No Longer a Business Tax Haven?
The Impacts of Nevada's New Commerce Tax

By Michael Knox and Brian Pick

In June 2015, the Nevada Legislature passed SB 483, which landmark legislation not only included revisions to several existing Nevada fees and taxes designed to increase revenue, but imposed a new "commerce tax" on businesses operating in Nevada. While the statutory language of the commerce tax has been available to review, the Nevada Department of Taxation only recently adopted regulations related to the implementation of the commerce tax, not coincidentally two days before the end of the first taxable year under the commerce tax. Although these regulations provide some additional guidance as businesses complete their first mandatory commerce tax filing, the commerce tax is a new world for Nevada businesses to navigate as they make these initial filings and look for tax planning opportunities.

The commerce tax applies generally to any business entity that engages in business within the state of Nevada. As defined by the statute however, "business entity" encompasses certain types of organizations that may not usually be subject to direct taxation, including partnerships, limited liability partnerships, and limited liability companies. There are also certain types of entities, like charitable organizations that qualify for tax-exempt status under federal law, that are specifically exempted from the commerce tax. The majority of businesses that generate revenue within the state, however, will be subject to the requirements of the commerce tax.

While payment of the tax itself is only triggered if a business's Nevada gross revenue in a taxable year exceeds $4,000,000, the law imposes a number of obligations on all businesses operating in Nevada. Every business, regardless of the amount of its Nevada gross revenue, must file a commerce tax return within 45 days of the taxable year ending on June 30. If a business has more than $4,000,000 in Nevada gross revenue, then tax is owed on the revenue beyond the taxable threshold (at rates between 0.051 percent and 0.331 percent, depending on the type of business activity in which the taxpayer is engaged).

Nevada's commerce tax implicates a number of other potentially complex issues that can have a significant impact on a business's commerce tax liability or its operations.

First, the applicable tax rate varies based on the type of activity a business engages in, so the tax liability of an entity that engages in various kinds of revenue generating activities within the state can be significantly impacted by the determination of the business category in which the company is "primarily engaged."

Second, for businesses that operate in other states as well as Nevada, determining what portion of the company's total revenue must be sitused to Nevada can have a material impact on the company's total Nevada gross revenue, and on its ultimate commerce tax liability.

Finally, the commerce tax creates document retention obligations for businesses. A company must keep whatever records might be necessary to determine the amount of its tax liability for the longer of four years or until any litigation related to its commerce tax obligation is resolved. The business must make these records available for inspection by the Department of Taxation upon demand at reasonable times during regular business hours. The Department, or anyone authorized in writing by the Department, can examine a business's records to either verify the accuracy of a return that has been filed, or to determine the proper amount of commerce tax owed if a return has not been filed. Notably, a business that maintains its records outside of the state can be required to pay the Department an amount equal to the allowance provided for state employees while travelling outside Nevada, as well as any other actual expenses incurred in order to examine the documents.

As the commerce tax is beginning to be implemented by the State, businesses must be aware of the filing deadlines regardless of whether tax is owed and, because some of the calculations are not yet entirely clear, they should ensure that any claims that the business has overpaid the tax are timely made.

The deadline for filing may be extended by the Department for no more than 30 days, based on the submission of a timely written application and a showing of good cause. No penalty or late charge will be assessed against the taxpayer as long as the tax is paid in full during the extension, but the business must pay interest on the amount due at the rate of 0.75 percent per month until the payment is completed. Any business that fails to pay the commerce tax by the deadline (or an extension) can be assessed a penalty that varies from 2 percent to 10 percent of the tax obligation, depending on how late the payment is made, plus interest.

Should a business determine that it has overpaid its commerce taxes, it must file a claim with the Department within three years after the last day of the month following the last month of the taxable year for which the overpayment was made. The claim must be in writing and state specifically the grounds upon which the claim is based. The failure to file a claim within this time frame acts as a waiver of the claim against the state, leaving the company without a remedy.

As the commerce tax is initially implemented and imposed on Nevada businesses, there are numerous new requirements and issues facing businesses, both administrative and financial. Since the tax has potentially significant implications on all businesses, savvy business operators will consult with their legal and accounting professionals to minimize their potential tax liability and ensure full compliance with the commerce tax as they begin to navigate this new world. ●

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