SENATE BILL NO. 318–COMMITTEE ON TAXATION

MARCH 5, 1999

Referred to Committee on Taxation

SUMMARY—Revises provisions governing collection of taxes on transfer of real property and clarifies responsibility for payment. (BDR 32-1434)

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

~

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

AN ACT relating to taxation; revising the method of collecting the taxes on the transfer of real property; clarifying the responsibility for payment of the taxes; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 375 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** ***1. If any portion of the tax imposed by NRS 375.020 and 375.025 is not paid by the seller or sellers when due, the county recorder may, within 36 months after the date that the tax was determined to be due, record a certificate which states:***

***(a) The amount of the tax due;***

***(b) The name and address of the seller or sellers who are liable for the amount due as they appear on the records of the county recorder; and***

***(c) That the county recorder has complied with all procedures required by law for determining the amount due.***

***2. If the county recorder determines that a certificate should be recorded pursuant to subsection 1, he shall record the certificate in the county in which the taxable transaction occurred and may record such a certificate in any other county in the state in which he believes property of the seller or sellers is or may in the future be located.***

***3. From the time of the recording of the certificate, the amount due constitutes a lien upon all real and personal property located in the county or counties in which the certificate is recorded that is owned by***

***the seller or sellers or acquired by the seller or sellers afterwards and before the lien expires. The lien has the effect and priority of a judgment lien and continues for 5 years after the time of the recording of the certificate unless sooner released or otherwise discharged.***

***4. Within 5 years after the date of the recording of the certificate or within 5 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by the county recorder by recording a certificate of renewal of the lien. From the time of recording, the lien is extended to all real and personal property located in the county or counties in which the certificate is recorded that is owned by the seller or sellers or acquired by the seller or sellers afterwards for 5 years, unless sooner released or otherwise discharged.***

**Sec. 3.** ***1. The county recorder may release all or any portion of the property subject to a lien imposed pursuant to section 2 of this act or subordinate the lien to other liens and encumbrances if he determines that the amount due is secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount due.***

***2. A certificate by the county recorder stating that property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, is conclusive evidence that the property has been released, or that the lien has been subordinated.***

**Sec. 4.** NRS 375.010 is hereby amended to read as follows:

375.010 The following terms, wherever used or referred to in this chapter, have the following meaning unless a different meaning clearly appears in the context:

1. "Deed" means every instrument in writing, ~~[except a last will and testament,]~~ whatever its form, and by whatever name it is known in law, by which title to any estate or present interest in real property, including a water right, permit, certificate or application, is conveyed or transferred to, and vested in, another person, but does not include ~~[a]~~ ***:***

***(a) A*** lease for any term of years ***;***

***(b) Any transaction in which an interest in real property is encumbered for the purposes of securing a debt;***

***(c) A deed that is being filed for a second time to correct an error;***

***(d) A deed transferring title to or from the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof;***

***(e) A last will and testament;*** or ~~[an]~~

***(f) An*** easement.

2. ***"Seller" means any person or other legal entity conveying title to real property, including without limitation, a grantor or other transferor of real property.***

***3.*** "Value" means:

(a) In the case of any deed not a gift, the amount of the full, actual consideration paid or to be paid for the real property, excluding the amount of any lien or liens assumed.

(b) In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated price the real property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Sec. 5.** NRS 375.020 is hereby amended to read as follows:

375.020 1. A tax, at the rate of:

(a) In a county whose population is 400,000 or more, $1.25; and

(b) In a county whose population is less than 400,000, 65 cents,

for each $500 of value or fraction thereof, is hereby imposed on each deed by which any lands, tenements or other realty is granted, assigned, transferred or otherwise conveyed to, or vested in, another person, if the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining on the interest or property at the time of sale, exceeds $100.

2. The amount of tax must be computed on the basis of the value of the transferred real property as declared pursuant to NRS 375.060.

***3. The seller or sellers are responsible for the payment of the tax imposed by subsection 1.***

**Sec. 6.** NRS 375.025 is hereby amended to read as follows:

375.025 1. In addition to all other taxes imposed on transfers of real property, a board of county commissioners in each county whose population is 100,000 or more but less than 400,000, may by ordinance, but not as in a case of emergency, impose a tax at the rate of up to 1/10 of 1 percent of the value thereof on each deed by which any residential lands, tenements or other residential realty is granted, assigned, transferred or otherwise conveyed to or vested in another person, after receiving the approval of a majority of the registered voters of the county voting on the question at a primary, general or special election. A county may combine this question with questions submitted pursuant to NRS 376A.040, 376A.050 and 376A.070 or any combination thereof.

2. A special election may be held only if the board of county commissioners determines, by a unanimous vote, that an emergency exists. The determination made by the board is conclusive unless it is shown that the board acted with fraud or a gross abuse of discretion. An action to challenge the determination made by the board must be commenced within 15 days after the board's determination is final. As used in this subsection, "emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the board of county

commissioners to prevent or mitigate a substantial financial loss to the county or to enable the board to provide an essential service to the residents of the county.

3. The amount of the tax must be computed on the basis of the value of the transferred property as declared pursuant to NRS 375.060. ***The seller or sellers are responsible for the payment of the tax.*** The county recorder shall collect the tax in the manner provided in NRS 375.030, except that he shall deposit all of the proceeds from the tax imposed pursuant to this section in the county general fund to be used in the manner specified in NRS 375.075.

4. Before the tax may be imposed, an open-space plan must be adopted by the board of county commissioners pursuant to NRS 376A.020 and the adopted open-space plan must be endorsed by the city council of each incorporated city within the county.

**Sec. 7.** NRS 375.090 is hereby amended to read as follows:

375.090 ~~[The tax imposed by NRS 375.020 and 375.025 does not apply to:~~

~~1. Any transaction wherein an interest in real property is encumbered for the purposes of securing a debt.~~

~~2. A transfer of title to or from the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.~~

~~3. A]~~

***1. Except as otherwise provided in paragraph (a) of subsection 2, the tax imposed by NRS 375.020 and 375.025 must be paid in full by the seller or sellers before the acceptance of the deed for recordation, without regard to whether the deed is exempt from the tax pursuant to subsection 3.***

***2. If one of the exemptions provided in subsection 3 applies to the deed, the seller or sellers may apply for approval of the exemption from the county recorder:***

***(a) Before the deed is offered for recordation, and if the approval is granted, the county recorder shall accept the deed for recordation without payment of the tax imposed by NRS 375.020 and 373.025; or***

***(b) Within 60 days after the deed is recorded. If the approval is granted, the county recorder shall refund the amount of the tax paid. The refund must be made pursuant to the same distribution formula under which the tax was initially paid.***

***3. A deed evidencing one of the following acts is exempt from the tax imposed by NRS 375.020 and 373.025:***

***(a) A*** transfer of title recognizing the true status of ownership of the real property.

~~[4.]~~ ***(b)*** A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common.

~~[5.]~~ ***(c)*** A transfer of title to community property without consideration when held in the name of one spouse to both spouses as joint tenants or tenants in common, or as community property.

~~[6.]~~ ***(d)*** A transfer of title between spouses, including gifts.

~~[7.]~~ ***(e)*** A transfer of title between spouses to effect a property settlement agreement or between former spouses in compliance with a decree of divorce.

~~[8.]~~ ***(f)*** A transfer of title to or from a trust, if the transfer is made without consideration.

~~[9.]~~ ***(g)*** Transfers, assignments or conveyances of unpatented mines or mining claims.

~~[10.]~~ ***(h)*** A transfer, assignment or other conveyance of real property to a corporation or other business organization if the ~~[person]~~ ***seller or sellers*** conveying the property ~~[owns]~~ ***own*** 100 percent of the corporation or organization to which the conveyance is made.

~~[11.]~~ ***(i)*** A transfer, assignment or other conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of consanguinity.

~~[12.]~~ ***(j)*** The making, delivery or filing of conveyances of real property to make effective any plan of reorganization or adjustment:

~~[(a)]~~ ***(1)*** Confirmed under the Bankruptcy Act, as amended, Title 11 of U.S.C.;

~~[(b)]~~ ***(2)*** Approved in an equity receivership proceeding involving a railroad as defined in the Bankruptcy Act;

~~[(c)]~~ ***(3)*** Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act; or

~~[(d)]~~ ***(4)*** Whereby a mere change in identity, form or place of organization is effected, such as a transfer between a corporation and its parent corporation, a subsidiary or an affiliated corporation,

if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 years after the date of the confirmation, approval or change.

~~[13.]~~ ***(k)*** The making or delivery of conveyances of real property to make effective any order of the Securities and Exchange Commission if:

~~[(a)]~~ ***(1)*** The order of the Securities and Exchange Commission in obedience to which the transfer or conveyance is made recites that the transfer or conveyance is necessary or appropriate to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79k;

~~[(b)]~~ ***(2)*** The order specifies and itemizes the property which is ordered to be transferred or conveyed; and

~~[(c)]~~ ***(3)*** The transfer or conveyance is made in obedience to the order.

~~[14.]~~ ***(l)*** A transfer to or from an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.

~~[15.]~~ ***(m)*** A transfer to or from a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

~~[16.]~~ ***(n)*** A transfer, assignment or other conveyance of real property to a corporation sole from another corporation sole. As used in this subsection, "corporation sole" means a corporation which is organized pursuant to the provisions of chapter 84 of NRS.

***4. The county recorder may audit the records of the transaction to verify the computation of the amount of tax due and any claimed exemption by requesting from the department a subpoena for production of the records necessary for the audit. Any such audit must be completed within 36 months after the date on which the last document for the transaction was recorded. If the county recorder receives confidential information during the course of an audit, he shall keep the information confidential.***

***5. The county recorder shall immediately inform the seller or sellers by written notice of any additional tax which the county recorder determines to be owed on the basis of an audit. The seller or sellers shall pay the amount due within 30 days after the date on which the county recorder sends the notice of the amount due.***

**Sec. 8.** NRS 388.750 is hereby amended to read as follows:

388.750 1. An educational foundation:

(a) Shall comply with the provisions of chapter 241 of NRS;

(b) Except as otherwise provided in subsection 2, shall make its records public and open to inspection pursuant to NRS 239.010; and

(c) Is exempt from the tax on transfers of real property pursuant to ***paragraph (l) of*** subsection ~~[14]~~ ***3*** of NRS 375.090.

2. An educational foundation is not required to disclose the names of the contributors to the foundation or the amount of their contributions. The educational foundation shall, upon request, allow a contributor to examine, during regular business hours, any record, document or other information of the foundation relating to that contributor.

3. As used in this section, "educational foundation" means a nonprofit corporation, association or institution or a charitable organization that is:

(a) Organized and operated exclusively for the purpose of supporting one or more kindergartens, elementary schools, junior high or middle schools or high schools, or any combination thereof;

(b) Formed pursuant to the laws of this state; and

(c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

**Sec. 9.** NRS 396.405 is hereby amended to read as follows:

396.405 1. A university foundation:

(a) Shall comply with the provisions of chapter 241 of NRS;

(b) Except as otherwise provided in subsection 2, shall make its records public and open to inspection pursuant to NRS 239.010;

(c) Is exempt from the tax on transfers of real property pursuant to ***paragraph (l) of*** subsection ~~[14]~~ ***3*** of NRS 375.090; and

(d) May allow a president or an administrator of the university or community college which it supports to serve as a member of its governing body.

2. A university foundation is not required to disclose the name of any contributor or potential contributor to the university foundation, the amount of his contribution or any information which may reveal or lead to the discovery of his identity. The university foundation shall, upon request, allow a contributor to examine, during regular business hours, any record, document or other information of the foundation relating to that contributor.

3. As used in this section, "university foundation" means a nonprofit corporation, association or institution or a charitable organization that is:

(a) Organized and operated exclusively for the purpose of supporting a university or a community college;

(b) Formed pursuant to the laws of this state; and

(c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

**Sec. 10.** The administrative regulation adopted by the Nevada Tax Commission which is codified as NAC 375.190 is hereby declared void. In preparing the supplements to the Nevada Administrative Code on or after July 1, 1999, the Legislative Counsel shall remove NAC 375.190.

**Sec. 11.** This act becomes effective on July 1, 1999.

~