

TAX TOPICS

*A publication of the Nevada Taxpayers Association
Serving the citizens of Nevada since 1922*

ISSUE 2-16

July 2016

Commerce Tax Regulations Adopted

The Commerce Tax Regulations that were approved by the Nevada Tax Commission in April 2016 were finalized and adopted by the Legislative Commission on June 29, 2016.

The following is a summary of the approved Commerce Tax Regulations:

- Existing law imposes an annual commerce tax on each business entity engaged in business in this State whose Nevada gross revenue in a fiscal year exceeds \$4,000,000 at a rate that is based on the industry in which the business entity is primarily engaged.
- The Nevada gross revenue of a business entity is determined by taking the amount of the gross revenue of the business entity, subtracting various deductions from that amount, then situsing the adjusted amount to this State.
- To calculate the amount of the commerce tax owed by a business entity, the business entity subtracts \$4,000,000 from its Nevada gross revenue, and then multiplies that amount by the rate prescribed for the industry in which the business entity is primarily engaged.
- This regulation adopts provisions for the administration, calculation and payment of the commerce tax.
- **Section 14** of this regulation defines the term “business entity” for the purpose of determining whether a person is subject to the commerce tax.
 - In determining whether a business entity is doing business in Nevada, the Department “must consider the activities of the business entity and not the activities of other entities in which the business entity owns an interest.”
 - As a general rule, a “business entity” includes entities organized with the NV Secretary of State, banks and savings and loans, partnerships, business associations, joint ventures, joint stock company, holding company, natural person who files a Schedule C, E or F with the IRS.

- **Section 15** of this regulation defines the term “intangible investments” for the purposes of the exemption from the commerce tax for a person whose activity in this State is confined to owning, maintaining and managing the person’s intangible investments or the intangible investments of certain other persons.
- **Section 16** of this regulation sets forth certain activities by a business entity in this State that constitutes conducting a business in this State and, thus, subject the business entity to the commerce tax.
- The following activities are considered “engaging in a business in” Nevada:
 - placement of advertising in Nevada;
 - consigned goods in Nevada;
 - performance of a contract in Nevada (regardless of whether the person brings their own employees into Nevada, hires local labor or subcontracts with another person for employment or labor);
 - delivers items sold into Nevada with its own vehicles;
 - has employees or representatives in Nevada;
 - does business anywhere in the State including on federal land;
 - enters into a franchise agreement;
 - maintains a place of business in Nevada to supervise the management of an entity;
 - has inventory in Nevada even if orders are filled outside Nevada;
 - leases tangible property used in Nevada;
 - provides loan production activities in Nevada;
 - acts, for a fee, as a general partner of a partnership or acts as a board member of a corporation doing business in Nevada;
 - maintains a place of business in Nevada;
 - holds, acquires, leases or disposes of real property in Nevada;
 - provides a service in Nevada through employees, independent contractors, agents or other representatives, including maintaining property (including a warranty), installing erecting, or modifying property in Nevada, conducting training classes or seminars in Nevada, providing technical assistance in Nevada, investigating, handling or assisting with customer complaints.;
 - sends materials to Nevada to await instructions on shipment;
 - stages or participates in shows, theatrical performances, or sporting events;
 - has an employee, independent contractor, agent or other representative in Nevada to promote or induce sales of the person’s goods or services;
 - has a phone number answered in Nevada;

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SUMMARY

- carries passengers or property from one point in Nevada to another point in Nevada;
- has facilities or an employee, independent contractor, agent or representative for purposes of storing, shipping or delivering goods from Nevada, for servicing, maintaining or repairing vehicles, trailers containers or other equipment in Nevada, for coordinating and directing the transportation of passengers or freight in Nevada; or
- any other activity that constitutes nexus under the U.S. Constitution.

- **Section 17** requires:

- (1) each business entity engaging in a business in this State in a taxable year to file a Nevada Commerce Tax Return with the Department of Taxation, regardless of whether the business entity owes the tax; and
- (2) a business entity whose Nevada gross revenue for a taxable year is less than \$4,000,000 to file a Nevada Commerce Tax Return that contains only certain information about the business entity and an affirmation, under penalty of perjury, that the business entity's Nevada gross revenue for the taxable year is less than \$4,000,000.



- **Section 18** of this regulation adopts a standard for determining whether a good or service is provided on a complimentary basis and, thus, excluded from the gross revenue of a business entity when calculating the amount of commerce tax owed by the business entity.
 - Goods or services are provided on a complimentary basis if provided for no charge or in exchange for points or credits earned by a customer or in exchange for a coupon, voucher or certificate.
- **Section 19** of this regulation defines the term “fiduciary duty” for the purpose of determining whether a business entity is required by a fiduciary duty to distribute revenue received by the business entity to another person or governmental entity and, thus, entitled to deduct that revenue from the business entity's gross revenue when calculating the commerce tax.

**REMINDER:
Commerce Tax
Returns are due
August 15!**

- **Section 20** of this regulation sets forth the manner in which a health care provider is required to calculate the deduction from gross revenue for the cost of uncompensated care.
- **Sections 21-77** of this regulation adopt provisions for the situsing of the gross revenue of a business entity to this State, including, without limitation, setting forth the manner in which certain business entities situs the gross revenue from providing

services.

- Regulations provide situsing general guidance to 52 different industry examples.

- **Section 78** of this regulation establishes the method for determining the industry in which a business entity is primarily engaged for the purpose of determining the commerce tax rate of the business entity.
- Existing law authorizes a business entity that has paid the commerce tax to receive a credit against the excise tax on the wages paid by certain businesses, commonly known as the modified business tax, in an amount equal to 50 percent of the commerce tax paid by the business for the preceding taxable year.
- The NAICS code is selected for the first time on the first commerce tax return.
 - If a business entity is engaging in a business that can be categorized in more than one NAICS code, the business entity must select the NAICS code with the “greatest percentage” of the business entity’s Nevada gross revenue for the tax year, or, at the election of the business entity, the NAICS code that represents the greatest average percentage of Nevada gross revenue for the 3 preceding fiscal years.
 - A business entity that wants to change its NAICS code must petition the Department for permission before the commerce tax return for that year is due.
- **Sections 8 and 11** of this regulation authorize a business entity that is a member of an affiliated group of entities and provides certain payroll services for the other members of the affiliated group to receive a credit in an amount equal to 50 percent of the sum of the commerce tax paid by the payroll provider and certain other members of the affiliated group if the Department determines that the payroll provider satisfies certain criteria.
 - Payroll Providers can claim credit for commerce tax paid by members of affiliated group, so long as payroll provider is a part of the affiliated group.
 - Payroll Providers must apply to the Department and be approved.
- **Sections 9 and 12** of this regulation adopt provisions governing the credit available to a business entity that pays a commerce tax deficiency.
 - If an employer has a commerce tax deficiency they don’t get to claim a credit related to that deficiency. (Sec. 9-12).
- Under existing law, the Department of Taxation is authorized to waive all or part of any interest or penalty, or both, imposed on a taxpayer who fails to make a timely payment of a tax if the Executive Director of the Department or a hearing officer finds that the failure to make a timely payment was the result of circumstances beyond the taxpayer’s control and occurred despite the exercise of ordinary care and without intent.
- Existing law further provides that if the Department determines that an overpayment of the commerce tax was made intentionally or by reason of carelessness, the Department must not allow the taxpayer to receive interest on the overpayment.

IN OUR NEXT ISSUE...

In October, Tax Topics will include a detailed description of the petitions/initiatives/referendum to appear on the November 2016 ballot.

To read the petitions click [here](#).

STATEWIDE QUESTIONS TO APPEAR ON 2016 GENERAL ELECTION BALLOT

- Initiative to Regulate and Tax Marijuana
- Background Check Initiative

REFERENDUM

- Certain Provisions Related to Net Metering (SB 374 – 2015 Legislative Session)

INITIATIVE PETITIONS TO AMEND THE NEVADA STATE CONSTITUTION

- Energy Choice Initiative
- Medical Patient Tax Relief Act

INITIATIVE PETITIONS TO PROPOSE A NEW STATUTE OR TO AMEND AN EXISTING STATUTE

- Voter ID

○ **Sections 2 and 79** of this regulation provide that:

(1) if the failure to pay the commerce tax in a timely manner was caused by reliance on the taxpayer's most recent federal income tax return or Nevada Commerce Tax Return to calculate the Nevada gross revenue of the taxpayer, the Department may waive all or part of the penalty or interest, or both, imposed on the taxpayer; and

(2) If an overpayment of the commerce tax was caused by such reliance, the overpayment is deemed to be made intentionally or by reason of carelessness, the Department must not allow the taxpayer to receive interest on the overpayment.

• Existing law states that if a taxpayer fails to pay the commerce tax within the period required by law, the taxpayer must pay a penalty and interest on the amount of tax owed. Under existing law, the penalty for the failure to pay the tax within the period required by law must be based on a graduated schedule adopted by the Nevada Tax Commission.

○ **Section 1** of this regulation includes the commerce tax in the graduated schedule of penalties adopted by the Commission so that the penalty imposed for a failure to pay the commerce tax in a timely manner is based on the same schedule as the other taxes collected by the Department.

TAX TOPICS

Is a publication of the

NEVADA TAXPAYERS ASSOCIATION

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