



MCDONALD·CARANO·WILSON LLP

Robert E. Armstrong, Esq.
E-mail: rarmstrong@mcwlaw.com
Direct line: (775) 326-4357

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

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

**Re: Comments on Proposed Regulation of the Nevada Tax Commission; LCB
File No. R123-15
Comments on Draft Instructions for Commerce Tax Return**

Dear Ms. Vasheko,

The purpose of this correspondence is to provide additional comments with respect to the Proposed Regulation of the Nevada Tax Commission, LCB File No. R123-15 (the "Proposed Regulation") and to suggest modifications to the Draft Instructions to the Commerce Tax Return.

Additional Comments on Proposed Regulation

In addition to the comments made in our November 25, 2015 letter, we would like to voice our support of the comments that were made by attorney Bart Mowry in his December 7, 2015 letter to Director Contine regarding the definition of "Business Entity." As currently drafted, the definition of "Business Entity" under the Proposed Regulation would include persons filing Schedule E (Form 1040)-Part I or Part V. However, as pointed out by Mr. Mowry, Part V of Schedule E is merely as summary of income that includes income reported on Parts II-IV of Schedule E. Because the Proposed Regulation intentionally omits filers of Parts II-IV of Schedule E from the definition of "Business Entity" bringing all such filers back into the definition by referencing Part V of Schedule E is not the likely intent of the drafters. Accordingly, we agree with Mr. Mowry that the reference to Part V of Schedule E in the definition of "Business Entity" should be omitted from the Proposed Regulation.

Suggested Modifications to Draft Instructions to the Commerce Tax Return

Enclosed with this correspondence is a redline version of the Draft Instructions to the Commerce Tax Return reflecting our suggested modifications thereto. We believe these suggested modifications will assist taxpayers in the preparation of the Commerce Tax Return by

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RENO, NEVADA 89501

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775-788-2000 • FAX 775-788-2020

ATTORNEYS AT LAW



WWW.MCWLAW.COM

2300 WEST SAHARA AVENUE
SUITE 1200
LAS VEGAS, NEVADA 89102
702-873-4100
FAX 702-873-9966

clarifying certain requirements for filing of the return and providing additional information regarding important statutory terms.

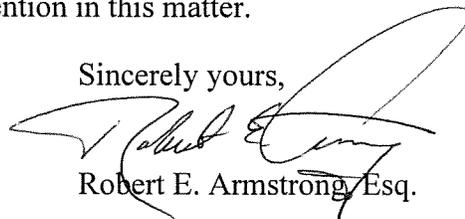
Note that our suggested modifications to the Draft Instructions enclosed herewith recommend that small business entities with less than \$4 million of Nevada gross revenue not be required to file a Commerce Tax return. We believe that the Department has the authority to adopt by regulation an exemption from filing a return for small business entities that have less than \$4 million of Nevada gross revenue. This authority is found in several sections of SB 483. First, Section 16 of SB 483 provides that the Department shall “administer and enforce the provisions of this chapter, and may adopt such regulations as it deems appropriate for that purpose.” This is a broad grant of regulatory authority to the Department to promulgate reasonable rules to implement the Commerce Tax. Second, Section 20(1) of SB 483 imposes the Commerce Tax upon “each business entity whose Nevada gross revenue in a taxable year exceeds \$4,000,000.” Third, Section 20(2) of SB 483 requires that “each business entity engaging in a business in this State during a taxable year shall . . . file with the Department a report on a form prescribed by the Department.” This section implies that the Department may prescribe forms to implement the Commerce Tax in a reasonable manner.

We recognize that the first clause of Section 20(2), if read literally and in isolation from the remainder of the Act, could theoretically require an entity with only \$1.00 of Nevada gross revenue to file a return. However, we believe the delegation of general regulatory authority to the Department and the specific authority to prescribe forms, gives the Department ample authority to exempt small businesses with gross revenue under the \$4 million threshold from the annual return requirement. Otherwise, the Department would receive a blizzard of irrelevant filings and the public would be unnecessarily burdened.

Alternatively, the Department could also consider a regulatory provision that allows a small business with less than \$4 million of Nevada gross revenue to simply “check a box” and claim exemption from the tax, rather than be subject to the full accounting and compliance burden necessary to complete the entire annual return.

We appreciate your consideration of our comments and suggestions and please do not hesitate to contact us. Thank you for your attention in this matter.

Sincerely yours,



Robert E. Armstrong, Esq.

REA/neh
Enclosure

cc: Deonne Contine, Executive Director, Department of Taxation (via email: contine@tax.state.nv.us) Bryan Fernley, Principal Deputy Legislative Counsel, Legal Division (via email: bryan.fernley@lcb.state.nv.us) George Hritz, Management Analyst III, Nevada Department of Taxation (via email: ghritz@tax.state.nv.us)

Who must file

Each business entity, including sole proprietorships, that is engaged in business in Nevada, unless specifically excluded by the law, has to file the Commerce Tax return. The Commerce Tax return must be filed even if there is no tax liability due, subject to the exception for business entities with less than \$4 million of Nevada gross revenue.

Specifically excluded by the law from filing requirements:

Natural persons, trusts as defined by regulations, and certain other entities, unless engaged in a business in Nevada and files Schedule C, E (Part 1) or F with the federal tax return;

Governmental entity;

IRC section 501(c) or NRS 82 or NRS 84 non-profit organization;

Credit Union;

Certain non-business statutory trusts, including REITs and REMICs as defined in IRC;

Passive entities defined by statute and regulations, generally with at least 90 percent of gross income from dividends, interest, gains and other passive sources and no more than 10 percent from active trade or businesses;

Entity that solely manages intangible investments;

Entity participating in exhibition in Nevada and is not required to obtain a business license pursuant to NRS 360.780.

Revenue

Do not include in revenue:

Cash discounts taken by customers

Value of complimentary goods or services provided to customers

Value of property or services donated to the IRC §501(c)(3) nonprofit organizations

Amounts indirectly realized from a reduction of an expense or deduction

Interest or dividends received, except for the interest on credit sales or from loans to customers (see instructions for line 4)

Distributions from corporations, distributive shares of S corporations and distributive or proportionate share of receipts and income from partnerships or single member LLCs

Revenue from hedging transactions as defined by IRC §1221 or FAS No.133, unless the title to real or tangible personal property is transferred in such transactions

Revenue received from another member of an affiliated group (50% or more direct or indirect ownership, control or possession of a business entity)

Proceeds attributable to the repayment, maturity or redemption of the principal of a loan, bond, mutual fund, certificate of deposit or marketable instrument

The principal amount received under a repurchase agreement or on account of any transaction characterized as a loan.

Proceeds from the issuance of the business entity's own stock, options, warrants, puts or calls, from the sale of the treasury stock

Contributions to a corporation or a partnership (IRC §118 and §721)

Amounts realized in corporate liquidations (IRC §331 and §336)

Amounts realized from liquidation of subsidiaries by a corporation (IRC §332 and §337)

Amounts realized from certain corporate acquisitions (IRC §338)

Amounts realized from transfer of assets to a corporation in exchange for stock (IRC §351)

Amounts realized from corporate modifications and reorganizations (IRC §355 and §368)

Distributions from a partnership (IRC §731)

Amounts realized in like-kind exchanges (IRC §1031)

Amounts realized from the sale of an account receivable

Amounts realized from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copyrights and similar intellectual property

Receipts from sale, exchange or other disposition of the capital assets (IRC§ 1221 or 1231)

Amounts realized from involuntary conversions (IRC §1033)

Insurance policy proceeds, except for the proceeds received for the loss of business revenue (see instructions for line 6)

Damages received as a result of litigation, except for the damages received for loss of business income (see instructions for line 5)

Revenue that is not subject to tax pursuant to the Constitution or laws of the United States or the Nevada Constitution

Amounts that are not considered revenue under generally accepted accounting principles.