



August 2016

## Nevada's New Commerce Tax

More than a year before the 78<sup>th</sup> Nevada Legislative Session (Session) convened, it was dubbed “The Revenue Session,” in reference to legislators’ bi-partisan acknowledgement that groundbreaking legislation was required to meet Nevada’s growing budget demands. Following four months of political arm-wrestling, the 2015 Legislative Session adjourned and, by all accounts, lived up to its moniker. Legislation passed during the 2015 Session includes a new Commerce Tax. The Commerce Tax – a tax on the privilege of engaging in business in Nevada – is imposed on businesses with **Nevada gross revenues** exceeding \$4,000,000 in the taxable year. Nevada does not have a personal income tax. The new Commerce Tax represents an attempt to impose tax on business revenues – not wages. The \$4,000,000 threshold is the standard amount a business entity may deduct from its gross revenue in determining its Commerce Tax liability – it is not a threshold for filing. **All business entities engaged in business in Nevada are required to file a Commerce Tax Return**, even if there is no tax liability, unless the business qualifies for an exemption.

### What is Taxed?

The Commerce Tax applies to gross revenues that are “situated” in Nevada. Such gross revenues include: (1) revenue from rents, royalties, and sales of real property are situated in Nevada if the real property is located in Nevada; (2) revenue from rents and royalties from personal property are situated in Nevada if the personal property is located or used in Nevada; (3) revenue from the sale of personal property is situated in Nevada if the property is delivered or shipped to a buyer in Nevada, regardless of the origin or other condition of sale; and (4) revenue from transportation services is situated in Nevada if both the origin and destination points of the transportation are located in Nevada. The legislation also contains a “catchall” provision for gross revenue not otherwise described, which is extremely broad and undetailed. The “catchall” was a subject of substantial discussion at the initial regulatory hearing before the Department of Taxation (Department) on July 7, 2015, and is likely to be clarified as the Department establishes its regulations on this tax.

## Which Entities Are Required to File the Return?

All business entities “engaged in business” in Nevada are subject to the Commerce Tax and are required to file annual Commerce Tax Returns, including:

- > Banks
- > Business trusts
- > C- and S-corporations
- > Holding companies
- > Joint ventures
- > Limited-liability companies
- > Limited-liability partnerships
- > Partnerships
- > Professional associations
- > Savings and loan associations
- > Sole proprietorships, independent contractors and individuals with rental real estate or royalties

For purposes of the tax, “engaging in business” means, without limitation, commencing, conducting or continuing a business and the exercise of corporate or franchise powers regarding a business.

*Example:* XYZ, Inc. is a Nevada corporation and maintains a license in Nevada. All of its activities are in California and it has no Nevada income. XYZ, Inc. is required to file a Commerce Tax Return in Nevada. However, because it has no Nevada revenues it will not have a tax due.

It’s not just Nevada entities that are subject to the filing and tax requirements. Entities organized in other states that are engaged in business in Nevada are also subject to the Commerce Tax. Activities that create a nexus sufficient for imposition of the tax include selling, leasing or renting real or personal property in Nevada, providing services while physically present in Nevada, maintaining a place of business or facilities in Nevada, having employees in Nevada, and entering into a contract to be performed in Nevada.

## Which Entities are Exempt from the Nevada Commerce Tax?

The statutes includes a list of entities that are exempt from the new Commerce Tax, such as:

- > Individuals<sup>1</sup>
- > Governmental entities
- > IRC 501(c), NRS 82 and NRS 84 non-profit organizations
- > Business entities organized pursuant to NRS 82 or NRS 84; Credit unions
- > Grantor trusts<sup>3</sup>
- > Estates<sup>4</sup>
- > Certain Real Estate Investment Trusts
- > Real Estate Mortgage Investment Conduits
- > Passive entities<sup>2</sup>
- > Entities that only own and manage intangible investments, such as stocks, bonds, patents, trademarks

Entities that are exempt from the Commerce Tax must file an Exempt Status Entity Form with the Nevada Secretary of State.<sup>5</sup> The exemption remains in place until the status of the business changes.

## Returns, Commerce Tax Year and Filing Deadline.

The Commerce Tax year runs from July 1 through June 30. **Returns are due 45 days following the end of the tax year.** For 2016, the filing deadline was Aug. 15, 2016. A 30-day extension of time to file is available upon written request – currently there isn’t a separate form for the extension request.

Penalties and interest will be assessed if the Commerce Tax Return is not timely filed or the tax timely paid, based on the amount of unpaid tax. *For this first tax year, there is a grace period until Feb. 15, 2017 to file and pay the tax.*

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<sup>1</sup> Unless the individual is engaged in a business and files Schedule C, E (Part 1) or F with the federal tax return

<sup>2</sup> Note that an entity that holds rental property is not considered to be a passive entity for purposes of the Commerce Tax.

<sup>3</sup> Excluding a trust taxable as a business entity for federal tax purposes.

<sup>4</sup> Excluding an estate taxable as a business entity for federal tax purposes.

<sup>5</sup> Commerce Tax registration forms, such as the Exempt Status Entity Form, can be found on the [State of Nevada Department of Taxation website](#).

Penalties and late charges may be waived if the return is filed and the amount due is paid during the grace period if there is good cause for being late (i.e., the failure occurred despite the exercise of ordinary care and was not intentional or due to willful neglect). Waivers will be determined on a case-by-case basis.

Each separate entity must file its own Commerce Tax Return – there is no provision for consolidated returns. Simplified reporting is available for entities with less than \$4,000,000 gross Nevada revenues for the year; and, returns can be filed online.

### **The Welcome Letter.**

All Nevada entities should have received a “Welcome Letter” with information regarding the Commerce Tax filing requirements and enrollment instructions. Due to difficulties in implementing the tax, some entities may not have received the notice and other entities that have no Nevada revenues may not realize there is still a filing requirement. Additional information regarding the filing and registration requirements can be found on the State of [Nevada Department of Taxation website](#).

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