

**PROPOSED AMENDMENT TO REGULATION R123-15
SUBMITTED ON BEHALF OF AMERICAN RESORT
DEVELOPMENT ASSOCIATION**

Summary: Sections 8 and 11 of the regulation add corresponding language to the chapters of NAC concerning the modified business tax and the modified business tax for financial institutions and mining companies (collectively, “MBT”) to allow certain payroll providers to utilize the commerce tax credit generated by affiliated entities for which it provides payroll services. Though the regulations generally refer to providing such services to “one or more members of the affiliated group,” paragraph (b) of subsection 2 of each section provides that “[e]ach member of the affiliated group” would have had MBT liability but for the payment of the payroll by the payroll provider. This raises the possibility that a payroll provider would be ineligible simply because an affiliated entity didn’t have an MBT liability. If the intent of the Department is to exclude from the MBT credit any affiliated entities that do not have MBT liability, the language below indicates that only those entities for which a credit is sought need to satisfy the “but for” test. If an affiliate is going to have its commerce tax liability imputed to the payroll entity for the purpose of the credit, it must be the recipient of payroll services from the payroll entity and only lack MBT liability because of this service. But if such a credit isn’t being sought, there is no reason for the “but for” test to be applied to the affiliate.

Proposed changes:

Sec. 8. 1. *An employer may apply to the Department to be designated as a payroll provider by submitting to the Department such forms, application materials and supporting documents as the Department may require.*

2. *The Department shall designate an employer as a payroll provider if the employer demonstrates to the satisfaction of the Department that:*

(a) *The employer is a member of an affiliated group which:*

(1) *Provides payroll services for one or more members of the affiliated group;*

(2) *Pays wages to employees who provide services on behalf of one or more members of the affiliated group; and*

(3) *Reports and pays the tax imposed pursuant to NRS 363A.130, as amended by section 68 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2900, on wages paid to employees who provide services on behalf of one or more members of the affiliated group; and*

(b) *Each member of the affiliated group for which a tax credit will be claimed pursuant to subsection 4 would have a liability for the tax imposed by NRS 363A.130, as amended by section 68 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2900, if the persons who provide services for that member were treated as employees of that member rather than as employees of the employer.*

3. *The Department may revoke or cancel the designation of an employer as a payroll provider if the employer no longer qualifies for that designation pursuant to subsection 2. The revocation or cancellation of the designation of an employer as a payroll provider does not preclude the Department from designating another employer as a payroll provider for the affiliated group if the other employer qualifies as a payroll provider pursuant to this section.*

4. *In reporting and computing the tax imposed pursuant to NRS 363A.130, as amended by section 68 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2900, a payroll provider may subtract from the amount calculated pursuant to subsection 1 of NRS 363A.130, as amended by section 68 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2900, a credit in an amount equal to 50 percent of the sum of the commerce tax paid by the payroll provider and each member of the affiliated group.*

5. *As used in this section:*

(a) *“Affiliated group” means a group of two or more business entities, each of which is controlled by one or more common owners or by one or more members of the group.*

(b) “Commerce tax” means the tax required to be paid pursuant to sections 2 to 61, inclusive, of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2878.

(c) “Controlled by” means the direct or indirect ownership, control or possession of 50 percent or more of the ownership interest in a business entity.

(d) “Payroll provider” means an employer who has been designated by the Department as a payroll provider pursuant to subsection 2.

Sec. 11. 1. An employer may apply to the Department to be designated as a payroll provider by submitting to the Department such forms, application materials and supporting documents as the Department may require.

2. The Department shall designate an employer as a payroll provider if the employer demonstrates to the satisfaction of the Department that:

(a) The employer is a member of an affiliated group which:

(1) Provides payroll services for one or more members of the affiliated group;

(2) Pays wages to employees who provide services on behalf of one or more members of the affiliated group; and

(3) Reports and pays the tax imposed by NRS 363B.110, as amended by section 70 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2901, on wages paid to employees who provide services on behalf of one or more members of the affiliated group; and

(b) Each member of the affiliated group *for which a tax credit will be claimed pursuant to subsection 4* would have a liability for the tax imposed by NRS 363B.110, as amended by section 70 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2901, if the persons who provide services for that member were treated as employees of that member rather than as employees of the employer.

3. The Department may revoke or cancel the designation of an employer as a payroll provider if the employer no longer qualifies for that designation pursuant to subsection 2. The revocation or cancellation of the designation of an employer as a payroll provider does not preclude the Department from designating another employer as a payroll provider for the affiliated group if the other employer qualifies as a payroll provider pursuant to this section.

4. In reporting and computing the tax imposed pursuant to NRS 363B.110, as amended by section 70 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2901, a payroll provider may subtract from the amount calculated pursuant to subsection 1 of NRS 363B.110, as amended by section 70 of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2901, a credit in an amount equal to 50 percent of the sum of the commerce tax paid by the payroll provider and the members of the affiliated group.

5. As used in this section:

(a) “Affiliated group” means a group of two or more business entities, each of which is controlled by one or more common owners or by one or more members of the group.

(b) “Commerce tax” means the tax required to be paid pursuant to sections 2 to 61, inclusive, of Senate Bill No. 483, chapter 487, Statutes of Nevada 2015, at page 2878.

(c) “Controlled by” means the direct or indirect ownership, control or possession of 50 percent or more of the ownership interest in a business entity.

(d) “Payroll provider” means an employer who has been designated by the Department as a payroll provider pursuant to subsection 2.

EXPLANATION: Matter in (1) *blue bold italics* is existing language in the regulation; and (2) *red bold italics* is new language proposed to be added in this amendment.