

Gross Receipts/Other Miscellaneous:

Nevada High Court Says 2019 Law Changes Impacting Modified Business Tax Rates are Invalid

Case No. 81924 (137 Nev., Advance Opinion 21), Nev. (5/13/21). In a case involving required legislative voting thresholds for passing rate extensions to Nevada's modified business tax (MBT) – a quarterly payroll-based tax on businesses paying wages to employees in Nevada – the Nevada Supreme Court (Court) affirmed a district court opinion from 2020, which held that certain MBT-related sections of legislation enacted in 2019 [see S.B. 551 (2019) for more details on this 2019 enacted legislation] must be invalidated and are “void and stricken for lack of supporting votes of two-thirds of the members of the Senate in the 80th (2019) Legislative Session.” The Court explained that Article 4, Section 18(2) of the Nevada Constitution requires the agreement of at least two-thirds of the members of each house of the Nevada Legislature to pass any bill “which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.” According to the Court, the two 2019 bills at issue in this case did create, generate, or increase public revenue and because the bills did not pass by a two-thirds majority in the Nevada Senate, those portions of the bills that would require a supermajority vote are unconstitutional.

URL:

<http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=60081&csIID=60081&deLinkID=816081&onBaseDocumentNumber=21-13709>

URL: <https://www.leg.state.nv.us/Session/80th2019/Reports/history.cfm?DocumentType=2&BillNo=551>

Included in the invalidated and stricken sections of one of the two 2019 bills at issue (*i.e.*, within S.B. 551 (2019)) are provisions that:

- Eliminate the rate adjustment procedure used by the Nevada Department of Taxation to determine whether the tax rates for the MBT must be reduced in any fiscal year based on whether specified combined revenue amounts exceed certain thresholds; and
- Maintain and continue the legally operative rates of the MBT at 2% (generally applicable to certain financial institutions and mining companies) and 1.475% (generally applicable to all other business entities).

Note that, under state law generally, a business entity paying both the MBT and the Nevada Commerce Tax can take a credit against the MBT of a certain amount of the Nevada Commerce Tax it has paid. The Nevada Commerce Tax generally is imposed on each “business entity” (including disregarded entities) engaged in business in Nevada that has Nevada-sitused gross revenue in excess of \$4 million annually at various rates that depend upon the industry in which the business entity is “primarily engaged” [see previously released *Inside Deloitte* article for more details on the Nevada Commerce Tax and MBT]. Please contact us with any questions.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/a-first-year-review-of-the-nevada-commerce-tax.html?id=us:2em:3na:stm:awa:tax:052121&sfid=7011O0000038l8qQAA>

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