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Via email: ghritz@tax.state.nv.us

George H. Hritz
Management Analyst Level III
State of Nevada
Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706

Re: Comments on Draft Regulation for Discussion on Trusts: September 25, 2015

Dear Mr. Hritz,

This letter serves as our written comments with respect to the draft Nevada Commerce Tax regulation on Trusts which will be the subject of a Department of Taxation regulatory workshop to be conducted later today. We continue to be concerned about the treatment of a trust as defined in the proposed draft regulation as an entity since at common law a trust is a relationship where the trustee is taking custody and care of assets for the benefit of others. We believe the other instances where the term “trust” is used in the Nevada Commerce Tax are distinguishable. Here are our comments to the draft regulation placed on the Nevada Department of Tax website yesterday afternoon:

Determination of Whether Trusts are Engaged in Business

The draft regulatory language is a very good start and addresses a fundamental issue – the determination of whether a trust is engaged in business should be made based upon only the trust’s activities, and not based upon the activities of partnerships, LLCs, disregarded entities or other legal entities in which the trust owns an interest, even a managing or controlling interest. Those other entities may be subject to the Commerce Tax in their own right, and the Commerce Tax should be applied on an entity-by-entity basis to avoid pyramiding the tax base and incidence of taxation, which would result in undue complexity and unnecessary duplication of the number of tax returns needed to report the same amount of gross receipts. Because federal Schedule E (Form 1040) is used to report both income from activities conducted directly by the taxpayer and activities conducted by pass-through entities (and reported on a federal Schedule K-1), the regulation should clarify that a trust should take into account only those activities reported on Schedule E that are conducted directly by the trust and not activities conducted by another



entity. We further believe the draft language of Section 10 could be expanded modestly to clarify these principles. The current draft reads as follows:

Sec. 10. In determining whether a trust is engaged in business in Nevada, the Department will consider the nature and character of the activities of the trust itself and not the activities of another entity in which the trust holds a legal ownership interest.

We suggest that this version should be augmented to read as follows:

Sec. 10. The nature and character of the activities of a trust itself shall determine whether a trust is engaged in business in Nevada, and not the activities of any other entity (including pass-through entities, whether or not disregarded entities for federal income tax purposes) in which a trust holds a legal ownership interest, without regard to whether the trust or any beneficiary, trustee or other fiduciary controls or participates in the management of such other entity. Accordingly, activities reported on federal Schedule E (Form 1040), Supplemental Income and Loss, shall be taken into account only to the extent attributable to activities conducted directly by the trust and not by partnerships or other legal entities, including disregarded entities. A trust that owns interests in such other legal entities and is not otherwise engaged in business in Nevada is not required to file a return pursuant to Sec. 20 of SB 483. The location of the administration of the trust or the choice of law governing the trust in the trust instrument are not relevant in determining whether the trust is engaged in business in Nevada.

Clarification of Exclusion for Investment Activities

The draft regulatory language also is very helpful and states that a trust can be a person eligible for the subsection 4(2)(m) exemption. We believe that the exemption needs further clarification regarding the scope of the term “intangible investments”, which is not fully defined in the statutory language. In particular, “intangible investments” should include interests in other legal entities, including flow through entities such other trusts, S corporations, partnerships, LLCs, disregarded entities or other legal entities in which the trust owns an interest, without regard to whether the trust or any beneficiary, trustee or other fiduciary controls or participates in the management of such other entity. Those other entities may be subject to the Commerce Tax in their own right, and the Commerce Tax should be applied on an entity-by-entity basis to avoid pyramiding the tax base and incidence of taxation, which would result in undue complexity and unnecessary duplication of the number of tax returns needed to report the same amount of gross receipts. We believe the draft language of Section 11 could be expanded modestly to clarify these principles.

The current draft reads as follows:

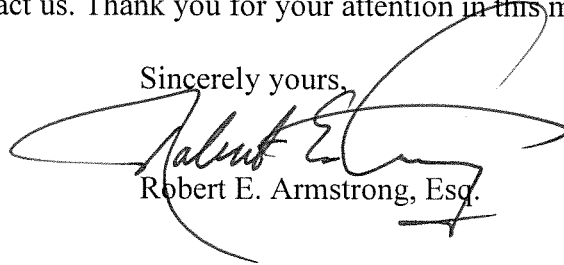
Sec. 11. As used in subparagraph (m) of subsection (2) of section 4 of S.B. 483, the Commission interprets the phrase “person whose activities within this State are confined to the owning, maintenance and management of the person’s intangible assets” to include a trust whose activities within this State are confined to the owning, maintenance and management of intangible assets of which the trust is the sole legal owner.

We suggest that this version should be augmented to read as follows:

Sec. 11. As used in subparagraph (m) of subsection (2) of section 4 of S.B. 483, the Commission interprets the phrase “person whose activities within this State are confined to the owning, maintenance and management of the person’s intangible investments” to include a trust whose activities within this State are confined to the owning, maintenance and management of intangible assets of which the trust is a legal owner. For this purpose, “intangible investments” includes in addition to the types of investments listed in Section 4(2)(m) of SB 483, interests in other legal entities, including other trusts, S corporations, partnerships, LLCs, disregarded entities or other legal entities in which the trust owns an interest, without regard to whether the trust or any beneficiary, trustee or other fiduciary controls or participates in the management of such other entity.

Once representatives of the Department of Taxation had a chance to consider our comments, please do not hesitate to contact us. Thank you for your attention in this matter.

Sincerely yours,



Robert E. Armstrong, Esq.

REA/neh

cc: Deonne Contine, Executive Director Department of Taxation (via email: contine@tax.state.nv.us)
Gregory L. Zunino, Bureau Chief Bureau of Business and State Services, Office of the Attorney General (via email: gzunino@ag.nv.gov)