Nevada enacts Commerce Tax effective July 1, 2015

June 10, 2015

In brief

Signed on June 10, 2015, and effective July 1, 2015, S.B. 483 imposes an annual commerce tax on each business entity engaged in business in Nevada. Generally, the tax base is gross revenue apportioned to Nevada with a $4,000,000 standard deduction. There are exclusions and deductions from gross revenue. However, there is no deduction for cost of goods sold or other expenses incurred. Tax rates vary from 0.051% to 0.331% depending on the industry in which the business entity is primarily engaged.

The tax is imposed on a separate entity basis. Tax years for all taxpayers are the twelve months ending June 30. The first report is due 45 days after the end of the fiscal year ending June 30, 2016. Taxpayers may request a 30-day extension.

In detail

Imposition of tax

For the privilege of engaging in a business in Nevada, the Commerce Tax is imposed on each business entity whose Nevada gross income in a taxable year exceeds $4,000,000. The rate of tax varies depending on the industry (business category) in which the taxpayer is primarily engaged.

The tax is computed by:

- calculating a taxpayer's apportioned Nevada gross revenue, which includes a taxpayer's gross revenue after certain exclusions and deductions
- subtracting a $4,000,000 modification from Nevada gross income
- multiplying that amount by the rate applicable to the taxpayer's business category.

The business category rates are available in the attached Appendix.

Business entities subject to tax

The tax appears to be imposed on a separate entity basis on each 'business entity' engaged in business in Nevada.

'Engaging in a business' includes commencing, conducting, or continuing a business and the exercise of corporate or franchise powers regarding a business.

A 'business entity' subject to the Commerce Tax means a "a corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust, professional association, joint stock company, holding company and any other person engaged in a business." IRC section 501(c)(3) nonprofits are not included.

Real estate investment trusts (REITs) are excluded from the definition of taxable business entities, with certain exceptions.

Natural persons are included as business entities to the extent they are required to file a Form 1040 Schedule C (Profit of Loss from Business), Schedule E (Supplemental Income and

Loss), or Schedule F (Profit or Loss from Farming).

Certain qualifying entities whose Nevada activities are limited to owning, maintaining, and managing certain intangible investments may be excluded from the definition of taxable business entities.

'Passive entities' (as defined below) are excluded from the definition of a 'business entity.'

Gross revenue

Gross revenue is defined as the total amount realized by a business entity from engaging in a business in Nevada that contributes to the production of gross income. There is no deduction for cost of goods sold or other expenses incurred.

Exclusions from gross revenue are:

- amounts realized from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property
- the value of cash discounts allowed by the business entity and taken by a customer
- the value of goods or services provided to a customer on a complimentary basis
- amounts realized from a transaction subject to, described in, or equivalent to, IRC section 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031 or 1033 regardless of the federal tax classification of the business entity under 26 C.F.R. § 301.7701-3
- amounts indirectly realized from a reduction of an expense or deduction
- generally, the value of property or services donated to an IRC 501(c)(3) entity
- amounts that are not considered revenue under generally accepted accounting principles.

S.B. 483 provides 27 categories of gross revenue deductions, which include:

- interest income (other than interest on credit sales)
- dividends and distributions from corporations
- distributive or proportionate shares of receipts and income from a pass-through entity
- receipts from a hedging transaction
- the amount of gross proceeds used to calculate the excise tax paid on mineral extraction
- revenue (direct premiums) relating to certain insurance taxes paid
- certain payments (e.g., from Medicaid and Medicare) received by a health care provider or health care institution
- certain payments received by an employee leasing company
- bad debts expensed for the purposes of federal income taxation
- returns and refunds to customers
- pass-through revenue (described below)
- certain income from a passive entity (described below)

Nevada gross revenue and apportionment

A taxpayer's Nevada gross revenue is the taxpayer's gross revenue sitused to the state. The following revenue is sitused to Nevada:

- rents and royalties from real property located in Nevada
- revenue from the sale of real property located in Nevada
- rents and royalties from tangible personal property to the extent the tangible personal property is located or used in Nevada
- revenue from the sale of tangible personal property if the property is delivered or shipped to a buyer in Nevada, regardless of the F.O.B. point or any other condition of sale
- revenue from the sale of transportation services if both the origin and the destination points of the transportation are located in Nevada
- revenue from the sale of other services in the proportion of the purchaser's benefit in Nevada. The physical location where the purchaser ultimately uses or receives the benefit of the service is paramount in determining the proportion of the benefit in Nevada. If the taxpayer cannot determine that location, the taxpayer may use an alternative method to situs gross revenue, with certain conditions.
- revenue not otherwise described if the gross receipts are from business conducted in Nevada. The physical location of the purchaser is paramount in determining if business is conducted in Nevada. If the taxpayer cannot determine that location, the gross revenue must not be considered to be from business conducted in Nevada.

If application of the situsing rules does not fairly represent the extent of a taxpayer's business conducted in Nevada, the Department may authorize the taxpayer to use an alternative method.

Taxable year and due dates

A taxable year is the 12-month period from July 1 to June 30.

Nevada Commerce Tax reports are due on or before the 45th day following the end of that taxable year. Taxpayers may request a 30-day extension to pay the tax. No penalty is assessed for payment during the 30-day period; however, interest is imposed.

Business category – primarily engaged

A taxpayer's initial Commerce Tax report must designate the business category in which the taxpayer is primarily engaged. A taxpayer is 'primarily engaged' in the business category in which the highest percentage of its Nevada gross revenue is generated. A taxpayer may not change its business category without the Department of Taxation's approval.

Pass-through revenue – Deducted from gross income

Pass-through revenue deducted from gross income includes:

- revenue received by a business entity that is required by law or fiduciary duty to be distributed to another person or governmental entity
- reimbursement for advances made by a business entity on behalf of a customer or client, other than with respect to services rendered or with respect to purchases of goods by the business entity in carrying out the business in which it engages
- certain revenue received by a business entity that is mandated by contract or subcontract to be distributed to another person or entity (including sales commissions).

Affiliate revenue – Deducted from gross revenue

Defined in the legislation as 'pass-through revenue,' revenue received by a business entity that is part of an affiliated group from another member of the affiliated group is deductible. An affiliated group means a group of two or more business entities, each of which is directly or indirectly controlled (50% or more ownership) by one or more common owners.

Passive entity – Income from a passive entity deducted from gross income

Deducted from gross income is a taxpayer's share of the net income of a passive entity to the extent such income was generated by the gross revenue of another business entity.

A 'passive entity' must satisfy the following requirements:

- the business is a limited-liability company, general partnership, limited-liability partnership, limited partnership or limited-liability limited partnership, or a trust, other than a business trust;
- at least 90 percent of the business entity's federal gross income consists of qualified income, including ddividends interest, ccapital gains from the sale of real property, and gains from the sale of certain commodities and securities; and
- the business entity does not receive more than 10 percent of its federal gross income from conducting an active trade or business.

Credit against payroll taxes

Nevada currently imposes the following payroll taxes:

- An excise tax on certain businesses (excluding financial institutions) equal to 1.17% of the total wages paid by the business each calendar quarter that exceed $85,000.
- An excise tax on financial institutions at the rate of 2% of total wages paid each calendar quarter.

S.B. 483 imposes the following changes effective July 1, 2015:

- The general excise tax rate is 1.475% of total wages paid by the business each calendar quarter that exceed $50,000.
- Taxpayers under both taxes may subtract as a credit 50% of Nevada Commerce Tax paid.
- The tax rates for both payroll taxes are reduced if the combined revenue from the Commerce Tax and the payroll taxes exceed a certain amount.

Mining businesses will pay the payroll tax at the same rate as financial institutions.

Audit costs paid by the taxpayer

A taxpayer must pay the state a travelling allowance and expenses for its auditors to inspect books and records maintained outside of Nevada.

The takeaway

Most taxpayers should consider how to adjust their reporting processes to comply with the Commerce Tax's July 1 – June 30 reporting year and the relatively brief period (75 days with an extension) under which to report and pay the tax.

Nevada taxpayers should be aware that the Commerce Tax is part of an estimated $1.5 billion omnibus tax plan intended to bolster and fund the state's education system. In addition, there are approximately 25 different business categories, with different tax rates, which may lead to complexities regarding how to categorize taxpayers engaged in one or more industries.

Let's talk

For more information on Nevada's Commerce Tax, please contact:

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Appendix
Business category rates

Business Category	NAICS Code	Tax Rate
Retail trade	44 and 45	0.111%
Manufacturing	31, 32, and 33	0.091%
Wholesale trade	42	0.101%
Finance and insurance	52	0.111%
Utilities and telecommunications	22 and 517	0.136%
Food services and drinking places	722	0.194%
Mining, quarrying, and oil and gas extraction	21	0.051%
Construction	23	0.083%
Warehousing and storage	493	0.128%
Air transportation	481	0.058%
Publishing, software, and data processing	511, 512, 515, and 518	0.253%
Truck transportation	484	0.202%
Rail transportation	482	0.331%
Other transportation	483, 485, 486, 487, 488, 491, and 492	0.129%
Real estate and rental and leasing	53	0.250%
Professional, scientific, and technical services	54	0.181%
Management of companies and enterprises	55	0.137%
Administrative and support services	561	0.154%
Waste management and remediation services	562	0.261%
Educational services	61	0.281%
Health care and social assistance	62	0.190%
Arts, entertainment and recreation	71	0.240%
Accommodation	721	0.200%
Agriculture, forestry, fishing, and hunting	11	0.063%
Other services	81	0.142%
Unclassified (Includes any business entity not included in any of the business categories above)		0.128%