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NEVADA BANKERS ASSOCIATION

POSITION STATEMENT

TAX POLICY

The Nevada Bankers Association's Commitment to Nevada's Future

The Nevada Bankers Association (NBA) supports the continued economic growth, diversity, and prosperity of this great State. As responsible corporate citizens in the State of Nevada, we believe that all Nevadans deserve excellent health care, quality education, care for our senior citizens, and the maintenance of a robust infrastructure. **We pledge to pay our "fair share" of the additional tax revenue generated from the business community** to support this attractive quality of life and provide the basis for continued economic growth and diversification. However, the method chosen through which such additional revenue is generated will be a critical determinant of the future health of the State's banking industry and the economy as a whole. Generally, a gross receipts-based tax is not favored by the financial services sector due to the complexities of such a tax structure and its potential adverse impact on our State, and the NBA cannot support the gross receipts-based tax set forth in Senate Bill 238 (or its identical equivalent in Assembly, Assembly Bill 243).

The NBA asked Professor Keith Schwer of UNLV to assess a fair share business tax contribution from the banks to address the State's needs. Dr. Schwer calculates that banks and financial services companies represent roughly 5.5 percent of the State's economy. The financial services industry is willing to pay its fair proportion of the incremental taxes that business as a whole pays.

The Impact of SB 238 and AB 243 on the Banking Industry

On March 5, SB 238 and AB 243, identical bills containing Governor Guinn's tax proposals, were introduced in the Nevada Senate and Assembly, respectively. The Nevada Bankers Association cannot support the gross receipts tax as proposed in these bills, since they include a number of serious flaws. The practical definition and implementation of a gross receipts tax across industry lines, and within our own industry, is anything but simple. The conditions and attributes of such a tax are so sensitive that their configuration could have wide-ranging effects on the tax burden imposed on the financial services industry. Specific examples of the problems within these bills include, but are not limited to

- The concept of "receipts" is expanded well beyond what is normally considered to be revenue. Examples include, but are not limited to:
 - The bills fail to exempt deposits and loan principal payments received on behalf of customers.
 - Net interest receipts are not considered. Interest income and fee income should be net of the cost of funds and loan loss reserves. In these bills, a gross receipts tax would be charged on the "receipts" of interest borrowers pay to the bank. If the interest rates were to triple, due primarily to an increased cost of funds, the gross receipts tax paid would also triple while the banks' net margins would remain constant. This situation could lead to banks incurring losses on loans made to Nevada customers.
 - The money a customer exchanges for a certificate of deposit should not be taxed, as Section 9.1 would require.
 - Use of the terms "any money" and "fair market value" of property or services received in Section 8 has uncertain and potentially wide-ranging implications, but could mean having to set a value on and charge for teller services at a bank, for example.
 - Under Section 9.1, a business entity would be taxed on capital contributions received from shareholders as well as other capital transactions.
- Section 9.1 provides no deduction for the purchase cost or basis of property when selling an asset. In the banking industry, with respect to asset sales and loan securitization transactions, the taxable receipt should be net of the cost basis of the asset sold. In many of these transactions, the net margin may be less than the proposed gross receipts tax obligation. Securities trades and brokerage-type transactions should be taxed only on the fees earned, and receipts generated from passive investment assets should be exempt since the management of such assets is highly mobile.
- The requirement in Section 14.1 for business entities that keep their books in states other than Nevada to pay "any other actual expenses incurred by the employee while he is absent from his regular place of employment to examine these documents" is overly broad and could easily be subject to abuse.

- The confidentiality provisions of Section 15 should be broadened to permit a taxpayer access to anything in his or her files, except informant information. Information disclosures and exchanges contained in Sections 15.2.e and f and 15.3 could lead to abuses.
- Section 18.1 may well violate the U.S. and Nevada Constitutions by impermissibly delegating the determination of the source and/or allocation of taxable receipts to a regulatory body as opposed to elected lawmakers. Leaving such decisions to an unelected regulatory body subjects businesses operating in Nevada, or contemplating whether to locate here, to a prolonged period of economic uncertainty. Additionally, rules can be changed by the administrative regulators at any time within such vague standards.
- Sourcing rules should be clearly spelled out in the legislation. Gross receipts should include revenues only on business activity attributable to Nevada residents. Receipts from non-Nevada residents should be excluded, even if those receipts are booked in Nevada. The bills should specify that businesses, which are not domiciled in Nevada but are doing business in Nevada, should be subject to a tax on gross receipts from Nevada residents.
- Most inter-affiliate transactions are not exempted. Tax policy should be neutral with respect to the structure within which a taxpayer wants to operate; thus sales and services sold by one affiliate to another should be exempt as should any transfer between affiliated entities. Taxpayers should not be penalized for conducting their business affairs through more than one legal entity.

The Impact of the Gross Receipts Tax on the Economy

Beyond specific problems with the bills that directly concern banks, there are other concerns which are more generally applicable. The gross receipts tax is complex, is unequal in its application, and is potentially detrimental to Nevada's economic growth and diversification. It could also have a highly negative impact on many of our business customers. Those with relatively high volumes and low margins (for instance, convenience stores, auto dealers, homebuilders, and grocery stores) would pay a much higher percentage of their net income as taxes than will others. This tax will be paid at the same rate, regardless of a company's profitability, margins, or ability to pay. All companies, exempt or not—regardless of the size of the business, must file regular revenue reports and will be subject to extensive auditing.

The Nevada Bankers Association is Committed to a Workable Tax Model

The Sales Tax on Services: A Plan for Fiscal Stability

As responsible corporate citizens, the members of the Nevada banking industry are fully committed to working with the legislature to develop a tax structure for the long-term. To reiterate, the members of the NBA commit to pay our fair share of additional tax revenues from business.

The NBA is working in coalition with many other business organizations to tax businesses through our support of a broad expansion of the sales tax to services. By taxing the growing portion of the economy, revenues will increase as the economy grows, providing much needed stability and predictability to future revenues. If the expanded base is kept sufficiently broad, with exclusions only for regressive and non-discretionary spending items such as groceries, health care, day care, energy, utilities, and rent, the overall sales tax rate could be reduced to 5 percent on all items, including those currently taxed. Such a tax could yield up to \$500 to \$600 million annually, depending on the level of exemptions. The rate reduction on tangible goods would provide a much-needed economic stimulus while at the same time providing tax relief for citizens in Nevada. For the financial services industry, this represents taxes on services consumed by our companies, including legal, accounting, consulting, janitorial, maintenance and repair, computer services, transportation, security, amid many others.

The following criteria are important to facilitate a workable model for a broad-based sales tax on such services:

1. The sales tax should be limited to services used in Nevada by a Nevada business taxpayer that are collected by a Nevada tax licensee.
2. Services between affiliates should be exempt.
3. An out-of-state service provider that is providing a taxable service in Nevada to a Nevada business taxpayer must collect and remit taxes, or the purchaser of the service should be responsible for the tax.
4. The tax will be based on the actual amount paid for the service provided.

We acknowledge that the financial services industry would be responsible for the collection and remittance of sales taxes on whichever services it provides that would be subject to taxation.