DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

Senate Taxation Committee
Tuesday, March 18, 2003

SUBJECT:	**Impact of Governor Guinn's Proposed .25% Gross Receipts Tax on the Petroleum Industry.**
Name:	Steve Johnson, President
Company:	Berry-Hinckley Industries 5690 Riggins Court, Suite A Reno, Nevada 89502 (775) 689-1222
Trade Association:	Nevada Petroleum Marketers & Convenience Store Association Executive Director: Peter Krueger P.O. Box 12431 Reno, Nevada 89510 (775) 348-1888
Conclusion:	Our company, trade association members and industry is strongly opposed to the Governor's proposed Gross Receipts Tax.

- The Gross Receipts Tax is inequitable and unfair due to the petroleum industry's high gross receipts and low operating margins.
- In reality, for our industry, the Gross Receipts Tax is an extremely high tax (36%-41%) which will not be passed on to the consumer and will lead to business closures, failures and bankruptcies.
- Based on the price volatility associated with the commodities we sell, our industry's Gross Receipts Tax will fluctuate dramatically, will be unpredictable and have no bearing on our levels of profitability.
- The Gross Receipts Tax will very negatively impact existing and future economic development in the State of Nevada.

Berry-Hinckley Industries is a locally owned and operated petroleum business headquartered in Reno, Nevada. We have over 500 employees and have been supplying petroleum and associated products to the public since 1928.

We sell and transport over 200 million gallons of gasoline and diesel fuel on a wholesale and retail basis annually. We operate two petroleum terminals in the Sparks, Nevada tank farm, twelve bulk petroleum distribution facilities located in northern and northeastern Nevada, 30 convenience stores, 25 unattended commercial fueling sites, and supply an additional 32 independently owned and operated convenience stores and gas stations.

Our industry experiences very high gross sales and very low gross profits/margins from those sales. As an illustration of this fact, we are a member of a petroleum industry study group which meets quarterly to discuss issues related to our industry. Based on a recent survey of 98 petroleum companies, the survey reported that the group's average net profit before income taxes was .61% (.0061) of gross sales. Governor Guinn's proposed .25% (.0025) Gross Receipts Tax levy would then represent 41% of this group's net profit before income taxes. This is obviously quite inequitable and unfair to an industry which experiences high gross sales and low operating margins.

With regards to the impact the Governor's proposed Gross Receipts Tax would have specifically on our company, we submit the following information. For the year ended December 31, 2001, our company's gross receipts from sales of petroleum products and convenience goods were in excess of $250,000,000 (already excluding all federal, state and local fuel taxes). Our company's net profit before income taxes was .69% (.0069) of our gross sales in 2001. The Governor's proposed .25% (.0025) Gross Receipts Tax if applied to our 2001 gross sales would result in a Gross Receipts Tax of approximately $645,000 or 36% of our company's net profit before income taxes. This would be more than the company's entire federal income tax. When you deduct the $645,000 in Gross Receipts Tax from our net profit before income taxes in 2001, our net profit before income taxes would then represent only a .44% (.0044) return on our gross sales.

During 2001 and continuing into 2002, our company has experienced large increases in our utility costs and more drastic increases in insurance costs associated with our industry and the aftermath of September 11, 2001. Not only has our company experienced declining net profits, but our employees have been without increases in their pay in 2001 and 2002 due to the state of our industry and our own troubled financial results.

Our industry, and specifically our company, simply cannot absorb the Governor's Gross Receipts Tax as currently proposed and operate profitably and stay in business. The proposed increases in the cigarette and liquor taxes will also negatively impact our business due to anticipated lower sales of those items resulting from higher prices to consumers from the increased tax rates.

On a national level, the number of bankruptcies and business closures in our industry is very alarming and will only get worse as a result of unfair and inequitable taxes such as the Governor's proposed Gross Receipts Tax.

We would also like to point out the price volatility of the commodities we primarily sell, gasoline and diesel fuel. As you know, the selling prices for gasoline and diesel fuel have wide swings in the prices these commodities are sold for depending on many factors out of ours and the consumers control (supply and demand, war threats, refinery problems, labor strikes in foreign oil producing countries, regulations pertaining to the kind of fuel which can be sold, ethanol vs. MTBE, etc.). To apply a Gross Receipts Tax to commodities (gasoline and diesel fuel) whose selling prices fluctuate so drastically seems to make no sense. For example, on November 27, 2002, the cost of a gallon of gasoline (excluding all federal, state and local fuel taxes) was $.74 (seventy-four cents) per gallon. If we sold 1,000,000 gallons of gas at our <u>cost</u> of $.74 per gallon, our gross receipts would be $740,000 and the gross receipts tax would be $1,850. The cost of that same gallon of gas on March 14, 2003 was $1.39 per gallon (excluding all federal, state and local fuel taxes). If we sold 1,000,000 gallons of gas at our <u>cost</u> of $1.39 per gallon, our gross receipts would be $1,390,000 and the Gross Receipts Tax would be $3,475.

The Gross Receipts Tax on the 1,000,000 gallons of gasoline sold on March 14, 2003 of $3,475 is $1,625, or 88% more than the Gross Receipts Tax on the 1,000,000 gallons sold on November 27, 2002. The petroleum company who sold the 1,000,000 gallons of gasoline on November 27, 2002 and March 14, 2003 did not make any more profit as a result of the increased price of this commodity (gasoline) but would pay 88% or $1,625 more in Gross Receipts Tax. This is not rational nor equitable. No consumer goods experience the price volatility which is experienced by the petroleum industry.

In summary, for the petroleum industry, the Governor's proposed Gross Receipts Tax makes no sense and is outrageously unfair and inequitable.

The Governor's proposed Gross Receipts Tax also has a potential inequitable impact on various different trade classes retailing gasoline and diesel fuel in the State of Nevada. The various trade classes are as follows:

- Major Oil Company Operated C-Store
- Distributor Operated C-Store
- Independent Dealer Operated C-Store

A major oil company operated C-Store would pay the Governor's proposed Gross Receipts Tax <u>once</u> at the time of sale to the ultimate consumer.

A distributor operated C-Store has to absorb <u>two</u> gross receipts taxes. The first when the major oil company passes through its gross receipts tax and the second at the time of the sale to the ultimate customer.

An independent dealer operated C-Store would have to absorb <u>three</u> gross receipts taxes. The first when the major oil company passes through its Gross Receipts Tax, the next when the distributor passes through its Gross Receipts Tax, the third on the ultimate sale to the consumer.

In this extremely low margin business the Gross Receipts Tax would give the major oil companies (Arco, Exxon, Shell, Texaco, Chevron, etc.) an insurmountable competitive advantage. Remember, as stated earlier, in 2001 the industry operated on net profit margin of only .61% (.0061) of gross sales.

The pricing practices and competitive nature of our industry will make it impossible for distributors and independent dealers to pass on the Gross Receipts Tax to our consumers. The major oil companies will be able to pass through their Gross Receipts Tax since all of the initial supply comes through them. After the initial product is purchased, the extremely competitive nature of the business sets the retail street sales prices. The major oil company C-Stores, that effectively pay only one Gross Receipts Tax, and the new gasoline retailers such as Costco, Wal-Mart, Sam's Club, Albertson's, etc. will set the competitive street retail prices. These new gasoline retailers use gasoline sales as a loss leader in order to enhance their offerings to their members. They often sell their gasoline at or below cost or at very slim margins (.01 cent to .03 cents per gallon). These new retailers will not need to pass through the Gross Receipts Tax because they can supplement their gasoline losses (or slim margins) with membership fees customers pay to shop at their facilities.

A distributor owned C-Store or independent dealer must establish their retail street prices in a manner to compete with these new low price retailers in order to retain certain volume levels and customer traffic. Not to be competitive in terms of retail street prices (despite increasing costs like a Gross Receipts Tax) would certainly lead to the demise of the facility.

On a wholesale basis, many of our prices we charge our customers are based on "spot market" prices in the San Francisco Bay area plus a transportation/tariff charge to have the product shipped into our market area. The Gross Receipts Tax would most certainly not be factored in or passed on to wholesale customers under these contractual arrangements.

Our company already pays a significant amount of local, county and state taxes and we simply can't afford to pay and absorb a Gross Receipts Tax.

- Based on our company's sales of over 200 million gallons of gasoline and diesel fuel on an annual basis, we remit to the State of Nevada on an annual basis in excess of $45 million in fuel excise taxes. In addition, as a result of the sale of taxable goods in our C-Stores, we remit to the State of Nevada millions of dollars of state sales taxes.

- Our company owns or leases over 70 facilities for which it pays real property taxes on.

- Our company provides employment for over 500 people and as a result, pays the state a Business Head Tax which is proposed by the Governor to triple.

- Our company owns millions of dollars worth of personal property on which it pays Personal Property Tax.

In addition, the proposed increase in the "Sin Taxes" on alcohol and tobacco products (which will in fact be passed on to the consumer) will negatively impact our sales volumes for these products. Lower sales volumes of the leading products we sell in our stores will in turn impact our profitability negatively.

The answer to the state's problems is not the enactment of the proposed Gross Receipts Tax which, as we have illustrated above, will be largely unfair and inequitable to industries such as ours which experience high gross sales in relation to our gross profits or operating margins. The enactment of a Gross Receipts Tax would also require the creation of an entirely new, expensive and intrusive bureaucracy to administer the Gross Receipts Tax. The administrative and compliance costs would be enormous which has been reported to be in excess of $30 million.

We have discussed the Governor's proposed Gross Receipts Tax with peers in our industry who operate their businesses in the State of Washington which is the state we believe is being used as a model for the Governor's proposed Gross Receipts Tax. Not only has the State of Washington's Gross Receipts Tax had a financially disastrous impact on my peer's business operations and profitability, but the Gross Receipts Tax in the State of Washington is simply not working. Why would the State of Nevada want to enact a Gross Receipts Tax that is not working in the state which is the model of the Governor's proposed Gross Receipts Tax. To do so would be a disaster and imprudent.

In summary, for our company specifically and for the petroleum industry in general, the Governor's proposed Gross Receipts Tax makes no sense, is outrageously unfair and inequitable and will lead to further petroleum business closures, C-Store closures and bankruptcies which in turn will reduce the number of jobs in the State of Nevada.

Thank you for taking the time and effort to consider our views.