MINUTES OF THE
SENATE COMMITTEE ON TAXATION

Seventy-third Session
March 10, 2005

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 2:05 p.m. on Thursday, March 10, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Terry Care
Senator John Lee

COMMITTEE MEMBERS ABSENT:

Senator Randolph Townsend (Excused)

STAFF MEMBERS PRESENT:

Chris Janzen, Deputy Fiscal Analyst
Ardyss Johns, Committee Secretary
Tanya Morrison, Committee Secretary

OTHERS PRESENT:

Thomas Summers, Deputy Executive Director, Department of Taxation
Dino DiCianno, Deputy Executive Director, Department of Taxation
Randolph E. Tobey, Vice Chairman, Pyramid Lake Paiute Tribe
John Michela, Deputy Attorney General, Office of the Attorney General
A. Brian Wallace, Chairman, Washoe Tribe of Nevada and California
Laurie A. Thom, Chairman, Walker River Paiute Tribe
LaVerne Roberts, Director, Taxation Department, Walker River Paiute Tribe

CHAIR MCGINNESS:
We are going to start as a subcommittee. Senator Townsend is absent and excused. Senator Rhoads and Senator Tiffany are testifying on bills in other committees. Senator Lee is on his way to this meeting. Please identify Senator Care, Senator Coffin and Chair McGinness as present.

We have a couple of bill draft requests (BDR) to introduce when we get a quorum.

We will now open the hearing on Senate Bill (S.B.) 138.

SENATE BILL 138: Limits circumstances in which overpayments of taxes may be applied to underpayments in another reporting period to reduce penalties. (BDR 32-408)

CHAIR MCGINNESS:
Today's agenda indicates we will have a discussion of property tax relief concepts and that will not take place in our meeting this afternoon.

THOMAS SUMMERS (Deputy Executive Director, Department of Taxation):
Our Department has proposed amendments for S.B. 138 (Exhibit C). The Department's understanding of the original intent of the Debit/Credit Offset (DR/CR Offset) was to benefit the taxpayers who made the effort to be in compliance. The purpose of our bill is to define the situations where the taxpayers are not in compliance.

This bill refers to reporting periods where a taxpayer who has underreported should be offset against the periods he or she was overreported. The bill then states the overreporting for interest purposes should be netted out against credits and interest calculated on each net deficiency by period.

The exception is when it is determined the provisions of these sections, as originally written, do not apply if the taxpayer has submitted a report that shows taxes due and has not remitted the taxes due in a timely manner. We would like to add criteria that the provisions of this section do not apply if, in any reporting period within the audit period, the taxpayer has: (a) failed to file a report or return he is required to file, (b) filed such a report or return later than the date it was due, (c) filed such a report or return that erroneously shows no

taxes due or (d) filed such a report or return that shows taxes due and has not remitted the taxes due in a timely manner.

I have prepared a schedule, Exhibit C, which shows a generic audit where a taxpayer has both underreported and overreported on a quarterly basis. Under the previous method, interest calculation was applied on a straight-line basis in a period-by-period deficiency, if it is a quarterly report. Taxpayers who are compliant are entitled to the debit/credit offset where the interest is calculated on each period's net deficiency before calculating the difference for the net period. As you can see in Exhibit C, the bottom line of the two comparisons shows taxpayers who meet the effort to remain in compliance and file timely returns. The interest on their audit of $1,000 over a 3-year period would be $151: whereas, taxpayers who are not in compliance and not entitled to the DR/CR Offset, accrue interest of $481 on that same audit for a 3-year period.

SENATOR CARE:
I am trying to determine what this bill would do if we no longer have the offset under these circumstances. If the intent was to be punitive, making these changes by your Department, in the long run, may cause increased cost to the taxpayer who pays in a timely manner. Could that happen with these proposed changes in the bill?

MR. SUMMERS:
We have the computer program which handles those calculations. Upon completion of the audit, the program generates the billing letters. We are trying to define criteria to benefit the taxpayers who are in compliance and define the criteria for those who have neither made the diligent effort to file timely nor accurately and have made errors through careless math mistakes rather than deliberate misreporting.

SENATOR CARE:
Is there a distinction made between the taxpayer who makes careless mistakes and the taxpayer who deliberately misreports? Is your Department making that distinction in these amendments?

MR. SUMMERS:
Yes, Senator Care, that is what we are trying to achieve with this bill and these amendments.

SENATOR COFFIN:
Are we in court on this particular circumstance, right now?

MR. SUMMERS:
At this time, we are not in court on this issue.

SENATOR COFFIN:
Did the Department of Taxation have to make many adjustments for taxpayers in the past couple of years?

DINO DICIANNO (Deputy Executive Director, Department of Taxation):
I need to give the Committee a brief history behind this bill. As you recall, S.B No. 362 of the 70th Session was passed, which amended the Taxpayers' Bill of Rights. These provisions are part of the Taxpayers' Bill of Rights. The intent of the original language was to afford a taxpayer the ability to apply a credit per each period before the interest was calculated. Initially, we determined the deficiency for the entire period and then applied the interest calculation. The Nevada Taxpayers Association determined that was unfair to taxpayers, and our Department agreed with the Association. That was referred to as the DR/CR Offset. In each period, we would apply a DR/CR Offset and apply the interest at the end.

We have had several cases where taxpayers have reported no money returns. In other words, they file the returns when, in fact, there was a tax liability in those periods. The original language was written so these taxpayers got the DR/CR Offset, based on that type of reporting. The Department of Taxation feels it is unfair to those who do properly report and pay in a timely manner. They should not receive the DR/CR Offset during those periods.

SENATOR COFFIN:
The issue could arise whereby an accountant is hired by a business and notes that business is in financial trouble due to bad bookkeeping. The owner of the business tells the accountant he has the money to pay the taxes, but he just did not fill out the paperwork. If these taxpayers sent a check in without a form or a partially finished form, would your Department stop the clock on these individuals?

MR. DICIANNO:
The circumstances you are describing are what we refer to as voluntary disclosure. These are taxpayers who are currently registered and filing returns either without payment or filing zero returns stating they have no liability without a payment when, in fact, they do have liability for those periods and do owe the tax. Those individuals should not be afforded the debit/credit offset. If we have a circumstance where a taxpayer is not registered and the accountant, in your example, finds someone has not been reporting properly, there are other mechanisms to deal with this issue. That would fall under voluntary disclosure, where the promulgated regulations by the Nevada Tax Commission for the waiver of penalty and interest for those periods would come into play.

SENATOR COFFIN:
If an individual has a surplus, would they be able to get the DR/CR Offset?

MR. DICIANNO:
Yes, they would still be entitled if they overpaid their tax liability. They would not be subjected to this provision. They are entitled to a refund plus what the interest is in the statute.

CHAIR MCGINNESS:
We will close the hearing on S.B. 138 and open the hearing on Assembly Bill (A.B.) 61.

ASSEMBLY BILL 61: Exempts from imposition of governmental services tax vehicles owned by governing body of Indian reservation or Indian colony under certain circumstances. (BDR 32-974)

RANDOLPH E. TOBEY (Vice Chairman, Pyramid Lake Paiute Tribe):
The 26 reservations and colonies of the Inter-Tribal Council of Nevada urge your support of A.B. 61. I will read from my prepared testimony (Exhibit D).

SENATOR TIFFANY:
What is the smallest number of Indian members needed to be considered an Indian tribe?

MR. TOBEY:
The federal government recognizes any number of members, provided they follow federal guidelines of tribal organization.

SENATOR TIFFANY:
This issue is still unclear to me. If there are only three members in the tribe, they are still exempt and pay no vehicle tax because government is considered an agency, department, entity or service. Is that correct?

CHAIR MCGINNESS:
At this point, I am going to ask Mr. Michela to come forward and give the Committee some historic perspective on how this exemption will work.

JOHN MICHELA (Deputy Attorney General, Office of the Attorney General):
I want to make it clear for the record, one of my normal clients is the Department of Motor Vehicles (DMV), but I am here today to represent the Office of the Attorney General.

Senator Tiffany asked Mr. Tobey how to distinguish between the governing body of a tribe and an individual tribal member. The language of A.B. 61 sets out only federally recognized tribes, and only the governing bodies of those tribes are entitled to exempt plates. This does not cover all vehicles owned by the tribal governments, just the vehicles not used for commercial purposes owned by the federally recognized tribal governments. The vehicles have to be owned by the tribal government. If the title of the vehicle states it is owned by an individual person, it is not owned by the tribal government. That is the way they distinguish authorization to have the exempt plates. The vehicle has to be owned by the federally recognized tribal government and titled to the tribal government.

SENATOR TIFFANY:
If a certain tribal entity bought three or four vehicles under their council's name, titled them under the council name and the council paid for the vehicle and registration, are they entitled to be exempt?

MR. MICHELA:
According to the statute, if those vehicles are titled to the governing body and are not used for commercial purposes, then yes, they would be exempt.

CHAIR MCGINNESS:
Mr. Michela would you please read to the Committee the letter from the Attorney General?

MR. MICHELA:
I will summarize for the Committee the prepared statement from the Attorney General (Exhibit E).

The present state of the law does not allow exempt plates on motor vehicles to be provided to tribal governing bodies. However, the Attorney General would like to change the present law. Exempt plates confer an official status to the vehicles, and the Attorney General would like to extend this official status to vehicles owned by tribal governments. Exempts plates are provided for in *Nevada Revised Statute* (NRS) 482. Specifically, subsection 1 of NRS 482.368 provides the Department of Motor Vehicles shall provide suitable distinguishing plates for exempt vehicles. Subsection 5 of NRS 482.368 states an exempt vehicle is a vehicle exempt from the Governmental Services Tax. However, NRS 482.368 does not contain a list of vehicles exempt from the Governmental Services Tax. It is NRS 371.100 which contains this list of vehicles, and that is why A.B. 61 proposes to amend NRS 371.100 instead of NRS 482.368. This bill also makes the distinction between commercial vehicles and government or noncommercial vehicles. The reason for this, again, is exempt plates confer an official status, and that status should not be granted to vehicles used for profit-generating activities.

In conclusion, the Attorney General supports the passage of A.B. 61. I would be happy to take any questions the Committee may have.

SENATOR COFFIN:
The second paragraph of the Legislative Counsel Bureau's Digest states, "This bill exempts from the tax all noncommercial vehicles owned by the governing body ... if the tribe ... is recognized by federal law ... " If a tribal member owns a truck or car in their own name, they would still pay the Governmental Services Tax. Is that correct?

MR. MICHAELA:
Presently, there is a practical exemption to tribal government vehicles and tribal members residing on reservation land from the Governmental Services Tax. This specifically arose from United States Supreme Court case law which stated the Governmental Services Tax could not be imposed against tribal members residing on reservation lands unless the tax was apportioned based on each vehicle's use. It would be impossible for the State to levy the tax based on each vehicle's "off-reservation use." This has become a practical exemption and the

Governmental Services Tax is not charged against tribal members residing on reservations or tribal government vehicles.

CHAIR MCGINNESS:
I believe we are putting into statute what has been a practice. The Yerington Tribe brought this question forward and received an opinion from the Attorney General which said the tribal governments were not entitled to exempt license plates for their vehicles. Subsequent to that opinion, various representatives of the tribe requested the Attorney General revisit his opinion. While the Attorney General stands by his opinion, he supports a change in the law allowing vehicles owned by tribal governments to bear exempt license plates.

Page 2 of A.B. 61 says vehicles used for commercial purposes do not get that exemption. Mr. Wallace, can you clarify this?

A. BRIAN WALLACE (Chairman, Washoe Tribe of Nevada and California):
This exemption would apply only to governmental vehicles owned by the tribal government and used for essential governmental purposes. Commercial vehicles and private party vehicles are not part of this exemption. The status of Indian tribes is something which is federally preempted, and there is a process developed over the centuries on how the tribes are recognized under federal law. There are also recognized, expressed acts of Congress for authority of the executive to recognize tribes which were eliminated about a century ago. Those are how tribes are recognized. Actually, there are no tribes in Nevada which have three members or fewer. Their populations range from 1,000 to 3,000 members here in Nevada.

Most vehicles the tribal governments use would be for transporting children, Head Start buses, tribal emergency vehicles, fire trucks, emergency medical technician vehicles, dump trucks, recycling vehicles and other vehicles used primarily for public services and public works.

SENATOR RHOADS:
If you work for the Bureau of Indian Affairs (BIA) and drive your own vehicle to work with a Nevada plate on it, you are not exempt. However, if you drive to work and get into a BIA car or pickup and drive around the reservation, are you exempt?

MR. WALLACE:
This bill does not necessarily address federal vehicles which include the Bureau of Indian Affairs, which is part of the U.S. Department of Interior. They would be exempt for totally different reasons. Most of the BIA operations occur in Elko and Carson City. A lot of the BIA presence, through federal statutes, has been assumed by tribal governments, and those functions are now being run by tribes, hence the expansion and need for these exemptions. There are larger volumes of government vehicles moving around the reservations due to the expansion of the tribal governments. This is mostly a constructive solution codifying what has been practice in the past. We agree with the analysis of the Attorney General; there is minimal, if any, fiscal impact because the tribal governments are exempt already. This is formalizing an existent practice. This bill will eliminate some of the confusion in DMV offices throughout the State.

SENATOR CARE:
With this bill, we are recognizing the federal preemption. If it is owned by the tribal colony for noncommercial purpose, we are not going to tag it. I am guessing the title will show the tribal council, and if somebody is violating the use of the vehicle, it would be up to the tribal council to handle. If they are off the reservation, it would be up to the Nevada Highway Patrol to handle it.

MR. MICHELA:
There is one other thing this bill does, which was the primary reason for drafting it. *Nevada Revised Statute* 482.368 sets out exempt vehicles that are entitled to exempt plates issued by the State. It is formally recognizing tribal government vehicles would be entitled to exempt plates.

LAURIE A. THOM (Chairman, Walker River Paiute Tribe):
I am here to state the Walker River Paiute Tribe does support A.B. 61. Again, at the Inter-Tribal Council of Nevada, Walker River stated, as a tribe, their support for Pyramid Lake. We support the language the Attorney General's Office has brought forward. We believe providing necessary governmental services such as emergency vehicles and transporting of patients to our clinics is a necessary service we provide our community. With the change in the language of the NRS, this bill would allow us to provide our services and not detrimentally harm the tribes with excessive fees. This would help the tribes financially, and we could continue to perform our duties.

LAVERNE ROBERTS (Director, Taxation Department, Walker River Paiute Tribe):
If this bill is not approved, when the new rules go into effect this year, it will create a new tax burden on the tribal governments.

CHAIR MCGINNESS:
I want to acknowledge we have representatives present from the Inter-Tribal Council of Nevada, the Yerington Paiute Tribe, the Reno-Sparks Indian Colony and the Fallon Paiute-Shoshone Tribe.

We will close the hearing on A.B. 61. We have heard discussion and testimony on a couple of bills today. Does anyone want to take action on S.B. 138?

SENATOR CARE MOVED TO DO PASS S.B. 138.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR MCGINNESS:
I will open the discussion for a motion on A.B. 61.

SENATOR CARE MOVED TO DO PASS A.B. 61.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR MCGINNESS:
We have two bill draft requests. The first one is BDR 32-453.

BILL DRAFT REQUEST 32-453: Increases the maximum amount of compensation board of county commissioners is authorized to provide for certain members of county board of equalization. (Later introduced as Senate Bill 180.)

SENATOR RHOADS MOVED TO INTRODUCE BDR 32-453.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR MCGINNESS:
We have another bill draft request, BDR 32-596. This BDR was introduced by the Nevada Association of Counties.

BILL DRAFT REQUEST 32-596: Authorizes certain counties, upon approval of voters, to impose additional taxes on certain motor vehicle fuels. (Later introduced as Senate Bill 181.)

SENATOR RHOADS MOVED TO INTRODUCE BDR 32-596.

SENATOR CARE SECONDED THE MOTION.

SENATOR COFFIN:
What size counties does this bill affect?

CHAIR MCGINNESS:
They are talking about counties with a population greater than 100,000 and less than 400,000, so this would affect Washoe County.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

* * * * *

CHAIR MCGINNESS:
I want to recognize the individuals from the assessors' offices here today. The meeting is adjourned at 2:41 p.m.

RESPECTFULLY SUBMITTED:

_____
Tanya Morrison,
Committee Secretary

APPROVED BY:

_____
Senator Mike McGinness, Chair

DATE: _____