

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R123-15

1. A clear and concise explanation of the need for the adopted regulation.

The need for this regulation is to implement the tax provisions contained in SB 483 which were enacted in the 2015 legislative session. Specifically, relating to establishing provisions for the administration, calculation and payment of the commerce tax imposed on the Nevada gross revenue of certain entities engaged in business in this state. As well as adopting provisions for the administration of the calculation of the credit against the payroll tax imposed on certain business for the payment of the commerce tax by a business.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by sending notice of workshops and hearings by electronic or regular mail as follows:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>
06/19/2015	Workshop	07/07/2015	116
08/21/2015	Workshop	09/09/2015	158
09/10/2015	Workshop	09/25/2015	163
11/17/2015	Workshop	12/07/2015	200
01/26/2016	Workshop	02/23/2016	209
03/01/2016	Workshop	03/18/2016	210
03/09/2016	Adoption Hearing	04/11/2016	210

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to other interested parties lists maintained by the Department.

See response to #5 for a summary of the public responses to the Regulation

A copy of the audio taped comments or the record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at croberts@tax.state.nv.us

3. **The number of persons who:**
 (a) **Attended each hearing:** 110 people attended the adoption hearing.
 (b) **Testified at each hearing:** 4 people testified at the adoption hearing.
 (c) **Submitted written comments:** None of the attendees that attended the adoption hearing submitted written comments.
4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Testified at the adoption hearing:

Paul Enos

Telephone number: 775-673-6111

Business address: 8745 Technology Way, Suite E, Reno, NV 89521

Electronic mail address: pje@nevadatrucking.com

Name of entity or organization represented: Nevada Trucking Association

Erin Barnett

Telephone number: 702-873-1400

Business address: 2300 West Sahara Avenue Suite 200, Las Vegas, NV 89102

Name of entity or organization represented: NAIOP Southern Nevada

Keith Lee

Telephone number: 775-829-1400

Electronic mail address: kiethl.pag@gmail.com

Name of entity or organization represented: Southwest Airlines

Tyre Gray

Telephone number: 702-692-8000

Electronic mail address: tgray@sclaw.com

Business address: 300 S Fourth Street, Suite 1400, Las Vegas, NV 89101

Name of entity or organization represented: Las Vegas Metro Chamber

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

See response to #2 for description of how comments were solicited from affected businesses and an explanation on how interested persons may obtain a copy of the summary.

Summary of public responses:

The following general responses were received by email and mail.

1. One taxpayer requested to minimize the filing requirement for entities that are exempt from the Commerce tax.
2. Four taxpayers requested that the Department create a simple Commerce tax Return for businesses with less than 4 million in Nevada gross revenue.
3. Ten taxpayers requested that the filing requirement for the Commerce tax match the federal filing date.
4. Two taxpayers requested that exempt entities not register with the Nevada Secretary should not have to register for the Commerce tax.
5. Seven taxpayers requested that the Department clarify the definition of “Nevada Gross Revenue”.
6. Ten requests were made to allow for affiliated groups to be allowed to take the MBT credit.
7. One taxpayer informed the Department that federal law prohibits the taxation of air commerce or air transportation.
8. Three taxpayers requested clarification of complimentary goods, to include goods or services provided at no charge, or exchanged for loyalty program points, credits, coupon, vouchers or certificates.
9. Two taxpayers requested to include other documents besides the bill of lading as proof of delivery.
10. Two taxpayers requested to clarify origin and destination.
11. Six taxpayers requested clarification for pass through revenue.
12. Eleven taxpayer requests were submitted seeking clarification of the applicability of the commerce tax to a Trust and that the definition of “business entity” should exclude trusts.
13. Two taxpayers inquired about the time frame for which the Department would respond to a taxpayer that is requesting to change their NAICS code.
14. One taxpayer requested to change the term of “taxable entity to business entity”.
15. Nine taxpayers requested the Department to define “Business Entity”.
16. Three taxpayers requested clarification as how to apply the “Recovery Charge”
17. Two taxpayers requested to clarify the healthcare uncompensated cost and the taxability from government-funded programs such as Medicaid and Medicare.
18. Two taxpayers submitted recommendations on how to account for uncompensated care.
19. Four taxpayers requested clarification of “Passive Entity”.
20. Eight taxpayers requested the Department to clarify that a Real Estate Broker services gross receipts earned by a real estate broker as defined in NRS 645.030 on property located in Nevada that is situated to Nevada, regardless of where the broker services were performed.
21. One taxpayer requested to clarify if a business sells a building, and buys another building, is Commerce tax due on the sale of the building sold.
22. One taxpayer requested to clarify the definition of “Revenue” and if venture capital investment in research and development activities should be included as revenue.

23. One taxpayer wanted clarification of revenue when a wholesaler moves product to a retailer and title never transfers.
24. Three taxpayers submitted comments that when calculating the Commerce tax liability using GAAP this creates a conflict when the business is told to use the same accounting method for federal income tax purposes.
25. One taxpayer requested the Department to clarify “pass through entity”
26. One taxpayer submitted a request to clarify “Interest Income” and the situs of the income.

The information above is a collection of the public comment, both written and oral which was collected throughout the workshop process. A copy of the written correspondence that was submitted can be found on the Department’s website.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted with changes. The changes were presented at the Adoption Hearing as identified in the document entitled “Department Revision to LCB Draft of Revised Proposed Regulation R123-15”.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

(a) Estimated economic effect on the businesses which they are to regulate.

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects on businesses. The benefits of these regulations are that the industry along with the Department will be provided more clarity for Senate Bill 483.

(b) Estimated economic effect on the public which they are to regulate.

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to public. The benefits of these regulations are that the public along with the Department will be provided more clarity for Senate Bill 483.

8. The estimated cost to the agency for enforcement of the proposed regulation:

The proposed permanent regulations present no significant foreseeable or anticipated cost or decrease in costs for enforcement other than the costs to implement the statutory provisions of the commerce tax.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulations do not overlap or duplicate any regulation of other state or local governmental entities.

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulations do not include new or increases in existing fees.