

---

# NEVADA DEPARTMENT OF TAXATION

<http://tax.nv.gov>



## **Tax Bulletin MBT 16-0005**

**Issue Date: June 27, 2016**

## **Employee Leasing Modified Business Tax**

---

### **Introduction**

This bulletin provides information regarding the changes to the imposition of the Modified Business Tax (MBT) on employee leasing companies.

### **Statutes and/or Regulations referenced**

NRS 363B.110; NRS 616B.670; Assembly Bill 389 (2015) (AB 389)

### **Employee Leasing Companies Generally**

In general, an employee leasing company provides employees to a client company for a fee. NRS 616B.670 provides a more detailed definition of the term "employee leasing company." Employee leasing companies are distinguishable from staffing companies insofar as they furnish employees to their client companies for an indefinite duration of employment as opposed to a finite or temporary term of employment. Employee leasing companies maintain the employees on their own payroll. The typical employee leasing company has multiple client companies to whom it provides employees.

### **Computation of the MBT prior to AB 389**

Under the MBT law, the company that registers and pays unemployment insurance on its employees is the company responsible to pay the MBT on the employees' wages. The current MBT law imposes an excise tax based on two classifications of business. For general business employers, the excise tax is imposed at the rate of 1.475 percent of the amount by which the sum of all wages paid by the employer during a calendar quarter exceeds \$50,000. Accordingly, with respect to each calendar quarter, current law exempts a general business employer's first \$50,000 in wages as paid to its employees for that quarter. For financial institutions defined under NRS 363A.050, the excise tax is imposed at a rate of 2 percent on the sum of all wages paid by the employer during a calendar quarter with no wage exemption. Whether an employee leasing company is a general business employer or a financial institution, the sum of all wages is the amount of wages paid by the employer after deducting the employee health care costs paid by the employer.

In 2013, employee leasing companies sought to separate their payroll in reference to the employees that they provided to each of their client companies thus, allowing an employee leasing company to claim the exemption allowed in NRS 363B.110 with respect to each of its client companies. The Attorney General clarified that the MBT was imposed upon the aggregate payroll of an employee leasing company and not based on the separate payroll of each client company. The justification for the aggregation was that employee leasing companies paid unemployment contributions to the Employment Security Division (ESD) which provided the aggregate wage information for the employee leasing company to the Department of Taxation for purposes of assessing the MBT. The wage information provided to the ESD was not broken down by each client company. Therefore, because the employee leasing companies were required to provide wage information in the aggregate to the ESD, the wage information could not be disaggregated for purposes of the MBT.

### **Computation of the MBT after AB 389**

With the passage of AB 389, the law now allows an employee leasing company to choose whether to use its own calculated contribution rate for unemployment insurance based on the employee leasing company's actual payroll, contribution, and benefit experience **or** the calculated contribution rate of each client company based on the client company's actual payroll, contribution and benefit experience for employees leased to the client company. When the employee leasing company chooses what calculated contribution rate it will use for unemployment insurance, then that selection also applies for calculating the MBT. Thus, if the employee leasing company chooses to use its own calculated contribution rate for unemployment insurance, then it will have to aggregate its payroll for calculation of the MBT. But, if the employee leasing company chooses to calculate the contribution rate of each client company for unemployment insurance, then it can separate its payroll of each client company for purposes of the MBT. When calculating the MBT for each client company, the rate will be determined based on whether the client company is classified as a general business or a financial institution.

### **Conclusion**

With changes provided by AB 389, the client company of an employee leasing company now can be viewed as the employer of the employees it leases. This means that the client company can now compute and pay the MBT based on its separate payroll but it will also be required to register and pay unemployment insurance based on its own calculated contribution rate. For more information on the Modified Business Tax, please see [http://tax.nv.gov/FAQs/Modified Business Tax Information FAQ s/](http://tax.nv.gov/FAQs/Modified_Business_Tax_Information_FAQ_s/).