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ASSEMBLY BILL NO. 345—ASSEMBLYWOMAN CONSIDINE

MARCH 20, 2023

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Referred to Committee on Revenue

SUMMARY—Revises provisions governing the Commerce Tax. (BDR 32-783)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to taxation; removing the exemption from the commerce tax for real estate investment trusts and qualified real estate investment trust subsidiaries; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law imposes an annual commerce tax on each business entity whose  
2 gross revenue earned in this State during a fiscal year exceeds \$4,000,000. The tax  
3 is imposed at a rate based on the industry in which the business entity is primarily  
4 engaged. (Chapter 363C of NRS) Existing law exempts from the commerce tax  
5 certain real estate investment trusts and qualified real estate investment trust  
6 subsidiaries, as those terms are defined by federal law. (26 U.S.C. § 856; NRS  
7 363C.020) This bill removes the exemption from the commerce tax for certain real  
8 estate investment trusts and qualified real estate investment trust subsidiaries, thus  
9 making the annual commerce tax applicable to all real estate investment trusts and  
10 qualified real estate investment trust subsidiaries whose gross revenue earned in  
11 this State during a fiscal year exceeds \$4,000,000.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 363C.020 is hereby amended to read as  
2 follows:  
3 363C.020 1. Except as otherwise provided in subsection 2,  
4 “business entity” means a corporation, partnership, proprietorship,  
5 limited-liability company, business association, joint venture,  
6 limited-liability partnership, business trust, professional association,



1 joint stock company, holding company and any other person  
2 engaged in a business.

3 2. "Business entity" does not include:

4 (a) Any person or other entity which this State is prohibited  
5 from taxing pursuant to the Constitution or laws of the United States  
6 or the Nevada Constitution.

7 (b) A natural person, unless that person is engaging in a business  
8 and is required to file with the Internal Revenue Service a Schedule  
9 C (Form 1040), Profit or Loss from Business, or its equivalent or  
10 successor form, a Schedule E (Form 1040), Supplemental Income  
11 and Loss, or its equivalent or successor form, or a Schedule F (Form  
12 1040), Profit or Loss from Farming, or its equivalent or successor  
13 form, for that business.

14 (c) A governmental entity.

15 (d) A nonprofit religious, charitable, fraternal or other  
16 organization that qualifies as a tax-exempt organization pursuant to  
17 26 U.S.C. § 501(c).

18 (e) A business entity organized pursuant to chapter 82 or 84 of  
19 NRS.

20 (f) A credit union organized under the provisions of chapter 672  
21 of NRS or the Federal Credit Union Act.

22 (g) A grantor trust as defined by section 671 and 7701(a)(30)(E)  
23 of the Internal Revenue Code, 26 U.S.C. §§ 671 and 7701(a)(30)(E),  
24 all of the grantors and beneficiaries of which are natural persons or  
25 charitable entities as described in section 501(c)(3) of the Internal  
26 Revenue Code, 26 U.S.C. § 501(c)(3), excluding a trust taxable as a  
27 business entity pursuant to 26 C.F.R. § 301.7701-4(b).

28 (h) An estate of a natural person as defined by section  
29 7701(a)(30)(D) of the Internal Revenue Code, 26 U.S.C. §  
30 7701(a)(30)(D), excluding an estate taxable as a business entity  
31 pursuant to 26 C.F.R. § 301.7701-4(b).

32 (i) ~~A real estate investment trust, as defined by section 856 of~~  
33 ~~the Internal Revenue Code, 26 U.S.C. § 856, and its qualified real~~  
34 ~~estate investment trust subsidiaries, as defined by section 856(i)(2)~~  
35 ~~of the Internal Revenue Code, 26 U.S.C. § 856(i)(2), except that:~~

36 ~~— (1) A real estate investment trust with any amount of its~~  
37 ~~assets in direct holdings of real estate, other than real estate it~~  
38 ~~occupies for business purposes, as opposed to holding interests in~~  
39 ~~limited partnerships or other entities that directly hold the real~~  
40 ~~estate, is a business entity pursuant to this section; and~~

41 ~~— (2) A limited partnership or other entity that directly holds~~  
42 ~~the real estate as described in subparagraph (1) is a business entity~~  
43 ~~pursuant to this section, without regard to whether a real estate~~  
44 ~~investment trust holds an interest in it.~~



1 ~~(j)~~ A real estate mortgage investment conduit, as defined by  
2 section 860D of the Internal Revenue Code, 26 U.S.C. § 860D.

3 ~~(k)~~ (j) A trust qualified under section 401(a) of the Internal  
4 Revenue Code, 26 U.S.C. § 401(a).

5 ~~(l)~~ (k) A passive entity.

6 ~~(m)~~ (l) A person whose activities within this State are confined  
7 to the owning, maintenance and management of the person's  
8 intangible investments or of the intangible investments of persons or  
9 statutory trusts or business trusts registered as investment companies  
10 under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et  
11 seq., as amended, and the collection and distribution of the income  
12 from such investments or from tangible property physically located  
13 outside this State. For the purposes of this paragraph, "intangible  
14 investments" includes, without limitation, investments in stocks,  
15 bonds, notes and other debt obligations, including, without  
16 limitation, debt obligations of affiliated corporations, real estate  
17 investment trusts, patents, patent applications, trademarks, trade  
18 names and similar types of intangible assets or an entity that is  
19 registered as an investment company under the Investment  
20 Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq.

21 ~~(n)~~ (m) A person who takes part in an exhibition, trade show,  
22 industry or corporate meeting or similar event held in this State for a  
23 purpose related to the conduct of a business, including, without  
24 limitation, an organizer, manager or sponsor of such an event or an  
25 exhibitor at such an event.

26 ~~(o)~~ (n) A person engaged in the business of extracting gold or  
27 silver in this State.

28 **Sec. 2.** 1. This section becomes effective upon passage and  
29 approval.

30 2. Section 1 of this act becomes effective:

31 (a) Upon passage and approval for the purpose of adopting any  
32 regulations and performing any other preparatory administrative  
33 tasks that are necessary to carry out the provisions of this act; and

34 (b) On July 1, 2023 for all other purposes.

