

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 “employer” for the purpose of the tax on business; revising the provisions governing the applicability and administration of the tax on live entertainment; clarifying the provisions governing the administration of the use taxes on certain 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:

**Section 1.** NRS 363B.030 is hereby amended to read as follows:

363B.030 “Employer” means any employer who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter, except a financial institution, an Indian tribe, a nonprofit organization, ~~for~~ a political subdivision ~~or~~ *or any person who does not supply a product or service, but who only consumes a service.*

For the purposes of this section:

1. “Financial institution” has the meaning ascribed to it in NRS 363A.050.

2. “Indian tribe” includes any entity described in subsection 10 of NRS 612.055.



1       3. "Nonprofit organization" means a nonprofit religious,  
2 charitable, fraternal or other organization that qualifies as a tax-  
3 exempt organization pursuant to 26 U.S.C. § 501(c).

4       4. "Political subdivision" means any entity described in  
5 subsection 9 of NRS 612.055.

6       **Sec. 2.** Chapter 368A of NRS is hereby amended by adding  
7 thereto the provisions set forth as sections 3, 4 and 5 of this act.

8       **Sec. 3.** *"Casual assemblage" includes, without limitation:*

9       1. *Participants in conventions, business meetings or*  
10 *tournaments governed by chapter 463 of NRS, and their guests; or*

11 2. *Persons celebrating a friend's or family member's*  
12 *wedding, birthday, anniversary, graduation, religious ceremony or*  
13 *similar occasion that is generally recognized as customary for*  
14 *celebration.*

15       **Sec. 4.** *"Shopping mall" includes any area or premises*  
16 *where multiple vendors assemble for the primary purpose of*  
17 *selling goods or services, regardless of whether consideration is*  
18 *collected for the right or privilege of entering that area or those*  
19 *premises.*

20       **Sec. 5.** *"Trade show" means an event of limited duration*  
21 *primarily attended by members of a particular trade or industry*  
22 *for the purpose of exhibiting their merchandise or services or*  
23 *discussing matters of interest to members of that trade or industry.*

24       **Sec. 6.** NRS 368A.010 is hereby amended to read as follows:

25       368A.010 As used in this chapter, unless the context otherwise  
26 requires, the words and terms defined in NRS 368A.020 to  
27 368A.110, inclusive, *and sections 3, 4 and 5 of this act* have the  
28 meanings ascribed to them in those sections.

29       **Sec. 7.** NRS 368A.020 is hereby amended to read as follows:

30       368A.020 "Admission charge" means the total amount,  
31 expressed in terms of money, of consideration paid for the right or  
32 privilege to have access to a facility where live entertainment is  
33 provided. *The term includes, without limitation, an entertainment*  
34 *fee, a cover charge, a table reservation fee, or a required minimum*  
35 *purchase of food, refreshments or merchandise.*

36       **Sec. 8.** NRS 368A.060 is hereby amended to read as follows:

37       368A.060 1. "Facility" means:

38       ~~(H)~~ (a) Any area or premises where live entertainment is  
39 provided and for which consideration is collected for the right or  
40 privilege of entering that area or those premises if the live  
41 entertainment is provided at:

42       ~~(a)~~ (I) An establishment that is not a licensed gaming  
43 establishment; or



~~[(b)]~~ (2) A licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits.

~~[(2)]~~ (b) Any area or premises where live entertainment is provided if the live entertainment is provided at any other licensed gaming establishment.

2. *“Facility” encompasses, if live entertainment is provided at a licensed gaming establishment that is licensed for:*

(a) *Less than 51 slot machines, less than 6 games, or any combination of slot machines and games within those respective limits, any area or premises where the live entertainment is provided and for which consideration is collected, from one or more patrons, for the right or privilege of entering that area or those premises, even if additional consideration is collected for the right or privilege of entering a smaller venue within that area or those premises; or*

(b) *At least 51 slot machines or at least 6 games, any designated area on the premises of the licensed gaming establishment within which the live entertainment is provided.*

**Sec. 9.** NRS 368A.090 is hereby amended to read as follows:

368A.090 1. “Live entertainment” means any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present.

2. *The term:*

(a) *Includes, without limitation, any one or more of the following activities:*

(1) *Music or vocals provided by one or more professional or amateur musicians or vocalists;*

(2) *Dancing performed by one or more professional or amateur dancers or performers;*

(3) *Acting or drama provided by one or more professional or amateur actors or players;*

(4) *Acrobatics or stunts provided by one or more professional or amateur acrobats, performers or stunt persons;*

(5) *Animal stunts or performances induced by one or more animal handlers or trainers, except as otherwise provided in subparagraph (7) of paragraph (b);*

(6) *Athletic or sporting contests, events or exhibitions provided by one or more professional or amateur athletes or sportsmen;*

(7) *Comedy or magic provided by one or more professional or amateur comedians, magicians, illusionists, entertainers or performers;*



1       (8) A show or production involving any combination of the  
2 activities described in subparagraphs (1) to (7), inclusive; and

3       (9) A performance involving one or more of the activities  
4 described in this paragraph by a disc jockey who presents recorded  
5 music. For the purposes of this subsection, a disc jockey shall not  
6 be deemed to have engaged in a performance involving one or  
7 more of the activities described in this paragraph if the disc jockey  
8 generally limits his interaction with patrons to introducing the  
9 recorded music, making announcements of general interest to  
10 patrons, and explaining, encouraging or directing participatory  
11 activities between patrons.

12       (b) Excludes, without limitation, any one or more of the  
13 following activities:

14       (1) Instrumental or vocal music, which may or may not be  
15 supplemented with commentary by the musicians, in a restaurant,  
16 lounge or similar area if such music does not routinely rise to the  
17 volume that interferes with casual conversation and if such music  
18 would not generally cause patrons to watch as well as listen;

19       (2) Occasional performances by employees whose primary  
20 job function is that of preparing, selling or serving food,  
21 refreshments or beverages to patrons, if such performances are  
22 not advertised as entertainment to the public;

23       (3) Performances by performers of any type if the  
24 performance occurs in a licensed gaming establishment other than  
25 a licensed gaming establishment that is licensed for less than 51  
26 slot machines, less than 6 games, or any combination of slot  
27 machines and games within those respective limits, as long as the  
28 performers stroll continuously throughout the facility;

29       (4) Performances in areas other than in nightclubs,  
30 lounges, restaurants or showrooms, if the performances occur in a  
31 licensed gaming establishment other than a licensed gaming  
32 establishment that is licensed for less than 51 slot machines, less  
33 than 6 games, or any combination of slot machines and games  
34 within those respective limits, which enhance the theme of the  
35 establishment or attract patrons to the areas of the performances,  
36 as long as any seating provided in the immediate area of the  
37 performers is limited to seating at slot machines or gaming tables;

38       (5) Television, radio, closed circuit or Internet broadcasts  
39 of live entertainment;

40       (6) Entertainment provided by a patron or patrons,  
41 including, without limitation, singing by patrons or dancing by or  
42 between patrons;

43       (7) Animal behaviors induced by animal trainers or  
44 caretakers primarily for the purpose of education and scientific  
45 research; and



(8) *An occasional activity, including, without limitation, dancing, that:*

*(I) Does not constitute a performance;*

*(II) Is not advertised as entertainment to the public;*

*(III) Primarily serves to provide ambience to the facility;*

*and*

*(IV) Is conducted by an employee whose primary job function is not that of an entertainer.*

**Sec. 10.** NRS 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.

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

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

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

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

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

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

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

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



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

4 (e) Live entertainment that is provided at a licensed gaming  
5 establishment that is licensed for less than 51 slot machines, less  
6 than six games, or any combination of slot machines and games  
7 within those respective limits, if the facility in which the live  
8 entertainment is provided has a maximum seating capacity of less  
9 than 300.

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

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

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

17 (i) Live entertainment that is provided at a licensed gaming  
18 establishment at private meetings or dinners attended by members of  
19 a particular organization or by a casual assemblage if the purpose of  
20 the event is not primarily for entertainment.

21 (j) Live entertainment that is provided in the common area of a  
22 shopping mall, unless the entertainment is provided in a facility  
23 located within the mall.

24 *(k) Live entertainment that is incidental to an amusement ride,*  
25 *a motion simulator or a similar digital, electronic, mechanical or*  
26 *electromechanical attraction. For the purposes of this paragraph,*  
27 *live entertainment shall be deemed to be incidental to an*  
28 *amusement ride, a motion simulator or a similar digital,*  
29 *electronic, mechanical or electromechanical attraction if the live*  
30 *entertainment is:*

31 *(1) Not the predominant element of the attraction; and*

32 *(2) Not the primary purpose for which the public rides,*  
33 *attends or otherwise participates in the attraction.*

34 *(l) Live entertainment that is provided to the public in an*  
35 *outdoor area, without any requirements for the payment of an*  
36 *admission charge or the purchase of any food, refreshments or*  
37 *merchandise.*

38 *(m) An outdoor concert, unless the concert is provided on the*  
39 *premises of a licensed gaming establishment.*

40 *(n) If two or more race events are scheduled in a calendar year*  
41 *at a race track in this State as a part of the National Association*  
42 *for Stock Car Auto Racing Nextel Cup Series, or its successor*  
43 *racing series, the second and each subsequent of such events held*  
44 *during that calendar year and all races associated therewith.*



1     (o) *Live entertainment provided in a restaurant which is*  
2 *incidental to any other activities conducted in the restaurant or*  
3 *which only serves as ambience so long as there is no charge to the*  
4 *patrons for that entertainment.*

5     6. *The Nevada Gaming Commission may adopt regulations*  
6 *establishing a procedure whereby a taxpayer that is a licensed*  
7 *gaming establishment may request an exemption from the tax*  
8 *pursuant to paragraph (o) of subsection 5. The regulations must*  
9 *require the taxpayer to seek an administrative ruling from the*  
10 *Chairman of the Board, provide a procedure for appealing that*  
11 *ruling to the Nevada Gaming Commission and further describe*  
12 *the forms of incidental or ambient entertainment exempted*  
13 *pursuant to that paragraph.*

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

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

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

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

26     **Sec. 11.** NRS 368A.220 is hereby amended to read as follows:

27     368A.220 1. Except as otherwise provided in this section:

28     (a) Each taxpayer who is a licensed gaming establishment shall  
29 file with the Board, on or before the 24th day of each month, a  
30 report showing the amount of all taxable receipts for the preceding  
31 month ~~or~~ *or the month in which the taxable events occurred.* The  
32 report must be in a form prescribed by the Board.

33     (b) All other taxpayers shall file with the Department, on or  
34 before the last day of each month, a report showing the amount of  
35 all taxable receipts for the preceding month. The report must be in a  
36 form prescribed by the Department.

37     2. The Board or the Department, if it deems it necessary to  
38 ensure payment to or facilitate the collection by the State of the tax  
39 imposed by NRS 368A.200, may require reports to be filed not later  
40 than 10 days after the end of each calendar quarter.

41     3. Each report required to be filed by this section must be  
42 accompanied by the amount of the tax that is due for the period  
43 covered by the report.



4. The Board and the Department shall deposit all taxes, interest and penalties it receives pursuant to this chapter in the State Treasury for credit to the State General Fund.

**Sec. 12.** Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

*In its administration of the use tax imposed by NRS 372.185, the Department shall not consider the storage, use or other consumption in this State of tangible personal property which is:*

1. *Worth \$100 or less; and*

2. *Acquired free of charge at a convention, trade show or other public event.*

**Sec. 13.** Chapter 374 of NRS is hereby amended by adding thereto a new section to read as follows:

*In its administration of the use tax imposed by NRS 374.190, the Department shall not consider the storage, use or other consumption in a county of tangible personal property which is:*

1. *Worth \$100 or less; and*

2. *Acquired free of charge at a convention, trade show or other public event.*

**Sec. 14.** NRS 375.090 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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





1       9. A transfer, assignment or other conveyance of real property  
2 if the owner of the property is related to the person to whom it is  
3 conveyed within the first degree of *lineal* consanguinity or affinity.

4       10. A conveyance of real property by deed which becomes  
5 effective upon the death of the grantor pursuant to NRS 111.109.

6       11. The making, delivery or filing of conveyances of real  
7 property to make effective any plan of reorganization or adjustment:

8       (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C.  
9 §§ 101 et seq.;

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

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

14       ➔ if the making, delivery or filing of instruments of transfer or  
15 conveyance occurs within 5 years after the date of the confirmation,  
16 approval or change.

17       12. The making or delivery of conveyances of real property to  
18 make effective any order of the Securities and Exchange  
19 Commission if:

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

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

27       (c) The transfer or conveyance is made in obedience to the  
28 order.

29       13. A transfer to an educational foundation. As used in this  
30 subsection, "educational foundation" has the meaning ascribed to it  
31 in subsection 3 of NRS 388.750.

32       14. A transfer to a university foundation. As used in this  
33 subsection, "university foundation" has the meaning ascribed to it in  
34 subsection 3 of NRS 396.405.

35       **Sec. 15.** NRS 368A.130 and 368A.210 are hereby repealed.

36       **Sec. 16.** This act becomes effective on July 1, 2005.

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## TEXT OF REPEALED SECTIONS

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**368A.130 Adoption by Department of regulations for determining whether activity is taxable.** The Department shall provide by regulation for a more detailed definition of "live



entertainment” consistent with the general definition set forth in NRS 368A.090 for use by the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

**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.





