



# NEVADA'S NEW TAX

## are you ready?

Nevada Senate Bill No. 483 was signed into law on June 10, 2015 imposing a new gross receipts tax on Nevada sales. The new law became effective July 1, 2015 and, in short, imposes a tax on any business entity engaged in business in Nevada with total annual Nevada sales over \$4 million at a tax rate ranging from 0.051% to 0.331%.

Business entities subject to this new tax include C and S corporations, entities taxed as partnerships, sole proprietorships, and individuals reporting business activity directly on their income tax returns. Entities exempt from the Commerce Tax include tax exempt, governmental, or not for profit entities, certain trusts, and REITs.

SB 483 defines nexus for the Commerce Tax as being engaged in business in Nevada with annual Nevada gross revenue in excess of \$4,000,000. Because the tax is not based on net income, but rather on gross receipts businesses are not afforded Public Law 86-272 protection from this tax. "Engaged in business" means:

- › Commencing, conducting or continuing a business;
- › The exercise of corporate or franchise powers regarding a business; and
- › The liquidation of a business which is or was engaging in a business when the liquidator holds itself out to the public as conducting that business

Given this loose definition of engaged in business, and without PL 86-272 as a back stop, it may be presumed that the sales tax nexus standards apply for what constitutes engaged in business in the state. Therefore, arguably a business entity without physical presence or agency or affiliate nexus (explained further below) may not be subject to the Nevada Commerce Tax merely by selling remotely into the state without any further connection.

Gross receipts are sourced to Nevada using a market based methodology. Specifically the following types of gross receipts are sourced to Nevada as subject to the Commerce Tax:

- › Revenue from the sale of tangible personal property delivered or shipped to Nevada regardless of FOB point or any other conditions of the sale
- › Rents and royalties from real property located in Nevada
- › Proceeds from the sale of real property located in Nevada
- › Rents and royalties from tangible personal property located or used in Nevada
- › Revenue from transportation services if both origin and destination are in Nevada
- › Revenue from other services proportionate to economic benefit received within Nevada
- › Other revenue from business conducted within Nevada



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In arriving at the amount of gross receipts subject to the Commerce Tax no deductions are allowed for costs of goods sold or any other expenses with limited exceptions. Deductions from gross revenue are allowed in specific instances for items such as certain industry specific taxes, previously taxed pass-through income, and dividends or interest on federal or Nevada bonds or securities, to name a few.

There are no credits available to offset the Commerce Tax, however 50% of the Commerce Tax paid may be used as a credit against tax due under the Nevada Modified Business Tax. The MBT is a payroll tax on wages paid in Nevada. Therefore, this benefit is only available to business entities with substantial activity already in Nevada.

Commerce Tax returns will be due annually for the 12 month period ending June 30th each year by August 14th, an extension until September 13th is available.

The following table summarizes the Nevada Commerce Tax rates by business category:

BUSINESS CATEGORY	RATE	BUSINESS CATEGORY	RATE
AGRICULTURE, FORESTRY, FISHING AND HUNTING	0.063%	FINANCE AND INSURANCE	0.111%
MINING, QUARRYING AND OIL AND GAS EXTRACTION	0.051%	REAL ESTATE AND RENTAL AND LEASING	0.250%
UTILITIES AND TELECOMMUNICATIONS	0.136%	PROFESSIONAL, SCIENTIFIC, AND TECHNICAL SERVICES	0.181%
CONSTRUCTION	0.083%	MANAGEMENT OF COMPANIES AND ENTERPRISES	0.137%
MANUFACTURING	0.091%	ADMINISTRATIVE AND SUPPORT SERVICES	0.154%
WHOLESALE TRADE	0.101%	WASTE MANAGEMENT AND REMEDIATION SERVICES	0.261%
RETAIL TRADE	0.111%	EDUCATIONAL SERVICES	0.281%
AIR TRANSPORTATION	0.058%	HEALTH CARE AND SOCIAL ASSISTANCE	0.190%
TRUCK TRANSPORTATION	0.202%	ARTS, ENTERTAINMENT AND RECREATION	0.240%
RAIL TRANSPORTATION	0.331%	ACCOMMODATION	0.200%
OTHER TRANSPORTATION	0.129%	FOOD SERVICES AND DRINKING PLACES	0.194%
WAREHOUSING AND STORAGE	0.128%	OTHER SERVICES	0.142%
PUBLISHING, SOFTWARE AND DATA PROCESSING	0.253%	UNCLASSIFIED	0.128%





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### affiliate nexus standard

On May 27, 2015 Assembly Bill No. 380 was signed into law implementing an affiliate nexus standard for sales and use tax effective July 1, 2015. With this new law, Nevada will impose a rebuttable presumption that a retailer has sales and use tax nexus in Nevada and is required to collect and remit sales and use tax if the retailer is:

- › Part of a controlled group of business entities that has a component member who has physical presence in Nevada; and
- › The component member with such physical presence engages in certain enumerated activities in Nevada that relate to the ability of the retailer to make retail sales to residents of Nevada.

A retailer may rebut this presumption by providing proof that the activities of the component member with physical presence in Nevada are not significantly associated with the retailer's ability to establish or maintain a market in Nevada for the retailer's products or services.

### agency nexus standard

Also included within AB 380 is an agency nexus standard also commonly referred to as "click through" nexus or remote seller nexus. This new provision is effective October 1, 2015 and imposes a rebuttable presumption that a retailer has sales and use tax nexus in Nevada and is required to collect and remit the state's sales and use tax if:

- › The retailer enters into an agreement with a resident of Nevada under which the resident receives certain consideration for referring potential customers to the retailer through a link on the resident's website or otherwise; and
- › The cumulative gross receipts from sales by the retailer to customers in Nevada through all such referrals exceeds \$10,000 during the preceding four quarterly periods.

The retailer may rebut this presumption by providing proof that each resident with whom the retailer has an agreement did not engage in any activity that was significantly associated with the retailer's ability to establish or maintain a market in Nevada for the retailer's products or services during the preceding four quarterly periods.

## still curious to learn more? reach out today!

For more information on Nevada's Commerce Tax and new nexus standards, please contact us:

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