

DATE: July 16, 2015

TO: Deonne Contine, Executive Director, Department of Taxation
Paulina Oliver, Deputy Director, Department of Taxation

FROM: Carole Vilardo, President
Nevada Taxpayers Association

SUBJECT: SB 483 - Proposed Regulations

On July 6, I submitted an addendum for a proposed regulation for Section 68.4 of SB 483. I have received the following suggested language from one of our members for that section.

- 68.4. (a) *Consolidated elected and combined taxpayer groups may elect to file as one taxpayer if persons in the group meet certain requirements. One of those requirements is that the persons have a specified portion of the value of their ownership interest owned and controlled by "common owners" included in the group. In addition to an ownership interest, the higher-tiered entity must have the ability through its voting rights to control the operations of the lower-tiered entities at each level of the vertical chain. There is a different "control test" for combined groups than for consolidated elected groups. For combined groups, the "control test" is that the higher-tiered entity must own more than 50 percent of the lower-tiered entity at each level of the vertical chain and effectively, through its ownership, possess the voting rights to be able to control the lower-tiered entity. For consolidated elected groups, the "control test" is that the higher-tiered entity must own at least 50 percent or at least 80 percent of the lower-tiered entity at each level of the vertical chain and effectively, through its ownership, possess the voting rights to be able to control the lower-tiered entity. For purposes of this paragraph, "effectively" means that the entity has the ability to actually control the operations of the lower-tiered entity and is not required to be part of another combined or consolidated group.*
- (b) *An employer that is a business entity that is part of an affiliated group [as defined in Section 11] may aggregate the total amount of commerce tax paid by each member of its affiliated group for purposes of calculating the credit provided by this Section.*
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Additionally, I believe there is a need for another regulation to clarify what is meant by "rental" and "leasing" under section 38. While the NAICS code 53 refers to the leasing of tangible property or intangible property such as trademarks, I would suggest that a regulation, possibly something similar to the following be considered. I believe it accurately reflects the intent of section 38.

38. *For the purposes of NAICS code 53, "rental" and "leasing" refer to buildings and related appurtenances.*

Regulations Proposed to Clarify Various Sections of SB 483
(CAV for NTA - Revised 6/18/15)

Section 4.1 - “Business Entity” determined

Clarification requested to reference that a “corporation” includes a subchapter S corporation as well as a nonprofit corporation.

Section 11 - “Pass-through revenue”

This section defines the various types of pass-through revenue, but not how to account for the distribution.

Pass-through revenue reflects the revenue amount due for completing a specific arrangement. However, it does not reflect the income reported to the IRS on the K1 form filed for the partnership, LLC or a subchapter S corporation. A regulation needs to identify if the entity is reporting revenue or income. The reporting of income would avoid the pyramiding factor that could be associated with reporting revenue.

Another regulation for this section involves the time frame for distribution.

This regulation needs to clarify that the distribution of pass-through revenue is made without regard to the length of time.

Section 14 - Passive Entity

This section is written in a manner that is causing confusion resulting in multiple interpretations by various business entities.

A potential solution is to have a regulation that lists all the exclusions from revenue identified in subsections 1, 2 and 3 of this section.

Sections 15 & 20 - NAICS Code

Section 15 requires a business that has multiple NAICS codes to report the code which generates the highest percentage of revenue. Section 20 does not allow a change of the NAICS code unless approved by the department.

A regulation is needed to clarify:

Specify the time period the NAICS code is to be determined? It should be the federal reporting year so it is easier for the business entity to determine.

A form should be created to submit the request for the NAICS code change. Additionally, if the department does not notify the entity within 30 days of acceptance or rejection, the change requested by the business entity should be considered accepted.

Section 22. 1 (e) - Transportation Regulations

1. A record keeping regulation is required for all transportation NAICS codes.
2. Clarification of “origin and destination in Nevada.” For example:

Truck

The origin of the trip is Phoenix. The first stop is Las Vegas, the second stop is Nye County and the final destination is Los Angeles. Would this trip be subject to the commerce tax? If it is, what records will be required to show the Nevada origin and destination and what records will be required to show the revenue derived from the Nevada shipments V. the Los Angeles shipments?

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