is not an individual;

Example. Partnership WXYZ is comprised of partner W, partner X, partner Y, and partner Z each having an equal interest in the partnership. Partner W and partner X are resident individuals of the Commonwealth, and partner Y and partner Z are domestic corporations. During the taxable year, Partnership WXYZ has gross revenues in the amount of \$1,000,000 and net income in the amount of \$100,000; each partner's distributive share of income from Partnership WXYZ determined under the NMTIT is \$25,000. The partnership must report and pay the BGRT on the entire \$1,000,000. Partner Y and partner Z must report and pay the BGRT on each partner's distributive share of net income of Partnership WXYZ, i.e., \$25,000 per partner.

(5) "Gross revenues" of a corporation, including a subchapter S corporation as defined by the NMTIT;

(6) "Gross revenues" of a sole proprietorship or independent contractor;

(7) The total revenue received or accrued, whichever is earlier, and without deduction for any expenses, by a person who by ocean-going vessel delivers property or transports individuals in or out of the Commonwealth. The gross revenue included by this paragraph shall be no more than the amount which bears a reasonable relationship to the activity performed by the person in the Commonwealth;

(8) For inventory property, the amount of money or other consideration received by a resident as insurance proceeds for fire or other casualty, theft, embezzlement, and the like of such property;

(9) For all property other than inventory property, the amount of money or other consideration received by a resident as insurance proceeds for fire or other casualty, theft, embezzlement, and the like of such property to the extent the amount of money or other consideration received exceeds the adjusted basis of such property; and

(10) "Gross revenues" of a casino, casino operator, or casino licensee, which shall include the total of all:

- (i) Cash payments received;
- (ii) Credit card payments received;
- (iii) Checks received, whether collected or not;
- (iv) The face value of any credit instruments issued, whether paid or not;
- (v) Any other sum received as payment for credit extended or the issue of chips;

by a casino, casino operator, or casino licensee for casino gaming activities, less the total amount paid out to patrons as winnings. For purposes of this section, no deduction shall be permitted for any credit card fees or discounts.\*

(c) Exclusions. "Gross revenue" shall not include the following items:

- (1) Wages and salaries subject to the wage and salary tax imposed by 4 CMC § 1201;
- (2) Gross revenues derived solely from the export sales of goods, resources, food, fish, or agricultural products produced or manufactured in the Commonwealth and delivered by the manufacturer or producer to the buyer outside the Commonwealth. However, a quarterly tax return must be filed regardless if no tax is due and a statement verifying the amount and destination covered by the exemption;

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- (3) Gross revenues derived from the sale of diesel fuel for use in any vessel's commercial operations that are primarily outside the territorial waters of the Commonwealth;
- (4) Gross revenues earned by a Foreign Sales Corporation, as defined by 4 CMC §§ 1601, et seq., from its operations;
- (5) Gross revenues earned by off-shore banking corporations as defined by 4 CMC § 1103(p);
- (6) Gross revenues earned by a person granted tax- exempt status by the Division of Revenue and Taxation as an organization exempt under NMTIT §§ 501(c)(3)–(6), 501(c)(8), 501(c)(10), 527 or a qualified plan under NMTIT § 401(a) to the extent allowed under 4 CMC § 1305(g) provided the person is in compliance with part 400;
- (7) Refunds and cash discounts allowed and taken;
- (8) Money received and held in a fiduciary capacity;
- (i) Example No. 1: Mr. Z owns a hotel. The price of a room per night is \$75. which does not include the 4 CMC § 1502 hotel occupancy tax in the amount of \$7.50. Mr. Z would report only the \$75 as gross revenue and would exclude the amount of the hotel occupancy tax collected in the amount of \$7.50 from the gross revenue tax.
- (ii) Example No. 2: Mr. X owns a grocery store and sells an item to a customer for \$50. Mr. X would report gross revenues in the amount of \$50. In this case, the gross revenue tax is imposed upon the sales price of the goods collected from the purchaser even if the gross revenue tax imposed on the sale is included within the sales price.
- (iii) Example No. 3: The trustee of a bankruptcy estate established under title 11 of the United States Code holds property on behalf of the estate in the amount of \$100,000 to be distributed to creditors pursuant to title 11. The bankruptcy estate earned no income or gross revenues. Neither the bankruptcy estate nor the bankruptcy trustee is required to report any of the \$100,000 as gross revenue as this amount was held by the estate and the trustee in a fiduciary capacity only.
- (iv) Example No. 4: Same facts as example no. 3 above except that the bankruptcy estate receives gross revenues in the amount of \$20,000. The bankruptcy estate is required to report the \$20,000 as gross revenue.
- (9) De Minimis, “gross revenues” which combined with all other gross revenues of a person for a taxable year do not exceed \$5,000 in total for a complete taxable year.

(d) Additional Gross Revenues.

- (1) Gross revenues shall also include those NMTIT deductions allowed under 4 CMC § 1706(a) and § 70-40.6-645. Such amounts shall be combined with the person's total gross revenues for the year in the last quarter of the person's taxable year.
- (2) Example. For the taxable year, Partnership MNOP derives gross revenues from the performance of services within the Commonwealth in the amount of \$500,000. The entire \$500,000 is subject to both the gross revenue tax and the NMTIT. For purposes of the NMTIT, Partnership MNOP is entitled to a deduction in the amount of \$1,000 under § 179 for the purchase of an asset not within the Commonwealth no portion of which substantially benefits business activities conducted in the Commonwealth. Partnership MNOP is required to report gross revenues in the amount of \$501,000 (i.e., \$500,000 plus \$1,000) and pay the gross revenue tax thereon in the amount of \$20,040.

\* So in original.

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Amdts Adopted 39 Com. Reg. 40374 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 40318 (Oct. 28, 2017); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (b)(4), (c)(8) and (d) were not designated. The Commission designated subsections (b)(4)(i) and (ii), (c)(8)(i) through (iv), and (d)(1) and (d)(2).

The notice of adoption for the 1995 regulations changed the proposed language of subsections (b)(4)(i) and (ii). The 1996 amendments amended subsection (b)(4)(ii) and deleted former subsections (c)(9) and (c)(10). The Commission redesignated former subsection (c)(11) as (c)(9).

### **§ 70-40.6-305 In the Commonwealth**

For purposes of the gross revenue tax, gross revenues are deemed derived from “in the Commonwealth” if the gross revenues are “sourced within the Commonwealth” pursuant to 4 CMC § 1103(u) and 4 CMC § 1712. All other issues as to whether gross revenues are derived “in the Commonwealth” for purposes of the gross revenue tax shall be made in accordance with the sourcing rules of the Northern Marianas Territorial Income Tax at §§ 861, et seq. to the extent consistent with the gross revenue tax.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-310 Quarterly Payments**

Every business subject to the gross revenue tax imposed by chapter 3 of 4 CMC shall report all such gross revenue received during each quarter and pay the gross revenue tax due thereon as provided in this subchapter no later than the last day of the month following the close of the quarter to wit on or before the following days:

| <b><u>Quarter</u></b> | <b><u>Due Date</u></b> |
|-----------------------|------------------------|
| First Quarter         | April 30               |
| Second Quarter        | July 31                |
| Third Quarter         | October 31             |
| Fourth Quarter        | January 31             |

Modified, 1 CMC § 3806(d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

### **§ 70-40.6-315 Rate of Tax**

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(a) General Gross Revenue Tax. Except as provided in 4 CMC § 1302, § 1303, or § 1304, a yearly tax is imposed on a person's total gross revenues at the rates specified in 4 CMC § 1301.

(b) Agriculture Producers and Fishing. In lieu of the gross revenue tax imposed by 4 CMC § 1301, the tax on persons engaged in the business of producing agricultural products in the Commonwealth or fishing in the Commonwealth, or its waters, for dietary consumption shall be at the rate of one percent of gross revenues in excess of \$20,000.

(c) Manufacturers and Wholesalers. In lieu of the gross revenue tax imposed by 4 CMC § 1301, the tax on persons engaged in the business of manufacturing and selling goods at wholesale shall be at the maximum rate of 2%.

(1) If all the gross revenues of a business are derived solely from manufacturing and selling of goods at wholesale, the entire amount of such gross revenues will be taxed at the maximum rate of 2% pursuant to 4 CMC § 1303.

(2) If all the gross revenues of a business are not derived solely from manufacturing and selling goods at wholesale, the combined gross revenues not derived from manufacturing and selling goods at wholesale shall be taxed at the rates imposed under 4 CMC § 1301 while the gross revenues derived solely from manufacturing and selling goods at wholesale shall be taxed at the maximum rate of 2% pursuant to 4 CMC § 1303.

(i) Example No. 1. Wholesaler Co., Inc. derives gross revenues from the sale of goods to a retailer for resell in the amount of \$100,000 for first quarter 1995. During this quarter, Wholesaler Co., Inc. also derives gross revenues from the direct sale of goods to consumers in the amount of \$50,000. Wholesaler Co., Inc. is required to pay gross revenue tax on the \$100,000 at the rates established under § 1303. Wholesaler Co., Inc. is required to pay gross revenue tax on the \$50,000 at the rates established under § 1301.

(ii) Example No. 2. Manufacturing Co., Inc. manufactures goods for sell to retailers and directly to consumers. For the taxable year, Manufacturing Co., Inc. derives \$800,000 gross revenues from the sale of such manufactured goods to retailers and \$125,000 gross revenues from the sale of such manufactured goods directly to consumers. The entire \$925,000 of proceeds received for the sale of goods manufactured by Manufacturing Co., Inc. is subject to the gross revenue tax rates established under § 1303. Thus, Manufacturing Co., Inc. shall pay gross revenue tax in the amount of \$18,500.

(3) All persons subject to 4 CMC § 1303 shall maintain separate records and accounts showing the gross revenue from manufacturing and selling, selling at wholesale, selling at retail, and other business activities.

(d) Banks, Banking Institutions, Building and Loan Associations, and other Financial Institutions. In lieu of the gross revenue tax imposed by 4 CMC § 1301, the tax on the operation of any bank, banking institution, building and loan association, and other lending institutions shall be equivalent to the greater of five percent of the net income received from such business or three percent of gross revenues. The calculation of net income for purposes of 4 CMC § 1304 shall be determined pursuant to 4 CMC § 1304(b).

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(e) Disincentives to Off-island Investments.

(1) In addition to the above and pursuant to 4 CMC § 1706(b), the gross revenue tax shall be imposed on all taxpayers in the amount of any credit allowed to such taxpayer under the NMTIT sections enumerated in 4 CMC § 1706(e) and § 70-40.6-645(b) of this subchapter.

(2) Example. For taxable year 1995, ABC Corporation derives gross revenues in the amount of \$250,000 all of which are sourced within the Commonwealth. The entire \$250,000 is subject to the gross revenue tax and the NMTIT. Under the NMTIT, ABC Corporation is entitled to a credit in the amount of \$75 under § 38 for an asset purchased off-island no portion of which substantially benefits business activities conducted in the Commonwealth. ABC Corporation is required to pay gross revenue tax in the amount of \$6,325 (i.e., \$6,250 (\$250,000 x 2.5%) plus \$75).

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (c)(2) and (e) were not designated. The Commission designated subsections (c)(2)(i) and (ii) and (e)(1) and (e)(2).

The notice of adoption for the 1995 regulations changed the proposed language of subsection (c)(2)(ii).

**§ 70-40.6-320 Tax Table -- 4 CMC § 1301**

Except as provided by 4 CMC § 1302, § 1303, or § 1304, the quarterly gross revenue tax imposed shall be at the following rates:

First Quarter  
**Table I (Jan. 1 - Mar. 31)**  
Gross revenue from January 1 to March 31

| <b><u>From</u></b> | <b><u>To</u></b> | <b><u>Rate</u></b> |
|--------------------|------------------|--------------------|
| -0-                | 1,250.00         | -0-                |
| 1,250.01           | 12,500.00        | 1.5%               |
| 12,500.01          | 25,000.00        | 2.0%               |
| 25,000.01          | 62,500.00        | 2.5%               |
| 62,500.01          | 125,000.00       | 3.0%               |
| 125,000.01         | 187,500.00       | 3.5%               |
| 187,500.01         | and over         | 5.0%               |

Second Quarter  
**Table II (Jan. 1 - June 30)**  
Cumulative gross revenue from January 1 to June 30

| <b><u>From</u></b> | <b><u>To</u></b> | <b><u>Rate</u></b> |
|--------------------|------------------|--------------------|
| -0-                | 2,500.00         | -0-                |
| 2,500.01           | 25,000.00        | 1.5%               |
| 25,000.01          | 50,000.00        | 2.0%               |

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|            |            |      |
|------------|------------|------|
| 50,000.01  | 125,000.00 | 2.5% |
| 125,000.01 | 250,000.00 | 3.0% |
| 250,000.01 | 375,000.00 | 3.5% |
| 375,000.01 | and over   | 5.0% |

Third Quarter

**Table III (Jan. 1 - Sept. 30)**

Cumulative gross revenue from January 1 to September 30

| <b><u>From</u></b> | <b><u>To</u></b> | <b><u>Rate</u></b> |
|--------------------|------------------|--------------------|
| -0-                | 3,750.00         | -0-                |
| 3,750.01           | 37,500.00        | 1.5%               |
| 37,500.01          | 75,000.00        | 2.0%               |
| 75,000.01          | 187,500.00       | 2.5%               |
| 187,500.01         | 375,000.00       | 3.0%               |
| 375,000.01         | 562,500.00       | 3.5%               |
| 562,500.01         | and over         | 5.0%               |

Fourth Quarter

**Table IV (Jan. 1 - Dec. 31)**

Cumulative Gross Revenue from January 1 to December 31

| <b><u>From</u></b> | <b><u>To</u></b> | <b><u>Rate</u></b> |
|--------------------|------------------|--------------------|
| -0-                | 5,000.00         | -0-                |
| 5,000.01           | 50,000.00        | 1.5%               |
| 50,000.01          | 100,000.00       | 2.0%               |
| 100,000.01         | 250,000.00       | 2.5%               |
| 250,000.01         | 500,000.00       | 3.0%               |
| 500,000.01         | 750,000.00       | 3.5%               |
| 750,000.01         | and over         | 5.0%               |

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

**§ 70-40.6-325 Tax Table -- 4 CMC § 1302 Agriculture Producers and Fishing**

(a) Rate. The quarterly gross revenue tax imposed on persons engaged in the business of producing agricultural products in the Commonwealth or fishing in the Commonwealth, or its waters, for dietary consumption shall be at the rate of 1% of gross revenues in excess of \$20,000.

(b) Exclusion. Agricultural producers and fisheries are allowed an exclusion of \$5,000 each quarter, cumulative by quarter, to a total of \$20,000 per annum. The total exclusion of \$20,000 will be allowed on the fourth quarterly return for the taxable year.

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Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

### **§ 70-40.6-330 Tax Table -- 4 CMC § 1303 Manufacturers and Wholesalers**

The quarterly gross revenue tax imposed on persons engaged in manufacturing and selling goods shall be at the following rates:

| First Quarter                                       |                  |                    |
|---|------------------|--------------------|
| <b><u>Table I (Jan. 1 - Mar. 31)</u></b>            |                  |                    |
| Cumulative Gross Revenue from January 1 to March 31 |                  |                    |
| <b><u>From</u></b>                                  | <b><u>To</u></b> | <b><u>Rate</u></b> |
| -0-   | 1,250.00         | -0-                |
| 1,250.01  | 12,500.00        | 1.5%               |
| 12,500.01   | and over         | 2.0%               |

| Second Quarter                                     |                  |                    |
|--|------------------|--------------------|
| <b><u>Table II (Apr. 1 - Jun. 30)</u></b>          |                  |                    |
| Cumulative Gross Revenue from January 1 to June 30 |                  |                    |
| <b><u>From</u></b>                                 | <b><u>To</u></b> | <b><u>Rate</u></b> |
| -0-  | 2,500.00         | -0-                |
| 2,500.01   | 25,000.00        | 1.5%               |
| 25,000.01  | and over         | 2.0%               |

| Third Quarter   |                  |                    |
|---|------------------|--------------------|
| <b><u>Table III (Jan. 1 - Sept 30)</u></b>              |                  |                    |
| Cumulative gross revenue from January 1 to September 30 |                  |                    |
| <b><u>From</u></b>                                      | <b><u>To</u></b> | <b><u>Rate</u></b> |
| -0-   | 3,750.00         | -0-                |
| 3,750.01  | 37,500.00        | 1.5%               |
| 37,500.01   | and over         | 2.0%               |

| Fourth Quarter   |                  |                    |
|--|------------------|--------------------|
| <b><u>Table IV (Jan. 1 - Dec. 31)</u></b>              |                  |                    |
| Cumulative gross revenue from January 1 to December 31 |                  |                    |
| <b><u>From</u></b>                                     | <b><u>To</u></b> | <b><u>Rate</u></b> |
| 0  | 5,000.00         | -0-                |
| 5,000.01   | 50,000.00        | 1.5%               |
| 50,000.01  | and over         | 2.0%               |

Modified, 1 CMC § 3806(f).

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History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

### **§ 70-40.6-335 Tax Table -- 4 CMC § 1304 Banks, Banking Institutions and Building and Loan Associations**

The quarterly gross revenue tax imposed on the operation of any bank, banking institution, building and loan association, and other lending institutions shall be equivalent to the greater of five percent of the net income received from such business or three percent of gross revenues.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

### **§ 70-40.6-340 Non-refundable Credit**

(a) In General. Except as provided in subsection (c) and pursuant to and as provided by 4 CMC § 1308 as amended by PL 9-59 and PL 10-73, there will be allowed against the tax imposed on gross revenues (or any other Commonwealth tax or fee imposed under other divisions or titles of the Commonwealth code in lieu of such tax) a nonrefundable credit against the tax imposed on Commonwealth source income under subtitle A of the NMTIT pursuant to chapter 7 of title 4 of the Commonwealth code. However, no such credit shall be allowed for any amount deducted in determining taxable income under the NMTIT as shown on the taxpayer's return.

(b) Quarterly Estimated NMTIT Payments.

(1) In order for 4 CMC § 1307 to apply to quarterly estimated NMTIT payments, the NMTIT and gross revenue tax must both be due within the period covered by the BGRT payment. The non-refundable BGRT tax credit will be accepted provided all information and documentation is submitted as required by the Division of Revenue and Taxation.

(2) This subsection may be illustrated by the following examples:

(i) Example No.1

|   |            |
|---|------------|
| BGRT due (1st quarter, 1996)                  | \$3,000.00 |
| BGRT non-refundable credit allocation         | \$3,000.00 |
| Amount BGRT paid                              | \$3,000.00 |
| <br>  |            |
| NMTIT estimated tax payment due               | \$5,000.00 |
| BGRT non-refundable credit allocated to NMTIT | 3,000.00   |

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Amount of NMTIT estimated tax payment 2,000.00

(ii) Example No. 2

|                                       |            |
|---------------------------------------|------------|
| BGRT due (1st quarter, 1996)          | \$8,000.00 |
| BGRT non-refundable credit allocation | \$5,000.00 |
| Amount BGRT paid                      | \$8,000.00 |

|   |            |
|---|------------|
| NMTIT estimated tax payment due               | \$5,000.00 |
| BGRT non-refundable credit allocated to NMTIT | \$5,000.00 |
| Amount of NMTIT estimated tax payment         | -0-        |

(c) Reduction of Non-refundable Credit for PL 10-73 Educational Tax Credit. The amount of the nonrefundable credit allowed under (a) and as provided by law shall be reduced by the amount of educational tax credit, allowed under 4 CMC § 1306, that is claimed by a person during the taxable year. See § 70-40.6-040(e)(3).

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (b) were not designated. The Commission designated subsections (b)(1) and (b)(2).

The notice of adoption for the 1995 regulations changed the proposed language of subsections (a), (b)(2)(i) and former subsection (c)(1)(i). The 1996 amendments deleted and replaced this section in its entirety with numerous amendments. The 1998 amendments added new subsection (c) and amended subsection (a).

### § 70-40.6-345 Quarterly Returns

(a) Filing Requirement and Due Date. Every person subject to the gross revenue tax of 4 CMC chapter 3 must file a quarterly return as specified in subsection (b) on or before the last day of the month following the end of the quarter during which the gross revenues were received or accrued to wit on or before the following days:

| <u>Quarter</u> | <u>Due Date</u> |
|----------------|-----------------|
| First Quarter  | April 30        |
| Second Quarter | July 31         |
| Third Quarter  | October 31      |
| Fourth Quarter | January 31      |

Businesses in every category are required to file quarterly tax returns reporting their gross revenue even though no gross revenue tax liability is due.

(b) Return Requirement.

(1) To report the gross revenue tax due under 4 CMC § 1301, persons are required to file the form “business gross revenue tax quarterly return.”

(2) To report the gross revenue tax due under 4 CMC § 1302 on agricultural producers and fisheries, persons are required to file the form “business gross revenue tax quarterly for agricultural producers & fisheries.”

(3) To report the gross revenue tax due under 4 CMC § 1303 on manufacturers and wholesalers, persons are required to file the form “business gross revenue tax quarterly return for manufacturing and wholesaling.”

(4) To report the gross revenue tax due under 4 CMC § 1304 on banks, banking institutions and building and loan associations, persons are required to file the form “gross revenue tax quarterly return - banks, banking institutions and building and loan association.”

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsections (b)(1) through (b)(4), the Commission moved the final periods inside of the closing quotation marks.

Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

**§ 70-40.6-350 Refund of Overpayment of Gross Revenue Tax**

A refund of an overpayment of gross revenue tax will be made after the fourth quarterly return has been filed and reviewed and a claim for refund has been made in accordance with 4 CMC § 1809 on the form prescribed by the Secretary.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

**§ 70-40.6-355 Combined Business Activities**

(a) Requirement. Pursuant to 4 CMC § 1301(b), a person who during the year conducts two or more separate and distinct businesses, sells more than one property or is entitled to distributive shares from more than one partnership (other than to a partner who is a resident individual), shall pay the yearly gross revenue tax on the combined total “gross revenue” as defined in § 70-40.6-301 of this subchapter that are derived from all such activities.

(b) Filing and Payment.

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(1) For purpose of subsection (a), the combined gross revenue of all the businesses derived from sources both within and without the Commonwealth, including the gross revenue of branches and subsidiaries from within and without the Commonwealth, would be reported on one return. Gross revenue which is taxed under 4 CMC § 1302, § 1303, and § 1304 shall be reported on a return prescribed for each section, and the taxes paid therefrom.

(2) Notwithstanding subsection (a) and (b)(1), the gross revenue tax on such combined businesses would be paid only on the combined total “gross revenues” as defined in § 70-40.6-301 of this subchapter that are derived from all such businesses.

(c) Domestic Corporations. Domestic corporations must report all gross revenue of their branches and subsidiaries located both within and without the Commonwealth on its quarterly gross revenue tax return and must pay the gross revenue tax on the combined total “gross revenues” as defined in § 70-40.6-301 of this subchapter that are derived from such branches and subsidiaries. Nothing within this provision shall subject gross revenues to the gross revenue tax which are not included within the definition of gross revenues in § 70-40.6-301 of this subchapter.

(d) Examples.

(1) Example No. 1: Mr. Walker owns a retail store in San Antonio, a garage in Chalan Kanoa, a snack bar in San Vicente, and a night club in Garapan. For the first quarter, the retail store has gross revenues in the amount of \$1,000.00, the garage has gross revenues in the amount of \$5,000.00, the snack bar has gross revenues in the amount of \$2,500.00, and the night club has gross revenues in the amount of \$50,000.00. Mr. Walker shall report the combined gross revenue of all the sales from the retail store, garage, snack bar, and night club in the amount of \$58,500.00 on one return for the quarter and shall pay gross revenue tax on \$58,500.00 in the amount of \$1,462.50 (i.e.,  $(58,500) \times (2.5\%)$ ).

(2) Example No. 2: ABC Corporation, a domestic corporation, has branch offices located in Saipan and Guam. For first quarter 1995, the Saipan branch of ABC Corporation has gross revenues for the quarter in the amount of \$100,000 of which all is derived from sources within the Commonwealth. The Guam branch has gross revenues for the quarter in the amount of \$250,000 of which \$175,000 is derived from sources outside the Commonwealth while the remaining \$75,000 is derived from sources within the Commonwealth.

In filing its quarterly gross revenue tax return for first quarter 1995, ABC Corporation is required to report the entire \$350,000 of gross revenues derived from both the Saipan and Guam branch. However, ABC Corporation is required only to pay gross revenue tax on the gross revenues derived from sources within the Commonwealth, i.e., \$175,000 (\$100,000 from Saipan branch and \$75,000 from Guam branch). The remaining \$175,000 of gross revenues derived from the Guam branch is not subject to the gross revenue tax.

(3) Example No. 3: Same facts as example no. 2 except that ABC Corporation filed its quarterly gross revenue tax return for first quarter 1995 reporting and paying tax on the entire \$350,000. On September 30, 1996, ABC Corporation files an amended gross revenue tax return for 1995 and a claim for refund of the gross revenue tax paid on the \$175,000 which was not deemed sourced within the CNMI. As ABC Corporation has

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timely filed a claim for refund of the gross revenue tax paid, ABC Corporation is entitled to a refund of the gross revenue tax paid on the \$175,000 which was not deemed sourced within the Commonwealth.

(4) Example No. 4: Same facts as example no. 3 except that ABC Corporation filed its refund claim on March 30, 1997, rather than on September 30, 1996. ABC Corporation was required to file its refund claim within one year after the end of the calendar year in which the amount to be refunded was paid, i.e., prior to December 31, 1996. As ABC Corporation's 1997 refund claim filed was untimely, ABC Corporation will not be entitled to the refund of gross revenue tax paid in 1995 on the \$175,000.

(5) Example No. 5: DEF Corporation, a domestic corporation, owns a retail store in Garapan. For the first quarter 1995, the retail store earns gross revenues in the amount of \$60,000. DEF Corporation also has interest income in the amount of \$42,000 and sells property receiving gross revenues in the amount of \$5,000. DEF Corporation must reported the combined gross revenues from its retail sales, interest income, and sale of property in the cumulative amount of \$67,000 in one return for the quarter and pay gross revenue tax on the \$67,000 in the amount of \$2,010 (i.e., (\$67,000) x (3.0%)).

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (d) were not designated. The Commission designated subsections (d)(1) through (d)(5).

Public Law 17-30 (effective Feb. 16, 2011) amended 4 CMC § 1307 to require taxes on gross revenue to be paid on a monthly basis.

### **§ 70-40.6-360 Uncollectible Accrued Gross Revenues**

(a) General Rule. A taxpayer may deduct amounts of bad debt from the total gross revenue used to calculate the amount of yearly tax levied under 4 CMC § 1301 on a December monthly business gross revenue tax return (or a final return as described in §70-40.6-365). The amount of gross revenue deducted must be charged off as uncollectible on the books and records of the taxpayer at the time the bad debt becomes worthless and can only be deducted on the final return for the year during which the bad debt is written off as uncollectible in the claimant's books and records.

(b) Bad Debt defined. For purposes of this section, the term "bad debt" means any portion of a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer that is eligible to be claimed as a deduction under section 166 of the NMTIT.

(c) Prior inclusion in gross revenue required. Bad debts shall not be allowed as a deduction under this section unless the revenues such items represent have been included in a business gross revenue tax return for the year for which the deduction as a bad debt is claimed or for a prior taxable period.

(d) **Requirement of Statement.** A statement of facts substantiating any deduction claimed under this section on account of bad debts shall accompany the tax return. Any claim for a bad debt deduction under this section shall be supported by the evidence required by the Division of Revenue and Taxation.

(e) **Subsequent Payments.** If a consumer, business, or other person pays all or part of a bad debt with respect to which a taxpayer claimed a deduction under this section, the taxpayer shall report the amounts received in the monthly return for the month payments were received and pay the tax due.

(f) **Casino Licensees.** A bad debt does not include any unpaid balance on a credit instrument extended for gaming credit by a casino licensee unless:

(1) The casino licensee submits a certificate of compliance from the Commonwealth Casino Commission, with respect to each credit instrument, certifying that it has complied with the requirements of NMIAC §17510.1-565(h), relating to treatment of credit for purposes of computing gross revenue, as provided in the Commonwealth Casino Commission Regulations adopted pursuant to 4 CMC § 2314;

(2) The Commonwealth Casino Commission has determined, as required by NMIAC § 175-10.1-565(h), that the public interest will be served if the unpaid balance is not included in gross revenue of the licensee; and

(3) The debt otherwise qualifies under this section.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 39 Com. Reg. 40374 (Nov. 28, 2017); Amdts Proposed 39 Com. Reg. 40318 (Oct. 28, 2017); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-365 Businesses Dissolving During a Taxable Year**

Any person who dissolves a business during a taxable year is required to make a final return no later than fifteen days following the dissolution of the business. In addition to all other applicable penalties, a penalty of ten percent of the tax due for the quarter preceding the quarter during which the business dissolved shall be added for each thirty days or fraction thereof elapsing between the due date of the final return and the date on which it is actually filed; provided, however, that the minimum penalty shall be twenty-five dollars. Interest of fifteen percent per annum shall also be imposed on the total amount paid after the deadline prescribed in this section.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-370 Sale or Transfer of Business**

(a) **Requirement.** If a business is sold or transferred by one owner to another, the seller and the buyer are both required to file a separate gross revenue tax return allocating

gross revenues received or accrued prior to and after the sale from the business, respectively. Such a transfer occurs, for example, if a sole proprietor forms a partnership or a corporation or if a business is sold from one owner to another.

(b) Statement. If there has been a change of ownership or other transfer of the business during the quarter, the buyer is required to attach to the first gross revenue tax return a statement showing the following:

- (1) The name of the transferor;
- (2) Whether the transferor is an individual, a partnership, corporation, or other entity;
- (3) The nature of the change or transfer; and
- (4) The date of such change or transfer.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 400 - Tax Exempt Organizations**

### **§ 70-40.6-401 Eligible Entities**

(a) In General. All nonprofit organizations must apply for and be granted tax-exempt status in order to be exempt from the earnings tax, the gross revenue tax, and the Northern Marianas territorial income tax.

(b) Earnings Tax.

(1) The following entities may apply to the Division of Revenue and Taxation for an exemption from the earnings tax imposed by 4 CMC § 1202:

- (i) Charitable Organizations, etc.: Entities qualifying for exemption under § 501(c)(3) of the NMTIT;
- (ii) Civic Leagues: Entities qualifying for exemption under § 501(c)(4) of the NMTIT;
- (iii) Agricultural Organizations: Entities qualifying for exemption under § 501(c)(5) of the NMTIT;
- (iv) Business Leagues: Entities qualifying for exemption under § 501(c)(6) of the NMTIT;
- (v) Fraternal Benefit Societies: Entities qualifying for exemption under § 501(c)(8) of the NMTIT;
- (vi) Domestic Fraternal Societies: Entities qualifying for exemption under § 501(c)(10) of the NMTIT;
- (vii) Pension Plans: Pension, profit-sharing, or retirement plans qualifying for exemption under § 401(a) of the NMTIT.

(2) All persons other than those enumerated above are subject to the earnings tax, as applicable.

(c) Gross Revenue Tax.

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- (1) The following persons may apply to the Division of Revenue and Taxation for an exemption from the gross revenue tax imposed by 4 CMC §§ 1301, et seq:
- (i) Charitable Organizations, etc.: Entities qualifying for exemption under § 501(c)(3) of the NMTIT;
  - (ii) Civic Leagues: Entities qualifying for exemption under § 501(c)(4) of the NMTIT;
  - (iii) Agricultural Organizations: Entities qualifying for exemption under § 501(c)(5) of the NMTIT;
  - (iv) Business Leagues: Entities qualifying for exemption under § 501(c)(6) of the NMTIT;
  - (v) Fraternal Benefit Societies: Entities qualifying for exemption under § 501(c)(8) of the NMTIT;
  - (vi) Domestic Fraternal Societies: Entities qualifying for exemption under § 501(c)(10) of the NMTIT;
  - (vii) Political Organizations: Entities qualifying for exemption under § 527 of the NMTIT;
  - (viii) Pension Plans: Pension, profit-sharing, or retirement plans qualifying for exemption under § 401(a) of the NMTIT.
- (2) All persons other than those enumerated above are subject to the Gross Revenue Tax, as applicable.

(d) NMTIT. Organizations may file for an exemption from the Northern Marianas Territorial Income tax under the provisions of the NMTIT.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (b) and (c) were not designated. The Commission designated subsections (b)(1) and (b)(2), and (c)(1) and (c)(2).

### **§ 70-40.6-405 Application Process; In General**

- (a) NMTIT. The application process for the Northern Marianas Territorial income tax shall be that prescribed under the mirrored U.S. Internal Revenue Code procedures and the regulations in this subchapter.
- (b) Earnings Tax and Gross Revenue Tax. The application process for the earnings tax and the gross revenue tax shall be that prescribed under the regulations in this subchapter.
- (c) Previously Granted Exemption by U.S. Internal Revenue Service. The application process for exemption from the earnings tax, the gross revenue tax, or the NMTIT for organizations which have been granted tax-exempt status by the U.S. Internal Revenue Service shall be that prescribed by § 70-40.6-425 of this subchapter. Thus, an organization granted tax-exempt status by the U.S. Internal Revenue Service is not automatically exempt from the earnings tax, the gross revenue tax, or the NMTIT but

instead must apply to the Division of Revenue and Taxation for exemption from all such taxes under the procedures prescribed within this subchapter.

(d) **Simultaneous Application with U.S. Internal Revenue Service.** The application process for exemption from the earnings tax, the gross revenue tax, or the NMTIT for an organization which is applying simultaneously with the U.S. Internal Revenue for an exemption from the U.S. Internal Revenue Code shall be that prescribed by § 70-40.6-430 of this subchapter. Thus, an organization is not automatically exempt from the earnings tax, the gross revenue tax, or the NMTIT upon filing an application for tax-exempt status with the U.S. Internal Revenue Service but instead must apply to the Division of Revenue and Taxation for exemption from all such taxes under the procedures prescribed within this subchapter.

(e) **Return Filing Requirements During Pendency of Application.** While an application for tax-exempt status under the earnings tax, the gross revenue tax, and the NMTIT is pending, a person is not required to file an annual earnings tax return, quarterly gross revenue tax returns, or income tax returns under the NMTIT. However, if the person is subsequently found not to qualify as a tax-exempt organization, the organization is required to file all previously required returns, pay all taxes with interest, and will be subject to all applicable penalties for late filing and late payment.

(f) **Duty to Provide Requested Information.** During the application process, all persons must provide all information requested within the time specified and a failure to do so may result in the rejection of the application.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-410 Application Process; Time To Apply**

(a) **Earnings Tax and Gross Revenue Tax.** In order to apply for tax-exempt status from the earnings tax or the gross revenue tax, a person must submit an application to the Division of Revenue and Taxation on or before June 30 of the first year of operations or within 30 days prior to the commencement of operations.

(1) The Division of Revenue and Taxation may extend the time to file the application no longer than two months; however, the Division of Revenue and Taxation may provide for a longer extension period for good cause shown.

(2) Organizations which do not submit an application within the time limitations specified within this subsection which are subsequently granted tax-exempt status shall be granted such status retroactive only to the date it submitted a complete application for tax-exempt status.

(b) **Northern Marianas Territorial Income Tax.** In order to apply for tax-exempt status from the Northern Marianas territorial income tax, a person must submit an application to the Division of Revenue and Taxation on or before the time prescribed by the Northern

Marianas territorial income tax. The Division of Revenue and Taxation may, however, extend the time to file the application for good cause shown.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments deleted and replaced this section in its entirety with numerous amendments.

### **§ 70-40.6-415 Application Fee**

(a) **Earnings and Gross Revenue Tax.** The application fee for applying for an exemption from the earnings tax and the gross revenue tax is \$10.00 each. Such fee must be paid upon filing an application for exemption from the earnings tax, the gross revenue tax, or both.

(b) **NMTIT.** Except as provided in subsections (c) and (d), the application fee for applying for an exemption from the Northern Marianas territorial income tax shall be that prescribed under the NMTIT. Such fee must be paid upon filing an application for exemption from the NMTIT.

(c) **Previously Granted IRS Status.** The application fee specified in subsection (b) for an organization applying for an exemption from the NMTIT which has previously been granted tax-exempt status by the U.S. Internal Revenue Service shall be waived upon submission of proper proof of payment of the application fee to the U.S. Internal Revenue Service.

(d) **Simultaneous Application with IRS.** The application fee specified in subsection (b) for an organization applying for an exemption from the NMTIT which has filed a simultaneous application with the U.S. Internal Revenue Service shall be waived upon submission of proper proof of payment of the application fee to the U.S. Internal Revenue Service.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (b), the Commission changed “subsection” to “subsections” to correct a manifest error.

### **§ 70-40.6-420 Application Process; Form and Procedure**

(a) **In General.** Except as provided in § 70-40.6-425 and § 70-40.6-430, if a person is applying for tax exempt status from either the earnings tax, the gross revenue tax, the NMTIT, or a combination of any of these taxes, the applicant is required to submit only

one application. Provided, that if the applicant is applying for tax-exempt status from the earnings tax, the gross revenue tax, and the NMTIT, the applicant is required to submit a letter indicating that its application is being submitted for exemption from all three taxes.

(b) Form of Application. The Division of Revenue and Taxation shall prescribe the form to be utilized as an application for exempt status from the earnings tax and the gross revenue tax. In general, the application submitted for exemption from the Northern Marianas territorial income tax is acceptable as the application for both the earnings tax and the gross revenue tax provided the applicant indicates so at the time of submission.

Modified, 1 CMC § 3806(c).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-425 Application Process -- Previously Granted Tax-exempt Status By U.S. Internal Revenue Service**

(a) The application process for exemption from the earnings tax, the gross revenue tax, or the NMTIT for organizations which have been granted tax-exempt status by the U.S. Internal Revenue Service shall be that prescribed by this section.

(b) The organization must make an application to the Division of Revenue and Taxation by timely submitting the following documents:

(1) A cover letter specifying which local taxes the organization is applying for exemption from and under what provisions of § 70-40.6-401(b) and (c) of this subchapter and § 501 of the NMTIT;

(2) A copy of form 1023 or form 1024, as applicable, as submitted to the U. S. Internal Revenue Service;

(3) A copy of all supporting documents required by the application as submitted to the U.S. Internal Revenue Service;

(4) A copy of form 8718, User Fee, with proof of payment as submitted to the U.S. Internal Revenue Service;

(5) Proof of payment of application fee in the amount of \$10.00 each if applying for exemption from the earnings tax and/or the gross revenue tax;

(6) A copy of the organization's favorable determination letter received by the U.S. Internal Revenue Service and all updated determination letters, if any, sufficient to verify the organization's current tax-exempt status with the U.S. Internal Revenue Service;

(7) An affidavit, signed under penalties of perjury by an authorized, knowledgeable agent of the organization, setting forth that all the facts contained within its application with the U.S. Internal Revenue Service and supporting documents are true and have not changed in any way that would affect its continuing tax-exempt status with the U.S. Internal Revenue Service; and

(8) Any other materials as requested by the Division of Revenue and Taxation.

Modified, 1 CMC § 3806(c), (d), (f).

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History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-430 Application Process; Simultaneous Application with U.S. Internal Revenue Service**

(a) In General. The application process for exemption from the earnings tax, the gross revenue tax, or the NMTIT for organizations filing a simultaneous application with the U.S. Internal Revenue Service shall be that prescribed by this section.

(b) Application. The organization must make an application to the Division of Revenue and Taxation by timely submitting the following documents:

(1) A cover letter specifying which local taxes the organization is applying for exemption from and under what provisions of § 70-40.6-401(b) and (c) of this subchapter and § 501 of the NMTIT;

(2) A copy of form 1023 or form 1024, as applicable, as submitted to the U. S. Internal Revenue Service;

(3) A copy of all supporting documents required by the application as submitted to the U.S. Internal Revenue Service;

(4) A copy of form 8718, User Fee, with proof of payment as submitted to the U.S. Internal Revenue Service;

(5) Proof of payment of application fee in the amount of \$10.00 each if applying for exemption from the earnings tax and/or the gross revenue tax;

(6) An affidavit testifying, under penalties of perjury that

(i) It has on a specified date (as specified therein) applied for tax-exempt status with the U.S. Internal Revenue Service;

(ii) Copies of its application and supporting documents submitted above were submitted to the U.S. Internal Revenue Service;

(iii) It has paid the appropriate user fee as specified on form 8718 to the U.S. Internal Revenue Service; and

(iv) Its purposes are within those specified in § 70-40.6-001 of this subchapter, § 501 of the NMTIT, or both, as applicable; and

(7) All other materials as requested by the Division of Revenue and Taxation.

(c) Receipt of IRS Determination Letter.

(1) IRS Favorable Determination Letter.

(i) If an organization receives a favorable determination letter from the U.S. Internal Revenue Service, it must within thirty days from the date on the IRS favorable determination letter, submit the following information to the Division of Revenue and Taxation:

(A) A cover letter requesting that its CNMI application be further processed;

(B) A copy of the IRS favorable determination letter;

(C) A copy of all documentation received by and submitted to the IRS regarding its favorable exemption letter excluding all material and documents previously submitted to the Division of Revenue and Taxation;

(D) An affidavit, signed under penalties of perjury, setting forth that all the facts contained within its application to the U.S. Internal Revenue Service and supporting

documents submitted therewith have not changed in any way that would affect its eligibility for tax-exempt status with the U.S. Internal Revenue Service; and

(E) All other information and materials as requested by the Division of Revenue and Taxation.

(ii) If the organization submits the above-referenced information within 30 days from the date on the IRS favorable determination letter, the initial application filing date with the Division of Revenue and Taxation will remain the same; however, if the organization does not timely submit this information, the organization's application will be deemed to have been filed on the date that the Division of Revenue and Taxation receives the above-referenced information.

(2) Adverse Determination Letter. If the organization receives an adverse determination letter from the U.S. Internal Revenue Service, the organization must within thirty days from the date on the IRS adverse determination letter submit a copy of its adverse determination letter to the Division of Revenue and Taxation. The organization will, however, be automatically denied exempt status by the Division of Revenue and Taxation from the earnings tax, the gross revenue tax, and the NMTIT, as applicable.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (c)(1) were not designated. The Commission designated subsections (c)(1)(i) and (ii).

### **§ 70-40.6-435 Annual Reporting Requirements**

(a) After Determination. All organizations granted tax- exempt status from the earnings tax and/or the gross revenue tax are required to file an annual information return.

(b) Pending Application. All organizations whose applications are pending for an exemption from the earnings tax and/or the gross revenue tax are required to file an annual information return.

(c) Form. The annual information return required under this section shall be that as prescribed by the Division of Revenue and Taxation. The annual information return(s) filed for the NMTIT will be acceptable as the annual information return for the earnings tax and the gross revenue tax.

(d) Penalty. Failure to comply with the annual reporting requirements specified under this section shall be subject to the penalties as provided in 4 CMC, division 1, as applicable.

(e) Time to File. The time by which an organization must file the annual information returns required under this section shall be that prescribed by the NMTIT for tax-exempt organizations, i.e., generally, on or before the fifteenth day of the fifth month following the close of the organization's taxable year.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments added new subsection (e).

### **§ 70-40.6-440 Income Not Exempt From Tax**

Notwithstanding that an organization has filed for or even been granted tax-exempt status, the organization is still subject to all other applicable tax requirements including:

- (a) Employment. Complying with all employment tax requirements, including the payment of withholding taxes and the filing of all required employment and withholding returns;
- (b) Excise. Payment of excise taxes, except as otherwise provided by law or regulations issued by the Division of Customs;
- (c) UBTI. Payment and reporting of unrelated business taxable income as provided in 4 CMC § 1203(a)(1) and 4 CMC § 1305 (g)(1); and
- (d) Other NMTIT Taxes. Payment and reporting of all excise taxes imposed upon a tax-exempt organization under the NMTIT.

History: Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments amended subsection (b).

### **§ 70-40.6-445 Raffle Tickets**

- (a) In General. The sale of raffle tickets shall be exempt from the earnings tax and the gross revenue tax only if:
  - (1) No benefit from the sale of the raffle tickets inures, in whole or in part, to the benefit of any private stockholder or individual;
  - (2) The organization selling the raffle tickets has applied for and been granted status as an organization exempt from the earnings tax and/or the gross revenue tax as applicable by the Division of Revenue and Taxation;
  - (3) Raffle tickets are registered with the Division of Revenue and Taxation at least 30 days before the date that tickets begin to be sold; and
  - (4) The organization prepares an accounting of the proceeds from raffle tickets on a quarterly basis where raffle tickets are sold in more than two quarters the year, and within 30 days of the drawing or award of prizes where raffle tickets are sold if the sale of raffle tickets occur in two quarters or less of the year.

- (i) The accounting in (a)(4) above shall be filed with the Division of Revenue and Taxation.
  - (ii) The deadlines for each quarter shall be the same as the deadlines for filing gross revenue tax returns
  - (iii) The accounting shall require such affidavit(s) as Revenue and Taxation shall require.
- (b) An exemption from the earnings tax or gross revenue tax on the sale of raffle tickets shall not be denied on the basis that raffle tickets are sold by the exempt organization on a regular basis.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 500 - Gaming Machine Jackpot Tax**

### **§ 70-40.6-501 Gaming Machine Jackpot Tax**

A tax of 10% is imposed on all jackpot winnings from poker machines, pachinko machines, slot machines, pachinko slot machines, and similar gaming devices on winnings in the amount of \$1,000.00 and over.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-505 Collection and Payment**

The owner or operator of the machine is responsible for collecting this tax. The withholding tax shall be remitted and filed with the Division of Revenue and Taxation on or before the tenth day of the month following the month in which the winning was paid and taxes withheld. Prior to distributing payment to the winner, the owner or operator must obtain the following information which must be maintained by the owner or operator:

- (a) Payor name;
- (b) Payor address;
- (c) Payor taxpayer identification number;
- (d) Month during which winnings were paid;
- (e) Payee name;
- (f) Payee address;

- (g) Payee Social Security Number. If payee does not have a U.S. Social Security number, the owner or operator must obtain another valid form of identification including passport, alien registration card, military identification card, voter's registration card;
- (h) Payee CNMI alien registration number, if applicable;
- (i) Payee driver's license number and place of issue. If the winner/payee has not been issued a driver's license by a jurisdiction, the owner or operator must obtain another valid form of identification which contains payee's picture;
- (j) Gross amount of winning;
- (k) Amount of gaming machine jackpot tax withheld;
- (l) Date winnings were paid; and
- (m) Type of machine winnings made from; e.g., poker machine, pachinko slot machine.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (m), the Commission changed the final semi-colon to a period to correct a manifest error.

### **§ 70-40.6-510 Accumulation of Winnings**

- (a) Single Occurrence.
  - (1) The gaming machine jackpot tax is not applicable to jackpot winnings in an amount less than \$1,000 in a single occurrence.
  - (2) Example Mr. X wins \$500 at 10:00 a.m. and then another \$500 during another game at 2:00 p.m. In this case, none of Mr. X's \$1,000 winnings are subject to the gaming machine jackpot tax.
- (b) Progressive Occurrence.
  - (1) The gaming machine jackpot tax is applicable to jackpot winnings in the amount of \$1,000 or more from a progressive occurrence, such as winnings of \$1,000 or more resulting from the doubling of a wager.
  - (2) Example: Mr. X earns \$300 from a machine but chooses to continue playing on the machine by doubling his wager and ultimately wins \$1,200. In this case, all of Mr. X's \$1,200 earnings are subject to the gaming machine jackpot tax.

Modified, 1 CMC § 3806(f).

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History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (a) and (b) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (b)(1) and (b)(2).

### § 70-40.6-515 Reporting Requirements

(a) **Monthly Withholding Remittances.** The withholding tax shall be remitted and filed with the Division of Revenue and Taxation on a gaming machine jackpot tax monthly withholding return. A gaming machine jackpot tax monthly withholding return must include all information as required by the Division of Revenue and Taxation.

(b) **Annual Information Returns.**

(1) **Payee Statement.** On or before January 31, of the calendar year following that during which gross winnings were paid and gaming machine jackpot tax was withheld, the payor is required to issue an annual information return to the payee in and on the form prescribed by the Division of Revenue and Taxation. Form W-2G, certain gambling winnings, may be used to satisfy this information return requirement; if such form is used, the payor should indicate in the box “state income tax withheld” the amount of the gaming machine jackpot tax withheld and remitted for the payee.

(2) **Filing With Revenue and Taxation.** On or before the last day of February of the calendar year following that during which gross winnings were paid and gaming machine jackpot tax was withheld, the payor is required to file with the Division of Revenue and Taxation a copy of the annual information return specified in (b)(1) above. All annual information returns filed by the payor shall be transmitted by a form 1096, annual summary and transmittal of U.S. information returns, and any other form as may be prescribed by the Secretary.

(c) **Annual Reporting Requirement.** For taxable year 1995, all payees are required to file an annual gaming machine jackpot tax return containing all information as required by the Secretary of Finance. Such return shall be due on or before April 15, 1996.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### § 70-40.6-520 Penalties

A withholding agent responsible for withholding the gaming machine jackpot tax shall be subject to all applicable penalties including the following:

(a) **Failure to Remit Withholding.** 4 CMC § 1815 for failure to withhold and timely remit the gaming machine jackpot tax;

(b) **Failure to File Monthly Return.** 4 CMC § 1816 for failure to timely file a gaming machine jackpot tax withholding return; and

(c) Failure to File Annual Information Return. 4 CMC § 1816 for failure to timely file annual an information return required under § 70-40.6-510(b)(2).

Modified, 1 CMC § 3806(c), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 600 - Income Tax**

### **§ 70-40.6-601 General Provisions**

Pursuant to Public Law 4-24, the provisions of § 601 of the Covenant shall become fully implemented beginning after December 31, 1984. The U.S. Internal Revenue Code as applied within the CNMI is known as the Northern Marianas territorial income tax or the “NMTIT.” This part is promulgated for the implementation of the NMTIT.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The Commission moved the period after “NMTIT” inside of the closing quotation mark.

### **§ 70-40.6-605 Mirrored Provisions of Internal Revenue Code**

The NMTIT includes in mirror fashion the following provisions of the U.S. Internal Revenue Code:

- (a) Subtitle A. Income Taxes:
  - (1) Chapter 1. Normal taxes and surtaxes, but excluding subchapter (N), part III subpart (D), “The Possessions of the United States,” but not excluding § 935;
  - (2) Chapter 3. Withholding of Tax on Nonresident Aliens and Foreign Corporations;
  - (3) Chapter 5. Taxes on Transfers to Avoid Income Taxes;
  - (4) Chapter 6. Consolidated Returns.
  
- (b) Subtitle C. Employment Taxes:
  - (1) Chapter 24. Collection of Income Tax at Source;
  - (2) Chapter 25. General Provisions Relating to Employment Taxes.
  
- (c) Subtitle F. Procedure and Administration:
  - (1) Chapter 61. Information and Returns. (See § 70-40.6-680 of this subchapter);
  - (2) Chapter 62. Time and Place for Paying Tax, except as provided for in § 70-40.6-665 of this subchapter;
  - (3) Chapter 63. Assessment;
  - (4) Chapter 64. Collection;

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- (5) Chapter 65. Abatements, Credits, and Refunds;
- (6) Chapter 66. Limitations;
- (7) Chapter 67. Interest;
- (8) Chapter 68. Additions to the Tax, Additional Amounts, and Assessable Penalties;
- (9) Chapter 70. Jeopardy, Receiverships, etc.;
- (10) Chapter 71. Transfers and Fiduciaries;
- (11) Chapter 72. Licensing and Registration;
- (12) Chapter 73. Bonds;
- (13) Chapter 74. Closing Agreements and Compromises;
- (14) Chapter 75. Crimes, Other Offenses, and Forfeitures;
- (15) Chapter 76. Judicial Proceedings;
- (16) Chapter 77. Miscellaneous Provisions;
- (17) Chapter 78. Discovery of Liability and Enforcement of Title;
- (18) Chapter 79. Definitions; and
- (19) Chapter 80. General Rules.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (a)(1), the Commission moved the comma after “states” inside of the closing quotation mark. In subsection (b)(2), the Commission changed the final semi-colon to a period.

### **§ 70-40.6-610 Non-retroactivity**

(a) **General Application.** The NMTIT does not apply to income received or accrued prior to January 1, 1985, except to the extent such income is not deemed “CNMI sourced income” as defined in § 70-40.6-615(d) of this subchapter. The NMTIT does apply to income received or accrued after December 31, 1984.

(b) **Method of Accounting.**

(1) The taxpayer’s method of accounting, cash or accrual, in use prior to January 1, 1985, will generally continue for purposes of the NMTIT. The taxpayer may elect to have the calendar year as a taxable year.

(2) Where a taxpayer is on fiscal year other than a calendar year with earnings accruing on and after January 1, 1985, to the fiscal year end, the taxpayer shall file for a short year and pay taxes based on example no. 1 or no. 2 below.

(i) **Example No. 1.** Taxpayer C is on a fiscal year, July 1 to June 30. Taxpayer C’s gross income from July 1, 1984, to June 30, 1985, is \$100,000.00 of which \$50,000.00 is earned from July 1, 1984, to December 31, 1984; the other half is earned from January 1, 1985, to June 30, 1985.

The cost of goods sold from January 1, 1985, to June 30, 1985, is \$35,000.00; ordinary and necessary business deductions are \$10,000 of which \$5,000.00 is incurred in 1985. C would report and pay tax under the NMTIT as follows:

|                          |          |
|--------------------------|----------|
| Gross Income             | \$50,000 |
| Less: Cost of Goods Sold | (35,000) |

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|                           |          |
|---------------------------|----------|
| Gross Margin              | 15,000   |
| Less: Business Deductions | (5,000)  |
| Net Income                | \$10,000 |

C may also determine its full NMTIT liability on the complete fiscal year income, inclusive of income prior to January 1, 1985, and allocate the tax liability by applying a percentage method on the number of days, or months prior to and after January 1, 1985 to the fiscal year end (see example no. 2).

(ii) Example No 2. Corporation D is on a fiscal year ending March 30, 1985. The corporation's sales for fiscal year 1984 is \$200,000.00. D's cost of goods sold totaled \$125,000.00, and it incurred ordinary and necessary business deductions in the amount of \$25,000.00. Corporation D is unable to determine its income from January 1, 1985 to March 30, 1985. Corporation D may allocate its income based on the following:

|  |              |
|--|--------------|
| Gross Income                                   | \$200,000    |
| Less: Cost of Goods Sold                       | (125,000)    |
| Gross Profit                                   | 75,000       |
| Less: Ordinary & Necessary Business Deductions | 25,000*      |
| Taxable Income                                 | \$50,000     |
| <br>Allocation: (3/12) x (\$50,000)            | <br>\$12,500 |

\$12,500.00 is deemed earned for the period beginning January 1, 1985 to March 30, 1985.

(3) Special Rule on Employee's Benefits. Paid Time-off. Under normal circumstances benefits or compensation for:

- (i) Vacation pay;
- (ii) Annual leave;
- (iii) Sick pay;
- (iv) Sick leave; and
- (v) All other paid time-off

are provided on the basis of prior years' services but may be for future years' services. Normally, such benefits are earned through rendition of personal services, and in most cases, if not all, are not items of income until such time that they are taken, used, or paid. All benefits accrued up to December 31, 1984, shall be subject to taxation under § 4.1709.1(A) of Revenue and Tax Regulations No. 8301. However, if the employment is terminated on December 31, 1984, and all benefits are cashed in for monetary value, the benefits accrued are not subject to the NMTIT regardless of when paid but are subject to 4 CMC chapter 2.

(c) Conforming Provisions. Paragraphs (1) and (3) of 4 CMC § 1703(b) pertain only to U.S. Internal Revenue Code provisions drafted with reference to inception dates prior to January 1, 1985. With respect to U.S. Internal Revenue Code provisions referencing inception dates after December 31, 1984, paragraphs (1) and (3) shall utilize the actual dates referenced.

\* So in original.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (b)(2) were not designated. The Commission designated subsections (b)(2)(i) and (ii).

### **§ 70-40.6-615 Qualified Fresh Start Assets**

(a) **Qualified Fresh Start Asset -- Definition.**

Qualified fresh start assets means:

- (1) All real property located in the Commonwealth; and
- (2) All personal property which is both:
  - (i) Owned, directly or indirectly, immediately prior to and on January 1, 1985 by:
    - (A) An individual who was a bona fide resident of the Commonwealth;
    - (B) A trust all of whose beneficiaries were bona fide residents of the Commonwealth;
    - (C) An estate who represented a decedent who was a bona fide resident of the Commonwealth as of the date of his death;
    - (D) A corporation incorporated in or under the laws of the Commonwealth, immediately prior to and on January 1, 1985;
    - (E) A partnership all of whose partners were persons described under subsection (a)(2)(i)(A) - (D) of this section; and
    - (F) An association all of whose members were persons described under subsection (a)(2)(i) (A) - (D).
  - (ii) Assuming that the personal property were sold on December 31, 1984, the amount realized from that sale would have been “CNMI sourced income” as determined pursuant to subsection (d) of this section and would not have been subject to income taxation by the United States, the Virgin Islands, American Samoa, Puerto Rico, or Guam.

(b) **Personal Property -- Definition.** For purposes of subsection (a) of this section, “personal property” means all property, tangible or intangible, that is not real property. Personal property includes, but is not limited to:

- (1) Installment sales contracts;
- (2) Bank and loans owned by the lender;
- (3) Pension and annuity contracts or plans (see § 70-40.6-620(d) of this subchapter);
- (4) Interests in employees’ benefits plans (see § 70-40.6-610(b)(3) of this subchapter);
- (5) Inventory items, goods and commodities for sales;
- (6) Contracts and leases; and
- (7) Stock.

(c) **Fair Market Value – Determination.**

The fair market value of any qualified fresh start asset shall be established at the taxpayer’s election by one of the following methods:

- (1) **Independent Appraisal.** An independent appraisal which:

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- (i) Was performed by a United States or CNMI licensed or registered appraiser in the Commonwealth, and who has engaged in that business for not less than 5 years; and
  - (ii) Was performed six months prior to or six months after January 1, 1985. If the appraisal was not performed within six months prior to or after January 1, 1985, the appraisal may be used to find the future value (at 1/1/85) and the present value (at 1/1/85) which will be the fair market value on January 1, 1985, by using the discounting method at the prevailing NMTIT § 6621 underpayment interest rate per annum on January 1, 1985. The NMTIT underpayment interest rate on January 1, 1985 was 13% per annum.
- (2) Discount Method.
- (i) Discounting the sales price back to January 1, 1985, using the prevailing NMTIT underpayment interest rate per annum, in accordance with NMTIT § 6621.
  - (ii) Example: Taxpayer E sold his land on June 30, 1985, for \$200,000.00, when the NMTIT underpayment interest rate was 11.25%. The fair market value, discounting the sales price back to January 1, 1985 is \$189,110.10.
- (3) Pro Rata Allocation.
- (i) A pro rata allocation of the difference between the adjusted cost basis and the sales price with respect to the periods it was held, before, and after January 1, 1985.
  - (ii) Example. Taxpayer F sold his residential property on December 31, 1985, for \$20,000.00. F purchased his property for \$10,000.00 on January 1, 1980, and subsequently made a \$5,000.00 capital improvement. The fair market value or modified adjusted cost basis on January 1, 1985, was \$19,166.64 calculated as follows.

|   |             |
|---|-------------|
| Cost  | \$10,000.00 |
| Add. Improvement  | 5,000.00    |
| Adjusted Cost basis   | \$15,000.00 |
| Sales Price   | 20,000.00   |
| Less: Adj. Cost Basis                                       | (15,000.00) |
| Difference  | 5,000.00    |
| Divided by the number of months owned                       | 72          |
| Allocable share per month                                   | 69.444      |
| Multiply by the number of months in service prior to 1/1/85 | 60          |
| Allocable share prior to 1/1/85                             | 4,166.64    |
| Add: adjusted cost basis                                    | 15,000.00   |
| Fair market value or modified adjusted Cost basis on 1/1/85 | \$19,166.64 |

- (4) Replacement Cost. A replacement cost may used for:\*
    - (i) Inventory items, goods and commodities for sale; and
    - (ii) Depreciable assets including removable items of building but not structural components of the building.
  - (5) Book Value. The book value of the asset on December 31, 1984.
- (d) CNMI Sourced Income. For purposes of 4 CMC § 1703, “CNMI sourced income” shall be determined using the sourcing rules in effect in the U.S. Internal Revenue Code as mirrored in the Commonwealth as of December 31, 1984.

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(e) Recapture. If during any taxable year an asset is disposed of and a portion or all of the proceeds received from the disposition of the asset is not CNMI sourced income, the benefit of any deduction for depreciation, amortization, and like purposes previously claimed under the NMTIT attributable to such asset is to be recaptured and appropriately taxed pursuant to procedures established by the Secretary of Finance.

(f) Accelerated Cost Recovery System (ACRS).

(1) Mandatory. Except as provided in subsection (b), the accelerated cost recovery system of the NMTIT is mandatory for all qualified fresh start assets whose fair market value is determined pursuant to any of the following methods:

- (i) Subsection (c)(1), independent appraisal;
- (ii) Subsection (c)(1)(ii), discount method (appraisal);
- (iii) Subsection (c)(2), discount method (sales);
- (iv) Subsection (c)(3), pro rata allocation;
- (v) Subsection (c)(4), replacement cost; or
- (vi) Subsection (c)(5), book value.

(2) Exception. Taxpayers may elect to continue a depreciation method in use immediately prior to January 1, 1985, only if they elect to determine the fair market value of the asset pursuant to the book value method prescribed in subsection (c)(5) of this section.

(3) Amortization. For purposes of determining allowances for amortization and for similar cost recovery systems for qualified fresh start assets, the fair market value obtained pursuant to subsection (c)(1) (independent appraisal) and subsection (c)(4) (replacement cost) must be allocated in accordance with the applicable NMTIT sections on amortization.

(g) NMTIT 38 Credit and NMTIT 179 Deduction.

(1) No credit shall be allowed under § 38 of the NMTIT for any qualified fresh start assets.

(2) No deduction shall be allowed under § 179 of the NMTIT for any qualified fresh start assets.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (c)(2) and (c)(3) were not designated. The Commission designated subsections (c)(2)(i) and (ii) and (c)(3)(i) and (ii).

In subsection (a)(2)(i)(D), the Commission changed “an” to “and” to correct a manifest error. In subsections (f)(1)(iii) and (iv), the Commission inserted the final semi-colons.

### § 70-40.6-620 Deductions and Credits

(a) No deduction shall be allowed if the transaction, event, or other course of conduct giving rise to the deduction took place prior to January 1, 1985, unless the taxpayer satisfies paragraph (1), (2), or (3) of subsection (c).

(b) No credit against any NMTIT shall be allowed if the transaction, event, or other course of conduct giving rise to the credit took place prior to January 1, 1985, unless the taxpayer satisfies paragraph (1), (2), or (3) of subsection (c).

(c) A deduction or credit, otherwise disallowed under subsections (a) and (b), shall be allowed if the taxpayer:

(1) Is obligated to file a tax return and pay a tax through 1985 under repealed chapter 7 on income derived from sources without the Commonwealth;

(2) Arrived in the Commonwealth during and after calendar year 1985 from Guam and the United States;

(3) Establishes from all the facts and circumstances that the deduction or credit is not contrary to 4 CMC § 1704.

(d) **Special Rule on Retirees.** In general, retirees are allowed to exclude from gross income his or her total contribution to a qualified retirement plan. Because of the fresh start asset concept of 4 CMC § 1703, retirees are allowed to exclude from gross income his or her total contributions made to a qualified retirement plan as the retiree's retirement commences on taxable year 1985.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-625 Change of Rates**

The effect of 4 CMC § 1704(b)(2) as repealed by PL 9-22 effective January 1, 1995, shall not bind taxpayers who:

(a) Continue to file and pay tax through 1985 under the repealed 4 CMC chapter 7 on income derived from sources without the Commonwealth, or

(b) Arrived into the Commonwealth during 1985 from Guam or the United States.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-630 Carryforward of Losses**

(a) **CNMI Home Office.** A taxpayer whose home office or parent company is located outside of the Commonwealth which has been reporting worldwide losses in the home office's or parent company's U.S. tax jurisdiction (including Guam), shall not carry forward such reported losses beginning January 1, 1985.

(b) Carryforward. A taxpayer shall not carry forward against income earned or accrued on or after January 1, 1985, any losses incurred in the Commonwealth prior to January 1, 1985, which were unreported by the home office or parent company located outside the CNMI.

(c) Example. Taxpayer G is a corporation whose home office or parent company is located in Guam. Taxpayer G has been in business in the Commonwealth since 1980, and since then has been writing off losses in the tax jurisdiction of Guam. On December 31, 1984, G's parent company has a balance of \$100,000 carry forward losses for the years beginning 1985 of which \$25,000 is attributable to the net operating losses incurred by taxpayer G in the Commonwealth. Taxpayer G cannot offset any income earned or accrued in the Commonwealth on or after January 1, 1985, with the \$25,000 net operating losses.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (c).

#### **§ 70-40.6-635**

[Reserved.]

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-640**

[Reserved.]

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-645 Additional Tax; Disincentives to Off-island Investments**

(a) Non-CNMI Deductions. Pursuant to 4 CMC § 1706 and except as provided in subsection (c), the amount of any deduction allowed to a taxpayer under the following NMTIT sections shall be deemed additional gross revenues and taxed accordingly under chapter 3 of 4 CMC:

- (1) § 169, amortization of pollution control facilities;
- (2) § 179, election to expense certain depreciable business property;
- (3) § 180, farmers' fertilizer expenditures;
- (4) § 182, farmers' land clearing expenditures;
- (5) § 190, expensing of removing architectural and transportation barriers to the handicapped and elderly;

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- (6) § 193, tertiary injectants;
- (7) § 194, amortization of reforestation expenditures;
- (8) § 195, start-up expenditures;
- (9) § 243, dividends received by corporations;
- (10) § 244, dividends received on certain preferred stock;
- (11) § 245, dividends from certain foreign corporations;
- (12) § 248, organizational expenditures;
- (13) § 263(c), expensing of intangible drilling costs, to the extent in excess of depreciation and amortization;
- (14) § 613 and 613(A), percentage depletion, to the extent in excess of cost depletion;
- (15) § 616(a), development expenditures, to the extent in excess of the amount deductible under NMTIT § 616(b) as a deferred expense;
- (16) § 617, mining exploration expenditures, to the extent in excess of the amount allowable as a deduction had the costs been capitalized and deducted ratably over 10 years;
- (17) § 631, gain or loss in the case of timber, coal and iron ore; and
- (18) § 184, § 185, § 188, and § 189 (if such deductions are reinstated under the NMTIT).
- (19) Taxpayers affected by 4 CMC § 1706(a) and this subsection shall add the full amount of the deductions listed above as gross revenues to the taxpayer's quarterly gross revenue tax return under 4 CMC chapter 3 and the provisions of 4 CMC § 1805.

(b) Non-CNMI Credits. Pursuant to 4 CMC § 1706 and except as provided in subsection (c), an additional tax is imposed under chapter 3 of 4 CMC on the amount of any credit allowed to a taxpayer under the following NMTIT sections:

- (1) § 21, household and dependent care;
- (2) § 38, general business credit; and
- (3) § 40, alcohol used as fuel.
- (4) Taxpayers affected by 4 CMC § 1706(b) and this subsection shall add the full amount of the credits listed above to the taxpayer's quarterly gross revenue tax return under 4 CMC chapter 3 and the provisions of 4 CMC § 1805.

(c) Exception. The tax imposed under 4 CMC § 1706(a) and 4 CMC § 1706(b) and subsections (a) and (b) of this section may be waived if:

- (1) The taxpayer establishes that the investment outside the CNMI substantially benefits business activities conducted or investments held for the production of income in the Commonwealth; or
- (2) The taxpayer has derived no tax benefits from the deduction or credit.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The final paragraphs of subsections (a) and (b) were not designated. The Commission designated subsections (a)(23) and (b)(4).

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The Commission corrected a numbering error in subsection (a). In subsection (a)(22), the Commission inserted the final period.

### § 70-40.6-650 Non-refundable Credit

(a) In General. Except as provided by subsections (b) and (f) and pursuant to and as provided by 4 CMC § 1206, § 1307, and § 1424 the taxes imposed on wages and salaries, earnings, gross revenues, and the user fee, will be allowed as a non-refundable credit against the NMTIT paid on the same items of income subject to these aforementioned taxes.

(b) Deduction v. Credit. In lieu of taking the 4 CMC §§ 1206, 1308, and 1424 taxes as credits, a person may elect to treat such taxes as deductions allowed under the NMTIT to the extent allowed under the NMTIT.

(c) Withholding Taxes. To determine the extent to which the WST is allowed to be utilized as a non-refundable credit against the NMTIT at the time the NMTIT and wage and salary tax withholdings are deducted and remitted, see § 70-40.6-115 of this subchapter.

(d) Earnings Tax. To determine the extent to which the earnings tax is allowed as a non-refundable credit against the NMTIT, see § 70-40.6-215 of this subchapter.

(e) Estimated Tax Payments. To determine the extent to which the § 1307 non-refundable credit is allowed at the time quarterly estimated NMTIT payments are made and quarterly gross revenue tax payments are made, see § 70-40.6-340(b) of this subchapter.

(f) Interaction with PL 10-73 Educational Tax Credit. The amount of the nonrefundable credit allowed under this section and as provided by law shall be reduced by the amount of educational tax credit, allowed under 4 CMC §§ 1205 and 1306, that is claimed by a person during the taxable year. See § 70-40.6-040(e)(3).

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments deleted and replaced this section in its entirety with numerous amendments. The 1998 amendments added new subsection (f) and amended subsections (a) and (b).

### § 70-40.6-655 Tax Relief; Rebate

(a) In General. Pursuant to and as provided by 4 CMC § 1708, every person subject to the NMTIT is allowed a rebate with respect to the NMTIT paid on income derived

from “sources within the Commonwealth” as determined pursuant to subsection (e) of this section. The amount of the rebate to which a taxpayer is entitled is determined pursuant to 4 CMC § 1708. The amount of the rebate shall be the percentage specified under 4 CMC § 1708(b)(1)(A) and (B) of the taxpayer’s “rebate base.” The “rebate base” is the NMTIT imposed on income derived from “sources within the Commonwealth” as determined by subsection (e) of this section and paid by the taxpayer less the amount of the non-refundable credit allowable under § 1206 or § 1308 as amended by PL 9-59 and PL 10-73. (See examples in subsection (g).)

(b) Exceptions to Entitlement to Rebate. The following are the list of exceptions to the entitlement to a rebate of the NMTIT:

(1) Outside Sale of Diesel Fuel. Notwithstanding subsection (a), a person is not entitled to a rebate with respect to any NMTIT collected upon income effectively connected with the sale of diesel fuel for use in any vessel’s commercial operations that are primarily outside the territorial waters of the Commonwealth;

(i) Example No. 1: Corporation XYZ derives all of its income from the sale of diesel fuel. For the current taxable year, XYZ has an NMTIT liability of \$875,000 of which \$420,000 is attributable to income derived from the sale of diesel fuel for use primarily outside the territorial waters of the Commonwealth while the remaining \$455,000 is from within the territorial waters of the Commonwealth. Corporation XYZ is not entitled to a rebate of the NMTIT paid on income derived from the sale of diesel fuel for use outside the territorial waters of the Commonwealth in the amount of \$420,000.

(ii) Example No. 2: Same facts as example no. 1 except that all of Corporation XYZ’s income is attributable to the sale of diesel fuel for use primarily within the territorial waters of the Commonwealth. Corporation XYZ is entitled to a rebate of the entire NMTIT paid in the amount of \$875,000 as calculated pursuant to 4 CMC § 1708.

(2) Accumulated Earnings Tax. Notwithstanding subsection (a), a person is not entitled to any rebate with respect to any accumulated earnings tax paid by the person pursuant to § 531 of the NMTIT;

(3) Not Subject to Local Taxes. Notwithstanding subsection (a) and except as provided in (i) or (ii) below, a person who has any income from sources within the Commonwealth that is not subject to any taxes under chapter 2 or chapter 3 shall not be entitled to any rebate with respect to the income tax on such income. Thus, taxpayers with interest, dividends, rents, royalties, or similar income earned in and derived from a person in the Commonwealth and received by a resident not in the course of carrying on a business is not subject to rebate unless the individual elects to be subject to tax under 4 CMC § 1202 pursuant to 4 CMC § 1708(d)(2).

(i) Notwithstanding (6) above and as provided by 4 CMC § 1708(d)(1)(B)(i) - (iii), a person is entitled to a rebate with respect to NMTIT paid on income when such income is not subject to taxes under chapter 2 or chapter 3 if any of the following provisions apply:

(A) The income is exempt from the earnings tax pursuant to § 70-40.6-101(c) of this subchapter;

(B) The income is exempt from the gross revenue tax under § 1305(a) or (d);

(C) The income is taxed under § 1421 of 4 CMC under the user fee provisions.

(ii) Notwithstanding (b)(6) and as provided by 4 CMC § 1708(d)(2), a person is entitled to a rebate with respect to NMTIT paid on income from sources within the

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Commonwealth when such income is not subject to taxes under chapter 2 or chapter 3 if the person elects to have that income taxed as if it were subject to the applicable tax under chapter 2 or chapter 3.

(A) Such an election shall be made in the manner and on the form prescribed by the Secretary.

(B) For purposes of (b)(3)(ii) and except as provided in (D), a taxpayer may elect to have an item of income subject to the earnings tax if the item was not derived in the course of carrying on a business whether or not the item constitutes “earnings” as defined within the earnings tax. In such case, the item of income shall be combined with all other items of earnings subject to the earnings tax, including those subject thereto due to the taxpayer’s election. Such an election must be made on or before the due date of the earnings tax; if not made on or before this date, the taxpayer is subject to all applicable penalties and interest for such underpayment but still is entitled to the rebate with respect to the NMTIT paid on such income.

(C) For purposes of (b)(3)(ii) and except as provided in (D), a taxpayer may elect to have an item of income subject to the gross revenue tax if the item of income was derived in the course of carrying on a business whether or not the item of income constitutes “gross revenues” as defined within the gross revenue tax. In such case, the item of income shall be combined with all other items of gross revenue subject to the gross revenue tax, including those subject thereto due to the taxpayer’s election. Such an election must be made on or before the last day of the month following the quarter during which the income was received or accrued; if not made on or before this date, the taxpayer is subject to all applicable penalties and interest for such underpayment but still is entitled to the rebate with respect to the NMTIT paid on such income;

(D) For purposes of (b), a taxpayer may elect to have gross winnings from any gaming, lottery, raffle or other gambling activity without the Commonwealth subject only to the earnings tax. A taxpayer may not elect to have such gross winnings subject to the gross revenue tax.

(iii) Examples.

(A) Example No. 1: For taxable year 1995, individual taxpayer A has CNMI sourced interest income not derived in the course of carrying on a business in the amount of \$100 and wages and salaries from services performed in the Commonwealth in the amount of \$30,000. Taxpayer A’s interest income is subject to the earnings tax and taxpayer A’s wages and salaries are subject to the wage and salary tax. Taxpayer A is entitled to a rebate of the NMTIT paid on both the interest income and the wages and salary.

(B) Example No. 2: Same facts as example no. 1 except that taxpayer A’s interest income is derived from sources outside the Commonwealth. Taxpayer A’s interest income is not subject to chapter 2 or to chapter 3. Taxpayer A is not entitled to rebate of the NMTIT paid on the interest income. Taxpayer A cannot make an election to have the interest income subject to chapter 2 or chapter 3 tax as the interest income was not sourced within the Commonwealth.

(C) Example No. 3: Same facts as example no. 1 except that instead of interest income, taxpayer A receives housing benefits in the amount of \$6,000. Taxpayer A’s housing benefits in the amount of \$6,000 are not subject to chapter 2 or chapter 3 tax. As housing benefits are exempt from the earnings tax under § 70-40.6-101(c) of this subchapter, taxpayer A is entitled to a rebate of the NMTIT paid on the housing benefits.

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(D) Example No. 4: Taxpayer L sold real property, not in the course of carrying on a business, located in the Commonwealth for \$100,000 with an adjusted basis in the amount of \$20,000. Taxpayer L's gain in the amount of \$80,000 is taxed under the earnings tax to the extent of  $\frac{1}{2}$  of the gain, i.e., \$40,000. For purposes of the NMTIT, the entire \$80,000 gain is subject to the NMTIT. Taxpayer L is entitled to a rebate of the NMTIT paid on the entire \$80,000 gain to the extent of the rebate attributable to the \$40,000 which was not taxable under the earnings tax and to the extent of the \$40,000 which was taxable under the earnings tax. Taxpayer L need not make any sort of election to have the entire \$80,000 subject to the earnings tax as taxpayer L would be entitled to a rebate on the entire \$80,000 as provided by law.

(c) Procedure. The amount of the rebate shall be rebated by timely filing an income tax return that includes the claim for rebate for the taxable year to which the rebate relates. No rebate shall be allowed prior to the filing of the required tax return to which the rebate relates. Under no circumstances whatsoever shall the rebate be advanced or taken in advance or shall the rebate be used as a credit against the income tax shown or required to be shown on an income tax return under the NMTIT.

(d) Time for Payment of Rebate. Except as provided in (d)(1), (2), (3), or (4) below, the amount properly subject to the rebate shall be made as soon as practicable but no later than 6 months from the due date of the return or the date of filing, whichever is later.

(1) Notwithstanding subsection (d), a rebate relating to a return for a taxable year which is referred to audit will not be made until the return is cleared from audit. Such audit shall be performed within a reasonable amount of time.

(2) Notwithstanding subsection (d), where the Secretary reasonably determines that the taxpayer may have committed fraud with respect to the filing of his or her tax return, the amount of the rebate shall not be made until the return has been cleared.

(3) Notwithstanding subsection (d), a rebate shall under no circumstances be made until the entire NMTIT liability has been paid by the taxpayer. In cases where NMTIT is not timely paid, upon payment of the entire (and not a portion thereof) NMTIT liability by the taxpayer, the rebate shall be made no later than 6 months from the date on which the NMTIT was paid in full, except to the extent (d)(1) or (d)(2) above is applicable.

(4) Notwithstanding subsection (d), a rebate subject to review (but not audit) of which the taxpayer is made aware in writing, shall not be made until the return is cleared from review. Such review shall be performed within a reasonable amount of time.

(e) Definition -- Source of Income. For purposes of determining the rebate and the non-refundable credits allowed under division 1 of 4 CMC, the terms "sources within the Commonwealth," "Commonwealth source income," and other similar terms shall be determined pursuant to 4 CMC § 1712 and § 70-40.6-105 of this subchapter. All other sourcing issues with respect to the rebate and the non-refundable credits shall be determined pursuant to the sourcing rules of the NMTIT at §§ 861, et seq.

(f) Fiscal Year Filers -- Transition Rule.

(1) For persons whose taxable years end other than on December 31, 4 CMC § 1708 as enacted by PL 9-22 shall apply to fiscal years commencing after December 31, 1994.

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(2) For persons whose taxable years end other than on December 31, 4 CMC § 1708 and 4 CMC § 1709 as repealed by PL 9-22 shall apply to fiscal years commencing before December 31, 1994 and 4 CMC § 1307 as enacted by PL 9-22 shall not apply.

(3) Example: The fiscal year of Corporation ABC ends September 30. For all income of Corporation ABC derived during fiscal year 1994 from October 1, 1994, to September 30, 1995, Corporation ABC is entitled to a rebate of NMTIT paid on such income in the amount allowed under the provisions of 4 CMC § 1708 as repealed by PL 9-22. For all taxable years commencing on or after October 1, 1995, Corporation ABC is entitled to a rebate of NMTIT paid on income derived during those fiscal years in the amount allowed under the provisions of 4 CMC § 1708 as enacted and amended by PL 9-22.

(g) Examples.

(1) Example No. 1. For taxable year 1996, taxpayer H has income in the amount of \$20,000 derived solely from wages and salaries received for services performed within the Commonwealth. For this taxable year, taxpayer H is allowed to claim 2 personal exemptions and files a joint income tax return. H prepares his 1040CM for taxable year 1996 and determines the following:

|  | <u>Chapter 7 NMTIT</u> | <u>Chapter 2 WST</u> |
|--|------------------------|----------------------|
| Gross income/wages and salaries          | \$20,000.00            | \$20,000.00          |
| Less: personal exemptions                | (4,000.00)             | N/A                  |
| Less: standard deduction                 | (6,350.00)             | N/A                  |
| Taxable income                           | 9,650.00               | 20,000.00            |
| Calculated tax                           | 1,500.00               | 1,000.00             |
| Less: non-refundable credit              | N/A                    | 1,000                |
| Balance after non-refundable credit      | 1,500.00               | -0-                  |
| Tax withheld                             | 1,300.00               | -0-                  |
| Tax underpayment/ overpayment            | 200.00                 | -0-                  |
| Calculation of rebate base:              | 500.00                 | N/A                  |
| Tax imposed: \$1,500.00                  |                        |                      |
| Less credit: (1,000.00)                  |                        |                      |
| Rebate base: 500.00                      |                        |                      |
| Amount of rebate/rebate (\$500.00 x 90%) | 450.00                 | -0-                  |

\*\*Note: Figures are for illustrative purposes only

In this case, taxpayer H is required to pay the NMTIT underpayment in the amount of \$200.00. Taxpayer A will then be entitled to a rebate in the amount of \$450.00.

(2) Example No. 2. For taxable year 1998, individual taxpayer M has income in the following amounts and from the following sources: (1) \$50,000 derived from wages and salaries received for services performed within the Commonwealth; (2) gain (as calculated under the NMTIT) from the sale of real property located in the Commonwealth the sale of which was not in the course of carrying on a business in the amount of \$75,000; (3) \$1000 gain from the sale of personal property not in the course of carrying on a trade or business; and (4) interest income from a savings account with a

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bank located in Guam in the amount of \$2,000. For this taxable year, taxpayer M has income subject to the NMTIT in the amount of \$128,000; income subject to the wage and salary tax in the amount of \$50,000; and income subject to the earnings tax in the amount of \$38,500 (1/2 gain of \$75,000 and \$1,000 CNMI sourced gain). For this taxable year, taxpayer M is allowed to claim 2 personal exemptions and files a joint income tax return. M prepares his form 1040CM for taxable year 1998 and determines the following:

|  | <u>CH 7<br/>NMTIT</u> | <u>CH 2 WST</u> | <u>CH 3 ET</u> |
|--|-----------------------|-----------------|----------------|
| Gross Income/Wages and Salaries/Earnings   | \$128,000.00          | \$50,000.00     | \$38,500.00    |
| Less: Personal Exemptions                  | (4,000.00)            | N/A             | N/A            |
| Less: Standard Deduction                   | (6,350.00)            | N/A             | N/A            |
| Taxable Income/Wages and Salaries/Earnings | 117,650.00            | 50,000.00       | 38,500.00      |
| Calculated Tax                             | 29,000.00             | 4,500.00        | 2,695.00       |
| Less: Non-Refundable Credits               | (7,195.00)            | N/A             | N/A            |
| Balance After Non-Refundable Credit        | 21, 805.00            | 4,500.00        | 2,695.00       |
| Less Tax Withheld and Est. Tax Payments    | 20,000.00             | 4,500.00        | -0-            |
| Withheld:                                  | \$15,000              |                 |                |
| Est. Tax Payments:                         | \$5,000               |                 |                |
|  | \$20,000.00           |                 |                |
| Tax Underpayment/(Overpayment)             | 1,805.00              | -0-             | 2,695.00       |
| Calculation of Rebate Base (see below^)    | 21,225.00             | N/A             | N/A            |
| Amount of Rebate Offset                    | (17,142.50)           |                 |                |
| \$ 18,000.00                               |                       |                 |                |
| <u>857.50</u> (\$21,225) - (20,000) x 70%  |                       |                 |                |
| \$(17,142.50)                              |                       |                 |                |

Amount due taxpayer:

NMTIT: \$1,805.00  
 Earnings Tax: 2,695.00  
 Rebate Offset: (17,142.50)

Due Taxpayer \$(12,642.50)

^Rebate Base Allocation

Percentage of Income Subject to Rebate: 90%\*  
Within Subject to Rebate: : (\$50,000) + (\$75,000) + (\$1,000)/\$128,000 = 98%  
 Percentage of Income Without Not Subject to Rebate: 2%  
Without Not Subject to Rebate: \$2,000/\$128,000 = 2%

Tax Imposed Within: \$28,420.00 (\$29,000) x (98%)

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Less Non-Refundable Credits: (7,195.00)

Rebate Base: \$21,225.00

Note: Figures are for illustrative purposes only and thus personal exemptions, standard deductions, and other similar items have been estimated.

\*So in original.

(3) Example No. 3: For taxable year 1998, taxpayer A has revenues in the amount of \$100,000 derived from sources within the Commonwealth in the course of carrying on a business. For this year, taxpayer A has no other income, will file a joint income tax return, and will claim two personal exemptions. Taxpayer A prepares his form 1040CM for taxable year 1998 and determines the following:

|                                     | <u>Chapter 7 NMTIT</u> | <u>Chapter 3 BGRT</u> |
|-------------------------------------|------------------------|-----------------------|
| Gross Income/Gross Revenues         | \$100,000.00           | \$100,000.00          |
| Less: Personal Exemptions           | (4,000.00)             | N/A                   |
| Less: Standard Deduction            | (6,350.00)             | N/A                   |
| Taxable Income                      | 89,650.00              | 100,000.00            |
| Calculated Tax                      | 20,300.00              | 2,000.00              |
| Less: Non-refundable Credit         | (2,000.00)             | N/A                   |
| Balance after Non-refundable Credit | 18,300.00              | 2,000.00              |
| Estimated Tax Payments Made         | 24,000.00              | N/A                   |
| Tax Underpayment/Overpayment        | (5,700.00)             | 2,000.00              |
| Calculation of Rebate Base:         | 18,300.00              | N/A                   |
| Tax Imposed: \$20,000.00            |                        |                       |
| Less Credit: <u>(2,000.00)</u>      |                        |                       |

Rebate Base: 18,300.00

Amount of Rebate Offset (16,470.00)

(18,300) x 90% = (\$16,470)

Amount due taxpayer 20,170.00  
 NMTIT: \$(5,700.00)  
 BGRT: (2,000.00)  
 Rebate offset: (16,470.00)

Amount due: (20,170.00)

Note: Figures are for illustrative purposes only and, thus, figures used for personal exemptions, standard deductions, and similar items are estimates.

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(4) Example No. 4: For taxable year 1996, Corporation ABC, a domestic corporation, has revenues in the amount of \$500,000 of which \$400,000 are derived from sources within the Commonwealth in the course of carrying on a business while the remaining are derived from sources without the Commonwealth. Corporation ABC has allowable deductions attributable to the \$400,000 of CNMI sourced gross revenues in the amount of \$75,000 and \$10,000 attributable to non-CNMI sourced gross revenues in the amount of \$100,000. Corporation ABC prepares its form 1120CM for taxable year 1996 and determines the following:

|  | <u><b>Chapter 7<br/>NMTIT</b></u> | <u><b>Chapter 3 GRT</b></u> |
|--|-----------------------------------|-----------------------------|
| Gross Income/Gross Revenues                      | \$500,000.00                      | \$400,000.00                |
| Less: Allowable Deductions                       | 85,000.00                         | N/A                         |
| Taxable Income                                   | 415,000.00                        | 400,000.00                  |
| Calculated Tax                                   | 130,000.00                        | 12,000.00                   |
| Less: Non-refundable Credit                      | (12,000.00)                       | N/A                         |
| Balance after Non-refundable credit              | 118,000.00                        | 12,000.00                   |
| Estimated Tax Payments Made                      | 120,000.00                        | N/A                         |
| Tax Underpayment/Overpayment                     | (2,000.00)                        | 12,000.00                   |
| Calculation of Rebate Base:                      | 89,400.00                         | N/A                         |
| Percentage of Income Within:           78%       |                                   |                             |
| Within: (\$400,000) - (\$75,000)/\$415,000 = 78% |                                   |                             |
| Percentage of Income Without:       22%          |                                   |                             |
| Without: (\$100,000) - (\$10,000)/\$415,000 =    |                                   |                             |
| 22%  |                                   |                             |
| Tax Imposed Within: \$101,400.00 (130,000) x     |                                   |                             |
| (78%)  |                                   |                             |
| Less Credit: <u>(12,000.00)</u>                  |                                   |                             |
| Rebate Base: 89,400.00                           |                                   |                             |
| Amount of Rebate                                 | 66,580.00                         | N/A                         |
| <br>   |                                   |                             |
| \$18,000.00                                      |                                   |                             |
| <u>48,580.00</u> (89,400)-(20,000) x 70%         |                                   |                             |
| \$66,580.00                                      |                                   |                             |
| <br>   |                                   |                             |
| Amount due taxpayer                              | \$56,580.00                       |                             |
| <br>   |                                   |                             |
| NMTIT:       (2,000.00)                          |                                   |                             |
| BGRT:       12,000.00                            |                                   |                             |
| Rebate offset: <u>(66,580.00)</u>                |                                   |                             |
| <br>   |                                   |                             |
| Due           \$(56,580.00)                      |                                   |                             |

Note: Figures are for illustrative purposes only

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(h) Transitional Rules. PL 10-74 amends rebate rates for taxpayers who are not corporations. PL 10-74 becomes effective on October 1, 1997. Thus, the rebate rates under PL 9-22 for taxpayers who are not corporations are in effect until September 30, 1997; the rebate rates under PL 10-74 are in effect after September 30, 1997. The provisions of this subsection apply to a taxpayer's 1997 taxable year; the provisions do not apply to post-1997 taxable years.

(1) Taxpayers with 1997 Taxable Year Ending December 31, 1997. Taxpayers with taxable years ended December 31, shall calculate their rebate under PL 9-22 for January 1, 1997 until September 30, 1997 and shall calculate their rebate under PL 10-74 for October 1, 1997 until December 31, 1997. Thus, 9/12 of a taxpayer's rebate shall be calculated under PL 9-22 and 3/12 shall be calculated under PL 10-74.

(i) Applicable Rebate Chart

Table A - January 1, 1997 to September 30, 1997

| <u>Level</u> | Amount of Tax Paid   |           | <u>Rebate Base</u>                                 |
|--------------|----------------------|-----------|--|
|              | <u>From</u>          | <u>To</u> |  |
| A            | \$-0-                | \$750.00  | 90%  |
| B            | 750.01               | 1,875.00  | \$675.00 plus 70% of rebate base over \$750.00     |
| C            | More than \$1,875.00 |           | \$1,462.50 plus 50% of rebate base over \$1,875.00 |

Table B - October 1, 1997 to December 31, 1997

| <u>Level</u> | Amount of Tax Paid    |            | <u>Rebate Base</u>                                 |
|--------------|-----------------------|------------|--|
|              | <u>From</u>           | <u>To</u>  |  |
| A            | \$-0-                 | \$5,000.00 | 90%  |
| B            | 5,000.01              | 25,000.00  | \$4,500.00 plus 70% of rebate base over \$5,000.00 |
| C            | More than \$25,000.00 |            | \$18,500 plus 50% of rebate base over \$25,000     |

(ii) Examples

Example No. 1. If a taxpayer, with no nonrefundable credit, has records demonstrating that he or she paid \$6,200 of NMTIT before 10/1/97 and \$1,800 after 9/30/97, the taxpayer's rebate base is \$5,245.00. This amount is calculated as follows: (\$1,462.50) plus (\$6,200 less \$1,875 = \$4,325)(50%) (table "A") plus (\$1,800.00) x (90%) = \$5,245.00 (table "B").

(2) Taxpayers with 1997 Taxable Years Ending After December 31, 1997. Taxpayers with taxable years ending after December 31, 1997, shall calculate their rebate under PL 9-22 for the period of their 1997 taxable year that falls between January 1, 1997 and September 30, 1997; for the period that falls between October 1, 1997 and the last day of their taxable year, the rebate shall be calculated under PL 10-74. Thus, a taxpayer's rebate, under these circumstances, must be prorated similarly to as provided in subsection (h)(1) above.

(i) Example No. 1. If a taxpayer's 1997 taxable year ends on November 30, 1998, the taxpayer's entire rebate will be calculated under PL 10-74. This is so because each month in the taxpayer's 1997 taxable year (December 1997 through November 1998) falls after the effective date of PL 10-74.

(ii) Example No. 2. If a taxpayer's 1997 taxable year ends on September 30, 1998, the taxpayer's entire rebate will be calculated under PL 10-74. This is so because each month in the taxpayer's 1997 taxable year (October 1997 through September 1998) falls after the effective date of PL 10-74.

(iii) Example No. 3. If a taxpayer's 1997 taxable year ends on June 30, 1998, 3/12 of the taxpayer's rebate will be calculated under the rates in effect in PL 9-22; 9/12 of the rebate will be calculated under PL 10-74.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 20 Com. Reg. 15890 (Apr. 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15822 (Feb. 15, 1998) (effective for 120 days from Feb. 3, 1998); Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsections (b)(1) and (g) were not designated. The Commission designated subsections (b)(1)(i) and (ii) and (g)(1) through (g)(4). The Commission also designated subsection (f)(3).

The notice of adoption for the 1995 regulations changed the proposed language in former subsections (b)(4), (b)(4)(iii), (d)(1), (d)(4), (f)(2) and (g)(1). The 1996 amendments deleted former subsections (b)(1), (b)(3), (b)(4) and (g), re-designated former subsections (b)(2), (b)(5) and (b)(6) as (b)(1), (b)(2) and (b)(3) accordingly, re-designated former subsection (h) and subsection (g) and replaced subsections (e) and (g) with numerous amendments. The 1998 amendments amended subsections (a), (b)(3), (g)(2) and (g)(3) and added a new subsection (i), which the Commission re-designated subsection (h).

The 1998 amendments stated an amendment to § 2206.11(a), codified at § 70-40.6-650(a). The amendment provided, however, was clearly intended to amend § 2206.12(a), codified at § 70-40.6-655, and the Commission amended this section accordingly. See 20 Com. Reg. at 15836 (Feb. 15, 1998).

In subsection (a), the Commission moved the period after "base" inside of the closing quotation mark. In subsection (e), the changed "term" to "terms" and moved the comma after "Commonwealth" inside of the closing quotation mark.

### **§ 70-40.6-660 Tax on Overpayments**

(a) In General. Pursuant to 4 CMC § 1709 and except as provided in subsection (b), there is imposed on every person subject to the NMTIT a separate, additional tax for such taxable year equal to the amount of any overpayment arising from any excessive credit,

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including those credits specified in subsection (c). However, nothing within 4 CMC § 1709 or this subsection shall prohibit a taxpayer from taking such credits to the extent of the taxpayer's NMTIT liability.

(b) Exceptions. Subsection (a) shall not apply to an excessive credit resulting from any overpayment of the following:

- (1) Withholding tax credit allowed under § 31 of the NMTIT;
- (2) Estimated tax credit;
- (3) Earned income tax credit allowed under § 32 of the NMTIT claimed by individuals with a "qualifying child" as defined by the NMTIT; and
- (4) All withholding or estimated tax credits withheld at source of nonresident aliens and foreign corporations allowed under § 33 of the NMTIT.

(c) Inclusions. The separate, additional tax imposed on any excessive credit is imposed on, but is not limited to, the following credits allowed under the NMTIT:

- (1) § 21, credit for household and dependent care services;
- (2) § 22, credit for the elderly and the permanently and totally disabled;
- (3) § 25, interest on certain home mortgages;
- (4) § 27 and § 901, foreign tax credit;
- (5) § 28, clinical testing expenses for certain drugs for rare diseases or conditions;
- (6) § 29, credit for producing fuel from a non-conventional source;
- (7) § 30, credit for qualified electric vehicles;
- (8) § 38, general business credit; and
- (9) All other credits which reduce tax liabilities dollar for dollar, except as provided in subsection (b) of this section.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### § 70-40.6-665 Estimated Tax

(a) Due Dates. Notwithstanding § 6654 of the NMTIT, the following are the due dates for payments of estimated tax for all taxpayers, both individual and non-individual:

| <b><u>Quarter</u></b> | <b><u>Due Date</u></b> |
|-----------------------|------------------------|
| First Quarter         | April 30               |
| Second Quarter        | July 31                |
| Third Quarter         | October 31             |
| Fourth Quarter        | January 31             |

(b) Place to File.

(1) Individual Taxpayer

(i) For an individual taxpayer that resides (as determined under § 935 of the NMTIT) within the CNMI for the entire taxable year, all quarterly estimated NMTIT payments should be made to the Commonwealth.

(ii) For an individual taxpayer that resides both within the Commonwealth and the United States and/or Guam during a taxable year, the determination of where the taxpayer is to make quarterly estimated NMTIT payments is made pursuant to § 935 of the NMTIT.

(2) Non-individual Taxpayer. All taxpayers other than an individual taxpayer must file its estimated income tax payments with the CNMI.

(c) Non-refundable Credit. Pursuant to and as provided by 4 CMC § 1205, § 1307, and § 1424 as amended by PL 9-59, a person may take any BGRT, earnings tax, wage and salary tax, or user fee as a non-refundable credit against the NMTIT imposed at chapter 7 of 4 CMC. To determine the extent to which the BGRT and WST non-refundable credits are allowed at the time quarterly estimated NMTIT payments are made, see § 70-40.6-115(c) and § 70-40.6-340(b).

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments amended subsection (c).

#### **§ 70-40.6-670 Nonresident Aliens, Foreign Corporations, and All Other Persons**

(a) Nonresident Alien and Foreign Corporations. A “nonresident alien” as defined by § 7701(b) of the NMTIT and a “foreign corporation” as defined by § 7701(a)(5) of the NMTIT is subject to the NMTIT as provided under the NMTIT. Generally, a nonresident alien and a foreign corporation are subject to the NMTIT only on income deemed sourced within the Commonwealth. Nonresident aliens and foreign corporations subject to the NMTIT shall file all income tax returns as specified by the NMTIT on or before the date specified by the NMTIT.

(b) All Others. All persons other than those specified in subsection (a) are subject to the NMTIT on income from all sources. Such persons shall file a territorial individual tax return on form 1040A-CM or 1040CM on or before April 15, following the close of the taxable year.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-675 Changes in Nomenclature; United States Agencies and Commonwealth Agencies**

(a) In General. Pursuant to 4 CMC § 1701(e), in applying the NMTIT for any purpose, except where it is manifestly otherwise required, the applicable provisions of the U.S. Internal Revenue Code shall be read so as to make all necessary changes in

nomenclature and other language where necessary to effect the intent of chapter 7 of 4 CMC.

(b) Government Agencies. Wherever the NMTIT mentions an agency or department of the United States government, it shall be construed to be applicable in the Commonwealth equal to its comparable agency or administration in the Commonwealth such as:

(1) United States Office of Personnel Management Retirement System is the Northern Mariana Islands Retirement Fund established under chapter 1, division 8 of 1 CMC;

(2) General Accounting Office is the Office of the Public Auditor established under chapter 6, division 2, of 1 CMC.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-680 Forms and Returns**

The Secretary shall prescribe all necessary forms and returns for the implementation of the NMTIT. The forms and returns prepared by the U.S. Internal Revenue Service for implementation of the U.S. Internal Revenue Code may be adopted and modified to suit the application thereof. See §§ 70-40.6-120 through 70-40.6-135 regarding withholding payments and returns.

Modified, 1 CMC § 3806(c).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-685 § 1701(i) Reasonable Cause Waiver**

Additions to tax, additional amounts, penalties or any part thereof, due to acts performed or not performed by a person acting in reasonable reliance on chapter 7 or on any rules and regulations promulgated thereunder shall be waived under 4 CMC § 1701(i) only if “reasonable cause” exists to waive such amounts. For purposes of this section, “reasonable cause” is defined the same as under the mirrored-income tax provisions of the NMTIT.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 700 - Administrative Provisions; General Rules**

### **§ 70-40.6-701 Applicability, Authority, and Income Tax Regulations**

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(a) Applicability. Unless otherwise specifically provided, the provisions in parts 700-1300 shall apply to taxes, fees, and charges imposed under 4 CMC, division 1, except that parts 700-1300 shall not apply to the following:

- (1) Taxes, fees, and other charges imposed under 4 CMC, chapter 4 which are administered by the CNMI Division of Customs;
- (2) Taxes, fees, and other charges imposed under 4 CMC, chapter 10, developer's infrastructure tax which are administered by the Department of Public Works;
- (3) Taxes, fees, and other charges imposed under 4 CMC, chapter 7, the Northern Marianas territorial income tax.

(b) Authority. The Secretary is authorized to promulgate parts 700-1300 pursuant to those provisions specified in § 70-40.6-001 of this subchapter, including the following provisions of the law:

- (1) 1 CMC § 2557 -- The Department of Finance may adopt rules and regulations not inconsistent with the law regarding those matters within its jurisdiction and to provide penalties both civil and criminal for violation thereof;
- (2) 4 CMC § 1811 -- All taxes imposed or authorized under this Act shall be a lien upon any property of the person or business obligated to pay said taxes and may be collected by levy upon such property in the manner to be prescribed by the Secretary pursuant to § 1818 of this Act;
- (3) 4 CMC § 1818 -- The Secretary upon approval of the Governor, shall have broad authority to prescribe all necessary rules and regulations not in conflict with this Act for the assessment and collection of taxes, penalties, fees, and charges and for the proper administration of this Act.

(c) Income Tax Regulations. To the extent applicable and not inconsistent or in compatible with the law and this subchapter, the regulations in parts 700-1300 are supplemented by the tax regulations to comparable NMTIT sections issued under the U.S. Internal Revenue Code which are mirrored for purposes of the NMTIT as follows:

| <u>CNMI Regulations</u><br><u>Section Number</u> | <u>NMTIT</u><br><u>Section Number</u> |
|--|---------------------------------------|
| 2207.4   | 7502                                  |
| 2207.5   | 7503                                  |
| 2207.7(a) & (b)                                  | 7622                                  |
| 2207.8(a)  | 7121                                  |
| 2207.8(b)  | 7122                                  |
| 2207.9   | 6011(e)                               |
| 2207.10  | 6107                                  |
| 2208.1   | 6201(a)                               |
| 2208.2   | 6201(a)(3)                            |
| 2208.3   | 6201(a)                               |
| 2208.4   | 6203                                  |
| 2208.5   | 6204                                  |
| 2208.6   | 6020                                  |

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|           |         |
|-----------|---------|
| 2208.8    | 6851    |
| 2208.9    | 6404(a) |
| 2209.1    | 6301    |
| 2209.2    | 6303    |
| 2209.3    | 6159    |
| 2210.1    | 6321    |
| 2210.2    | 6322    |
| 2210.3    | 6323(f) |
| 2210.4    | 6323(a) |
| 2210.5    | 6325    |
| 2210.6    | 6323(g) |
| 2210.7    | 6326    |
| 2211.1    | 6331    |
| 2211.2    | 6332    |
| 2211.3    | 6334    |
| 2211.4    | 6335    |
| 2211.5    | 6337    |
| 2211.6    | 6338    |
| 2211.7(a) | 6339    |
| 2211.7(b) | 6338    |
| 2211.8    | 6340    |
| 2211.9    | 6341    |
| 2211.10   | 6342    |
| 2211.11   | 6343    |
| 2212.1    | 7601    |
| 2212.2    | 7602    |
| 2212.3    | 7603    |
| 2212.4    | 7605    |
| 2212.5    | 7606    |

Modified, 1 CMC § 3806(c), (d), (f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (a)(2), the Commission changed “fee” to “fees” to correct a manifest error.

### **§ 70-40.6-705 Private Letter Rulings**

The procedures for private letter rulings shall follow that form prescribed in 4 CMC § 1707.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-710 Service By Publication**

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For all tax actions where service of process is required, the Commonwealth government or its designee may serve process on a party not found within the Northern Mariana Islands under the same circumstances and in the same manner as the laws or court rules of the Northern Mariana Islands authorize service of process by private plaintiffs.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-715 Timely Mailing Treated as Timely Filing and Paying**

(a) General Rule.

(1) Date of Delivery. If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of the Commonwealth tax laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(2) Mailing Requirements. This subsection shall apply only if:

(i) The postmark date falls within the prescribed period or on or before the prescribed date:

(A) For the filing (including any extension granted for such filing) of the return, claim, statement, or other document, or

(B) For making the payment (including any extension granted for making such payment), and

(ii) The return, claim, statement, or other document, or payment was, within the time prescribed in subsection (i), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the return, claim, statement, or other document is required to be filed, or to which such payment is required to be made.

(b) Postmarks. This section shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent allowed under the Income Tax Regulations of § 7502 of the NMTIT.

(c) Registered and Certified Mailing.

(1) Registered Mail. For purposes of this section, if any such return, claim, statement, or other document, or payment, is sent by United States registered mail:

(i) Such registration shall be prima facie evidence that the return, claim, statement, or other document was delivered to the agency, officer, or office to which addressed, and

(ii) The date of registration shall be deemed the postmark date.

(2) Certified Mail. The provisions of subsection (c)(1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail in

the manner and to the extent as provided under the Income Tax Regulations of § 7502 of the NMTIT.

(d) Exceptions. This section shall not apply with respect to:

- (1) The filing of a document in, or the making of a payment to the Commonwealth Superior Court.
- (2) Currency or other medium of payment unless actually received and accounted for, or
- (3) Returns, claims, statements, or other documents, or payments, which are required under any provision of the Commonwealth tax laws or the regulations thereunder to be delivered by any method other than by mailing.

(e) Mailing of Deposits.

(1) Date of Deposit. If any deposit required to be made (pursuant to the Income Tax Regulations of § 7502 of the NMTIT) on or before a prescribed date is, after such date, delivered by the United States mail to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit, such deposit shall be deemed received by such bank, trust company, domestic building and loan association, or credit union on the date the deposit was mailed.

(2) Mailing Requirements. Subsection (e)(1) shall apply only if the person required to make the deposit establishes that:

(i) The date of mailing falls on or before the second day before the prescribed date for making the deposit (including any extension of time granted for making such deposit), and

(ii) The deposit was, on or before such second day, mailed by United States mail in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit. In applying subsection (c) for purposes of this subsection, the term “payment” includes “deposit,” and the reference to the postmark date refers to the date of mailing.

(3) No Application to Certain Deposits. Subsection (e)(1) shall not apply with respect to any deposit of \$20,000 or more by any person who is required to deposit any tax more than once a month.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-720 Time for Performance of Acts Where Last Day Falls on Saturday, Sunday, or Legal Holiday**

When the last day prescribed under authority of the Commonwealth tax laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the

performance of any act shall be determined by including any authorized extension of time; the term “legal holiday” means a legal holiday in the CNMI.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-725 Extensions to File Tax Returns**

(a) Wage and Salary Tax Return and Earnings Tax Return. See § 70-40.6-140 regarding the wage and salary tax return and § 70-40.6-225 regarding the earnings tax return.

(b) Gross Revenue Tax Returns. In the case of the gross revenue tax, the Secretary may for good cause extend the time for filing returns but no later than the last day of the first month succeeding the regular due date. In all other cases, there shall be no extension to file a tax return.

Modified, 1 CMC § 3806(c).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-730 Authority to Administer Oaths and Certify; Authority to Regulate Practice**

(a) Oaths -- Department of Finance Personnel. Every officer or employee of the Department of Finance designated by the Secretary for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the CNMI tax laws or this subchapter made thereunder.

(b) Oaths -- Other Government Employees. Any oath or affirmation required or authorized under any CNMI tax law or under any regulations made thereunder may be administered by any person authorized to administer oaths for general purposes of the law of the Commonwealth, where in such oath or affirmation is administered. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

(c) Regulation of Practice. For purposes of both the NMTIT and non-NMTIT provisions of 4 CMC, division 1, the Secretary shall have the authority to regulate practice before the Division of Revenue and Taxation under the mirrored provisions of the conference and practice requirements of §§ 601.501-601.509 of title 26 of the U.S. Code of Federal Regulations and Treasury Department Circular No. 230 codified at 31 U.S. Code of Federal Regulations, part 10, circular 230.

Modified, 1 CMC § 3806(d), (f).

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History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-735 Closing Agreements; Compromises**

(a) Closing Agreements. The Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any Commonwealth tax for any taxable period. If such agreement is approved by the Secretary (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact,

(1) The case shall not be reopened as to the matters agreed upon, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit may be made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(b) Compromises. The Secretary may compromise any civil or criminal case arising under the Commonwealth tax laws prior to reference to the Attorney General's Office for prosecution or defense and the Attorney General or his delegate may compromise any such case after reference to it.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-740 Returns on Magnetic Media**

All annual wage and salary tax statements, forms W-2, shall be filed on magnetic media if required under § 6011(e) of the NMTIT and the Income Tax Regulations thereunder.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-745 CNMI Tax Return Preparer Must Furnish Copy of Return to Taxpayer and Must Retain a Copy or List**

(a) Furnishing a copy to taxpayer. Any person who is a CNMI "income tax return preparer" as defined by § 7701(a)(36) of the NMTIT with respect to any return or claim for refund shall furnish a completed copy of such return or claim to the taxpayer not later than the time such return or claim is presented for such taxpayer's signature.

(b) Copy or list to be retained by CNMI tax return preparer. Any person who is a CNMI income tax return preparer with respect to a return or claim for refund shall, for the period ending 3 years after the close of the return period -

(1) Retain a competed copy of such return or claim, or retain, on a list, the name and taxpayer identification number of the taxpayer for whom such return or claim was prepared; and

(2) Make such copy or list available for inspection upon request by the Secretary.

(c) In cases where 2 or more persons are CNMI income tax return preparers with respect to the same return or claim for refund, compliance with the requirements of subsection (a) or (b), as the case may be, of one such person shall be deemed to be compliance with the requirements of such subsection by the other persons as provided by § 6107 of the NMTIT and regulations thereunder.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 800 - Assessments**

### **§ 70-40.6-801 Authority**

The Secretary of Finance or his delegate is authorized to make inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The Commission inserted a comma after the word “determinations” pursuant to 1 CMC § 3806(g).

### **§ 70-40.6-805 Erroneous Prepayment Credits**

If on any return or claim for refund of taxes, there is an overstatement of the credit for tax withheld at the source or of the amount paid as estimated tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-810 Taxes Assessed**

The Secretary shall assess all taxes determined by the Secretary as to which returns, schedules, lists or entry certificates are required to be made. Taxes and all other amounts indicated as due on returns filed by a taxpayer are deemed assessed on the date the return is filed.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-815 Method of Assessment**

Secretary's assessments shall be made by recording the liability of the taxpayer in the Office of the Secretary in the manner and to the extent as provided under the Income Tax Regulations of § 6201 of the NMTIT. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the Secretary's record of assessment.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-820 Supplemental Assessments**

The Secretary may, at any time within such periods as may be prescribed for assessments, make such supplemental or additional assessment whenever it is ascertained that any assessment is imperfect or incomplete. The Secretary may also make an assessment for the recovery of any erroneous refund or rebate made.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-825 Assessment No Return Filed**

(a) Notice. Upon the failure of any person to make and file a return required within the time and the manner and form prescribed, or upon failure to pay any amount due, the Secretary may notify such person of such failure and demand that a return be made and filed and the tax paid as required.

(b) Preparation of Return by Secretary. Except as provided by 4 CMC § 1708, if any person shall fail to make a required return, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which being signed by such person, may be received by the Secretary as the return of such person.

(c) Execution of Return by Secretary.  
Authority of Secretary to Execute Return. Except as provided by 4 CMC § 1708, if any person fails to make any required return at the time prescribed therefore, and if such person upon notice and demand made by the Secretary, fails or refuses within 30 days after said notice and demand to make and file a return and pay the tax required after said notice and demand has been mailed to the taxpayer's last known address or within 30 days after said notice has been otherwise caused to be delivered to the taxpayer, the Secretary may make a return for such persons from his own knowledge and from such information as he can obtain through testimony or otherwise, and may assess the appropriate amount of tax.

(d) Status of Returns Executed by Secretary. Any return made and subscribed by the Secretary pursuant to this section shall be prima facie good and sufficient for all legal purposes.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-830 Assessment Erroneous Return Filed**

In the event any taxpayer makes and files a required return, schedule or list and the Secretary determines that said return, schedule or list is untrue, erroneous, incomplete or incorrect in any respect, or does not otherwise conform to law, the Secretary may determine and assess the proper amount of tax in accordance with the procedures of division 1 of 4 CMC and this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-835 Termination Assessment**

- (a) In General. If the Secretary believes that a taxpayer intends to:
- (1) Depart from the Commonwealth;
  - (2) Remove his property from the Commonwealth;
  - (3) Conceal himself or his property from the Commonwealth; or
  - (4) Do any other act (including in the case of a corporation, distributing all or a part of its assets in liquidation or otherwise)

which tends to prejudice or to render wholly or partially ineffectual proceedings to collect tax for the current and/or the immediately preceding taxable year, unless such proceeding be brought without delay, the Secretary shall immediately make a determination of tax for the current taxable year and/or for the preceding taxable year. Notwithstanding any other provision of law or this subchapter, such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of the tax so determined (together with all interest, additional amounts, and additions to the tax provided by law) for the current taxable year and/or such preceding taxable year, and shall cause notice of such determination and assessment to be given to the taxpayer, together with a demand for immediate payment of such tax.

(b) Computation of Tax. In the case of a current taxable year, the Secretary shall determine the tax for the period beginning on the first day of such current taxable year and ending on the date of the determination under subsection (a) as though such period were a taxable year of the taxpayer and shall take into account any prior determination made under this section with respect to such current taxable year.

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(c) Treatment of Amounts Collected. Any amounts collected as a result of any assessments under this section shall, to the extent thereof, be treated as a payment of tax for such taxable year.

(d) Departure of Alien. Subject to such exceptions as are provided under the Income Tax Regulations under § 6851 of the NMTIT:

(1) No alien shall depart from the CNMI unless he first procures from the Secretary a certificate that he has complied with all obligations imposed upon him by the CNMI tax laws.

(2) Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes, if in the case of an alien about to depart from the CNMI, the Secretary determines that the collection of the tax will not be jeopardized by the departure of the alien.

(e) Limitation. This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the taxpayer's return for such taxable year (determined with regard to any extensions of time to file a return).

Modified, 1 CMC § 3806(d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### § 70-40.6-840 Abatement

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which--

(a) Is excessive in amount;

(b) Is assessed after the expiration of the period of limitations properly applicable thereto;

(c) Is erroneously or illegally assessed; or

(d) Is small in amount if the Secretary determines that the administration and collection costs involved would not warrant collection of the amount due.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### Part 900 - Collections

#### § 70-40.6-901 Collection Authority

The Secretary shall collect all taxes imposed.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-905 Notice and Demand for Tax**

Unless otherwise provided, the Secretary shall, as soon as practicable after the making of an assessment of a tax pursuant to part 1300 of this subchapter give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left with a responsible person at the dwelling or usual place of business of such person, or shall be sent by certified mail to such person's last known address.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-910 Agreements for Payment of Tax Liability in Installments**

(a) **Authorization of Agreements.** The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

(b) **Extent to Which Agreement Remains in Effect.**

(1) **In General.** Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement.

(2) **Inadequate Information or Jeopardy.** The Secretary may terminate any agreement entered into by the Secretary under subsection (a) if--

(i) Information which the taxpayer provided to the Secretary prior to the date such agreement was entered into was inaccurate or incomplete; or

(ii) The Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy. "Jeopardy" is defined as when the Secretary believes that a taxpayer intends to:

(A) Depart from the Commonwealth;

(B) Remove his property from the Commonwealth;

(C) Conceal himself or his property from the Commonwealth; or

(D) Do any other act (including in the case of a corporation, distributing all or a part of its assets in liquidation or otherwise)

which tends to prejudice or to render wholly or partially ineffectual proceedings to collect tax.

(3) **Subsequent Change in Financial Conditions.**

(i) **In General.** If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

(ii) **Notice.** Action may be taken by the Secretary under (3)(i) only if--

- (A) Notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action; and
- (B) Such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred.
- (4) Failure to Pay an Installment or Any Other Tax Liability When Due or To Provide Requested Financial Information. The Secretary may alter, modify, or terminate an agreement entered into by the Secretary under subsection (a) in the case of the failure of the taxpayer --
  - (i) To pay any installment at the time such installment payment is due under such agreement;
  - (ii) To pay any other tax liability at the time such liability is due; or
  - (iii) To provide a financial condition update as requested by Secretary.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 1000 - Lien for Taxes**

### **§ 70-40.6-1001 Lien**

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the Commonwealth upon all property and rights to property, whether real or personal, belonging to such person.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1005 Period of Lien**

The lien imposed by law and pursuant to § 70-40.6-1001 of this subchapter shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied, the assessment expires under applicable Commonwealth law, or the lien is released by the Secretary.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1010 Place for Filing Notice**

Notice of a tax lien shall be recorded with the Commonwealth Recorder's Office. A notice of a tax lien so recorded shall be perfected as to all of a taxpayer's real property located within the Commonwealth, to all tangible and intangible personal property and income of a taxpayer residing within the Commonwealth, and to all tangible and

intangible personal property and income located in the Commonwealth of a taxpayer residing without the Commonwealth.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1015      Validity and Priority of Tax Lien**

(a)      In General. Except as provided in subsection (b) or (c), the validity and priority of a tax lien of the Commonwealth government in the property and income of a taxpayer for unpaid taxes, additions to tax, penalties and interest (and any cost that may accrue in addition thereto) shall, as against anyone else claiming an interest in the same property or income of the taxpayer, be determined in accordance with applicable Commonwealth law (including 1 CMC § 3711 and 2 CMC § 4520).

(b)      Exception. No tax lien of the Commonwealth government in a taxpayer's property and income shall have priority over a bona fide purchaser or lessee of the taxpayer for valuable consideration, a bona fide holder of a security interest for value, a bona fide judgment lien creditor or holder of another bona fide interest or encumbrance for value, unless the Commonwealth government's tax lien has been recorded previously or the party claiming the competing interest in the property or income of the taxpayer has actual notice of the tax lien.

(c)      Filing Requirement. No interest claimed by a competing party in property or income of a taxpayer shall prevail over a tax lien of the Commonwealth government unless the party claiming such competing interest has taken all steps under applicable law to properly create and perfect the interest claimed in the taxpayer's property or income, and said interest is not otherwise contrary to or in violation of Commonwealth law.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1020      Release of Lien, Discharge, and Subordination**

(a)      Release of Lien. Except to the extent as provided in the Income Tax Regulations of § 6325 of the NMTIT, the Secretary shall issue a certificate of release of any lien imposed with respect to any non-NMTIT tax not later than 30 days after the day on which:

(1)      Liability Satisfied or Unenforceable. The Secretary finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2)      Bond Accepted. There has been furnished to the Secretary and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extensions of

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such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by the Secretary.

(b) Discharge of Property. As provided in (b)(1), (2), and (3) and in the manner and to the extent provided in the Income Tax Regulations under § 6325 of the NMTIT, the Secretary may discharge property from a lien.

(1) The Secretary may issue a certificate of discharge of any part of property subject to a lien if the Secretary finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of all other liens upon such property which have priority over such lien.

(2) The Secretary may issue a certificate of discharge of any part of the property subject to a lien if--

(i) There is paid over to the Secretary in partial satisfaction of the liability secured by the lien an amount determined by the Secretary, which shall not be less the value, as determined by the Secretary, of the interest of the CNMI in the part to be so discharged; or

(ii) The Secretary determines at any time that the interest of the CNMI in the part to be so discharged has no value.

(iii) In determining the value of the interest of the CNMI in the part to be so discharged, the Secretary shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the CNMI.

(3) The Secretary may issue a certificate of discharge of any part of the property subject to a lien if such part of the property is sold and, pursuant to an agreement with the Secretary, the proceeds of such sale are to be held as a fund subject to the liens and claims of the CNMI in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) Subordination of Lien. In the manner and to the extent provided in the Income Tax Regulations under § 6325 of the NMTIT, the Secretary may issue a certificate of subordination of a lien imposed upon any part of the property subject to such lien if--

(1) There is paid over to the Secretary an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the CNMI; or

(2) The Secretary believes that the amount realizable by the CNMI from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(d) Effect of Certificate.

(1) Conclusiveness. Except as provided in subsections (d)(2) and (3), if a certificate is issued pursuant to this section by the Secretary and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(i) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

- (ii) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien; and
  - (iii) In the case of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the CNMI is subordinated is superior to the lien of the CNMI.
- (2) Revocation of certificate of release. If the Secretary determines that a certificate of release was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under § 70-40.6-735(b) of this subchapter which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary may revoke such certificate and reinstate the lien--
- (i) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address; and
  - (ii) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).
  - (iii) Such reinstated lien
    - (A) Shall be effective upon the date notice of revocation is mailed to the taxpayer in accordance with the provisions of (d)(2)(i), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of (d)(2)(ii); and
    - (B) Shall have the same force and effect (as if such date) and until the expiration of the period of limitation on collection after assessment, as a lien imposed by § 70-40.6-1001 of this subchapter.
- (3) Certificates void under certain conditions. Notwithstanding any other provision of this subchapter, any lien imposed by this subchapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The final paragraphs of subsections (b)(2) and (d)(2) were not designated. The Commission designated subsections (b)(2)(iii) and (d)(2)(iii).

### **§ 70-40.6-1025 Refiling of Notice**

For purposes of validity and priority of the tax lien--

- (a) General Rule. Unless a notice of lien is refiled in the manner prescribed in subsection (b) during the required filing period, such notice of lien shall be treated as filed on the date on which it is refiled (in accordance with §§ 70-40.6-1001 through 70-40.6-1015 of this subchapter) after the expiration of such refiling period.
- (b) Place for Filing. A notice of lien refiled during the required refiling period shall be effective only if such notice of lien is refiled in the Commonwealth Recorder's Office.

(c) Required Refiling Period. In the case of any notice of lien, the term “required refiling period” means --

- (1) The one year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax; and
- (2) The one year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1030 Administrative Appeal of Liens**

(a) Appeal. In the manner and to the extent provided in the Income Tax Regulations under § 6326 of the NMTIT, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for release of such lien alleging an error in the filing of the notice of such lien.

(b) Certificate of Release. If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall expeditiously issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

Modified, 1 CMC § 3806(d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

## **Part 1100 - Seizure of Property for Collection of Taxes**

### **§ 70-40.6-1101 Levy and Dstraint**

(a) Authority. If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sums as shall be sufficient to cover the expenses of the levy) by initiating levy proceedings upon all property and rights to property (except such property as is exempt under § 70-40.6-1110 of this subchapter) belonging to such person or on which there is a lien for the payment of such tax. If the Secretary makes a finding that the collection of such tax is in jeopardy, as defined in § 70-40.6-910(b)(2)(ii) of this subchapter, notice and demand for immediate payment of such tax may be made by the Secretary and upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10 day period provided in this section.

(b) Seizure and Sale of Property. The term “levy” as used in part 1100 of this subchapter includes the power of dstraint and seizure by any means. Except as otherwise provided, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to

property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) **Successive Seizures.** Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the Commonwealth for which levy is made, the Secretary may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) **Requirement of Notice Before Levy.**

(1) **Notice.** A levy under subsection (a) may only be made after the Secretary has notified the person in writing of his intention. Such notice must be made at least 30 days before the day of levy by giving the taxpayer the notice in person, leaving the notice at the taxpayer's dwelling or usual place of business, or by sending the notice by certified or registered mail to such taxpayer's last known address.

(2) **Jeopardy.** If the Secretary makes a finding that the collection of such tax is in jeopardy, as defined in § 70-40.6-910(b)(2)(ii) of this subchapter, subsection (d)(1) shall not apply to a levy.

(3) **Contents of Notice.** The notice required shall include a brief statement which sets forth in simple and nontechnical terms:

(i) The provisions of the law, including this subchapter, relating to levy and sale of property;

(ii) The procedures applicable to the levy and sale of property under this subchapter;

(iii) The administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals;

(iv) The alternatives available to taxpayers which could prevent levy on the property (including installment agreements);

(v) The provisions of this subchapter relating to redemption of property and release of liens on property; and

(vi) The procedures applicable to the redemption of property and the release of a lien on property under this subchapter.

(e) **Continuing Levy on Salary and Wages.** The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under § 70-40.6-1150 of this subchapter.

(f) **Uneconomical Levy.** No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

(g) **Levy on Appearance Date of Summons.**

(1) **In General.** No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in

response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

(2) No application in case of jeopardy. This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy as defined by § 70-40.6-910(b)(2)(ii) of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1105 Surrender of Property Subject to Levy**

(a) Requirement. Except as otherwise provided in this section, any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights (or discharge such obligation) to the Secretary, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) Special Rule for Banks. Any bank or financial institution shall surrender (subject to an attachment or execution under judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(c) Enforcement of Levy.

(1) Extent of Personal Liability. Any person who fails or refuses to surrender any property or rights to property subject to levy, upon demand by the Secretary, shall be liable in his own person and estate to the Commonwealth in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum from the date of such levy. Any amount (other than costs) recovered under this subsection shall be credited against the tax liability for the collection of which such levy was made.

(2) Penalty for Violation. In addition to the personal liability imposed by subsection (c)(1), if any person required to surrender property or rights to property fails or refuses to surrender such property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 50 percent of the amount recoverable under subsection (c)(1). No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

(d) Effect of Honoring Levy. Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the Secretary, surrenders such property or rights to property (or discharges such obligation) to the Secretary (or who pays a liability under subsection (c)(1)) shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

(e) **Person Defined.** The term “person,” as used in this section, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

Modified, 1 CMC § 3806(d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1110      Property Exempt From Levy**

(a) **Enumeration.** There shall be exempt from levy:

(1) **Wearing Apparel and School Books.** Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) **Fuel, Provisions, Furniture, and Personal Effects.** If the taxpayer is the head of a family, so much of the automobile fuel, provisions, furniture, and personal effects in his household, and of the firearms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$1,650 in value or that amount as allowed under § 6334 of the NMTIT;

(3) **Books and Tools of a Trade, Business, or Profession.** So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$1,100 in value or that amount as allowed under § 6334 of the NMTIT;

(4) **Undelivered Mail.** Mail, addressed to any person, which has not been delivered to the addressee;

(5) **Worker’s Compensation.** Any amount payable to an individual as worker’s compensation (including any portion thereof payable with respect to dependents) under a worker’s compensation law of the Commonwealth, the United States, or any state, possession, or territory of the United States;

(6) **Judgments for Support of Minor Children.** If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment; and

(7) **Principal Residence Exempt in Absence of Certain Approval or Jeopardy.** Except to the extent provided in subsection (d), the principal residence of the taxpayer (within the meaning of § 1034 of the NMTIT).

(b) **Appraisal.** The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary shall summon two disinterested individuals who shall make the valuation.

(c) **No Other Property Exempt.** Notwithstanding any other law of the Commonwealth, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

(d) Levy Allowed on Principal Residence in Case of Jeopardy or Certain Approval. Property described in subsection (a)(7) shall not be exempt from levy if--

- (1) The Secretary personally approves (in writing) the levy of such property; or
- (2) The Secretary finds that the collection of tax is in jeopardy, as defined in § 70-40.6-910(b)(2)(ii) of this subchapter.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1115 Sale of Seized Property**

(a) Notice of Seizure. As soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor), or shall be left at the owner/taxpayer's usual place of abode or business. If the owner/taxpayer cannot be readily located or has no dwelling or place of business in the Commonwealth, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized, and in the case of real property, a description with reasonable certainty of the property seized.

(b) Notice of Sale. The Secretary shall as soon as practicable after the seizure of the property give notice to the owner, in the manner described in subsection (a) and shall cause a notification to be published in a generally circulated local newspaper and post the notices at the United States Post Offices in the Commonwealth. Such notice shall specify the property to be sold and the time, place, manner, and conditions of the sale. Whenever levy is made without regard to the 10 day period specified in § 70-40.6-1101(a) of this subchapter, public notice of the sale of the property seized shall not be required to be made within such 10 day period unless the type of goods require immediate sale.

(c) Time of Sale. The time of the sale shall not be less than 10 days nor more than 40 days from the time of giving public notice.

(d) Manner and Conditions of Sale. The manner and conditions of the sale shall be reasonable for all circumstances and shall be as consistent as possible with the manner and conditions of a sale of property relating to taxes under the NMTIT as provided in § 6335 of the NMTIT.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1120 Redemption of Property**

(a) Before Sale. Before the sale of seized property, any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses

of the proceeding, if any, to the Secretary at any time prior to the sale thereof, and upon such payment the Secretary shall restore such property to him and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) **Redemption of Real Estate After Sale.**

(1) **Period.** The owners of any real property located in the Commonwealth sold as provided in § 70-40.6-1115 of this subchapter, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) **Price.** Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found then to the Secretary, for the use of the purchaser, his heirs, or assigns, of the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

(c) **Record.** When any lands sold are redeemed as provided in this section, the Secretary shall cause entry of the fact to be made upon the records maintained by the Secretary, and such entry shall be evidence of such redemption.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1125 Certificate of Sale; Deed of Real Property**

(a) **Certificate of Sale.** In the case of property sold as provided in § 70-40.6-1115 of this subchapter, the Secretary shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefore.

(b) **Deed to Real Property.** In the case of any real property sold as provided in § 70-40.6-1115 of this subchapter and not redeemed in the manner and within the time provided in § 70-40.6-1120 of this subchapter, the Secretary shall execute to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) **Real Property Purchased by Commonwealth.** If real property is declared purchased by the Commonwealth at a sale pursuant to § 70-40.6-1115 of this subchapter, the Secretary shall at the proper time execute a deed therefore, and without delay cause such deed to be duly recorded in the Commonwealth Recorder's Office.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1130      Legal Effect of Certificate of Sale of Personal Property and Deed of Real Property**

(a) Certificate of Sale of Property Other Than Real Property. In all cases of sale pursuant to § 70-40.6-1115 of this subchapter of property (other than real property), the certificate of such sale:

(1) As Evidence. Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As Conveyances. Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) As Authority for Transfer of Corporate Stock. If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) As Receipts. If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) As Authority for Transfer of Title to Motor Vehicle. If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) Deed of Real Property. In the case of the sale of real property pursuant to § 70-40.6-1115 of this subchapter:

(1) Deed as Evidence. The deed of sale given pursuant to § 70-40.6-1125 of this subchapter shall be prima facie evidence of the facts therein stated; and

(2) Deed as Conveyance of Title. If the proceedings of the Secretary as set forth have been substantially in accordance with the provisions of Commonwealth law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the delinquent party had in and to the real property thus sold at the time the lien of the Commonwealth attached thereto.

(c) Effect of Junior Encumbrances. A certificate of sale of personal property given or a deed to real property executed pursuant to § 70-40.6-1125 of this subchapter shall discharge such property from all liens, encumbrances, and titles over which the lien of the Commonwealth with respect to which the levy was made had priority.

Modified, 1 CMC § 3806(c), (d), (f).

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History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1135        Records of Sale**

(a) Requirement. The Secretary shall keep a record of all sales of real property under § 70-40.6-1115 of this subchapter and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed.

(b) Copy as Evidence. A copy of such record, or any part thereof, certified by the Secretary shall be evidence in any court of the truth of the facts therein stated.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1140        Expense of Levy and Sale**

The Secretary shall determine the expenses to be allowed in all cases of levy and sale.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1145        Application of Proceeds of Levy**

(a) Collection of Liability. Any money realized by proceedings under this part (whether by seizure, by surrender under § 70-40.6-1105 of this subchapter, or by sale of seized property) or by sale of property redeemed by the Commonwealth (if the interest of the Commonwealth in such property was a lien arising under the provisions of this act) shall be applied as follows:

- (1) Expense of Levy and Sale. First, against the expenses of the proceedings;
- (2) Specific Tax Liability on Seized Property. If the property seized and sold is subject to a tax imposed by any Commonwealth law which has not been paid, the amount remaining after applying (a)(1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);
- (3) Liability of Delinquent Taxpayer. The amount, if any, remaining after applying (a)(1) and (a)(2) shall then be applied against the liability in respect of which the levy was made or the sale was conducted.

(b) Surplus Proceeds. Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Secretary to the person or persons legally entitled thereto.

Modified, 1 CMC § 3806(f).

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History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1150 Authority to Release Levy and Return Property**

(a) Release of Levy and Notice of Release.

(1) In General. In the manner and to the extent as provided in the Income Tax Regulations of § 6343, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if:

(i) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time;

(ii) Release of such levy will facilitate the collection of such liability;

(iii) The taxpayer has entered into an agreement with the Secretary under § 70-40.6-910 of this subchapter to satisfy such liability by means of installment payments, unless such agreement provides otherwise. For purposes of this provision, the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary;

(iv) The Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer; or

(v) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(2) Expedited Determination on Certain Business Property. In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under subsection (a)(1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) Subsequent Levy. The release of levy on any property under subsection (a)(1) shall not prevent any subsequent levy on such property.

(b) Return of Property.

(1) If the Secretary determines that property has been wrongfully levied upon, it shall be lawful for the Secretary to return:

(i) The specific property levied upon;

(ii) An amount of money equal to the amount of money levied upon; or

(iii) An amount of money equal to the amount of money received by the Commonwealth from a sale of such property.

(2) Property may be returned at any time. An amount equal to the amount of money levied upon or received from such sale may be returned at any time before the expiration of 9 months from the date of such levy.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The original paragraphs of subsection (b) were not designated. The Commission designated subsections (b)(1) and (b)(2).

**Part 1200 - Examination and Inspection**

**§ 70-40.6-1201 Canvass of CNMI for Taxable Persons and Objects**

(a) General Rule. The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Department of Finance to proceed, from time to time, through the Commonwealth and inquire after and concerning all persons therein who may be liable to pay any Commonwealth tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) Penalties. For penalties applicable to forcible obstruction or hindrance of Department of Finance officers or employees in the performance of their duties, see § 70-40.6-1330(b)(3)(i) of this subchapter.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: On February 28, 2002, the Department of Finance published public notice of an Order of Tax Compliance Canvass issued pursuant to this section. See 24 Com. Reg. 19035 (Feb. 28, 2002).

**§ 70-40.6-1205 Examination of Books and Witnesses**

In General. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any Commonwealth tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any Commonwealth tax or collecting any such liability, the Secretary is authorized to examine any books, papers, records, or other data which may be relevant or material to such inquiry.

Modified, 1 CMC § 3806(g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The Commission replaced the final semi-colon with a period.

**§ 70-40.6-1210**

[Reserved.]

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1215 Time and Place of Examination**

(a) Time and Place. The time and place of examination under § 70-40.6-1205 of books, papers, records, or other data shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances; however, the date fixed to make such records available shall not be less than 10 days from the date of the request.

(b) Restriction on Examination of Taxpayer. No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

Modified, 1 CMC § 3806(c).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1220 Entry of Premises for Examination of Taxable Objects**

(a) Entry During Day. The Secretary may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) Entry at Night. When such premises are open at night, the Secretary may enter them while so open, in the performance of his official duties.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**Part 1300 - Miscellaneous**

**§ 70-40.6-1301 Record Maintenance**

(a) Requirement. All books and records of all business transactions necessary to determine the gross revenue tax and other taxes imposed by the Commonwealth government are to be maintained within the Commonwealth at the central office of the business operation and shall be made available for examination not later than ten days beginning with the date when the request is received. A full and accurate record of all business transactions necessary to determine the annual business gross revenue tax and other taxes must be maintained for a minimum of three years after the date of such transaction.

(b) Bar Tax. Every establishment licensed to serve alcoholic beverages and subject to the tax imposed under 4 CMC § 1501 must record separately the sales of all beverages.

(c) Hotel Occupancy Tax. Every person subject to tax under 4 CMC § 1502 must record separately all revenues earned from transient occupants of hotels, lodging, and other facilities.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The Commission inserted a comma after the word “lodging” in subsection (c) pursuant to 1 CMC § 3806(g).

**§ 70-40.6-1305 Withholding Record**

All books and payroll records necessary to determine an employee’s wages and salaries and respective withholding taxes imposed by the Commonwealth government are to be maintained in the senatorial district within the Commonwealth where the business operation is conducted and shall be made available for examination not later than ten days beginning with the date when the request is received.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1310 Permanent Change of Residence Outside the CNMI**

Every individual in both private and public employment who intends to permanently change his residence during the taxable year to a country outside the Commonwealth of the Northern Mariana Islands, including the United States, its territories and possessions, and depart the Commonwealth, must secure a tax clearance from the Division of Revenue and Taxation, that all fees, taxes, penalty, and interest due and owing the Commonwealth government have been paid in full. Upon written request for a tax clearance, a determination shall be made within twenty-one days from the date of receipt of the request for clearance or the individual shall be deemed cleared.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1315 Payments**

(a) In General. All taxes, fees, and charges, except where other provisions of the regulations in this subchapter govern, shall immediately become due and must be paid in cash, or by U.S. postal money order, or check drawn at a bank in the Northern Mariana Islands, or a bank in any of the states in the United States of America made payable to the “CNMI Treasurer.” The Division of Revenue and Taxation shall have the right to reject any or all personal checks and demand payment in the form of cash, U.S. postal money order, or certified checks.

(b) **Made Through Bank.** If tax payments are made directly or through a bank account of the CNMI government, the taxpayer is required to furnish to the Division of Revenue and Taxation within five working days of the payment a copy of the payment transaction indicating the type of tax, period to which it relates, amount of payment, taxpayer name, and taxpayer identification number.

(c) **Dishonored Checks.** Any check returned by the bank due to insufficient funds or dishonored for any other reason must be replaced by either cash, U.S. postal money order, or certified check. Any tax, fee, or charge paid by a check and returned by the bank due to insufficient funds or dishonored for other reasons is construed to have not been paid when due and the payor shall be assessed and collected penalty and interest, in addition to all charges arising as result of the check being returned, including those charges pursuant to 7 CMC § 2242.

(d) **Withholding Payments.** Withholding returns filed without payment shall not be considered timely filed even though it is sent in the mail 4 CMC § 1804(b)(1).

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (a), the Commission moved the period after “Treasurer” inside of the closing quotation mark.

**§ 70-40.6-1320            Disclosure of Information**

The Division of Revenue and Taxation of the Commonwealth of the Northern Mariana Islands shall maintain all records and documents associated with the administration and enforcement of the tax laws and related regulations. Except as otherwise authorized by law, only authorized employees of the Division of Revenue and Taxation shall have access to these records and documents. Employees of the Division of Revenue and Taxation are prohibited from making any unauthorized disclosure to any person regarding another person’s records, tax returns, and return information maintained pursuant to law and these and other related regulations.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1325            Tax Forms; Preparation; Signatures**

(a) **In General.** Pursuant to 4 CMC § 1806, the Secretary shall prescribe the forms of all returns required to be furnished under the provisions of 4 CMC, division 1. All information required by the form of any return must be included in the return by the person responsible for making the return.

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(b) **Signature.** All returns must be signed by a natural person. No return shall be complete unless and until it is signed by the taxpayer. Except as provided in subsection (d), tax returns shall be signed by the following:

- (1) The return of an individual shall be signed by the individual;
- (2) The return of a corporation shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act;
- (3) The return of a partnership shall be signed by any one of the partners; and
- (4) The return of other entities shall be signed by a natural person as specified by the NMTIT.

(c) **Returns Prepared by Tax Preparer.** Any CNMI tax return preparer as defined by § 7701(a)(36) of the NMTIT who prepares a return for a taxpayer, must sign the return as the tax return preparer. In addition to signing the return as the tax return preparer, the tax return preparer must provide therein the following information:

- (1) The date the tax return preparer signed the return;
- (2) The firm name and address by which the tax return preparer is employed;
- (3) The tax return preparer's employer identification number;
- (4) The tax return preparer's social security number.

(d) **Representative Signature.** A person other than the taxpayer may sign a taxpayer's return on behalf of the taxpayer only as provided in (d)(1) and (d)(2) below. In all other instances, a taxpayer must sign his or her return.

(1) **Joint Returns.** A tax return of a married couple filing jointly may be signed by one spouse on behalf of the other if:

- (i) The couple are filing a joint return as allowed by law;
- (ii) The non-signing spouse is physically unable by reason of disease or injury to sign the return;
- (iii) The signing spouse must have the oral consent of the incapacitated spouse;
- (iv) The signing spouse must sign the incapacitated spouse's name to the return in the proper space followed by the words "By (Signing Spouse Name) Husband/ Wife";
- (v) The signing spouse must sign his/her own name in the proper space;
- (vi) The signing spouse must attach a statement to the return with the following information:

(A) The name of the return being filed (e.g., wage and salary tax return, earnings tax return, gross revenue tax return);

(B) The taxable year or period;

(C) The reason for the inability of the spouse who is incapacitated to sign the return;

(D) That the incapacitated spouse consented to the signing of the return. An example of such a statement is as follows:

"I, taxpayer John Q. Public, am filing a joint gross revenue tax return with my wife, Suzie Q. Public for the quarter ended March 31, 1995. Because my wife is unable to sign this return due to her having two broken arms, I am signing this return on her behalf. My wife, Suzie Q. Public, has authorized me to sign her name to this return."

(2) **All Other Returns.** In all instances other than that specified in (d)(1) above, a representative may sign a taxpayer's tax return on the taxpayer's behalf if:

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- (i) The taxpayer executes a power of attorney which specifically authorizes the agent to make, execute, or file the return. A form 2848CM is sufficient as a power of attorney provided the taxpayer specifies within the form 2848CM that he is specifically authorizing his representative to make, execute, or file his return; and
- (ii) The taxpayer submits a letter to the Division of Revenue and Taxation requesting permission to have his representative sign his return. The taxpayer must indicate within the letter the reason why he is unable to sign the return. The request will be granted only if the taxpayer has provided good cause for allowing his representative to sign his return. Provided, however, that permission from the Division of Revenue and Taxation is not required under the following circumstances:
  - (A) If the taxpayer is unable by reason of disease or injury to sign the return; or
  - (B) If the taxpayer is unable to sign the return because he is absent from the CNMI for a continuous period of at least 60 days prior to the date for filing the return.
- (3) The provisions of (d)(2) apply in all instances other than that specified in (d)(1) above. Accordingly, a return may be signed by an accountant, attorney, spouse for separately filed returns, and all other instances only as authorized by (d)(2) above.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 18 Com. Reg. 14076 (Apr. 15, 1996); Amdts Proposed 18 Com. Reg. 14002 (Feb. 15, 1996); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The final paragraph of subsection (d) was not designated. The Commission designated it subsection (d)(3).

The notice of adoption for the 1995 regulations changed the proposed language in subsections (b), (d) and (d)(1)(i). The 1996 amendments deleted and replaced subsection (b) in its entirety.

In subsection (e)(1)(ii), the Commission inserted the closing quotation marks.

### **§ 70-40.6-1330 Penalties**

- (a) NMTIT. For purposes of taxes, charges, and fees imposed under chapter 7 of 4 CMC, the penalty and interest provisions applicable thereto are those provided under the NMTIT.
- (b) Non-NMTIT. The provisions of (b)(2) and (b)(3) apply to applicable failures and underpayments under, but not limited to the provisions in (b)(1)
  - (1) Applicable provisions:
    - (i) Wage and salary tax imposed by 4 CMC§ 1201;
    - (ii) Earnings tax imposed by 4 CMC § 1202;
    - (iii) Gross revenue tax imposed under chapter 3, division 1, 4 CMC;
    - (iv) Excise and other taxes imposed by article 1, chapter 4, division 1 of 4 CMC;
    - (v) User fee imposed by article 2, chapter 4, division 1 of 4 CMC;
    - (vi) Bar tax imposed by 4 CMC § 1501;
    - (vii) Hotel occupancy tax imposed by 4 CMC § 1502;
    - (viii) Poker machine license fees, pachinko slot machine license fees, and amusement machine license fees imposed under chapter 5, division 1, 4 CMC;

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- (ix) Gaming machine jackpot tax imposed under chapter 5, division 1, 4 CMC; and
- (x) Additional gross revenue tax imposed under 4 CMC § 1706.
- (2) Applicable penalties include, but are not limited to the following:
  - (i) 4 CMC § 1815. Monthly penalty upon taxes;
  - (ii) 4 CMC § 1816. Failure to file return on time; and
  - (iii) 4 CMC § 1817. Interest.
- (3) Additional penalties:
  - (i) Corrupt or forcible interference; forcible rescue of seized property:
    - (A) Corrupt or forcible interference. Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the Division of Revenue and Taxation acting in an official capacity under division 1, 4 CMC, shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than \$3,000, or imprisoned not more than 1 year or both. The term “threats of force,” as used in this subsection, means threats of bodily harm to the officer or employee of the Division of Revenue and Taxation or to a member of his or her family.
    - (B) Forcible rescue of seized property. Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under division 1, 4 CMC, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than \$500, or not more than double the value of the property so rescued whichever is greater, or be imprisoned not more than 2 years.
- (c) Process in Imposing. For purposes of the penalties imposed under 4 CMC § 1815 and 4 CMC § 1816, the penalties shall be imposed at the time the tax was due unless the taxpayer’s failure to timely file or timely pay is due to reasonable cause as that term is defined under the NMTIT. If the taxpayer’s failure is due to reasonable cause as that term is defined under the NMTIT, the penalty imposed under 4 CMC § 1815 and 4 CMC § 1816 shall be imposed at the time the tax was paid or upon notice and demand for payment, as applicable. The taxpayer shall have the burden of establishing that its failure to timely file or to timely pay, as applicable, was due to reasonable cause.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: In subsection (b)(3)(i)(A), the Commission moved the comma after “force” inside of the closing quotation mark.

### **Part 1400 - Rules and Regulations for the Operation of Poker Machines**

Part Authority: 1 CMC § 2553; 1 CMC § 2557; 4 CMC § 1507.

Part History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Amdts Emergency and Proposed 24 Com. Reg. 19858 (Dec. 27, 2002) (effective for 120 days from Dec. 2, 2002); Amdts Emergency and Proposed 24 Com. Reg. 19831 (Nov. 27, 2002) (effective for 120 days from Nov. 27, 2002); Amdts Adopted 18 Com. Reg. 14031 (Feb. 15, 1996); Amdts Emergency and Proposed 17 Com. Reg. 13850 (Dec. 15, 1995)

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(effective for 120 days from Nov. 27, 1995); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995); Adopted 10 Com. Reg. 5714 (Oct. 15, 1988); Proposed 10 Com. Reg. 5700 (Sept. 15, 1988); Proposed 8 Com. Reg. 4701 (Oct. 22, 1986); Proposed 8 Com. Reg. 4192 (Jan. 17, 1986).

Commission Comment: 4 CMC §§ 1503-1510 govern the licensing and use of amusement machines in the Commonwealth, including poker machines. 4 CMC § 1507 directs the Secretary of Finance to promulgate rules and regulations regarding amusement machines.

In January 1986, the Department of Finance proposed the first “Poker Machine Disclosure Regulations.” See 8 Com. Reg. 4192 (Jan. 17, 1986). A notice of adoption for the January 1986 regulations was never published.

In October 1986, the Department of Finance proposed to add a new § 2.1504(a)(2) to Revenue and Taxation Regulations No. 8301, entitled “Poker Machine Regulations,” to administer and enforce PL 5-3, the “Poker Machine Act of 1986.” The Poker Machine Regulations were promulgated as an amendment to Revenue and Taxation Regulations No. 8301 § 2.1504(a)(2) in October 1988.

The 1995 Revenue and Taxation Regulations No. 2200 included revised “Rules and Regulations for the Operation of Poker Machines,” as part XV § 2300, codified at part 1400. The 2003 amendments repealed and reenacted part 1400 in its entirety.

### **§ 70-40.6-1401 Definitions**

For purposes of this part, the following definitions apply:

(a) “Beneficial interest” in an owner or organization means an interest (other than solely as a creditor) held by a person directly or indirectly:

- (1) That entitles such person to control, directly or indirectly, such organization; or
- (2) Which permits a person to share in any income or profit earned from a licensed poker machine; or
- (3) Which constitutes more than five percent of the shares of voting stock or other voting securities which control or regulate the operation of the organization; or
- (4) That entitles such person to more than five percent of the earnings and profits or distributions of such organization; or
- (5) That entitles such person to five percent or more of the assets of such corporation upon the liquidation or dissolution of such organization; or
- (6) From which such person receives or is legally entitled to receive over a period of time, interest payments, dividends, or other payments totaling more than five thousand dollars, other than payments with respect to bonds, certificates of deposits, notes or other evidences of indebtedness which are generally offered to members of the public and for which such person paid a fair market value.

(b) “Director” means the Director of Revenue and Taxation, Department of Finance.

(c) “Moral turpitude” means a crime, whether a felony or misdemeanor, that involves illegal gambling, bookmaking, embezzlement, theft, bribery, use of controlled substance, corruption, abuse of a minor, contribution to the delinquency of a minor, or any other act or conduct that could or may impair a person’s ability to perform his or her duties related to the supervision of the operation of a poker machine;

(d) “Organization” means a corporation, partnership, joint stock association, sole proprietorship, joint venture, business association, cooperative association, professional corporation, or other entity existing for any purpose.

(e) “Person” includes an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, organization, or any other person acting in a fiduciary or representative capacity, or any combination of individuals. “Person” includes any department, commission, agency, or instrumentality of the Commonwealth, including any municipality or political subdivision and any agency or instrumentality thereof.

(f) “Secretary” or “Secretary of Finance” means the Secretary of the Department of Finance or his designee. The designee shall be the Director of Revenue and Taxation unless otherwise specified.

(g) “Skimming”: the skimming of poker machine proceeds is the intentional exclusion, or the taking of any action in an attempt to exclude any money, proceeds or their value from the deposit, counting, collection, or computation of the gross revenue or net proceeds of the operation of a poker machine.

(h) “Software” means the programs or data used to control the machine.

(i) “Token” means a piece of metal or composite material approved by the Department of Finance for use in the operation of poker machines which represents a specific monetary value or a U.S. twenty-five cent piece, i.e., a quarter, as the context requires.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of subsection (a). The 2003 amendments added new subsections (b) and (f) and re-designated the remaining subsections accordingly.

### **§ 70-40.6-1402      Poker Machines; Applications**

(a) All applications for a poker machine license must be submitted by the owner of the machine on the form prescribed by the Department of Finance and must contain --

(1) The statutorily required license fee attached to the application. Such license fee will be fully refunded in the event the application is denied for any reason;

(2) The make, model, year, brand name, and serial number (or manufacturer identification number if serial number is not applicable) of each machine;

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- (3) The date each poker machine was imported into the CNMI and a copy of all required documents establishing that all excise taxes have been paid;
- (4) The intended location (by building, village, and island) of each machine;
- (5) A color photograph of each machine while in operation with its screen illuminated;
- (6) The name, address, telephone number, and signature of the owner of the machine and of any person or organization holding a beneficial interest in the owner of the machine. In lieu of providing the signature of each person or organization holding a beneficial interest in the owner of the machine, a primary officer, person in control of such person or organization, or designated representative may affix its signature for the person or organization holding a beneficial interest in the owner of the machine.
- (7) A photocopy of the applicant's identification or passport, and a copy of the applicant's criminal history issued by the proper authorities. If the applicant is a corporation, all officers of the corporation shall submit a copy of their passport and a copy of their criminal history as specified above;
- (8) A copy of the corporation's by-laws, if applicable;
- (9) The most recent financial statement;
- (10) A memorandum explaining the applicant's business experience, outlining the applicant's ability to operate a poker establishment;
- (11) Social Security number and tax identification number of the owner;
- (12) A declaration, made under penalty of perjury by the owner, that the owner has filed all tax returns and has paid all taxes, or has entered into an installment agreement with the Division of Revenue and Taxation;
- (13) Proof of registration with the U.S. Attorney's Office pursuant to 15 USC § 1173.
- (14) All other information required by the Department of Finance;
- (15) A statement under penalty of perjury that all information related to the application is true and correct.

(b) All applications must be submitted by the owner of the machine to the Director, Division of Revenue and Taxation, Department of Finance.

(c) Upon written request by an applicant and written approval by the Director, the Director may authorize an applicant to omit certain information from an application if the information is not available to the applicant, or if the information was previously submitted, provided such information continues to be current, and provided such information is provided to the Director on or before the date prescribed by the Director.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language for subsection (a)(6), moved former subsection (c) to § 70-40.6-1404(b) and redesignated former subsection (d) accordingly. The 2003 amendments added new subsection (a)(13) and amended subsections (a)(1), (a)(7), (a)(10), (a)(12), (b) and (c).

The Commission inserted a comma after the word “village” in subsection (a)(4) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of “Social Security” in subsection (a)(11) pursuant to 1 CMC § 3806(f).

**§ 70-40.6-1404          Renewal of Licenses**

(a)     Poker machine licenses must be renewed annually on or before the expiration date of the license. Poker machines may continue in operation during the review period provided that the application is received before the expiration date and the statutorily required amount of license fee is paid. If the license application is denied, the poker machines may not be operated.

(b)     The application procedure for renewal of a poker machine license is pursuant to § 70-40.6-1402 of this subchapter as specified therein. The Department of Finance may prescribe a different application form for renewal of a poker machine license which may require the same, more, or less information than that required in an initial application.

(c)     Except as indicated otherwise, the rules and procedures pertaining to the renewal of a poker machine license shall be the same as those pertaining to the original license issued.

Modified, 1 CMC § 3806(c), (d), (e).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of subsection (b). The 2003 amendments amended subsection (a).

**§ 70-40.6-1406          Issuance of Poker Machine Licenses**

(a)     Issuance of License. A license may only be issued upon payment of the required license fee and submission of a completed application form and all supporting documents.

(b)     Upon receipt of a completed application for a poker machine license, the Director will issue licenses pursuant to the following procedures:

(1)     The Department of Finance may visit the premises designated in the application and certify that the information contained in the application is true and correct and that the machines and applicants are in full compliance with this subchapter;

(2)     The Department of Finance will review all applications and supporting documents to ensure full compliance with this subchapter;

(3)     If the application meets all requirements, a license will be issued within 21 days from the date the application is received. Said license shall be in writing and must be posted on the premises where the machine is located in such a manner as will be visible to the public.

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- (4) An application for initial license may be denied as specified under § 70-40.6-1444 of this subchapter.
- (5) Before a license is issued, all charges, taxes, and fees relating to poker machines must be fully paid, including applicable penalty and interest charges.
- (6) All poker machines imported into the Commonwealth for commercial use must be properly identified pursuant to § 70-40.6-1420(a) of this subchapter. Poker machines not properly identified shall not be issued a license.
- (7) A license shall be valid for a period of one year from the date specified in the license.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of subsection (b)(3). The 2003 amendments added new subsection (b)(7) and amended subsections (a), (b) and (b)(3).

The Commission inserted a comma after the word “taxes” in subsection (b)(5) pursuant to 1 CMC § 3806(g).

### **§ 70-40.6-1408      Transfer of Tag**

- (a) No poker machine license tag may be transferred from a defective or malfunctioning machine to an operative machine without the written approval of the Director.
- (b) A retagging fee shall apply pursuant to § 70-40.6-1410, and an amended license shall be issued indicating the new serial number and tag number.
- (c) No additional license fee be required to be paid for the replacement machine, however, the replacement machine license shall expire on the expiration date of the defective or malfunctioning machine that was replaced.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments deleted former § 2300.5, entitled “Replacement of Machines,” and replaced it with this section. Subsection (a) was moved from former § 2300.10(a). See 17 Com. Reg. at 13225 (Apr. 15, 1995).

The 2003 amendments also deleted former § 2300.6, entitled “Quota Transferable.” See 17 Com. Reg. at 13224 (Apr. 15, 1995).

**§ 70-40.6-1410      Tags**

(a) Licensed poker machines must bear a numbered tag on the top right-hand corner of the machine's cabinet affixed by the Department of Finance. This tag may be removed only by the Department of Finance. A second identical tag shall be placed inside the poker machine. No poker machine may be operated unless it has a valid tag affixed to its cabinet. No tag can be transferred from one machine to another except in accordance with § 70-40.6-1408.

(b) The poker machine owner shall report to the Department of Finance whenever a tag is lost or defaced, and that lost or defaced tag will be promptly replaced by the Department of Finance after the Department verifies the tag number from the identifying tag inside the machine. A tag replacement fee of \$25 shall be paid to the Department of Finance to retag each machine.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments moved this section from former § 2300.9 and amended subsections (a) and (b).

**§ 70-40.6-1412      Jackpot Payout Level**

(a) Each machine shall be set to stop and payout the jackpot upon reaching \$1,000 worth of credits from a single winning occurrence, or progressive occurrence when the player elects to terminate further progressive betting. Upon termination of further progressive betting, the machine must block coins-in or further play of the machine until the operator has reset the machine. The jackpot tax shall be collected at this time.

(b) Single Occurrence.

(1) The gaming machine jackpot tax is not applicable to jackpot winnings in an amount less than \$1,000 in a single occurrence.

(2) Example: Mr. X wins \$500 at 10:00 a.m. and then another \$500 during another occurrence at 11:00 a.m. for a cumulative total of \$1,000. In this case, none of Mr. X's \$1,000 winnings are subject to the jackpot tax.

(c) Progressive Occurrence.

(1) The jackpot payout is applicable to jackpot winnings in the amount of \$1,000 or more from a progressive occurrence, such as winnings of \$1,000 or more resulting from the doubling of a wager.

(2) Example: Mr. X earns \$300 from a machine but chooses to continue playing on the machine by doubling his wager and ultimately wins \$1,000. The machine shall payout this jackpot and shall not accept any additional coins until the operator has reset the machine. All applicable taxes will be collected at this time.

(d) The operator shall maintain a record of the jackpot wins, including the machine's serial number and the amount won on that particular machine, in accordance with the accounting requirements in § 70-40.6-1424(e).

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002).

Commission Comment: The original paragraphs of subsections (b) and (c) were not designated. The Commission designated subsections (b)(1) and (b)(2) and (c)(1) and (c)(2).

### **§ 70-40.6-1414          Electronic Security and Accounting System**

Each poker machine licensed in the CNMI shall contain an electronic security and accounting system acceptable to the Director. Such system shall:

- (a) Detect any defects or malfunctioning in such machine;
- (b) Ensure the integrity of the poker machine game being played;
- (c) Be able to accurately record the gross revenue earned by the machine; and
- (d) Monitor and calculate the play of each machine to secure full and complete payment of all applicable CNMI taxes.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Amdts Adopted 18 Com. Reg. 14031 (Feb. 15, 1996); Amdts Emergency and Proposed 17 Com. Reg. 13850 (Dec. 15, 1995) (effective for 120 days from Nov. 27, 1995); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments added new subsections (a), (b) and (c) to formerly reserved § 2300.7. See 17 Com. Reg. 13854 (Dec. 15, 1995). The 2003 amendments deleted former subsections (b) and (c) and re-designated and amended former subsection (a) (now the entire section).

### **§ 70-40.6-1416          Repair and Maintenance Record Keeping**

No PC board or motherboard may be worked on or removed from a poker machine without filling out the required maintenance action form. This form shall be retained by the operator for a period of six years. A copy shall be provided to the Division of Revenue and Taxation Enforcement Branch on a monthly basis. The form shall contain the following information:

- (a) Date and time of opening the machine;

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- (b) Company name and location;
- (c) Machine ID, serial number and tag number;
- (d) Description of the problem;
- (e) Full set of meter reading before the board is worked on. If the problem is a machine reset due to board failure, list the meter readings stated on the most recent collection;
- (f) Action taken and parts replaced;
- (g) If the machine action required is a board reset, indicate the starting readings to begin the next accounting period;
- (h) Signature of the technician and manager.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002).

Commission Comment: In subsection (f), the Commission changed “take” to “taken” to correct a manifest error.

### § 70-40.6-1418

[Reserved.]

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Amdts Adopted 18 Com. Reg. 14031 (Feb. 15, 1996); Amdts Emergency and Proposed 17 Com. Reg. 13850 (Dec. 15, 1995) (effective for 120 days from Nov. 27, 1995); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 1996 amendments added a new section entitled “Cost for Electronic Security and Accounting System,” to formerly reserved § 2300.8. See 17 Com. Reg. 13855 (Dec. 15, 1995). The 2003 amendments deleted this section and re-designated the reserved section as § 2300.10, codified at 70-40.6-1418.

### § 70-40.6-1420 Identification of Machines

All poker machines must bear a visible, engraved identification plate which contains the following information:

- (a) Name of the manufacturer;
- (b) Serial number;

- (c) Model number;
- (d) Manufacturer's commercial name.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1422 Security Requirements**

Except as waived in writing by the Director for cause, all new poker machines licensed after the effective date of the regulations in this subchapter must comply with the following security requirements in order to be issued a poker machine license:

- (a) The door may not be opened without a key;
- (b) The power switch must be located inside the cabinet;
- (c) The processor board must be enclosed in a case as provided by the manufacturer;
- (d) Any errors or malfunctions must be displayed by error codes on the machine. The errors must be cleared by an attendant;
- (e) The mechanism to accept coins must be capable of detecting a valid coin and rejecting all others. The mechanism must signal an error if any invalid condition is detected;
- (f) The machine must resist forced or illegal entry and must retain evidence of any entry until properly cleared or until a new play is initiated;
- (g) Any malfunction of the machine must void all pays and plays for that game and must be clearly marked on the machine;
- (h) Each machine must have a system of lights or sound to notify the operator of a machine door open, hopper empty, printer problems, and call button (customer service);
- (i) Each machine must indicate that a coin has been accepted. Manual payouts must have a system to call the operator (lights or sound) and must be able to block coins-in until the operator has reset the machine;
- (j) Electronic meters must be preserved for a minimum of 5 years in case of power off condition. A machine must be able to complete its cycle and complete all pays owed to the player in the event of a power interruption, once the power has been restored to its proper level;

(k) Each machine must have the motherboard compartment locked. Any entry or opening of the compartment shall be recorded on a maintenance action form in accordance with § 70-40.6-1416.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of the opening paragraph. The 2003 amendments amended the opening paragraph and subsections (b), (c) and (k).

### **§ 70-40.6-1424          Accounting Requirements**

Except as waived in writing by the Director for cause, all poker machines licensed after the effective date of the regulations in this subchapter must comply with the following accounting requirements:

(a) All owners of poker machines must place a meter inside each poker machine for recording the number of coins inserted into the machine.

(b) Such meter is to be read each time the machine is opened for fills and withdrawals. Each reading must be kept as a permanent accounting record of all poker machine businesses.

(c) Each machine must have the following meters:

(1) Electronically stored meters that can be read by the attendant without opening the machine door;

(2) Electronically stored meters of at least 6 digits in length, that are stored in memory and register token/ coin-in, token/coin-out or credits paid, and token/coin to drop.

(d) An entry must be made each time the door to the machine in accordance with § 70-40.6-1416.\* Such documentation must be kept inside the machine at all times.

\*So in original.

(e) The operator shall keep a record of the daily activity of each machine, including amount of all payouts and the machine tag number, on a form prescribed by the Director of Revenue and Taxation. Failure to maintain such record on a daily basis shall subject the operator to a civil penalty in the amount of \$100 per failure. This penalty will be imposed after hearing in accordance with § 70-40.6-1450. Additionally, the business license may be revoked in accordance with 4 CMC § 1807.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations added a new opening paragraph. The 2003 amendments amended the opening paragraph and subsection (d) and added new subsection (e).

**§ 70-40.6-1426      Safety Requirements**

Except as waived in writing by the Director for cause, all poker machines licensed after the effective date of the regulations in this subchapter must comply with the following safety requirements:

(a)      Electrical Immunity Requirements

- (1)      Each machine must be totally immune to human electrostatic discharge (up to 20,000 volts DC).
- (2)      Each machine must completely recover from 20,000-27,000 volt DC discharges, without any data or video corruption.

(b)      Other Safety Requirements

- (1)      Each machine shall be manufactured in a way as not to present any electrical, mechanical, or fire hazard.
- (2)      Each machine must comply with all electrical standards, industrial codes, and safety standards set prescribed by law.
- (3)      Each machine must be properly fused or protected by circuit breakers.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations added a new opening paragraph. The 2003 amendments amended the opening paragraph. The Commission inserted a comma after the word “mechanical” in subsection (b)(1) pursuant to 1 CMC § 3806(g).

**§ 70-40.6-1428      Unlicensed Machines**

(a)      Any poker machine which is not validly licensed and tagged shall be removed from within the game room and kept within a separate locked room. No customers shall be permitted to enter the separate locked room.

(b)      In addition to any other remedy provided by law or the regulations in this subchapter, violation of this provision may subject the machine to seizure and in accordance with 1 CMC § 2557 a civil penalty in the amount of two times the required

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annual license fee. This penalty shall be paid by the owner of the machine after a hearing as required by § 70-40.6-1450 of this subchapter.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments added this section to formerly reserved § 2300.15.

### **§ 70-40.6-1430 Movement of Machines**

(a) Before any poker machine can be relocated from one building or business location to another, the licensee of the machine shall first submit a written request to the Director on the form prescribed by the Department of Finance. The request must be signed by the person who is the licensee of the poker machine in question under penalty of perjury. The request must include the following information:

- (1) Present location of the poker machine to be moved;
- (2) The intended location of the poker machine to be moved;
- (3) The serial number and the CNMI tag number of such machine.
- (4) All other information requested by the Department of Finance.

(b) The Director must act on the relocation request within 5 working days after receipt of such request. If any poker machine is found to have been moved without prior written approval from the Director, the license for that machine may be suspended for no less than 30 days and not more than 180 days.

(c) The licensee shall post a photo-copy of the license of the transferred machine(s) at the new location. A copy of the form prescribed for the transfer shall be posted at both old and new location in such a manner as will be visible to the public and available for inspection by Revenue and Taxation.

(d) Only machines listed in the license, as updated by the posted form prescribed by the Director for machines that have been relocated, shall operate in the particular named location.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments added new subsections (c) and (d) and amended subsections (a) and (b).

### **§ 70-40.6-1432 Notification of Machine Location**

Upon application for a poker machine license pursuant to the rules and regulations in this subchapter, each applicant shall give written notice to the Department of Finance of the location and a sketch of the location, by building, village and island where the machine will be operated.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1434          Separate Room, Minors, and Prohibition of Alcohol**

(a)     Separate Room. Poker machines operated in an establishment at which any other business is carried on shall be segregated from the other business area(s) of the establishment by a wall or barrier from floor to ceiling, creating a completely separate room. Poker machines may be operated in a segregated room which contains poker machines to the extent allowed by law. Poker machines may be operated in hotel or motel lobbies without a wall or barrier.

(b)     Minors. Only persons 18 years of age or older shall be allowed entry into the poker machine room. Every person who is a licensee is responsible for ensuring that only those authorized by law are permitted to enter the segregated room and are permitted to operate a poker machine. A sign must be visibly displayed on the outside door of the separate room or the entrance door of the establishment if no separate room is required which reads “No Person Under 18 Years Old Allowed.”

(c)     Prohibition of Alcohol. As provided by 4 CMC § 1503(d), no alcoholic beverages or other intoxicants shall be allowed in the separate room specified in subsection (a).

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of subsections (b) and (c). The 2003 amendments amended subsections (b) and (c).

In subsection (b), the Commission moved the final period inside of the closing quotation mark.

**§ 70-40.6-1436          Location**

Poker machines may be operated only in locations authorized by law.

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995)

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(superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1438 Inspection of Machines**

The Secretary of Finance or his designee has an absolute right at all times to open, inspect, and test any poker machine to determine compliance with the rules and regulations in this subchapter and/or applicable law.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1440 Hours of Operation**

The operation of poker machines in the Commonwealth shall be limited to the hours between 10:00 a.m. to 10:00 p.m. Provided, however that this limitation shall not apply to poker machines which are operated by and on the premises of a licensed casino, nor will this limitation apply to establishments that have a uniformed security officer, equipped with a functioning two-way radio or a cellular telephone, on duty between the hours of 10:00 p.m. until 10:00 a.m. The uniformed security officer shall be an individual separate from the cashier. Within 90 days from the date of this amendment, all licensees shall develop and implement a written safety and security plan providing for the continual use of electronic surveillance recording equipment. Such plan shall be provided to the Department of Finance, Division of Revenue and Taxation and shall meet, at the minimum, standards as established by the Division of Revenue and Taxation. Provided, however, that this limitation shall not apply to poker machines which are operated by and on the premises of a licensed casino.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Amdts Emergency and Proposed 24 Com. Reg. 19858 (Dec. 27, 2002) (effective for 120 days from Dec. 2, 2002); Amdts Emergency and Proposed 24 Com. Reg. 19831 (Nov. 27, 2002) (effective for 120 days from Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The November and December 2002 emergency and proposed amendments added a new section, entitled "Hours of Operation," in formerly reserved § 2300.21, codified in this section .

The Commission changed "90 day" to "90 days" to correct a manifest error.

### **§ 70-40.6-1442 Other Reporting Requirements**

Persons who are the licensees of poker machines must strictly adhere to all reporting requirements under the tax laws of the Commonwealth of the Northern Mariana Islands,

including the filing of information returns and payments of taxes. Failure to comply will be grounds for suspension or revocation of an existing poker machine license or for denying an application for renewal of a poker machine license.

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

**§ 70-40.6-1444 Denial, Suspension or Revocation of a License**

The receipt of a CNMI poker machine license is a privilege not a right. However, any such license once issued is revocable only for cause.

(a) Denial or Revocation of License - Grounds. Pursuant to the procedures prescribed within this part, the Director may deny an application for a license or revoke a license issued on any one or more of the factors herein listed:

(1) The financial responsibility and security of the applicant and the business or activity in which the applicant is engaged. Consideration of this factor may include the analysis of the applicant's credit record, compliance with CNMI tax laws, status of other permits and licenses, results of a criminal background investigation, adequacy of security procedures against theft, the type of construction of the applicant's facility and whether the location is fixed and permanent, whether the applicant can provide appropriate security, and any other factor that may assist the Director in such evaluation; or

(2) The location of, and public accessibility to, the applicant's place of business or activity. Consideration of this factor may include analysis of the applicant's hours of operation, proximity to major transit routes, proximity to large employers, public parking availability, and any other factor that may assist the Director in such evaluation; or

(3) The applicant has been convicted of a felony, or criminal fraud, or gambling or a gambling-related offense, or any felony or misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense; or

(4) The applicant is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit; or

(5) The applicant is delinquent in the payment of any Commonwealth tax, duty, fee or similar charge or any other debt due the Commonwealth at any time after the application is filed but before the Department of Finance acts to grant or deny the license; or

(6) The applicant has a spouse, child, parent, parent-in-law, or spouse's child who is a person described in subsection (a)(3), (a)(4), or (a)(5) of this subsection; or

(7) The applicant has violated the Poker Machine Act or a rule or regulation adopted pursuant to the Poker Machine Act; or

(8) The applicant is not an individual, but an individual described in one or more of subsections (a)(3) - (a)(7) of this section holds a beneficial interest in the applicant; or

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(9) The applicant provided false or misleading information on the application form, or failed to provide information required as part of the application or evaluation process; or

(10) The applicant failed to cooperate or to provide any additional or supplemental information which the Director deems necessary in order to determine whether the applicant is suitable to hold a license; or

(11) The applicant operates any poker machine without a license; or

(12) The applicant fails to comply with any other factor that is or may be helpful in determining whether the applicant's experience, character, and general fitness are such that the licensing of the person to operate a poker machine will not detract from the integrity, security, honesty, or fairness of the operation of the poker machine business. An example of the type of factor considered in this regard is the analysis of the type of product currently sold or form of service currently provided or other business activity currently conducted by the applicant.

(b) Suspension. Poker machines operating in violation of law or the rules and regulations in this subchapter shall be dealt with in accordance with the applicable CNMI laws. If a poker machine is found not to be in compliance with the requirements of this subchapter, the person who is the licensee of such machine will have his license to operate poker machines suspended until compliance with this subchapter is met to the satisfaction of the Director.

(c) Revocation. In addition to the basis of denying or revoking a poker machine license set forth in subsection (a)(1) - (a)(12), a license once issued may also be revoked if the person holding such license:

(1) Operates a machine without proper documentation or provides or maintains inaccurate or false information; or

(2) Alters the software programs, pay back percentages, jackpots, meters, security and accounting system or related equipment or any other equipment that implies a modification of the conditions under which the machines were approved; or

(3) Allows minors to play a poker machine;

(4) Fails to cooperate with or provide all relevant information requested by the Department of Finance; or

(5) Accepts or exchanges a food stamp coupon, an NAP coupon or similar item for coins or tokens used to play a poker machine; or

(6) Violates any CNMI law.

(d) Seizure. A poker machine may be seized pursuant to § 70-40.6-1456 of this subchapter. If a licensed or unlicensed machine is seized, the owner and/or the person licensed to operate such machine shall be liable for the cost of transporting the machine, a reasonable storage charge of not less than \$25 per day per machine, and any labor charges incurred in the seizure and storage of such machine.

(e) The Department of Finance and the Commonwealth government shall not be liable for damages arising from the seizure and/or confiscation of machines, including

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damages occurring during transfer and storage, provided that reasonable care is used in seizure and confiscation.

(f) Suspension or Revocation of a License.

(1) Without any way limiting or restricting the ability of the Director to consider the factors listed in this section as grounds for suspension or revocation of a license issued by the Director, the Director may also suspend or revoke a license held by a licensee based upon a finding of one or more of the following:

(i) The determination by the Director of the existence of any one or any combination of factors previously listed as grounds for denial of issuance of a license under this section or the determination by the Director that the existence of any one or more factors listed in (f)(1)(ii) through (f)(1)(xiii) below directly apply to or relate to the holder of the poker machine license; or

(ii) That the beneficial interest in the ownership of the business premises has changed or the business location of the applicant has changed without approval of the Director; or

(iii) That the licensee has permitted a person under 18 years of age to play a poker machine; or

(iv) That the licensee has not prominently displayed, at the licensed location, the license issued by the Director; or

(v) That the licensee has violated any directive or instruction issued by the Director; or

(vi) That the licensee has violated any express term or condition of its license, the Poker Machine Act or this subchapter; or

(vii) That the licensee and/or its employee(s) has exhibited discourteous treatment including but not limited to abusive language toward customers, or any government agents, employees or their designees; or

(viii) That the licensee has assigned or transferred or attempted to transfer its poker machine license to another party; or

(ix) That the licensee engaged in fraud, deceit, misrepresentation, or other conduct prejudicial to public confidence in the poker machine business; or

(x) That the licensee engaged in telecommunication or printed advertising that the Director determines to have been false, deceptive, or misleading; or

(xi) That the licensee failed to establish or maintain reasonable security precautions with regard to operation of the licensed poker machines; or

(xii) That the licensee has engaged in skimming of poker machine funds; or

(xiii) That the licensee has failed to make payments when due by any poker machine to the CNMI.

(2) Notice of suspension or revocation of a license shall, if possible, be given to the licensee in writing setting forth the reasons therefore. A suspended or revoked license shall immediately be surrendered to the Director.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Amdts Adopted 18 Com. Reg. 14031 (Feb. 15, 1996); Amdts Emergency and Proposed 17 Com. Reg. 13850 (Dec. 15, 1995) (effective for 120 days from Nov. 27, 1995); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of subsection (a). The 1996 amendments amended subsection (c)(2). The 2003 amendments moved subsection (f) from former § 70-40.6-1448(b) and amended subsections (a), (a)(1), (a)(2), (a)(10), (b), (c)(2), (c)(6) and (d). The Commission inserted a comma after the word “misrepresentation” in subsection (f)(1)(ix) pursuant to 1 CMC § 3806(g).

**§ 70-40.6-1446            Continuous Disclosure of Information**

(a) Any information provided to the Director under the rules and regulations in this subchapter or on any application, filing or other instrument submitted to the Director that subsequently becomes incorrect or misleading, shall be immediately updated by the applicants or licensees providing an explanation thereof to the Director. Without limiting the foregoing, all applicants or licensees shall notify the Director immediately if any change in the ownership or beneficial interest or location of the applicant or licensee occurs.

(b) The Director may develop forms for poker machine license applications requesting all such information required by the Poker Machine Act or by the rules and regulations in this subchapter or that is deemed necessary or appropriate to evaluate the applicant’s suitability to hold a license. Such application shall be completed, executed, acknowledged, and notarized by the applicant prior to submission to the Director.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments amended subsections (a) and (b). The Commission inserted a comma after the word “acknowledged” in subsection (b) pursuant to 1 CMC § 3806(g).

**§ 70-40.6-1448            License Proceedings**

Denial of an Application of License. Whenever the Director has reason to believe that an applicant is not eligible to receive a license, he may issue a written notice of denial to the applicant. The notice shall set forth the matters of fact and law relied upon in determining that the application should be denied, and shall afford the applicant 15 days from the date of receipt of the notice to submit a written request for reconsideration to the Director wherein the applicant may set forth the basis pursuant to which the applicant believes that the denial of a license was based on either an incorrect understanding of fact or an incorrect application of the law. The Director shall promptly review the request for reconsideration and, in writing, either affirm or modify the previous denial of a license. The denial of a poker machine license by the Director is subject to judicial review and may be reversed by the court only upon a finding that the Director acted in an arbitrary and capricious manner in denying such license.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The notice of adoption for the 1995 regulations changed the proposed language of subsection (a). The 2003 amendments moved former subsection (b) to § 70-40.6-1444(f) and amended former subsection (a).

### **§ 70-40.6-1450 Hearings**

All hearings related to the rules and regulations in this part shall be conducted in accordance with the CNMI Administrative Procedure Act, 1 CMC §§ 9101, et seq.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1452 Confidentiality**

All information submitted to the Department of Finance regarding licensing of a poker machine shall be confidential and shall be disclosed only as follows:

- (a) To the license applicant; or
- (b) To the business license section of the Department of Finance only to the extent necessary to permit that agency to carry into effect its statutory business licensing provisions; or
- (c) For the purpose of carrying into effect the rules and regulations in this part, laws pertaining to poker machines, or any law imposing taxes or duties payable to the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments amended subsection (b).

### **§ 70-40.6-1454 Grounds for Seizure of a Machine**

A licensed or unlicensed machine may be seized in accordance with § 70-40.6-1456 of this subchapter for the following grounds:

- (a) The applicant is delinquent in the payment of any Commonwealth tax, duty, fee or similar charge or any other debt due the Commonwealth at any time; or
- (b) The applicant has violated the Poker Machine Act or a rule or regulations adopted pursuant to the Poker Machine Act; or
- (c) The applicant operates any poker machine without a license; or
- (d) Operates a machine without proper documentation or provides or maintains inaccurate or false information; or
- (e) Alters the software programs, pay back percentages, jackpots, meters, security and accounting system or related equipment or any other equipment that implies a modification of the conditions under which the machines were approved; or
- (f) Allows minors to play a poker machine;
- (g) Accepts or exchanges a food stamp coupon, an NAP coupon or similar item for coins or tokens used to play a poker machine; or
- (h) Violates any CNMI law.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002).

**§ 70-40.6-1456 Inspection, Warrants and Seizure**

- (a) The Division and its employees and agents, upon approval of the Director, shall have the authority, without notice and without warrant:
  - (1) To inspect and examine all premises wherein poker machines are located, or wherein any records of such activities are prepared or maintained;
  - (2) To inspect all equipment and supplies in, about, upon, or around such premises;
  - (3) To inspect, examine and audit all books, records, and documents pertaining to a licensee's operation; and
  - (4) To inspect the person, and personal effects present where poker machines are operated, of any holder of a license or registration issued pursuant to 4 CMC § 1503 while that person is present in the poker establishment.
- (b) The provisions of subsection (a) of this section shall in no way be deemed to limit the warrantless inspections beyond the circumstances specified in subsection (a)(1) through (4) if carried out in accordance with constitutional requirements.
- (c) To effectuate further the purposes of this subchapter, the Division and its employees and agents may obtain administrative warrants for the inspection and seizure

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of any property possessed, controlled, bailed or otherwise held by any applicant, licensee, registrant, intermediary company, or holding company.

(d) Issuance and execution of warrants for administrative inspection and seizure shall be in accordance with the following:

(1) Any judge of a court having jurisdiction where the inspection or seizure is to be conducted may, upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by 4 CMC § 1507 or regulations thereunder and seizures of property appropriate to such inspections. For the purposes of this section, “probable cause” means a valid public interest in the effective enforcement of the act or regulations sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a person duly designated and having knowledge of the fact alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying:

- (i) The area, premises, building, or conveyance to be inspected;
- (ii) The purpose of such inspection; and
- (iii) Where appropriate, the type of property to be inspected, if any.
- (iv) The warrant shall identify the item or types of property to be seized, if any.
- (v) The warrant shall be directed to a person authorized to execute it.
- (vi) The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof.
- (vii) It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and where appropriate, shall direct the seizure of the property specified.
- (viii) The warrant shall direct that it be served during normal business hours of the licensee.
- (ix) It shall designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave a copy of the warrant and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. The clerk of court, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall cause them to be filed with the court which issued such warrant.

(e) The Division is authorized to make administrative inspections to check for compliance by any applicant, licensee, registrant, intermediary company or holding company, and to investigate any violations thereof.

(f) This section shall not be construed to prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) With the consent of the owner, operator or agent in charge of the controlled premises;

(2) In situations presenting imminent danger to health or safety;

(3) In situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impractical to obtain a warrant or in other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking;

(4) In accordance with the provisions of this subchapter; or

(5) In all other situations where a warrant is not constitutionally required.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002).

Commission Comment: The Commission inserted a comma after the word “upon” in subsection (a)(2) pursuant to 1 CMC § 3806(g).

**§ 70-40.6-1458 Presence upon Opening of Machines**

(a) Pursuant to law, the Secretary of Finance is authorized to be present at all times when monies are withdrawn from poker machines. Accordingly, the Secretary of Finance will establish a schedule in coordination with all applicants receiving poker machines licenses, to ensure that the Secretary of Finance or his designee is present at all times when monies are withdrawn from poker machines. Except as otherwise authorized by the Secretary of Finance, no monies may be withdrawn from any poker machine unless the Secretary of Finance or his designee is present at such time. In the alternative, the Secretary of Finance may promulgate additional or supplemental rules or regulations to accomplish the objectives of this section which are to assure that the integrity of the game is protected and that there is an accurate accounting of income generated from each machine and that any and all fees and taxes due and owing to the CNMI are promptly and fully paid.

(b) In lieu of subsection (a), the Secretary or his designee may require a written report relating to all monies withdrawn from a poker machine, meter readings, payout amount, jackpot winnings and other information to be provided on a form prescribed by the Director in accordance with § 70-40.6-1424(e) of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

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History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002); Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The 2003 amendments added new subsection (b).

### **§ 70-40.6-1460 Violation of Law or Regulations**

Violation of any provision of 4 CMC division 1, chapter 5 or of the regulations in this subchapter by a licensee, his agent or employee shall be deemed contrary to the public health, safety, morals, good order and general welfare of the inhabitants of the CNMI and grounds for suspension or revocation of a license. Acceptance of a poker license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by all of the regulations of the Division of Revenue and Taxation as the same now are or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep himself informed of the content of all such regulations, and ignorance thereof will not excuse violations.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 25 Com. Reg. 20107 (Apr. 30, 2003) (repealing and reenacting part 1400); Amdts Proposed 24 Com. Reg. 19746 (Nov. 27, 2002).

## **Part 1500 - Amusement Machines**

### **§ 70-40.6-1501 Licenses**

- (a) All amusement machines, including inoperative amusement machines, in the Commonwealth must be licensed before they can be used for commercial purposes.
- (b) Licenses for the commercial operation of amusement machines must be applied for on a form prescribed by the Secretary of Finance--
  - (1) Before a new amusement machine is operated, and
  - (2) No later than December 31, of the year preceding that for which the renewal applies.
- (c) Before a license is issued, all charges and fees relating to amusement machines must be fully paid, including applicable penalty and interest charges.
- (d) An initial license issued for an amusement machine shall be effective from the date of issue until December 31, unless revoked or replaced.
- (e) Renewal licenses for amusement machines shall be effective from January 1 to December 31, unless revoked or replaced.

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- (f) All amusement machine licenses shall expire December 31. No amusement machine shall be operated after December 31 until a renewal license was applied for, paid, and issued by the Division of Revenue and Taxation.
- (g) All new and renewed license applications for amusement machines must be accompanied by a listing of machines to be licensed showing the following information:
- (1) Type of machine to be licensed;
  - (2) Serial number of the machine to be licensed;
  - (3) Location where the machine is to be used. The location must include the name of the establishment and address (municipal district number and village) of the establishment; and
  - (4) The license tag issued by Revenue and Taxation. For licenses of new machines, the word “new” must be indicated.
- (h) All amusement license fees shall become due and payable at the time the license application is submitted to the Division of Revenue and Taxation.
- (i) Once an initial license is issued, all subsequent licenses shall be renewals and subject to the full annual license fees.
- (j) The license fee may be prorated on a quarterly basis for the initial issuance of licenses for new amusement machines. The annual license fees may also be prorated for the operation of amusement machines which were not in use one year or more after they were registered with the Division of Revenue and Taxation as inoperative machines. The license fee for inoperative machines shall be the annual fee if the machines were inoperative less than one calendar year. All license fees are due and payable pursuant to subsection (h) of this section.
- (k) A separate license certificate shall be issued for each class of machine showing the serial numbers of machines licensed and the numbers of the license tags issued by the Division of Revenue and Taxation.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1505 License Tag**

- (a) Licensed amusement machines must bear a Commonwealth government license tag on the top right-hand corner of the screen or viewing window or scoreboard; or for those machines without viewing window, screen or scoreboard, the area designated by a Revenue Officer. Only licensed amusement machines may be operated commercially in the Commonwealth.
- (b) A licensed machine cannot be replaced by another machine which is not licensed.

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(c) Owners and/or operators of amusement machines are responsible to ensure that the license tags are not removed, defaced, or destroyed. Owners and/or operators are also responsible for the expenses of replacing damaged license tags.

(d) Damaged license tags shall be replaced by the Division of Revenue and Taxation. The operator of the machine shall be required to pay a \$5 retagging fee for each new license tag issued.

(e) A license tag shall not be removed from one machine to another machine. The owner or operator shall be charged \$100 for each new license tag issued for this purpose.

(f) The Division of Revenue and Taxation shall have the right to confiscate unlicensed machines and store them at a location it chooses to utilize. Confiscated machines shall remain in the custody of the Division of Revenue and Taxation until the machines are properly licensed.

(g) If an unlicensed machine is confiscated, both the owner and the operator shall be liable for the cost of transporting the machine, storage charge of \$5 per day per machine, labor cost, and other charges incurred in the transfer of the machine from the operator/owner's place of business to the storage facility of the Commonwealth government. These charges must be paid prior to the issuance of a license.

(h) The Division of Revenue and Taxation shall not be liable for damages arising from the confiscation of unlicensed machines, and including damages occurring during transfer and storage.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1510 Trademark and Serial Numbers**

Effective with the effective date of this amendment, all amusement machines imported into the Commonwealth for commercial use must have a trademark and a serial number. Amusement machines without a trademark and a serial number shall not be issued a license.

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **§ 70-40.6-1515 Relocating Amusement Machines**

(a) Before any amusement machine can be relocated from one building or business location to another, the owner of the machine must first submit a written request to the Director, Division of Revenue and Taxation. The request must be signed by the owner of the amusement machine in question under penalty of perjury. The request must include the following information:

- (1) Present location of the amusement machine to be moved;
- (2) The intended location of the amusement machine to be moved; and
- (3) The serial number and the CNMI tag number of such amusement machine.

(b) The Director, Division of Revenue and Taxation must act on the relocation request within 10 normal working days after receipt of such request. If any amusement machine is found to have been moved without prior written approval from the Director, the owner of such machine shall have his license to operate amusement machines suspended for no less than 30 days and not more than 180 days.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-1520          Revocation**

The Division of Revenue and Taxation may revoke an amusement machine license due to nonpayment of the license fees, taxes, penalty, interest, and other fees and charges due and owing the Commonwealth by the owner and/or operator, and/or for noncompliance with this subchapter.

Modified, 1 CMC § 3806(d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

#### **§ 70-40.6-1525          Liability for Charges**

All charges imposed by this part and 4 CMC § 1503 shall be the liability of any owner or lessee, or any officer, manager, or representative of any owner or lessee, of the amusement device, or any person operating or managing any business at which such amusement machine is offered for patronage.

Modified, 1 CMC § 3806(f).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

### **Part 1600 -    Cigarette Wholesaler Reporting Requirements**

#### **§ 70-40.6-1601          Definitions**

- (a) “Cigarette” has the meaning prescribed in section 2(D) of Public Law 13-15 [3 CMC § 2171(d)].
- (b) “Department” means the Department of Finance, Revenue and Taxation.

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(c) “Excise tax” means taxes imposed on cigarettes under 4 CMC § 1402(a)(16), and on “roll-your-own” tobacco under 4 CMC § 1402(a)(17), as amended.

(d) “Master Settlement Agreement” has the meaning prescribed in section 2(E) of Public Law 13-15 [3 CMC § 2171(e)].

(e) “Non-participating manufacturer” (NPM) means any tobacco product manufacturer who is not a participating manufacturer (signatory) to the tobacco Master Settlement Agreement dated November 29, 1998, referred to in subsection (d). Any manufacturer of a brand not maintained at the National Association of Attorneys General (NAAG) website: [www.naag.org](http://www.naag.org), is a nonparticipating manufacturer for purposes of that brand.

(f) “Participating manufacturer” (PM) is a signatory to the tobacco Master Settlement Agreement dated November 29, 1998, referred to in subsection (d). A list of participating manufacturers and their brands is maintained and updated at the National Association of Attorneys General (NAAG) website: [www.naag.org](http://www.naag.org).

(g) “Roll-your-own” tobacco means any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. Per subsection II(m) of the “Master Settlement Agreement,” and section 2(D) of Public Law 13-15 [3 CMC § 2171(d)], 0.09 ounces of roll-your-own tobacco constitutes one individual “cigarette” for reporting purposes. The term “cigarette” encompasses roll-your- own tobacco.

(h) “Tobacco product manufacturer” has the meaning prescribed in section 2(I) of Public Law 13-15 [3 CMC § 2171(i)].

(i) “Wholesale agent” means any person that is required to pay the excise tax on cigarettes imposed pursuant to 4 CMC § 1402(a)(16) or roll-your-own tobacco pursuant to 4 CMC § 1402(a)(17). This includes any business in possession of a class 1 wholesale agent’s license from the Department of Commerce, but also applies to anyone in the CNMI who is required to pay such tax.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

Commission Comment: The Commission codified part XIX § 2700 as part 1600 and moved part XVIII § 2600 to part 1700 to maintain consistency in the NMIAC.

In subsection (g), the Commission moved the comma after “Agreement” inside of the closing quotation mark.

### **§ 70-40.6-1605 Cigarette Wholesale Agent’s Monthly Report**

Every wholesale agent shall file with the Department, on a form to be provided by the Department, a “Monthly Report - Summary of Excise Tax Activity” showing the total monthly quantity of cigarette sticks and ounces of roll-your-own tobacco for which an excise tax was paid during the calendar month immediately preceding the month in which the report was filed. Such monthly report shall also state: the total excise tax paid; amount of excise tax refund claimed; and total excise tax due. Any wholesale agent possessing a class 1 wholesale agent’s license from the Department of Commerce shall file this report monthly regardless of whether any excise tax was paid or otherwise due for the month reported.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

**§ 70-40.6-1610 List of Participating Manufacturers**

The Department shall maintain a current list of participating manufacturers and make it available to wholesale agents upon request. Such list may also be viewed at: <http://www.naag.org/issues/tobacco>.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

Commission Comment: The Commission inserted the final period.

**§ 70-40.6-1615 Monthly Report of Participating Manufacturers**

Every wholesale agent shall report monthly to the Department on forms to be provided by the Department:

- (a) The brand names of each participating manufacturer’s cigarettes received by the wholesale agent in the CNMI;
- (b) The name, and address if known, of the participating manufacturer;
- (c) The name and address of the person from whom the participating manufacturer’s cigarettes were acquired;
- (d) The number of individual cigarettes of each brand of each participating manufacturer received by the wholesale agent during the preceding month, separately stating by brand:
  - (1) The number of individual cigarette sticks, including roll-your-own tobacco (for which .09 ounces equals one cigarette stick), received; and
  - (2) The number of ounces of roll-your-own tobacco received.

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- (e) The amount of cigarette sticks for which the wholesale agent is responsible for paying an excise tax separately stated by brand.
- (f) Supporting documentation of the number of individual cigarettes or ounces of roll-your-own tobacco of each participating manufacturer brand that the wholesale agent exported from the CNMI, or is otherwise entitled to a refund or exemption from excise tax, separately stating by brand:
- (1) The number of cigarette sticks entitled to refund or exemption;
  - (2) The amount of roll-your-own tobacco, in ounces, entitled to exemption; and
  - (3) The basis for the refund or exemption from the excise tax.
- (g) An invoice number (and if subsequently requested by the Department, a copy of each invoice) relating to the wholesale agent's:
- (1) Purchase or acquisition of any participating manufacturer's cigarettes received or sold by the wholesale agent in the CNMI; and
  - (2) Export, if any, of any participating manufacturer's cigarettes from the CNMI.
- (h) If a wholesale agent possessing a class 1 wholesale agent's license from the Department of Commerce did not purchase, acquire or export any participating manufacturer cigarettes within the month, that wholesale agent shall so certify on a form to be provided by the Department.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

### **§ 70-40.6-1620 Monthly Report of Non-participating Manufacturers**

Every wholesale agent shall report monthly to the Department on forms to be provided by the Department:

- (a) The brand names of each non-participating manufacturer's cigarettes received by the wholesale agent in the CNMI;
- (b) The name, and address if known, of the nonparticipating manufacturer of each brand of cigarette identified by the wholesale agent;
- (c) The name and address of the person from whom the non-participating manufacturer cigarettes were acquired;
- (d) The number of individual cigarettes of each brand of each non-participating manufacturer received by the wholesale agent during the preceding month, separately stating:
  - (1) The number of individual cigarette sticks; and
  - (2) The number of ounces of roll-your-own tobacco received.

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- (e) The amount of cigarette sticks for which the wholesale agent is responsible for paying an excise tax separately stated by brand.
- (f) Supporting documentation of the number of individual cigarettes or ounces of roll-your-own tobacco of each non-participating manufacturer brand that the wholesale agent exported from the CNMI, or is otherwise entitled to a refund or exemption from excise tax, separately stating by brand:
- (1) The number of cigarette sticks entitled to exemption or refund;
  - (2) The amount of roll-your-own tobacco, in ounces, entitled to exemption; and
  - (3) The basis for the refund or exemption from the excise tax.
- (g) A copy of each invoice relating to the wholesale agent's:
- (1) Purchase or acquisition of any non-participating manufacturer's cigarettes received or sold by the tobacco distributor in the CNMI; and
  - (2) Export, if any, of any non-participating manufacturer cigarettes from the CNMI.
- (h) If a wholesale agent possessing a class 1 wholesale agent's license from the Department of Commerce did not purchase, acquire or export any non-participating manufacturer cigarettes within the month, that wholesale agent shall so certify on a form to be provided by the Department.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

### **§ 70-40.6-1625 When Reports Must Be Filed**

A wholesale agent shall file the reports required under §§ 70-40.6-1605, 70-40.6-1615, and 70-40.6-1620 with the Department by the 30th day following the last day of the month for which the report is made. Reports for cigarettes sold in the CNMI after January 1, 2003, and before the effective date of the regulations in this part are due 60 days after the effective date of these regulations.

Modified, 1 CMC § 3806(c), (d).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

### **§ 70-40.6-1630 Records to Be Maintained**

A wholesale agent shall maintain all records relating to or reflecting its purchase and sale of participating and non-participating manufacturers' cigarettes after January 1, 2003, for a period of years after the date of sale. The wholesale agent shall make records available to the Department upon request by the Department.

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History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

### **§ 70-40.6-1635 Penalties for Non-compliance**

Pursuant to 4 CMC § 5611(g), the Department may revoke the business license of any wholesale agent who fails to comply with the regulations in this part, based upon the severity of the violations.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 26 Com. Reg. 22193 (Mar. 23, 2004); Amdts Emergency and Proposed 25 Com. Reg. 21452 (Nov. 17, 2003) (effective for 120 days from December 1, 2003).

### **Part 1700 - Miscellaneous Provisions**

#### **§ 70-40.6-1701 Severability**

If any provision of the regulations in this subchapter shall be held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 17 Com. Reg. 13539 (June 15, 1995) (superseding all rules and regulations issued prior to adoption); Proposed 17 Com. Reg. 13086 (Apr. 15, 1995).

Commission Comment: The Commission codified part XIX § 2700 as part 1600 and moved part XVIII § 2600 to part 1700 to maintain consistency in the NMIAC.