

**PROPOSED REGULATION OF THE  
NEVADA TAX COMMISSION**

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY:

A REGULATION relating to taxation; providing implementation of the Commerce Tax

**Clarifying a taxable business entity and the requirements of a taxable entity**

- 1) *The tax imposed by Senate Bill 483 is an entity based tax. Each taxable entity must file the annual return pursuant to Sec. 20 of SB 483 even if the taxable entity has no tax liability pursuant to Secs. 24-49 of SB 483*
- 2) *“Taxable entity” means:*
  - a. *a person or entity in this State that is engaging in a business including*
    - (a) *those entities identified in Sec. 4 of SB 483, which includes Subchapter S corporations,*
    - (b) *the entity or person who files the Schedule C (Form 1040), Profit or Loss from Business, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss from Farming, or its equivalent or successor form, for that business or any other person or entity.*
- 3) *Engaging in a business has the meaning ascribed to it in Sec. 6 of SB 483*
- 4) *The Department will determine that an entity is commencing, conducting or continuing a business in this State, and therefore a taxable entity, if it conducts certain activities, including without limitation, any of the following:*
  - (a) *advertising: entering Nevada to purchase, place, or display advertising when the advertising is for the benefit of another and in the ordinary course of*

*business (e.g., the foreign taxable entity makes signs and brings them into Nevada, sets them up, and maintains them);*

*(b) consignments: having consigned goods in Nevada;*

*(c) contracting: performance of a contract in Nevada regardless of whether the taxable entity brings its own employees into the state, hires local labor, or subcontracts with another;*

*(d) delivering: delivering into Nevada items it has sold;*

*(e) employees or representatives: having employees or representatives in Nevada doing the business of the taxable entity;*

*(f) federal enclaves: doing business in any area within Nevada, even if the area is leased by, owned by, ceded to, or under the control of the federal government;*

*(g) franchisors: entering into one or more contracts with persons, corporations, or other business entities located in Nevada, by which: (A) the franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor; and (B) the operation of a franchisee's business pursuant to such plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate.*

*(h) holding companies: maintaining a place of business in Nevada or managing, directing, and/or performing services in Nevada for subsidiaries or investee entities;*

*(i) inventory: having an inventory in Nevada or having spot inventory for the convenient delivery to customers, even if the bulk of orders are filled from out of state;*

*(j) leasing: leasing tangible personal property which is used in Nevada;*

*(k) loan production activities: soliciting sales contracts or loans, gathering financial data, making credit checks, collecting accounts, repossessing property or performing other financial activities in Nevada through employees, independent contractors, or agents, regardless of whether they reside in Nevada;*

- (l) *partners:*
  - (A) *acting as a general partner in a general partnership which is doing business in Nevada; (B) acting as a general partner in a limited partnership which is doing business in Nevada (a foreign taxable entity which is a limited partner in a limited partnership is not doing business in Nevada, if that is the limited partner's only connection with Nevada);*
- (m) *place of business: maintaining a place of business in Nevada;*
- (n) *processing: assembling, processing, manufacturing, or storing goods in Nevada;*
- (o) *real estate: holding, acquiring, leasing, or disposing of any property located in Nevada;*
- (p) *services, including, but not limited to the following:*
  - (A) *providing any service in Nevada, regardless of whether the employees, independent contractors, agents, or other representatives performing the services reside in Nevada; maintaining or repairing property located in Nevada whether under warranty or by separate contract; installing, erecting, or modifying property in Nevada; conducting training classes, seminars or lectures in Nevada; providing any kind of technical assistance in Nevada, including, but not limited to, engineering services; or investigating, handling or otherwise assisting in resolving customer complaints in Nevada.*
- (q) *shipment: sending materials to Nevada to be stored awaiting orders for their shipment;*
- (r) *shows and performances: the staging of or participating in shows, theatrical performances, sporting events, or other events within Nevada;*

- (s) *solicitation: having employees, independent contractors, agents, or other representatives in Nevada, regardless of whether they reside in Nevada, to promote or induce sales of the foreign taxable entity's goods or services;*
- (t) *telephone listing: having a telephone number that is answered in Nevada; or*
- (u) *transportation:*
  - (A) *carrying passengers or freight (any personal property including oil and gas transmitted by pipeline) from one point in Nevada to another point within the state, if pickup and delivery, occurs within Nevada; or*
  - (B) *having facilities and/or employees, independent contractors, agents, or other representatives in Nevada, regardless of whether they reside in Nevada:*
    - (i) *for storage, delivery, or shipment of goods;*
    - (ii) *for servicing, maintaining, or repair of vehicles, trailers, containers, and other equipment;*
    - (iii) *for coordinating and directing the transportation of passengers or freight; or*
    - (iv) *for doing any other business of the taxable entity.*

5) *Taxable entity does not include those entities specifically excluded from the definition of business entity as provided in Sec. 4 of SB 483.*

**Commerce Tax Credit toward Modified Business Tax liability only available if the Commerce Tax is paid.**

*Sec. 1. If an employer incurs Commerce Tax liability but does not pay the Commerce Tax as required by section 20(2) of Senate Bill 483, the employer is not entitled to the Modified Business Tax credit as provided in Sections 68 and 70 of Senate Bill 483 until such time as the Commerce Tax liability is satisfied.*

*Sec. 2. Should Commerce Tax liability be partially satisfied, the employer will only be allowed to take credit equal to 50 percent of the amount actually paid.*

*Sec. 3. Upon any Commerce Tax liability being either partially or fully satisfied, the employer may, provided it is within the statutory period as provided in NRS 363A.150 or NRS 363B.150, amend any previously filed Modified Business Tax returns periods that follow the taxable year(s) for which the Commerce Tax payment was made, to reflect the qualifying credit.*

*Sec. 4. The Department may make any adjustments to a taxpayers account to apply available credits and adjust the Modified Business Tax returns.*

**Process for reporting and changing the NAICS Code designation.**

*Sec. 1 The taxpayer will designate its NAICS code and corresponding tax rate on its initial Commerce Tax return and will use such NAICS code designated on its initial return on all subsequent Commerce Tax returns filings with the Department. Unless the Department discovers that the taxpayer has submitted an erroneous or inaccurate NAICS code, the Department will record the designation on the initial return as the NAICS code for the taxpayer. If the Department determines that the taxpayer has submitted an erroneous or inaccurate NAICS code, the Department will notify the taxpayer requesting additional documentation or clarification regarding the NAICS code designation.*

*Sec. 2. If the taxpayer intends to use a NAICS code designation different than the NAICS code initially designated by the taxpayer, the taxpayer must notify the Department in writing on a form designated by the Department at the same time it files its Commerce Tax Return. The request should include the prior category, the new category, the reason for the change and all documentation supporting its change in NAICS category.*

*Sec. 3. The Department will review the NAICS designation change request and make a determination regarding the change in NAICS designation and tax rate within 60 days of receipt of the request and documentation required herein.*

*Sec. 4. If the Department later determines that a NAICS code change was submitted based on fraudulent or erroneous information, and the change resulted in underreporting of tax liability by the taxpayer, the Department shall not be estopped from assessing liability.*

## **Commerce Tax Recovery Charge**

*Sec. \_\_\_ 1. The Commerce Tax is a tax imposed on the gross revenue of a business. It is not a tax on the customer, and the business entity is prohibited from assessing it directly against the customer.*

*2. The business entity may itemize a “Commerce Tax recovery charge” on an invoice or receipt if:*

*a. The business entity explains to its customers that the charge is made in order to recover money paid by the business for taxes imposed upon it pursuant to NRS \_ [Commerce Tax];*

*b. The invoice clearly indicates that the recovery charge is included in the total price collected from the customer and is not an additional charge assessed on the customer’s total.*

*3. The total amount collected from the customer is the measure of Commerce Tax, less allowed deductions.*

**Amend NAC 363A and B as follows: (to allow for payroll provider to take Commerce Tax Credit toward affiliated group MBT Liability)**

*Sec. 1 “Affiliated group” means:*

*(a) An affiliated group as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. § 1504(a); or*

*(b) A controlled group of corporations as described in section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. § 1563(a)(2).*

*Sec. 2. “Commerce tax” means the tax imposed by Section 20 of SB 483.*

*Sec. 3. “Commerce tax credit” means the credit described in paragraph 4 of section 68 of S.B. 483.*

*Sec. 4. “Employer” has the meaning ascribed to it in NRS 363B.030 or NRS 363A.030.*

*Sec. 5. “Modified business tax” means the tax imposed by NRS 363B.110 or NRS 363A.110*

*Sec. 5. “Payroll provider” means a single member of an affiliated group who:*

- (a) Has been designated by the group to provide payroll services for each of the other members of the group;*
- (b) Pays wages to employees performing services exclusively for each of the other members of the affiliated group;*
- (c) Reports and pays the modified business tax on the gross wages paid to employees performing services exclusively for each of the other members of the affiliated group; and,*
- (d) Has applied to and been approved by the Department, pursuant to section 6 of this regulation, to compute the commerce tax credit in the manner described in section 7 of this regulation .*

*Sec. 6.*

*1. An employer may apply to the Department to be recognized as a payroll provider by submitting to the Department such forms, application materials and supporting documents as the Department may require. To be recognized as a payroll provider, the employer must demonstrate to the satisfaction of the Department that:*

- (a) The employer meets each of the conditions described in section 5;*
- (b) The members of the affiliated group are engaged in the same business or similar businesses; and,*
- (c) Each member of the affiliated group would have a recurring liability for the modified business tax if the persons providing services exclusively for that member were treated as that member’s own employee and not those of the payroll provider.*

*2. The Department may revoke or cancel the payroll provider designation if it finds that a member of the group no longer meets the criteria.*

*Sec. 7. In computing and reporting the commerce tax credit, a payroll provider may claim an amount equal to 50% of the sum of all commerce tax liabilities incurred by the payroll provider and members of the affiliated group during the period for which the payroll provider requests the commerce tax credit.*

DRAFT