

DATE: May 21, 2015

TO: NTA Members

The following pages contain a section by section summary of AB 464 as it proposed to be amended. This amendment, which has been forthcoming for over 8 days at this point, is the Governor's compromise. The link to the proposed amendment is:

https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument?exhibitId=16283&fileDownloadName=ho0521_AB464_jonc.pdf.

FAST FACTS

The proposed amendment to AB 464 has three tax components: (1) a tiered increase in the annual state business license fee; (2) the modified business tax; and (3) a percentage tax based on reported Nevada gross receipts (Commerce Tax).

First - State Business License

The current \$200 State annual business license fee is increased to \$500 for domestic and foreign corporations and \$300 for all other businesses required to have an annual State Business License.

The administration and collection of the tax remains with the office of the Secretary of State.

Second - The Modified Business Tax (MBT)

The MBT on financial institutions is reinstated at the 2percent rate and the base of the tax is broadened to include mining at the 2 percent rate.

The health care deduction is reinstated.

The rate for the MBT general business is increased to 1.475 percent and the wage threshold for purposes of determining tax liability is reduced to the sum of quarterly wages paid over \$50,000.

Employers can deduct up to 50 percent of the Commerce tax from the MBT.

The administration and collection of the tax remains with the Department of Taxation.

Third - The Commerce Tax

The amendment adds the "Commerce" tax as the third revenue component. It is a variation of what was found in SB 252, the Governor's original proposal.

The industry classifications are reduced by one; telecommunications is combined with utilities.

Instead of 67 rates for each classification there is now one rate per classification.

Instead of being paid quarterly, the tax is now paid annually.

The first \$3.5 million dollars is subtracted from Nevada gross revenue.

The administration and collection of the tax remains with the Department of Taxation.

Miscellaneous

The effective date of this bill is July 1, 2015 for most purposes.

The revenue generated by the tax is deposited as it currently is, to the State's general fund.

SECTION BY SECTION OF AB 464 AS PROPOSED TO BE AMENDED

SECTION NO.	SUMMARY/ COMMENTS
1	Add a new chapter to title 32 - Taxation statutes
2	Identifies sections 2-13 as definitions
3	Defines “business” as any activity engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, to any person or governmental entity.
4	<p>Defines a business entity. Includes corporations, partnerships, proprietorships, LLC’s, business trusts, professional associations, holding companies and combined group.</p> <p>Entities not included range from governmental entities; organizations that qualify as non-profits under IRS code 501 c); a natural person operating from home whose earnings are less than 66 2/3; a natural person who rents 4 or fewer dwelling units; a business organized under NRS chapter 82 or 84; a credit union organized under NRS 678; and various trusts.</p>
5	“Commerce tax” is defined as the tax to be paid by this chapter.
6	“Engaging in a business” is defined.
7	“Governmental entity” is defined.
8	Defines gross revenue as “the total amount realized by a person from engaging in a business in this state, without deduction for the cost of goods sold or other expenses incurred that contribute to the production of gross income. . . .” Without limitation the term includes the fair market value of any property and services received and any debt transferred or forgiven as consideration. Additional examples of what is included and not included are identified.
9	“Nevada gross revenue” means the gross revenue of a business entity from engaging in a business in this State adjusted pursuant to section 21 and derived from business and situated to this State pursuant to section 22.
10	“NAICS” - the North American Industrial Classification System of 2012, published by the Census Bureau.
11	<p>“Pass Through Revenue” - There are numerous references to the various types of pass through revenue in this section that range from “Revenue received by a business required by law or fiduciary duty to be distributed to another person or governmental entity” to “Revenue received by a business that is part of an affiliated group from another member of the affiliated group.”</p> <p>“Affiliated group” is defined as “. . . a group of two or more business entities, each of which is controlled by one or more common owners or by one or more members of the group. “Controlled by” is defined as “. . .direct or indirect ownership, control or possession of the power to vote 50 percent of the outstanding voting securities of a business.</p>
12	“Taxable year” - is defined as 12 month period beginning on July 1 and ending on June 30.
13	“Wages” - The remuneration paid for personal services, including without limitation, commissions, and bonuses and remuneration payable in any medium other than cash.
14	“Passive Entity” - identifies what a passive entity is and any conditions or exclusions from various definitions of passive entities in this section.
15	Miscellaneous
15	In determining the NAICS code to be used by the business the business shall use that code “. . .in which the highest percentage of Nevada Revenue is generated.
16 -19	Department of Taxation Administrative Responsibilities
16	To administer and enforce this chapter, adopt regulations, and deposit all fees, interest and penalties for credit to the State General Fund.
17	Record keeping requirements by a business as established by the Department.
18	Provides for the Department to verify through the books and records kept by the business. Also allows the Department to cover any travel expenses for examining books and records kept out-of-state.
19	Requires the Executive Director of the Department to keep any confidential information obtained confidential.

20-23	Calculation of Revenue
20	Provides that for the “privilege” of doing business in Nevada a commerce tax is imposed on each entity whose Nevada gross revenue exceeds \$3.5 million as determined in sections 23-49. Requires the tax to be paid on or before 45 days of the end of the taxable year. Requires the business to designate a business category in the initial filing and does not allow a change in designation unless the business applies to the department of taxation and receives approval. Allows the department, upon written request and for good cause to extend the payment 30 days. No penalty or late charge will be imposed for the extension, but interest will be charges at the rate of 0.75 percent per month.
21	This is a very extensive section that includes, but is not limited to the following amounts to be subtracted from the Nevada gross revenue of the business: any gross revenue which is forbidden to be taxed pursuant to the U.S. Constitution or Nevada Constitution; revenue of the business from interest upon any bonds or securities of the Federal Government or State of Nevada or local jurisdiction; any gross revenue used to determine the amount of the gross gaming fee (NRS 463.370); the amount of gross revenue used to determine the net proceeds of minerals tax (NRS 362.100-240); a revenue of direct premiums written and all other considerations for insurance used to determine the insurance premium tax (NRS 680B); the amount of revenue from the sale of the liquor tax (NRS 369.330); any amount of wages, payroll taxes employee benefits and workers’ compensation as payments to an employee leasing company and any pass through revenue. Also, subtracted are various payments to health care providers, including, but not limited to, Medicaid, Medicare, CHIP, professional services in relation to workers comp claims, any uncompensated care by a health care provider. Additional revenue reductions are also identified ranging from receipts from a hedging transaction to bad debts expensed for the the purpose of federal taxation.
22	Establishes the rules for gross revenue to be sitused to this State. The following are considered sitused to Nevada: real property located in this state, the gross rents and royalties and gross receipts from the sale of real property; tangible personal property located or used in Nevada; gross rents and royalties and gross receipts from the sale if the property is delivered or shipped to a buyer in Nevada, regardless of the F.O.B. or other condition of sale; gross receipts for the sale of transportation services if both origin and destination point of the transportation are located in Nevada; gross revenue from services not otherwise described if the gross receipts are from business conducted in this state; and gross revenue not otherwise described, if the gross revenue is from business done in the State. The department may authorize a business entity to use an alternative method of situsing gross revenue to this State if the provisions of this section do not fairly represent the extent of business conducted in this State.
23	Provides for the calculation of the rate for a business entity. The amount of commerce tax due is equal to the amount obtained after subtracting \$3.5 million from the Nevada gross revenue of the business entity for the taxable year and multiplying that amount by the rate shown in the industry classification.
24 - 49	Commerce Tax Rates by Category General Information: There are 25 NAICS categories, one category identified in each section and one “not otherwise classified category, with one rate for each category identified. (Note: this is a major change from the 67 rates in each category which was found in SB 252.
24	Agricultural, Forestry, and Hunting - NAICS 11. Includes businesses primarily engaged in agricultural production or support. Rate: 0.063 percent.
25	Mining, Quarrying and Oil and Gas Extraction - NAICS 21. Includes businesses primarily engaged in mining operations and support activities, including without limitation, extracting. Rate: 0.051 percent.
26	Utilities & Telecommunications - NAICS 22 & 517. Includes businesses primarily engaged in providing utility services, including without limitation, electric power, natural gas, steam supply, water supply and sewage removal, and telecommunications, including telephone, cable, satellite, etc. Does not include waste management services. Rate: 0.136 percent.
27	Construction - NAICS 23. Includes all businesses primarily engaged in the construction of buildings or engineering projects such as highways, utilities systems, the preparation of sites for new construction and subdividing land for sale as building sites. Rate: 0.083 percent.
28	Manufacturing - NAICS 31,32 and 33. Includes all businesses primarily engaged in mechanical, physical, or chemical transformation of materials, substances or components into new products. Rate: 0.091 percent.

24 - 49	Commerce Tax Rates by Category <i>continued</i>
29	Wholesale Trade - NAICS 42. Includes all businesses primarily engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Rate: 0.101 percent.
30	Retail Trade - NAICS 44 & 45. Includes all businesses primarily engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Rate: 0.111 percent.
31	Air Transportation - NAICS 481. Includes all businesses primarily engaged in providing air transportation of passengers and/or cargo using aircraft such as an airplane and helicopter. Rate: 0.058 percent.
32	Truck Transportation - NAICS 484. Includes all businesses primarily engaged in providing over-the-road transportation of cargo using motor vehicles, such as truck and trailer. Rate: 0.202 percent.
33	Rail Transportation - NAICS 482. Includes all businesses primarily engaged in providing rail transportation of passengers and/or cargo, using railroad rolling stock. Rate: 0.331 percent.
34	Other Transportation - NAICS 483,485,486,487,488,491 & 492. Includes all businesses primarily engaged in providing: Water transportation; transit and ground passenger transportation; Pipeline transportation; Scenic and sightseeing transportation; Support activities for transportation including activities of the United States Postal Service and its subcontractors; and Couriers and messengers. Rate: 0.129 percent.
35	Warehousing and Storage - NAICS 493. Includes all businesses primarily engaged in operating warehousing and storage facilities for general merchandise, refrigerated goods and other warehouse products. Rate: 0.128 percent.
36	Publishing, Software and Data Processing - NAICS 511,512,515 and 518. Includes all businesses primarily engaged in: Publishing, except on the Internet; Motion Picture and Sound Recording, Broadcasting, except on the Internet; Data Processing. Rate: 0.253 percent.
37	Finance and Insurance - NAICS 52. Includes all businesses primarily engaged in financial transactions or facilitating financial transactions. Rate: 0.111 percent.
38	Real Estate and Rental and Leasing - NAICS 53. Includes all businesses primarily engaged in renting, leasing, or otherwise allowing the use of tangible or intangible assets, businesses providing related services, managing real estate for others, selling, renting or buying real estate for others and appraising real estate. Rate: 0.25 percent.
39	Professional, Scientific and Technical Services - NAICS 54. Includes all businesses primarily engaged in performing professional scientific and technical activities for others. Rate: 0.181 percent.
40	Management of Companies and Enterprises - NAICS 55. Includes all businesses primarily engaged in: Holding of securities of or other equity interests in, companies and enterprises for the purpose of owning a controlling interest or influencing management decisions; or Administering, overseeing and managing establishments of the company or enterprise. Rate: 0.137 percent.
41	Administrative and Support Services - NAICS 561. Includes all businesses primarily engaged in activities that support the day-to-day operations of other organizations. Rate: 0.154 percent.
42	Waste Management and Remediation Services - NAICS 562. Includes all businesses primarily engaged in the collection, treatment and disposal of waste materials. Rate: 0.261 percent.
43	Educational Services - NAICS 61. Includes all businesses primarily engaged in providing instruction and training in a wide variety of subjects. Rate: 0.281 percent.
44	Health Care and Social Assistance - NAICS 62. Includes all businesses primarily engaged in providing health care assistance and social assistance for natural persons. Rate: 0.190 percent.
45	Arts, Entertainment and Recreation - NAICS 71. Includes all businesses primarily engaged in operating facilities or providing services to meet varied cultural, entertainment and recreational interests of their patrons. Rate: 0.24 percent.
46	Accommodations - NAICS 721. Includes all businesses primarily engaged in providing lodging or short-term accommodations or travelers, vacationers and others. Rate: 0.2 percent.
47	Food Services and Drinking Places - NAICS 722. Includes all businesses primarily engaged in preparing meals snacks and beverages to customer order for immediate on and off premises consumption. Rate: 0.194 percent.

24 - 49	Commerce Tax Rates by Category <i>continued</i>
48	Other Services - NAICS 81. Includes all businesses primarily engaged in providing services not included in any of the business categories described in the prior sections. Businesses in this category are primarily engaged in activities such as repairing equipment and machinery, promoting or administering religious activities, grantmaking, advocacy, and providing dry cleaning and laundry services, personal care, pet care, photofinishing, temporary parking services and dating services. Rate: 0.142 percent.
49	Unclassified Businesses. Includes any business that paid wages during the quarter and is not included in any of the prior business categories covered by sections 24 to 48. Rate: 0.128 percent.
50 - 61	Administration, Compliance, Enforcement
50	Businesses may use either cash or accrual method of accounting, and may not change the method of accounting for 3 years.
51	Provides that any amount of overpayment will be reported to the State Board of Examiners and the overpayment returned after any amount applied to taxes owing.
52	Provides that a claim for overpayment must be made within three years of the month following the calendar quarter the overpayment was made. Claims must be made in writing, and failure to file a claim in a timely manner constitutes a waiver against recovering the overpayment.
53	Any overpayment of the business license fee (tax) will receive interest pursuant to NRS 360.2937 unless the overpayment has been made intentionally or through carelessness.
54	No writ, suit or other legal action may be filed unless a claim for credit or refund has been filed.
55-58	Specifies the time frames and procedures and time to file a claim seeking recovery of an overpayment of the Commerce tax
59-60	Specifies the procedure for the Department of Taxation to recover a refund.
61	Provides that the remedies of the State provided for in this chapter are commutative.
62 - 65	Clarifying and Conforming Language
63-65	As appropriate adds references to NRS 363A and sections 2-61 of this act.
66 - 70	Modified Business Tax
66	Amends NRS 363.A - MBT Financial Institutions to include Mining.
67	Provides that an employer may receive a 50 percent credit against the commerce tax for the MBT tax paid, provided the credit does not exceed the tax due. An unused credit may not be carried forward to the next fiscal year and may not be refunded.
68	Adds a new provision to NRS 363B - MBT General Business that by formula determines the rate of the MBT for the following fiscal year and provides that the rate for the following years shall be 1.17 percent or the recalculated amount, which ever is greater.
69	Clarifies the term employer in NRS 363B - MBT General Business that financial institutions and mining are not included.
70	Provides that the MBT rate is 1.475% on the sum of all wages, which exceed \$50,000 per quarter, and provides for the 50 percent credit against the commerce tax.
71- 72	Miscellaneous
71	Deletes the 10 percent increase in the vehicle registration fee which was originally added in 2009 and was to eventually be remitted to the highway trust fund. Reduces the minimum amount of the Governmental Services Tax to \$6.00 from \$16.00. Note: See section 102.
72	Deletes the reference to NRS 482.182 and repeals a number of provisions in NRS 40
72 - 75	State Business License
72-75	The annual State Business License Fee is increased to \$500 for all businesses organized pursuant to NRS78, 78A, 78B, and 80. For all other businesses the fee is increased to \$300.
76-104	Conforming Language
105 - 164	Miscellaneous
105	Deletes references to the insurance transferable film tax credit.

76-104	Conforming Language continued
106	<p>Provides the effective dates for:</p> <p style="padding-left: 40px;">Sections 2-61 inclusive apply to the taxable year which begins on July 1, 2015.</p> <p style="padding-left: 40px;">The amendatory provisions for the MBT do not apply to any taxes due for any period ending on or before July 1, 2015.</p> <p style="padding-left: 40px;">The recalculation of the MBT does not apply to any taxes due for any period ending on or before June 30 of the year in which the rate becomes effective.</p> <p style="padding-left: 40px;">The changes to the Governmental Services tax apply for any period of registration of a vehicle that begins or after July 1, 2016.</p>
107	<p>Repeals NRS 482.180. This section is effective upon passage and approval for administrative tasks and on July 1, 2015 for all other purposes.</p>
108	<p>Provides that sections 1-70, 73-77 and 82-106 become effective upon passage and approval for administrative tasks and on July 1, 2015 for all other purposes. Deletes provisions found in AB 464 as introduced repealing the MBT on Financial Institutions and the health care deduction for the MBT. Also provides for the transfer of certain amounts of the Governmental Services taxes to the State Highway Funds, effective July 1, 2015.</p>