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February 23, 2016

VIA FACSIMILE 775-684-2020

Deonne E. Contine
Executive Director
State of Nevada
Department of Taxation
1515 College Parkway, Suite 115
Carson City, NV 89706

Re: Workshop on LCB draft of Proposed Regulation R123-15 dated
February 17, 2016 and Comments on draft instructions for
Commerce Tax Return - Draft 3

Dear Ms. Contine,

The purpose of this correspondence is to provide comments with respect to the LCB draft of proposed regulation of R123-15 dated February 17, 2016 ("Proposed Regulation").

1. Section 14 of Proposed Regulation. Subsection 2 contains the definition of a "business entity." The first category mentioned in subparagraph 2(a) is "an entity organized pursuant to Title 7 of NRS . . ." Title 7 contains the statutory framework for all Business Associations created under Nevada law or foreign entities qualified to do business in Nevada. Since Title 7 is so inclusive and includes private corporations, close corporations, foreign corporations, miscellaneous corporations, limited-liability companies, partnerships, business trusts, professional entities and associations, as well as other related topics, consideration should be given to deleting subparagraphs 2(d) and (e) of the Proposed Regulation. The former references partnerships governed by Chapter 87, while the latter specifically mentions limited-liability partnerships registered pursuant to Chapter 87. Both of these types of entities are already included in the definition above by incorporation of those organized under Title 7 of the Nevada Revised Statutes.

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2. Section 15 of Proposed Regulation. As you are aware, Section 4, subsection 2(m) of Senate Bill No. 483 adopting the Commerce Tax exempts income from passive activities stating the following:

"(m) A person whose activities within this State are confined to the owning, maintenance, and management of the person's intangible investments or of the intangible investments of persons or statutory trusts or business trusts registered as investment companies under the Investment Company Act of 1940, 15 U.S.C. §§80a-1 et seq., as amended, and the collection and distribution of the income from such investments or from tangible property physically located outside this State. For the purposes of this paragraph, 'intangible investments' include, without limitation, investments in stocks, bonds, notes and other debt obligations, including, without limitation, debt obligations of affiliated corporations, real estate investment trusts, patents, patent applications, trademarks, trade names, and similar types of intangible assets or an entity that is registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. §§80a-1 et seq."

Section 15 of the Proposed Regulation provides that:

"[T]he term 'intangible investments' includes, without limitation, the intangible investments described in that paragraph [paragraph (m) of subsection 2 of Section 4 quoted above] and an interest in any entity, including, without limitation, a trust, S corporation, partnership, limited-liability company or other entity in which a person owns an interest, regardless of whether that person controls or participates in the management of the entity in which the person owns an interest."

Though we recognize that both the statute and Proposed Regulation make clear that the specific items mentioned are not exclusive because of the phrase "without limitation," we believe that inclusion of a few more examples in the Proposed Regulation would be beneficial and provide greater guidance to Nevada taxpayers. Accordingly, we encourage the Department to specifically include futures and other derivatives contracts.

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3. Definition of Passive Entity. Section 14 of Senate Bill 483 provides as follows:

- "1. For purposes of this chapter, a business is a 'passive entity' only if:
 - (a) the business is a limited-liability company, a general partnership, limited-liability partnership, limited partnership, or a limited-liability limited partnership, or a trust, other than a business trust;
 - (b) during the period for which the gross revenue of the business entity is reported pursuant to section 20 of this act, at least 90 percent of the business entity's federal gross income consists of the following income:

[dividends, interest, capital gains, royalties from mineral deposits, etc.] . . ."

We believe that the Proposed Regulation should address passive entities that are excluded from the Commerce Tax. My colleague Robert E. Armstrong addressed this in some detail by his letter to the Department dated November 25, 2015. By my letter dated December 7, 2015, I concurred completely with Mr. Armstrong's proposal to clarify or include a definition for "passive entities." I submit that such clarifications would be helpful to both the Department of Taxation and taxpayers in general.

In addition to what Mr. Armstrong proposed in detail in his letter of November 25, 2015, we would also expand the passive-income test to include "income from a limited-liability company or **other flow-thru entity such as a S corporation.**" This clearly fits within the spirit and intent of SB 483 and in Section 14 of SB 483 in particular. It is evident to me as a tax lawyer from the reference to "income from a limited-liability company" and various partnerships in Section 14.1(1)(a) above that the intent of the Nevada Legislature is to include passive income that flows to a person from any flow-thru entity in the passive-income test. This clarification that income from all flow-thru entities counts as part of the passive-income test would be similar to the clarification already made in the Proposed Regulation that the ownership constitutes an "intangible investment" as defined in Section 15 of the Proposed Regulation.

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4. Draft 3 of Commerce Tax Return, Instructions, and Section 17 of the Proposed Regulation. First, we applaud the Departments and LCB's inclusion of a shortened Nevada Commerce Tax Return for those entities whose income from an active business does not exceed \$4,000,000, and the inclusion in Draft 3 of the taxpayer's declaration that it did not exceed \$4,000,000 without requiring such entity to disclose all of its gross revenue from intangible investments and passive income. While technically the receipts from intangible assets and passive activities do constitute "gross revenues" in an accounting sense, we propose that a clarifying amendment be made to subsection 2 of Section 17 of the Proposed Regulation to read as follows:

2. A business entity engaging in a business in this State whose gross revenues ***subject to the Commerce Tax*** for a taxable year is less than \$4,000,000 shall provide on its Nevada Commerce Tax Return only the following information:

....

We believe this clarification will coordinate with the definition of "Revenue" on page 2 of the 2016 Instructions for Commerce Tax Return.

We appreciate the continuing dialogue and the Department's and LCB's fine efforts in trying to make a horribly complex tax less complex and burdensome to the citizens of Nevada. Please do not hesitate to contact us for any questions or clarification. Thanks again for your attention in this matter.

Respectfully submitted,



G. Barton Mowry

GBM/km