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**COMMERCE TAX QUESTIONS AND ANSWERS**

as of: September 8, 2015

**Q: What is the Commerce Tax?**

A: The Commerce Tax is an annual tax imposed on the Nevada gross revenue of each business entity engaged in business in this State. Each business entity subject to the tax must file a return; however, there is no tax liability unless a business's Nevada gross revenue in a taxable fiscal year exceeds four million dollars (\$4,000,000.)

**Q: What is the taxable fiscal year of the Commerce Tax?**

A: The taxable fiscal year is the 12 month period beginning July 1<sup>st</sup> and ending on June 30<sup>th</sup>.

**Q: What should I do if my business uses a different taxable year for reporting its revenue for federal tax purposes?**

A: A business would use its internal records kept on a monthly basis to calculate and report its Nevada gross revenue from July 1<sup>st</sup> thru June 30<sup>th</sup> each year.

**Q: When is the tax due?**

A: The tax return and payment are due on or before the 45<sup>th</sup> day following the last day of the taxable year (June 30<sup>th</sup>). **The first return and payment are due on August 15, 2016.**

**Q: How do I know if I qualify as a "business" subject to the Commerce Tax?**

A: A Business is defined as any activity engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity. (Section 3 of Senate Bill 483).

A "business entity" means a corporation, S 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. (Section 4 of Senate Bill 483)

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**Q: What is the tax rate for the Commerce Tax?**

A: The tax rate is based on the industry code (NAICS code) of the business entity. The industry rates are as follows:

<b>NAICS Category</b>	<b>INDUSTRY</b>	<b>Tax Rate</b>
11	Agriculture, Forestry, Hunting	.063%
21	Mining, Quarrying, Oil and Gas Extraction	.051%
22/517	Utilities and Telecommunications	.136%
23	Construction	.083%
31-33	Manufacturing	.091%
42	Wholesale Trade	.101%
44-45	Retail Trade	.111%
481	Air Transportation	.058%
484	Truck Transportation	.202%
482	Rail Transportation	.331%
483, 485-488, 491-492	Other Transportation	.129%
493	Warehousing and Storage	.128%
511, 512, 515, 518	Publishing, Software, Data Processing	.253%
52	Finance and Insurance	.111%
53	Rental & Leasing	.25%
54	Professional, Scientific or Technical Services	.181%
55	Management of Companies and Enterprises	.137%
561	Administrative and Support Services	.154%
562	Waste Management and Remediation Services	.261%
61	Education Services	.281%
62	Health Care and Social Assistance	.190%
71	Arts, Entertainment and Recreation	.24%
721	Accommodations	.20%
722	Food Services and Drinking Places	.194%
81	Other Services	.142%
Unclassified	Unclassified Business	.128%

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**Q: How do I determine my industry code (NAICS code)?**

A: Most taxpayers will already have a NAICS code that has been used to register with the Secretary of State, the Employment Security Division and/or the Modified Business tax among others. If you are unsure whether the category you have previously used is the category of your business or you do not know your NAICS code, you may find the following link to the NAICS search tool useful. <http://www.naics.com/search/>

**Q: What if I have more than one business industry in a single entity, which NAICS do I use?**

A: A business entity's NAICS is determined by the type of business the entity is. For instance, an auto body shop would be in the Other Services Category (NAICS beginning with 81) (regardless of whether in any given month it sold more tangible personal property than it provided services) because its business is providing auto body services.

Gaming Entities can fall under one of three different NAICS codes for purposes of the Commerce Tax based on activity that accompanies the gaming:

Hotel Casino	Accommodations Category
Taverns / Restaurants with Gaming	Food Services and Drinking Places Category
Slot Machine Parlors	Arts and Entertainment Category

**Q: What if I have a single business entity and I do not have one business industry type.**

If a single business entity has multiple types of businesses under its single entity that would not fall under the same NAICS code (like a pizza parlor and laundromat), the NAICS would be the category where the highest percentage of revenue comes from.

**Q: What if I do not have gross revenue of \$4,000,000, do I still have to file a return?**

A: Yes, every business entity subject to the Commerce Tax is required to file a return whether they have a tax liability or not. However, those entities that do not have \$4,000,000 will only be required to provide a simplified version of the tax return and will not be required to provide any additional information.

**Q: Are there any entities that are not subject to the Commerce Tax?**

A: Yes, some entities such as 501(c)s, governmental entities and passive entities are excluded from the definition of business and therefore not subject to the Commerce Tax. Please see Section 4(2) of Senate Bill 483 for a full list of excluded entities.

**Q: Is there a grace period for the first filing of this tax?**

A: Yes, while it is expected that each business entity will do its best to fully comply with the Commerce Tax provision, there is a grace period until February 15, 2017 whereby no interest or penalty will be assessed for failure to comply unless the failure was intentional or due to willful neglect.

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**Q: How do I determine my gross revenue?**

A: The gross revenue of a business entity is determined by taking the total amount from engaging in a business in this State with no deduction for, cost of goods sold or other expenses incurred in operating the business.

Revenue that is not included as gross revenue can be found in Section 8(3) of Senate Bill 483.

**Q: How do I determine my Nevada gross revenue?**

A: Nevada gross revenue includes the amounts of revenue received as follows:

- 1) For revenue related to the sale, lease, or royalties of tangible personal property sold to a consumer who is located in Nevada whether it is shipped, delivered into Nevada or purchased at a physical location in Nevada.
- 2) For revenue related to the sale of services, it is the location where the benefit is received by the purchaser. The purchaser is located in Nevada or the service is provided by a Nevada business for a benefit in Nevada.
- 3) For transportation services, it is whether the transport both begins and ends at points located in Nevada.
- 4) For real property sales, rents or royalties if the real property is located in Nevada.

**Q: Are there any allowable deductions?**

A: Yes, there are various deductions that may be taken. The deductions are described in Section 21 of Senate Bill 483.

**Q: If Federal law prohibits the taxing of gross receipts in certain circumstances, would my business still have to file a Commerce Tax Return?**

A: Yes, all business entities are required to file a return. However, any gross revenue prohibited from taxing pursuant to the Constitution or laws of the United States or the Nevada Constitution is a deduction from gross revenue pursuant to Section 21 of Senate Bill 483. For instance, certain state or local gross receipts taxes on aviation commerce are preempted by a federal aviation statute on taxation (49 U.S.C. Section 40116, also known as the Anti-Head Tax Act (“AHTA”)). Businesses that are under the AHTA would not include revenue from those transactions but may have other revenue that would be subject to the Commerce Tax.

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**Q: If I am liable for the Commerce Tax, are there any credits towards other taxes due to the State?**

A: Yes, an employer (as defined in NRS 363A.130 and NRS 363B.130) is entitled to take a credit equal to 50% of the amount of the Commerce Tax paid for the preceding Commerce Tax taxable year and apply it to their tax due for Modified Business Tax.

**Q: How long do I have to use my credit towards my Modified Business Tax liability?**

A: The credit may be taken on the 1<sup>st</sup> 4 quarters immediately following the end of the taxable fiscal year for which the Commerce Tax was paid. (Calendar year quarters ending 3<sup>rd</sup>, 4<sup>th</sup>, 1<sup>st</sup> and 2<sup>nd</sup> of every year.)

**Q: What if I pay my Commerce Tax late, do I still get to take the credit for the 4 quarters of Modified Business Tax?**

A: If you pay the Commerce Tax late, you will have to amend the applicable Modified Business Tax return in order to take the credit. For example, if you pay the Commerce Tax in November and have already filed the 3<sup>rd</sup> quarter Modified Business Tax return, you will need to amend the 3<sup>rd</sup> quarter Modified Business Tax return in order to take the credit on the 3<sup>rd</sup> quarter's return.

**Q: Will I get a refund if my Modified Business Tax liability is less than my allowed credit?**

A: No, the amount of credit used for a calendar quarter may not exceed the amount due for a calendar quarter and any unused credit may not be carried forward beyond the 4<sup>th</sup> quarter immediately following the end of the taxable fiscal year for which the Commerce Tax was paid. A Taxpayer is not entitled to a refund of any unused credit.