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Via email: vashekon@tax.state.nv.us

Nadia Vasheko
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State of Nevada
Department of Taxation
Grant Sawyer Office Building
555 E. Washington Ave, Suite 1300
Las Vegas, NV 89101

Re: Reply to Email Correspondence of October 6, 2015

Dear Ms. Vasheko,

Thank you for contacting us and allowing us an opportunity to respond with respect to your questions set forth in your email correspondence to me of October 6, 2015. Your questions and our requested responses are set forth below with respect to the Nevada Tax Commission proposed regulation dated September 24, 2015 using defined terms contained in SB 483 or the proposed regulation:

1. Please provide some examples of the trust arrangements that would demonstrate the difference in application of law with your suggested amendment and without your suggested amendment.

   Our response:

   Example 1: A trust defined in Section 9 of the proposed regulation directly owns a fee interest in commercial real estate located in Nevada. Since the trust will report its rental income from the real estate on Part 1, Schedule E of Form 1040 which is gross revenue as defined in Section 8 of SB 483, the trust will be required to file and pay Commerce Tax under Section 20 of SB 483. This result would be the same with or without the adoption of our suggested amendments.

   Example 2: A trust defined in Section 9 of the proposed regulation owns marketable securities, partnership interests, S corporation stock and ownership interests in other entities each of whom engage in business in Nevada and each of whom earn gross revenue as defined in Section 8 of SB 483. The trust will report its distributive share of income or loss from those entities on Part II, Schedule E of

Form 1040. If our suggested amendments are adopted, the trust would not be required to file a Commerce Tax return. However, since the other entities directly earn gross revenue as defined in Section 8 of SB 483, each of those entities will be required to file Commerce Tax returns and pay Commerce Tax under Section 20 of SB 483. If our suggested amendments are not adopted, the trust may be required to file a Commerce Tax return, disclose its worldwide income, and possibly pay Commerce Tax on its distributive share of the income of the entities in which it owns an interest even though the other entities also file and pay Commerce Tax on the same gross revenue, thus causing duplicative reporting obligations and tax pyramiding.

Example 3: If none of the entities owned by the trust described in Example 2 engage in business in Nevada, neither the trust nor the entities will be required to file or pay Commerce Tax.

Example 4: If our suggested amendments are adopted, a beneficiary of a trust in Example 1 or Example 2 would not be required to file Commerce Tax returns and pay Commerce Tax since the income would be reported by the beneficiary on Part III, Schedule E, Form 1040. If our proposed amendment is not adopted, the beneficiary may be required to file Commerce Tax returns and potentially pay Commerce Tax on such gross revenue even though the trust or the entities in which the trust owns an interest would file Commerce Tax returns and pay Commerce Tax on the same gross revenue.

2. When you refer to "***activities reported on federal Schedule E (Form 1040), Supplemental Income and Loss, shall be taken into account only to the extent attributable to activities conducted directly by the trust***", which part(s) of the schedule E would those activities be reported in?

   Our response:

   The gross revenue from activities reported on Part I of Schedule E of Form 1040 would be taken into account for Commerce Tax purposes if such activities are directly carried on by the trust in the State of Nevada. However, gross revenue reported on Parts II and III of Schedule E of Form 1040 does not result from activities carried on directly by the trust, but rather is the result of activities carried on by other entities in which the trust owns an interest. As previously discussed, those other entities would be required to file Commerce Tax returns and pay Commerce Tax with respect to that gross revenue. Duplicative reporting and tax pyramiding would result if trusts were required to report the same gross revenue on their Commerce Tax returns and pay Commerce Tax on gross revenue directly earned by other entities.

3. If the trust is ***"not otherwise engaged in business in Nevada"*** why does not it qualify as an exception under subparagraph (m), paragraph (2), Section 4 of SB 483? In other

words, why does it have to be clarified it "***is not required to file a return pursuant to Sec. 20 SB 483.***"?

Our response:

We believe that the trust would qualify under Section 4(2)(m) as you suggest, but because the meaning of the term "intangible investments" used in that section is not defined, the application of Section 4(2)(m) in the context of a trust's investments is ambiguous. For example, many trusts own intangible investments in the form of stock in closely held corporations, membership interests in limited liability companies and partnership interests in general and limited partnerships. While we believe such investments are "intangible investments" within the meaning of Section 4(2)(m), it is not clear from the statutory language whether such investments fit within the meaning of that term. Because of that ambiguity and the extraordinary breadth of the regulatory definition contained in Section 4 of the proposed regulation released on September 9, 2015, we believe a clear cut rule with respect to a trust defined under Section 9 of the proposed regulation is vitally important.

4. Would your proposed amendments to Section 10 create a filing and reporting requirement, for Commerce Tax, for a business trust that directly owns a tangible investment located inside Nevada (i.e. Real estate, inventory, mining operations etc.)?

   Our response:

   Since business trusts as defined in Section 2 of the proposed regulation are excluded from the definition of trust set forth in Section 9 of the proposed regulation, business trusts are not covered in our proposed amendment, as Section 10 is limited in scope to only trusts defined in Section 9. Generally, based on the provisions of SB 483, a business trust is essentially treated as a corporation for tax purposes and it is our belief that the business trust described in your question would be required to file Commerce Tax return and pay Commerce Tax.

5. If the business trust owned a distributive share in a pass through entity that owned a tangible investment in Nevada, would the pass through entity then have a filing and reporting requirement, for Commerce Tax, while the business trust would not have a filing and reporting requirement?

   Our response:

   We believe this inquiry is outside the scope of Section 10 which is intended to solely focus on a "trust" as defined in Section 9 of the proposed regulation. Section 10 excludes a business trust described in Section 2 of the proposed regulation. However, to answer your question generally, a business trust that does not directly earn gross revenue in Nevada would not be required to file a Commerce Tax return

and pay Commerce Tax since the pass through entity earned the gross revenue as defined in Section 8 of SB 483 is required to file a return as required under Section 20 of SB 483.

6. Does the statement "***activities reported on federal Schedule E...shall be taken into account***" require the trust to re-evaluate its reporting position for Commerce Tax annually?

   Our response:

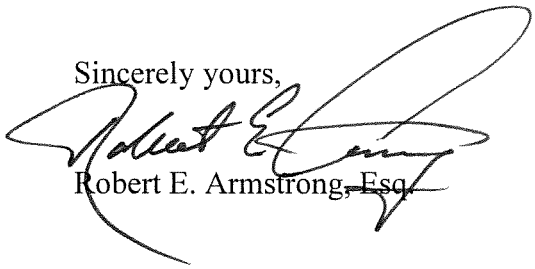
   Yes, the trust could directly acquire a fee interest in commercial or residential rental real estate, or begin directly engaging in a trade or business in Nevada at any time, which would give rise to the requirement that the trust file a Commerce Tax return and pay Commerce Tax.

7. Does the term "***activities conducted directly by the trust***" include a passive income received by the trust? For instance, real estate rental income from a Nevada property in which the trust does not materially participate.

   Yes, if the trust directly owns the Nevada property which produces real estate rental income, the trust would file Commerce Tax returns and pay Commerce Tax.
   The concept of "materially participate" and passive income are not used in SB 483 and seem foreign to SB 483. We believe the terms "material participation" and "passive income" derive from federal income tax concepts contained in IRC 469 which determines if tax losses are immediately deductible. Niether concept is particularly useful in the context of the Commerce Tax which is a decidedly different form of taxation.

We greatly appreciate our continuing dialogue and please do not hesitate to contact us. Thank you for your attention in this matter.

Sincerely yours,



Robert E. Armstrong, Esq.

REA/neh

cc: Deonne Contine, Executive Director Department of Taxation (via email: contine@tax.state.nv.us)
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