

ASSEMBLY BILL NO. 554—COMMITTEE ON COMMERCE AND LABOR

MARCH 29, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing taxation. (BDR 32-1344)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to taxation; clarifying the definition of “business” for the purpose of collecting the state business license fee; exempting certain community banks from the taxes imposed on branch offices of financial institutions; reducing the tax on financial institutions imposed on certain community banks located in smaller counties; expanding the exemption from the tax on live entertainment provided for nonprofit organizations; clarifying the provisions governing the administration of the use taxes on the receipt of personal property acquired free of charge at public events; expanding the exemptions from the taxes on the transfer of real property; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 360.765 is hereby amended to read as follows:
2 360.765 1. “Business” includes:
3 (a) A corporation, partnership, proprietorship, limited-liability
4 company, business association, joint venture, limited-liability
5 partnership, business trust and their equivalents organized under the
6 laws of this State or another jurisdiction and any other person that
7 conducts an activity for profit; and
8 (b) The activities of a natural person which are deemed to be a
9 business pursuant to NRS 360.785.



2. The term does not include:

(a) A governmental entity.

(b) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) A person who operates a business from his home and earns from that business not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(d) A business whose primary purpose is to create or produce motion pictures. As used in this paragraph, "motion pictures" has the meaning ascribed to it in NRS 231.020.

(e) A person who does not supply a product or a service, but who only consumes a service.

Sec. 2. Chapter 363A of NRS is hereby amended by adding thereto a new section to read as follows:

"Community bank" means a bank that is located in the county in which the majority of its patrons reside and is owned by an entity that has less than \$1,000,000,000 in total banking assets.

Sec. 3. NRS 363A.120 is hereby amended to read as follows:

363A.120 1. ~~[There]~~ *Except as otherwise provided in this subsection, there* is hereby imposed an excise tax on each bank at the rate of \$1,750 for each branch office in excess of one maintained by the bank in this State on the first day of each calendar quarter. *The provisions of this subsection do not apply to a community bank that is located in a county whose population is less than 50,000.*

2. Each bank that *is subject to the tax imposed by subsection 1 and* maintains more than one branch office in this State on the first day of a calendar quarter shall, on or before the last day of the first month of that calendar quarter:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for the branch offices maintained by the bank in this State on the first day of that calendar quarter.

3. For the purposes of this section:

(a) "Bank" means:

(1) A corporation or limited-liability company that is chartered by this State, another state or the United States which conducts banking or banking and trust business; or

(2) A foreign bank licensed pursuant to chapter 666A of NRS.

➤ The term does not include a financial institution engaging in business pursuant to chapter 677 of NRS or a credit union organized



1 under the provisions of chapter 678 of NRS or the Federal Credit
2 Union Act.

3 (b) "Branch office" means any location or facility of a bank
4 where deposit accounts are opened, deposits are accepted, checks
5 are paid and loans are granted, including, but not limited to, a brick
6 and mortar location, a detached or attached drive-in facility, a
7 seasonal office, an office on a military base or government
8 installation, a station or unit for paying and receiving, and a location
9 where a customer can open accounts, make deposits and borrow
10 money by telephone or through use of the Internet, and excluding
11 any automated teller machines, consumer credit offices, contractual
12 offices, customer bank communication terminals, electronic fund
13 transfer units and loan production offices.

14 **Sec. 4.** NRS 363A.130 is hereby amended to read as follows:

15 363A.130 1. ~~[There]~~ *Except as otherwise provide in this*
16 *section, there* is hereby imposed an excise tax on each employer at
17 the rate of 2 percent of the wages, as defined in NRS 612.190, paid
18 by the employer during a calendar quarter with respect to
19 employment.

20 2. *In lieu of the tax imposed by subsection 1, in a county*
21 *whose population is less than 100,000, there is hereby imposed an*
22 *excise tax on each employer that is a community bank at the rate*
23 *of 1 percent of the wages, as defined in NRS 612.190, paid by the*
24 *employer during a calendar quarter with respect to employment.*

25 3. The tax imposed by this section must not be deducted, in
26 whole or in part, from any wages of persons in the employment of
27 the employer.

28 ~~[3.]~~ 4. Each employer shall, on or before the last day of the
29 month immediately following each calendar quarter for which the
30 employer is required to pay a contribution pursuant to
31 NRS 612.535:

32 (a) File with the Department:

33 (1) A return on a form prescribed by the Department; and

34 (2) A copy of any report required by the Employment
35 Security Division of the Department of Employment, Training and
36 Rehabilitation for determining the amount of the contribution
37 required pursuant to NRS 612.535 for any wages paid by the
38 employer during that calendar quarter; and

39 (b) Remit to the Department any tax due pursuant to this section
40 for that calendar quarter.

41 ~~[4.]~~ 5. Except as otherwise provided in subsection ~~[5.]~~ 6, an
42 employer may deduct from the total amount of wages reported and
43 upon which the excise tax is imposed pursuant to this section any
44 amount authorized pursuant to this section that is paid by the
45 employer for health insurance or a health benefit plan for its



employees in the calendar quarter for which the tax is paid. The amounts for which the deduction is allowed include:

(a) For an employer providing a program of self-insurance for its employees, all amounts paid during the calendar quarter for claims, direct administrative services costs, including such services provided by the employer, and any premiums paid for individual or aggregate stop-loss insurance coverage. An employer is not authorized to deduct the costs of a program of self-insurance unless the program is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq.

(b) The premiums for a policy of health insurance or reinsurance for a health benefit plan for its employees.

(c) Any amounts paid by an employer to a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5) for participation in an employee welfare benefit plan.

(d) Such other similar payments for health care or insurance for health care for employees as are authorized by the Department.

~~[5-]~~ 6. An employer may not deduct from the wages upon which the excise tax is imposed pursuant to this section:

(a) Amounts paid for health care or premiums paid for insurance for an industrial injury or occupational disease for which coverage is required pursuant to chapters 616A to 616D, inclusive, or 617 of NRS; or

(b) Any payments made by employees for health care or health insurance or amounts deducted from the wages of employees for such care or insurance.

~~[6-]~~ 7. An employer claiming the deduction allowed pursuant to subsection ~~[4]~~ 5 shall submit with the return filed pursuant to subsection ~~[3]~~ 4 proof of the amount paid in the calendar quarter that qualifies for the deduction. If the amount of the deduction exceeds the amount of reported wages, the excess amount may be carried forward to the following calendar quarter until the deduction is exhausted.

~~[7-]~~ 8. As used in this section, "employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.

Sec. 5. 368A.200 is hereby amended to read as follows:

368A.200 1. Except as otherwise provided in this section, there is hereby imposed an excise tax on admission to any facility in this State where live entertainment is provided. If the live entertainment is provided at a facility with a maximum seating capacity of:

(a) Less than 7,500, the rate of the tax is 10 percent of the admission charge to the facility plus 10 percent of any amounts paid for food, refreshments and merchandise purchased at the facility.



1 (b) At least 7,500, the rate of the tax is 5 percent of the
2 admission charge to the facility.

3 2. Amounts paid for gratuities directly or indirectly remitted to
4 persons employed at a facility where live entertainment is provided
5 or for service charges, including those imposed in connection with
6 the use of credit cards or debit cards, which are collected and
7 retained by persons other than the taxpayer are not taxable pursuant
8 to this section.

9 3. A business entity that collects any amount that is taxable
10 pursuant to subsection 1 is liable for the tax imposed, but is entitled
11 to collect reimbursement from any person paying that amount.

12 4. Any ticket for live entertainment must state whether the tax
13 imposed by this section is included in the price of the ticket. If the
14 ticket does not include such a statement, the taxpayer shall pay the
15 tax based on the face amount of the ticket.

16 5. The tax imposed by subsection 1 does not apply to:

17 (a) Live entertainment that this State is prohibited from taxing
18 under the Constitution, laws or treaties of the United States or the
19 Nevada Constitution.

20 (b) Live entertainment that is provided by or entirely for the
21 benefit of a nonprofit religious, charitable, fraternal or other
22 organization that qualifies as a tax-exempt organization pursuant to
23 26 U.S.C. § 501(c) ~~[-]~~ *or a nonprofit corporation organized or*
24 *existing under the provisions of chapter 82 of NRS.*

25 (c) Any boxing contest or exhibition governed by the provisions
26 of chapter 467 of NRS.

27 (d) Live entertainment that is not provided at a licensed gaming
28 establishment if the facility in which the live entertainment is
29 provided has a maximum seating capacity of less than 300.

30 (e) Live entertainment that is provided at a licensed gaming
31 establishment that is licensed for less than 51 slot machines, less
32 than six games, or any combination of slot machines and games
33 within those respective limits, if the facility in which the live
34 entertainment is provided has a maximum seating capacity of less
35 than 300.

36 (f) Merchandise sold outside the facility in which the live
37 entertainment is provided, unless the purchase of the merchandise
38 entitles the purchaser to admission to the entertainment.

39 (g) Live entertainment that is provided at a trade show.

40 (h) Music performed by musicians who move constantly
41 through the audience if no other form of live entertainment is
42 afforded to the patrons.

43 (i) Live entertainment that is provided at a licensed gaming
44 establishment at private meetings or dinners attended by members of



1 a particular organization or by a casual assemblage if the purpose of
2 the event is not primarily for entertainment.

3 (j) Live entertainment that is provided in the common area of a
4 shopping mall, unless the entertainment is provided in a facility
5 located within the mall.

6 6. As used in this section, "maximum seating capacity" means,
7 in the following order of priority:

8 (a) The maximum occupancy of the facility in which live
9 entertainment is provided, as determined by the State Fire Marshal
10 or the local governmental agency that has the authority to determine
11 the maximum occupancy of the facility;

12 (b) If such a maximum occupancy has not been determined, the
13 maximum occupancy of the facility designated in any permit
14 required to be obtained in order to provide the live entertainment; or

15 (c) If such a permit does not designate the maximum occupancy
16 of the facility, the actual seating capacity of the facility in which the
17 live entertainment is provided.

18 **Sec. 6.** Chapter 372 of NRS is hereby amended by adding
19 thereto a new section to read as follows:

20 *In its administration of the use tax imposed by NRS 372.185,*
21 *the Department shall not consider the storage, use or other*
22 *consumption in this State of tangible personal property acquired*
23 *free of charge at a convention, trade show or other public event.*

24 **Sec. 7.** Chapter 374 of NRS is hereby amended by adding
25 thereto a new section to read as follows:

26 *In its administration of the use tax imposed by NRS 374.190,*
27 *the Department shall not consider the storage, use or other*
28 *consumption in a county of tangible personal property acquired*
29 *free of charge at a convention, trade show or other public event.*

30 **Sec. 8.** NRS 375.090 is hereby amended to read as follows:

31 375.090 The taxes imposed by NRS 375.020, 375.023 and
32 375.026 do not apply to:

33 1. A mere change in identity, form or place of organization,
34 such as a transfer between a corporation and its parent corporation, a
35 subsidiary or an affiliated corporation if the affiliated corporation
36 has identical common ownership.

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

40 3. A transfer of title recognizing the true status of ownership of
41 the real property.

42 4. A transfer of title without consideration from one joint
43 tenant or tenant in common to one or more remaining joint tenants
44 or tenants in common.



1 5. A transfer of title between spouses, including gifts, or to
2 effect a property settlement agreement or between former spouses in
3 compliance with a decree of divorce.

4 6. A transfer of title to or from a trust without consideration if a
5 certificate of trust is presented at the time of transfer.

6 7. Transfers, assignments or conveyances of unpatented mines
7 or mining claims.

8 8. A transfer, assignment or other conveyance of real property
9 to a corporation or other business organization if the person
10 conveying the property owns 100 percent of the corporation or
11 organization to which the conveyance is made.

12 9. A transfer, assignment or other conveyance of real property
13 if the owner of the property is related to the person to whom it is
14 conveyed within the first degree of consanguinity ~~H~~ *or to the*
15 *spouse of such a person.*

16 10. The making, delivery or filing of conveyances of real
17 property to make effective any plan of reorganization or adjustment:

18 (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C.
19 §§ 101 et seq.;

20 (b) Approved in an equity receivership proceeding involving a
21 railroad, as defined in the Bankruptcy Act; or

22 (c) Approved in an equity receivership proceeding involving a
23 corporation, as defined in the Bankruptcy Act,

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

27 11. The making or delivery of conveyances of real property to
28 make effective any order of the Securities and Exchange
29 Commission if:

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

35 (b) The order specifies and itemizes the property which is
36 ordered to be transferred or conveyed; and

37 (c) The transfer or conveyance is made in obedience to the
38 order.

39 12. A transfer to an educational foundation. As used in this
40 subsection, "educational foundation" has the meaning ascribed to it
41 in subsection 3 of NRS 388.750.

42 13. A transfer to a university foundation. As used in this
43 subsection, "university foundation" has the meaning ascribed to it in
44 subsection 3 of NRS 396.405.

45 **Sec. 9.** NRS 368A.210 is hereby repealed.



1 **Sec. 10.** This act becomes effective on July 1, 2005.

TEXT OF REPEALED SECTION

368A.210 Taxpayer to hold taxes in separate account. A taxpayer shall hold the amount of all taxes for which he is liable pursuant to this chapter in a separate account in trust for the State.

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