

2015 NEVADA TAX REFORMS

Commerce Tax, Modified Business Tax, Business License Fee

Current as of June 10, 2015

A. Commerce Tax – Senate Bill 483

1. Summary

- Enacts a new Commerce Tax on all businesses with gross revenue over \$4,000,000/year. Rates specific to industry type.
- Allows for a credit against the Modified Business Tax (MBT) of 50% of the Commerce Tax.
- The tax begins to accrue on July 1, 2015, with the first payment due August 15, 2016.

2. Payees of the Commerce Tax (Secs. 3, 4)

- The tax is imposed on any business entity engaged in an activity with the object of gain, benefit, advantage, either direct or indirect, to any person or governmental entity.
- Business entity includes a corporation, partnership, proprietorship, LLC, business association, joint venture, LLP, business trust, professional association, joint stock company, holding company and any other person engaged in a business.
- Business entity also includes a natural person engaged in the above activities and who must file a Schedule C, E or F form with the IRS.

3. Doing Business in Nevada (Sec. 6)

- The tax is based on “engaging in a business” in Nevada, which includes:
 - Commencing, conducting or continuing a business.
 - Exercising corporate or franchise powers regarding a business.
 - Liquidation of a business if the liquidator holds itself out to the public as a conductor of that type of business.

4. Exempt Entities (Secs. 4, 14)

- Persons or entities prohibited from taxation by federal law or the NV Constitution
- Governmental entities
- 501(c) entities
- Non-profits under NRS 82 or 84
- Credit unions

- Charitable trusts (unless taxable as a business)
- Estates (except trusts taxable as a business)
- Certain real estate investment trusts
- Real estate mortgage investment conduits
- 401(a) trusts
- Ownership, maintenance and management of intangible investments
- Passive entities
 - A passive entity must be a LLC, general partnership, limited partnership or limited liability partnership, or a non-business trust, which does not receive more than 10% of its federal gross income from conducting an active trade or business, and the federal gross income consists of at least 90% of the following:
 - dividends, interest, foreign currency exchange gain, periodic and non-periodic payments with respect to notional principal contracts, option premiums, cash settlement or termination payments with respect to a financial instrument, and income from a LLC;
 - capital gains from the sale of real property, gains from the sale of commodities traded on a commodities exchange and gains from the sale of securities; and
 - royalties, bonuses or delay rental income from mineral properties and income from other non-operating mineral interests.
- Persons whose activities in Nevada are confined to the owning, maintenance and management of the person's intangible investments or the intangible investments of statutory or business trusts registered under the Investment Company Act of 1940. Intangible investments include investments in stocks, bonds, notes, debt obligations, real estate investment trusts, patents, patent applications, trademarks, and trade names.
- Persons who take part in an exhibition in Nevada and who are not required to obtain a state business license pursuant to NRS 360.780.

5. Calculation of Gross Revenue (Secs. 8, 9)

- The total amount realized from the conduct of business in Nevada, without deduction for cost of goods sold or other expenses incurred. The amount includes:
 - fair market value of any property and any services received and any debt transferred or forgiven as consideration;
 - revenue realized from the sale, exchange or other disposition of business property;
 - revenue realized from the performance of services by a business;
 - revenue realized from the possession of another person of business property or capital.
- Revenue does not include:
 - receipts from the sale or disposition of intellectual property;
 - cash discounts provided to a customer;
 - complimentary goods or services;
 - amounts realized from certain IRS recognized transactions;
 - amounts indirectly realized from a reduction of an expense or deduction;
 - the value of property or services donated to a 501(c)(3) organization if tax deductible;
 - amounts not considered revenue under GAAP.

6. Deductions from Gross Revenue (Secs. 10.5, 11, 21)

- Revenue prohibited from taxation by the US or NV Constitution or laws.
- Interest on government bonds

- If subject to gaming tax, gross revenue used to calculate the gaming tax
- If subject to mining tax, gross proceeds used to calculate the mining tax
- If subject to liquor tax, the amount of the liquor tax paid
- If subject to insurance premium tax, total income used to calculate the insurance premium tax.
- If subject to captive insurance premiums, the net direct premiums used to calculate the captive insurance tax.
- Revenue received by a health care provider from Medicaid, Medicare, Children's Health Insurance Program, the Fund for Hospital Care to Indigent Persons, TRICARE, worker's compensation services, or for actual cost of health care when the provider is not compensated.
- If a health care institution, 50% of the revenues received in the prior bullet point.
- If an employee leasing company, any payments from a client company for wages, payroll taxes on wages, employee benefits and worker's compensation benefits for employees leased to the client company.
- Pass-through revenue, which includes:
 - Revenue which, by law, must be distributed to another person or governmental entity;
 - Taxes collected from a third party and remitted by a business to a taxing authority;
 - Reimbursements for advances made by a business on behalf of a client or customer, unrelated to goods and services;
 - Revenue received by a business that is mandated by contract or subcontract to be distributed to another, if the revenue is: (1) sales commissions paid to a non-employee including split-fee real estate transactions; (2) the tax basis of securities underwritten by the business, as determined for purposes of federal income tax; or (3) subcontracting payments under a contract or subcontract to provide services, labor or materials in connection with the actual or proposed design, construction, remodeling, remediation or repair or improvements on real property.
 - Revenue received by a legal services entity that is required by law to be distributed to a client or another as damages, subject to subrogation, due to another attorney who provided services and is not part of the firm, or reimbursements from a claimant for expenses.
 - Revenue received by a business that is part of an affiliated group, from a member of the affiliated group. An affiliated group means:
 - A group of two or more businesses, each of which is controlled by one or more common owners or by or more members of the group.
 - To be controlled means direct or indirect ownership, control or possession of the power to vote 50% of outstanding voting securities of a business.
- The tax basis of securities and loans sold by the business, as determined for purposes of federal income taxation.
- Revenue that is directly derived from the operation of a facility that is located on property owned or leased by the federal government and managed or operated primarily to house members of the military.
- Interest other than interest on credit sales.
- Dividends and distributions from corporations and income from a pass through entity.
- Revenue from certain asset sales.
- Revenue from certain hedging transactions.
- Revenue attributable to the principal of a loan or repurchase agreement.
- Revenue from the sale of the businesses own stock.
- Insurance proceeds, except insurance proceeds to cover loss of business revenue.
- Litigation damages unless they would have been considered revenue without litigation.
- Bad debts.
- Returns or refunds.

- Revenue from the sale of an account receivable if the account receivable was included as gross revenue in the underlying transaction.
- Value of in state ownership of a passive entity.

7. Apportionment (Sec. 22)

- Revenue from rent, royalty or sale of real property situated to Nevada if the real property is in Nevada.
- Revenue from sale or lease of tangible personal property situated to Nevada if the tangible personal property is located or used in Nevada (lease) or if delivered or shipped to a buyer in Nevada (sales).
- Revenue from transportation services situated to Nevada if both the origin and destination are located in Nevada.
- Revenue from services situated to Nevada in proportion to the benefit in Nevada, as compared to the purchaser's benefit everywhere else from the service.
- Revenue not otherwise described situated to Nevada if from business done in Nevada.
- A business may petition the Department of Taxation for different situsing.

8. Administration (Secs. 12, 16, 17, 18, 20, 50, 52)

- The Commerce Tax is administered by the Nevada Department of Taxation.
- The Commerce Tax is reported and paid annually, on a tax year running from July 1 to June 30.
- The first payment is due August 15, 2016 and covers the period of July 1, 2015 – June 30, 2016. Payments are due each August 15 thereafter.
- The tax is tied to a fiscal year starting July 1 through June 30.
- The Commerce Tax is deposited in the state general fund and is not earmarked.
- Accounting method for the Commerce Tax must be the same as the accounting method used for federal tax purposes.
- Claims for refunds due to overpayment have a 3 year period of limitations.
- Taxpayers must maintain records for 4 years or longer if in litigation.
- All taxpayers subject to audit, even if below the \$4,000,000 threshold.

9. Industry Rates (Secs. 10, 15, 20, 23, 24-49)

- The Commerce Tax is imposed on gross annual revenue over \$4,000,000.
- Businesses are classified pursuant to the 2012 version of the NAICS code.
- For businesses with more than one NAICS code applicable, the appropriate NAICS code is the business "in which the highest percentage of its Nevada gross revenue is generated." A business entity cannot change its designated category without permission from the Department of Taxation.
- Industry Rates:

➤ Agriculture, Forestry and Hunting (NAICS 11).	.063%
➤ Mining, Quarrying, and Oil and Gas Extraction (NAICS 21).	.051%
➤ Utilities & Telecommunications (NAICS 22, 517).	.136%
➤ Construction (NAICS 23)	.083%
➤ Manufacturing (NAICS 31-33)	.091%
➤ Wholesale Trade (NAICS 42)	.101%
➤ Retail Trade (NAICS 44-45)	.111%
➤ Air Transportation (NAICS 481)	.058%
➤ Truck Transportation (NAICS 484)	.202%
➤ Rail Transportation (NAICS 482)	.331%

➤ Other Transportation (NAICS 483, 485-488, 491-492)	.129%
➤ Warehousing and Storage (NAICS 493)	.128%
➤ Publishing, Software, Data Processing (NAICS 511-512, 515, 518)	.253%
➤ Finance and Insurance (NAICS 52)	.111%
➤ Real Estate Rental and Leasing (NAICS 53)	.25%
➤ Professional, Scientific, or Technical Services (NAICS 54)	.181%
➤ Management of Companies and Enterprises (NAICS 55)	.137%
➤ Administrative and Support Services (NAICS 561)	.154%
➤ Waste Management and Remediation Services (NAICS 562)	.261%
➤ Educational Services (NAICS 61)	.281%
➤ Health Care and Social Assistance (NAICS 62)	.190%
➤ Arts, Entertainment and Recreation (NAICS 71)	.24%
➤ Accommodations (NAICS 721)	.2%
➤ Food Services and Drinking Places (NAICS 722)	.194%
➤ Other Services (NAICS 81)	.142%
➤ Unclassified Business	.128%

10. Commerce Tax Credit (Secs. 68, 70)

- 50% of the Commerce Tax paid in a tax year is usable as a credit against any modified business tax (MBT) tax liability.
- Credit is only available for the 4 quarters following the tax year in which the Commerce Tax was paid.
- No carry forwards of unused credits and no refunds if the credit exceeds the MBT liability.

11. Rate Adjustments (Sec. 62)

- On September 30 of each year, the Department of Taxation compares revenues received by the Commerce Tax and the MBT against economic forum projections.
- If revenue received is over 4% from projections, the Department of Taxation adjusts the rate of the MBT so that revenue matches 4% of projections.

B. Modified Business Tax – SB 483

1. Summary

- Eliminates the proposed sunset on the MBT, which was scheduled to decrease on July 1, 2015. Replaces that rate with a permanent rate, lowers the available wage deductions, and adds mining in to the same rate as financial institutions.
- New rates are effective July 1, 2015.

2. Rates and Deductions

- Increases the MBT rate from 1.17% to 1.475% for most businesses. Mining and Financial Institutions are set at 2.0%.
- Reduces the deduction against the MBT from \$340,000/year to \$200,000/year.
- Retains the existing deduction against the MBT for health care.

C. Business License Fee – SB 483

1. Summary

- Maintains the existing \$200 annual business license fee for all entities except corporations. Corporations now have a \$500 annual business license fee.
- Fees for initial lists and annuals lists for businesses also increase by \$25.
- New fees are effective July 1, 2015.
- The business license fee continues to be administered by the Secretary of State.