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TESTIMONY TO THE NEVADA STATE LEGISLATURE SENATE JUDICIARY COMMITTEE  
SENATE BILL 134 (REPEAL OF NEVADA REVISED STATUTE 463.3669)

Mr. Chairman, members of the Senate Judiciary Committee, as Doug mentioned, my name is Jeremy Aguero. I would also like to extend my thanks to the Committee for allowing us the opportunity to testify before you today. In my comments, I will attempt to briefly address three key issues:

1. *What gave rise to NRS 463.3669 in 1995?*
2. *What changes have occurred since 1995, which have eliminated the need for NRS 463.3669?*
3. *Why is Senate Bill 134 necessary to eliminate a conflict of existing laws?*

**WHAT GAVE RISE TO NRS 463.3669?**

The intent of NRS 463.3669 was to protect jackpot winners against incurring unintended federal income tax consequences when receiving installment payments over an extended period (e.g., 20 years). Perhaps the easiest way to demonstrate the problem is through an example of what might have happened to a hypothetical jackpot winner prior to NRS 463.3669's enactment.

Suppose a patron won a \$10 million jackpot payable in 20 annual installments. If this right were assignable, the patron could be deemed to have had "constructive receipt" of the present value of the entire \$10 million. Thus, although the patron would receive only \$500,000 in the first year, that same patron would potentially have federal income tax liability of \$2 million.

Recognizing the state had an interest in protecting casino patrons from facing this dilemma; NRS 463.3669 was passed in 1995. The theory of "constructive receipt" turns on the concept of "unqualified demand." By eliminating the patron's right to assign her payments to a third party demand to the funds became limited or "qualified," and thus, no unintended tax liability was created. Similar statutes were passed in a number of states where lottery prize winners were facing similar problems.

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**WHAT CHANGES HAVE OCCURRED SINCE 1995, WHICH HAVE ELIMINATED THE NEED FOR NRS 463.3669?**

The tenuous nature of this distinction, which effectively elevated form over substance, was, at least part, a driving force behind the development of Internal Revenue Code § 451 (h) in 1998. Section 451 (h), which was an element of the 1998 Tax and Trade Relief Extension Act, provides that a jackpot winner who is granted the option of choosing between a lump sum or periodic payments is not required to include the winnings as gross income merely because the option to take a lump sum exists.

In a 2000 Private Letter Ruling, the Service noted that § 451 (h) is not affected by the mere presence of a state law permitting a prize winner to assign award payments. The IRS explained that “constructive receipt” requires the amount credited to the winners account be subject to unqualified demand. Where a winner’s right to receive payments are not accelerated or otherwise altered by state law, a jackpot is not subject to “unqualified demand” and no federal income tax liability follows.

If a state law allowing the assignment of winnings did not trigger the unintended federal income tax consequences giving rise to NRS 463.3669, the repeal of a statute prohibiting such assignments would clearly not lead to the emergence of such consequences. Thus, NRS 463.3669 has served its purpose well, but is no longer required.

**WHY IS SENATE BILL 134 NECESSARY TO ELIMINATE A CONFLICT OF EXISTING LAWS?**

As Doug noted earlier, a second reason supporting the repeal of NRS 463.3669 is that it currently conflicts with NRS 104.9406. NRS 104.9406, which was adopted in 1999, updated Nevada’s statutes to reflect the most current provisions of the Uniform Commercial Code. Subsection (6) of the statute, however, provides that any law prohibiting the assignment of an “account” is void to the extent of the prohibition. The definition of “account” includes gaming winnings; and thus, any law prohibiting the assignment of gaming winnings is void.

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SENATE BILL 134 (REPEAL OF NEVADA REVISED STATUTE 463.3669)**

NRS 463.3669 prohibits the assignment of gaming winnings on its face. Thus, not only is the statute no longer required it also stands opposed to a more recently adopted statute. While this conflict may invalidate NRS 463.3669, it certainly adds confusion and uncertainty to Nevada law.

For all of these reasons, Mr. Chairman, we respectfully recommend that the Nevada State Legislature repeal NRS 463.3669.

Mr. Chairman, with your indulgence, I would like to conclude by taking a moment to thank the Legislative Counsel Bureau's Research Division, which was remarkably helpful in support of our efforts. Additionally, I would also like to publicly thank Professors Bob Faiss and Tony Cabot. These two gentlemen, who I think we all recognize as being instrumental in the development and refinement of a modern gaming law, very clearly demonstrate a long-run commitment to our community by taking time out of their extraordinary schedules to impart the value of their wisdom and experience on a generation of Nevadans who aspire to work along side them, and, hopefully, will do an equal service to our great state. Finally, I would like to thank Mr. Lerner. His counsel and insights were of great benefit to this process.

Mr. Chairman, with that, we conclude our presentation. We thank you again for your time, and we would be pleased to address any comments or question the Committee may have.