SB 483 – Commerce Tax – Sections 2 thru 61
Issues to consider for clarification and/or regulation development
October 1, 2015

Section 8:
Issue: Definition of "Gross Revenue" – "amounts realized" is unclear as it applies to hospitals as we bill in a uniform manner but collect different amounts for these services based on who is paying for the service and the patient's ability to pay.
Recommendation: Clarify that this means amounts collected (not billed) for services provided. For health care providers, gross revenue means revenue less contractual allowances /discounts. (line 1C IRS Form 1120)

Section 12:
Issue: Tax year is the State fiscal ending June 30 of each year and most Commerce Tax payers will be operating on a calendar year.
Recommendation: We ask that the State make a **technical correction** to modify its process and allow the tax payer to elect their taxable year to match their federal tax year including the following:

- If the tax payer elects tax year other than SFY – allow for a stub period filing in the first year to bridge to the tax payers elected tax period.
- Consider matching filing due date to the federal filing date – 75 days after the end of the fiscal period which will allow information that is common between both returns to be known prior to filing.
- If an organization is sold mid-year, each owner is responsible for filing a commerce tax return for the portion of the year they owned the business.
    - Any tax credit earned by the seller of a business entity can be transferred to the buyer of that business.

Section 20:
Issue: Uncertain as to whether business entities that don't exceed $4 million of NV gross revenues are required to file.
Recommendation: Need confirmation all taxable business entities are required to file.

Section 21 - Deductions:
Subsection (i)
Issue: This subsection allows health care providers to deduct payments received from Medicaid, Medicare, SCHIP, Hospital care for Indigent Persons, or Tricare/ Workers Comp/ actual uncompensated costs. The Department has proposed language (see attached) to calculate uncompensated costs that will be quite burdensome to maintain in addition to current reporting and does not adequately address the inherent delays in being able to determine uncompensated cost.
Recommendation: Ask the Department to clarify in the regulations:

1. Payments from Government-funded programs including those administered by private managed care organizations (i.e. Medicaid, Medicare, Workers Comp. MCO's, etc.) are included in the deduction.

2. Utilize the Uncompensated Cost Report (which is part of the annually required Community Benefit reporting for hospitals in Nevada -see example attached) to establish the uncompensated cost ratio from the most recent reported year – which is generally 8 – 12 months after the close of the fiscal year. The uncompensated cost ratio will be applied to billed charges for payers defined in the uncompensated cost report for the current tax year to estimate current year uncompensated cost. We would like to work with the Department to refine the methodology for the industry that takes into consideration the inherent lag in being able to estimate uncompensated costs.

Subsection (j):
Issue: This subsection only allows health care institutions to deduct 50% of the amount quantified in subsection (i) – institutions may also in certain circumstances employ/bill/collect for physician services and should be treated the same as independent physicians when doing so.
Recommendation: Regulations should clarify that this reduced deduction applies to health care "gross revenue" related to institutional services only. In other words, the limitation applies to the revenue stream(s) and not the entity itself.

Subsection (q):
Issue: References exclusion of receipts from the sale of section 1221 or 1231 property per the federal tax code. Is the amount of the receipt equal to the federal tax basis or equal to GAAP?
Recommendation: Clarify that the receipts are per GAAP or federal tax basis.

Subsection (x):
Issue: Subsection (x) allows for 100% deduction of bad debt reported for federal income tax purposes.
Recommendation: Clarify subsection (x) applies to hospitals the same as all other businesses.

Subsection (z):
Issue: This subsection appears to address factored accounts receivable and allows business entities to deduct amounts realized from factoring to the extent already included in gross receipts
Recommendation: We propose that the business entity selling the accounts receivable be responsible for paying taxes related to the services they provided at the value that were able to collect (in this case from the factoring company) and the factoring company should only pay tax on amount they collect above what they paid for the receivable (should be considered pass thru revenue under subsection (l)).

Section 22:
Subsection (1) (b):
Issue: Gross revenue from the sale of property located in Nevada is subject to the commerce tax. If a business sells a building and buys or builds another building, it appears the entire sales price of the first building is taxed even though the proceeds are invested in a new location.
Recommendation: Confirm with the Department that the proceeds from the sale are considered as deductions similar to the tax basis for securities under section 21 subsection (m).

Other:

1. Given the filling deadline is only 45 days after June 30 each year and several components of the statute refer to methods (section 50) or amounts from federal income taxation (section 21subsection which will not have occurred yet for most organizations, consider the following:
    a. Work with the Department to consider allowing businesses to elect a fiscal period that matches their filing time frames for federal income tax purposes and allow a stub period in the first year that will bridge the business entity to their newly elected reporting period (base deductions on estimates).
    b. Clarify if extensions are allowed section 20 subsection 4.
2. Confirm treatment of Commerce tax credit (50% of commerce tax paid last year) to reduce Modified Business Tax liability can be used within an Affiliated Group.
3. What was the intent of Section 50? The entity's method of accounting for gross revenue for purposes of the commerce tax must be the same as the method used for federal income tax purposes yet there are a number of other references to using GAAP accounting.

Possible Legislative Fixes/Changes to Consider

Sections 8 and 50:
Issue: Conflicts in the sources of information to calculate commerce tax liability: Subsection 3(g) indicates to follow GAAP, but Subsection 3(d) references federal tax codes sections for exceptions to "gross revenue". Also, see Section 50, which references using the same accounting method as federal income tax purposes.

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Section 12:
Issue: Tax year is the State fiscal ending June 30 of each year and most Commerce Tax payers will be operating on a calendar year.

Section 21 subsection (j): This subsection only allows health care institutions to deduct 50% of the deductions listed in section 21 subsection (i). We would like the Department to consider eliminating section 21 subsection (j) so that all health care providers (including institutions) are treated the same and are allowed to deduct 100% of the payments related to government payers and uncompensated costs outlined in section 21 subsection (i).

Sections 68 and 70
Issue: Commerce tax credit should be able to be utilized by other affiliated group members. Not different than the cellular industry, many times business entities in an affiliated group are organized for specific business purposes but in practice operate as one or at least in support of each other. Therefore tax credits earned by one business entity if not usable by that entity should be able to be used by other business entities in affiliated group or "family".

UNCOMPENSATED COST REPORT

HOSPITAL: Example Hospital **Period:** **12/31/2014**

Line	PART I - Calculate Ratio of Cost to Charges (RCC)			
1	Total Operating Expenses *(A)*	$	539,918,302	
2	Non - Operating Expense *(A)*	$	-	
3	Total Hospital Expenses (sum of oper & non-oper exp)	$	539,918,302	
	Less Cost Directly Assigned to Uninsured Patients			0
4	Graduate Medical Education Cost *(B)*	$	(2,769,257)	FROM COST REPORT
5	Emergency Room Physician Professional Fees *(C)*	$	(11,209,964)	
	Other Directly Assigned Cost (list) - *(D)*			
6	1) Medicaid Eligibility Vendors (PAS)	$	(3,786,826)	FROM PAS
7	2) Nursing Homes, etc	$	(41,008)	
8	3)	$	-	
9	4)	$	-	
10	5)	$	-	
	Less Cost Prohibited by CMS for DSH Purposes			
11	Offsite Clinic Cost *(E)*	$	-	
	Other Excluded Cost (list) - *(F)*			
12	1)	$	-	
13	2)	$	-	
14	Total Expenses Excluded from Cost Pool	$	(17,807,055)	
15	Adjusted Cost Pool (Total expenses less excluded items)	$	522,111,247	
16	Billed Charges *(G)*	$	4,315,318,135	
17	Average Ratio of Cost to Charges (adj cost / charges)		12.1%	

(A) From the Nevada Hospital Quarterly Reports found at:
http://www.univ.edu/Research_Centers/chia/utillizationandfinancial.htm

(B) Resident /Faculty Salaries and other costs in support of GME from hospital records.
Exclude allied health education programs.

(C) ER / Trauma /Anesthesiology on-call coverage and compensation to physicians for indigent patient care.
From hospital records. Exclude directorship fees and other services not directly related to patient care.

(D) Any identifiable cost that is solely related to uninsured patients from hospital records.
Examples include payments to nursing homes for placement of patients without pay source, and eligibility workers in excess of standard social services staff.

(E) All costs associated with operating clinics not on hospital campus from hospital records.

(F) Any other cost category specifically prohibited for DSH by regulation or policy

(G) From NHQR for your hospital for the reporting period.

Note: Cost reported as AB342 community benefits are included either in pool or directly assigned.