



July 7, 2015

To: Director Deonne Contine, Nevada Department of Taxation

From: Paul J. Enos, CEO, The Nevada Trucking Association

Re: The Nevada Commerce Tax

The Nevada Trucking Association, which represents over 560 member companies statewide, suggests the following issues be addressed in relation to the implementation of the Nevada Commerce Tax:

Section 11-Pass Through Revenue

Do pass through payments to other businesses or independent contractors, where an IRS form 1099 is filed, come under the definition of pass through revenue?

The trucking industry contracts a substantial amount of owner operators/independent drivers, or other trucking companies to move freight. When a trucking company collects payment for a job carried out by an owner operator or other company there is contractual obligation for the company engaging these drivers to pay them for the work they complete.

A similar issue exists with freight brokers who collect revenue from a shipper and pay a trucking company to move the freight.

Sections 15 and 20- NAICS codes and vertically integrated business

The application of tax rates based on NAICS codes for vertically integrated businesses whose revenue falls under different NAICS that vary year-to-year needs to be clarified.

For example, in 2014 a trucking company which is listed on their IRS return with a trucking NAICS code received 45% of their revenue from hauling general freight and 55% under a contract with the United States Post Office. Since a majority of this company's revenue comes from the "other transportation" category under this scenario, the company would pay the commerce tax at a rate of .139 on all of its revenue instead of at the trucking rate of .202.

What is the time frame for a business to determine its NAICS code? Will it vary from year to year, depending on the revenue streams or will it stand until it's requested by the taxpayer or department? What kind of documentation and records will be required to prove revenue sources? If a business requests a change, what is the period for the Department of Taxation to act?

Section 22-Situs

Clarify "origin and destination"

We believe that there is an important distinction between *interstate* and *intrastate* movements and ask the Tax Commission to clarify the term "origin and destination in Nevada."

Section 22.1(e) computes the commerce tax based on “Gross revenue from the sale of transportation services is situated to this State if both the origin and the destination point of the transportation are located in this State.”

The federal definition of interstate commerce in Title 49 CFR 390.5, states: *Interstate commerce means trade, traffic, or transportation in the United States—*

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States;
or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

Intrastate commerce means any trade, traffic, or transportation in any State which is not described in the term “interstate commerce.”

For instance, if the truck only moved a load in Nevada as part of a continuous movement of interstate freight, it is classified as interstate.

Clarify the apportionment for revenue on tangible property not used in Nevada.

A business entity that leases trucks used in interstate commerce has their revenue situated under Section 22.1 (c) *Gross rents and royalties from tangible personal property is situated to this State to the extent the tangible personal property is located or used in this State.*

For example, if a leased truck is reporting 80% of its miles, under the International Registration Plan (IRP), outside of Nevada, for purposes of computing the commerce tax only 20% of the leasing company’s revenue on that truck should be situated to Nevada. The Motor Division at the Nevada DMV audits IRP, therefore the apportionment data is already collected by the state.

Record Keeping

What kind of documentation and records will be required to prove revenue sources? Are bills of lading adequate to prove situs?