SENATE BILL NO. 392–COMMITTEE ON TAXATION

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON TAXATION, PUBLIC REVENUE AND TAX POLICY)

MARCH 29, 2005

Referred to Committee on Taxation

SUMMARY—Makes various changes to state financial administration. (BDR 32-683)

FISCAL NOTE: Effect on Local Government: No.
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 state financial administration; making various changes regarding the applicability and administration of the requirements for a state business license, certain taxes imposed on businesses and the tax on live entertainment; establishing annual salaries for the Chairman and other members of the Nevada Tax Commission; making various changes regarding the Taxpayers' Bill of Rights; providing a Taxpayers' Bill of Rights for Taxes on Fuels; making appropriations; 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. Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. ***"Exhibition" means a trade show or convention, craft show, sporting event or any other similar event involving the exhibition of property, products, goods, services or athletic or physical skill.***

Sec. 3. ***"State business license" means the business license required pursuant to NRS 360.780.***

Sec. 4. ***1. A natural person is not required to obtain more than one state business license for any combination of activities conducted by that person which are reported to the Internal Revenue Service for any federal tax year on two or more of the forms described in paragraph (b) of subsection 1 of NRS 360.765.***

2. As used in this section, "federal tax year" means any period of 12 months for which a person is required to report income, tax deductions and tax credits pursuant to the provisions of the Internal Revenue Code and any regulations adopted pursuant thereto.

Sec. 5. ***1. Except as otherwise provided in subsection 2, a person who has been issued a state business license shall submit a fee of $100 to the Department on or before:***

(a) The last day of the month in which the anniversary date of issuance of the state business license occurs in each year; or

(b) Such other annual date as the Department and person may mutually agree,

➥ unless the person submits a written statement to the Department, at least 10 days before that date, indicating that the person will not be conducting business in this State after that date.

2. The Department may reduce the amount of any initial fee required pursuant to paragraph (b) of subsection 1 to allow credit for the remaining portion of a year for which the fee has been paid for the state business license pursuant to paragraph (a) of subsection 1 or NRS 360.780.

3. A person who fails to submit the annual fee required pursuant to this section in a timely manner shall pay a penalty in the amount of $100 in addition to the annual fee.

Sec. 6. ***1. A person or governmental entity that operates a facility at which one or more exhibitions are held is responsible for the payment of a licensing fee pursuant to this section on behalf of the persons who do not have a state business license but who take part in the exhibition for a purpose related to the conduct of a business.***

2. The operator of the facility shall pay the licensing fee required by subsection 1 either:

(a) On an annual basis by remitting to the Department the sum of $5,000 on or before July 1 for all the exhibitions held at that facility during the fiscal year beginning on that day; or

(b) On a quarterly basis by remitting to the Department an amount equal to the product of the total number of businesses taking part in each exhibition at the facility during a calendar quarter who do not have a state business license multiplied by the number of days on which the exhibition is held at the facility

during the calendar quarter, multiplied in turn by $1.25 for each exhibition held at the facility during the calendar quarter.

3. If the operator of a facility at which an exhibition is held has not paid the licensing fee as provided in paragraph (a) of subsection 2, the operator of the facility shall, on or before the last day of each calendar quarter in which an exhibition is held at that facility, remit to the Department the licensing fee in the amount required by paragraph (b) of subsection 2 for all the exhibitions held at that facility during that calendar quarter.

4. The licensing fees due pursuant to this section must be calculated, reported and paid separately from any other fees due from the operator of the facility pursuant to this chapter.

5. The Nevada Tax Commission shall adopt such regulations as it deems necessary to carry out the provisions of this section.

Sec. 7. NRS 360.050 is hereby amended to read as follows:

360.050 1. ~~[Each]~~ ***The Chairman of the Nevada Tax Commission is entitled to receive an annual salary of $27,500.***

2. Except as otherwise provided in NRS 360.010, each of the ***other*** commissioners is entitled to receive ~~[a salary of not more than $80, as fixed by the Commission, for each day actually employed on the work of the Commission.~~

~~2. While engaged in the business of the Commission, each member and employee of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.]~~ ***an annual salary of $20,000.***

Sec. 8. NRS 360.291 is hereby amended to read as follows:

360.291 1. The Legislature hereby declares that each taxpayer has the right:

(a) To be treated by officers and employees of the Department with courtesy, fairness, uniformity, consistency and common sense.

(b) To a prompt response from the Department to each communication from the taxpayer.

(c) To provide the minimum documentation and other information as may reasonably be required by the Department to carry out its duties.

(d) To written explanations of common errors, oversights and violations that taxpayers experience and instructions on how to avoid such problems.

(e) To be notified, in writing, by the Department whenever its officer, employee or agent determines that the taxpayer is entitled to an exemption or has been taxed or assessed more than is required by law.

(f) To written instructions indicating how the taxpayer may petition for:

(1) An adjustment of an assessment;

(2) A refund or credit for overpayment of taxes, interest or penalties; or

(3) A reduction in or the release of a bond or other form of security required to be furnished pursuant to the provisions of this title that are administered by the Department.

(g) Except as otherwise provided in NRS 361.485, to recover an overpayment of taxes promptly upon the final determination of such an overpayment.

(h) To obtain specific advice from the Department concerning taxes imposed by the State.

(i) In any meeting with the Department, including an audit, conference, interview or hearing:

(1) To an explanation by an officer, agent or employee of the Department that describes the procedures to be followed and the taxpayer's rights thereunder;

(2) To be represented by himself or anyone who is otherwise authorized by law to represent him before the Department;

(3) To make an audio recording using the taxpayer's own equipment and at the taxpayer's own expense; and

(4) To receive a copy of any document or audio recording made by or in the possession of the Department relating to the determination or collection of any tax for which the taxpayer is assessed, upon payment of the actual cost to the Department of making the copy.

(j) To a full explanation of the Department's authority to assess a tax or to collect delinquent taxes, including the procedures and notices for review and appeal that are required for the protection of the taxpayer. An explanation which meets the requirements of this section must also be included with each notice to a taxpayer that an audit will be conducted by the Department.

(k) To the immediate release of any lien which the Department has placed on real or personal property for the nonpayment of any tax when:

(1) The tax is paid;

(2) The period of limitation for collecting the tax expires;

(3) The lien is the result of an error by the Department;

(4) The Department determines that the taxes, interest and penalties are secured sufficiently by a lien on other property;

(5) The release or subordination of the lien will not jeopardize the collection of the taxes, interest and penalties;

(6) The release of the lien will facilitate the collection of the taxes, interest and penalties; or

(7) The Department determines that the lien is creating an economic hardship.

(l) To the release or reduction of a bond or other form of security required to be furnished pursuant to the provisions of this title by the Department in accordance with applicable statutes and regulations.

(m) To be free from investigation and surveillance by an officer, agent or employee of the Department for any purpose that is not directly related to the administration of the ~~[provisions of this title that are]~~ ***taxes*** administered by the Department.

(n) To be free from harassment and intimidation by an officer, agent or employee of the Department for any reason.

(o) To have statutes imposing taxes and any regulations adopted pursuant thereto construed in favor of the taxpayer if those statutes or regulations are of doubtful validity or effect, unless there is a specific statutory provision that is applicable.

2. The provisions of this title ***, NRS 244A.820, 244A.870, 482.313 and 482.315 and title 57 of NRS*** governing the administration and collection of taxes by the Department must not be construed in such a manner as to interfere or conflict with the provisions of this section or any applicable regulations.

3. The provisions of this section apply to any tax administered and collected ***by the Department*** pursuant to the provisions of this title ~~[or any applicable regulations by the Department.]~~ ***, NRS 244A.820, 244A.870, 482.313 and 482.315 and title 57 of NRS and any regulations adopted by the Department relating thereto.***

Sec. 9. NRS 360.292 is hereby amended to read as follows:

360.292 The Executive Director shall cause:

1. To be prepared in simple nontechnical terms a pamphlet setting forth the Taxpayers' Bill of Rights and a description of the regulations adopted by the Department pursuant to NRS 360.2915.

2. A copy of the pamphlet to be ~~[distributed:~~

~~(a) To each taxpayer on record with the Department and to any other person upon request; and~~

~~(b) With]~~ ***:***

(a) Posted on an Internet website maintained by the Department;

(b) Made available to any person upon request at the offices of the Department and the Department of Motor Vehicles, and public libraries in each county of this State; and

(c) Distributed with each notice to a taxpayer that an audit will be conducted by the Department.

Sec. 10. NRS 360.760 is hereby amended to read as follows:

360.760 As used in NRS 360.760 to 360.795, inclusive, ***and sections 2 to 6, inclusive, of this act,*** unless the context otherwise requires, the words and terms defined in NRS 360.765 ~~[, 360.770]~~

and 360.775 ***and sections 2 and 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 11. NRS 360.765 is hereby amended to read as follows:

360.765 1. ~~[“Business” includes:~~

~~(a) A corporation, partnership, proprietorship, limited liability company, business association, joint venture, limited liability partnership, business trust and their equivalents organized under the laws of this State or another jurisdiction and any other person that conducts an activity]~~ ***Except as otherwise provided in subsection 2, “business” means:***

(a) Any person, except a natural person, that performs a service or engages in a trade for profit; ~~[and~~

~~(b) The activities of a]~~ ***or***

(b) Any natural person ~~[which are deemed to be a business pursuant to NRS 360.785.]~~ ***who performs a service or engages in a trade for profit if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for that activity.***

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]~~ ***whose net earnings*** from that business ***are*** 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 natural person whose sole business is the rental of four or fewer dwelling units to others.***

(e) 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.

Sec. 12. NRS 360.780 is hereby amended to read as follows:

360.780 1. Except as otherwise provided in subsection ~~[8,]~~ ***7,*** a person shall not conduct a business in this State unless he has a ***state*** business license issued by the Department.

2. An application for a ***state*** business license must:

(a) Be made upon a form prescribed by the Department;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business;

(c) ~~[Declare the estimated number of employees for the previous calendar quarter;~~

~~(d)]~~ Be accompanied by a fee of $100; and

~~[(e)]~~ ***(d)*** Include any other information that the Department deems necessary.

3. The application must be signed by:

(a) The owner, if the business is owned by a natural person;

(b) A member or partner, if the business is owned by an association or partnership; or

(c) An officer or some other person specifically authorized to sign the application, if the business is owned by a corporation.

4. If the application is signed pursuant to paragraph (c) of subsection 3, written evidence of the signer's authority must be attached to the application.

5. ~~[A person who has been issued a business license by the Department shall submit a fee of $100 to the Department on or before the last day of the month in which the anniversary date of issuance of the business license occurs in each year, unless the person submits a written statement to the Department, at least 10 days before the anniversary date, indicating that the person will not be conducting business in this State after the anniversary date. A person who fails to submit the annual fee required pursuant to this subsection in a timely manner shall pay a penalty in the amount of $100 in addition to the annual fee.~~

~~6.]~~ The ***state*** business license required to be obtained pursuant to this section is in addition to any license to conduct business that must be obtained from the local jurisdiction in which the business is being conducted.

~~[7.]~~ ***6.*** For the purposes of NRS 360.760 to 360.795, inclusive, ***and sections 2 to 6, inclusive, of this act,*** a person shall be deemed to conduct a business in this State if a business for which the person is responsible:

(a) Is organized pursuant to title 7 of NRS, other than a business organized pursuant to chapter 82 or 84 of NRS;

(b) Has an office or other base of operations in this State; or

(c) Pays wages or other remuneration to a natural person who performs in this State any of the duties for which he is paid.

~~[8.]~~ ***7.*** A person who takes part in ~~[a trade show or convention]~~ ***an exhibition*** held in this State for a purpose related to the conduct of a business is not required to obtain a ***state*** business license specifically for that event ~~[.]~~ ***if the operator of the facility where the***

exhibition is held pays the licensing fee on behalf of that person pursuant to section 6 of this act.

Sec. 13. NRS 360.795 is hereby amended to read as follows:

360.795 1. Except as otherwise provided in this section and NRS 360.250, the records and files of the Department concerning the administration of NRS 360.760 to 360.795, inclusive, ***and sections 2 to 6, inclusive, of this act,*** are confidential and privileged. The Department, and any employee of the Department engaged in the administration of NRS 360.760 to 360.795, inclusive, ***and sections 2 to 6, inclusive, of this act,*** or charged with the custody of any such records or files, shall not disclose any information obtained from those records or files. Neither the Department nor any employee of the Department may be required to produce any of the records, files and information for the inspection of any person or for use in any action or proceeding.

2. The records and files of the Department concerning the administration of NRS 360.760 to 360.795, inclusive, ***and sections 2 to 6, inclusive, of this act,*** are not confidential and privileged in the following cases:

(a) Testimony by a member or employee of the Department and production of records, files and information on behalf of the Department or a person in any action or proceeding pursuant to the provisions of this chapter if that testimony or the records, files or information, or the facts shown thereby, are directly involved in the action or proceeding.

(b) Delivery to a person or his authorized representative of a copy of any document filed by the person pursuant to NRS 360.760 to 360.795, inclusive ~~[.]~~ ***, and sections 2 to 6, inclusive, of this act.***

(c) Publication of statistics so classified as to prevent the identification of a particular business or document.

(d) Exchanges of information with the Internal Revenue Service in accordance with compacts made and provided for in such cases.

(e) Disclosure in confidence to the Governor or his agent in the exercise of the Governor's general supervisory powers, or to any person authorized to audit the accounts of the Department in pursuance of an audit, or to the Attorney General or other legal representative of the State in connection with an action or proceeding pursuant to this chapter, or to any agency of this or any other state charged with the administration or enforcement of laws relating to workers' compensation, unemployment compensation, public assistance, taxation, labor or gaming.

(f) Exchanges of information pursuant to subsection 3.

(g) Disclosure of information concerning whether or not a person conducting a business in this State has a ***state*** business license **.** ~~[issued by the Department pursuant to NRS 360.780.]~~

3. The Nevada Tax Commission may agree with any county fair and recreation board or the governing body of any county, city or town for the continuing exchange of information concerning taxpayers.

4. The Executive Director shall periodically, as he deems appropriate, but not less often than annually, transmit to the Administrator of the Division of Industrial Relations of the Department of Business and Industry a list of the businesses of which he has a record. The list must include the mailing address of the business ~~[and the approximate number of employees of the business]~~ as reported to the Department.

Sec. 14. Chapter 360A of NRS is hereby amended by adding thereto the provisions set forth as sections 15, 16 and 17 of this act.

Sec. 15. ***Section 16 of this act may be cited as the Taxpayers' Bill of Rights for Taxes on Fuels.***

Sec. 16. ***1. The Legislature hereby declares that each taxpayer has the right:***

(a) To be treated by officers and employees of the Department with courtesy, fairness, uniformity, consistency and common sense.

(b) To a prompt response from the Department to each communication from the taxpayer.

(c) To provide the minimum documentation and other information as may reasonably be required by the Department to carry out its duties.

(d) To written explanations of common errors, oversights and violations that taxpayers experience and instructions on how to avoid such problems.

(e) To be notified, in writing, by the Department whenever its officer, employee or agent determines that the taxpayer is entitled to an exemption or has been taxed or assessed more than is required by law.

(f) To written instructions indicating how the taxpayer may petition for:

(1) An adjustment of an assessment;

(2) A refund or credit for overpayment of taxes, interest or penalties; or

(3) A reduction in or the release of a bond or other form of security required to be furnished pursuant to the provisions of chapters 365 and 366 of NRS.

(g) To recover an overpayment of taxes promptly upon the final determination of such an overpayment.

(h) To obtain specific advice from the Department concerning the taxes imposed pursuant to chapters 365, 366 and 373 of NRS.

(i) In any meeting with the Department, including an audit, conference, interview or hearing:

(1) To an explanation by an officer, agent or employee of the Department that describes the procedures to be followed and the taxpayer's rights thereunder;

(2) To be represented by himself or anyone who is otherwise authorized by law to represent him before the Department;

(3) To make an audio recording using the taxpayer's own equipment and at the taxpayer's own expense; and

(4) To receive a copy of any document or audio recording made by or in the possession of the Department relating to the determination or collection of any tax for which the taxpayer is assessed, upon payment of the actual cost to the Department of making the copy.

(j) To a full explanation of the authority of the Department to assess a tax or to collect delinquent taxes, including the procedures and notices for review and appeal that are required for the protection of the taxpayer. An explanation which meets the requirements of this section must also be included with each notice to a taxpayer that an audit will be conducted by the Department.

(k) To the immediate release of any lien which the Department has placed on real or personal property for the nonpayment of any tax when:

(1) The tax is paid;

(2) The period of limitation for collecting the tax expires;

(3) The lien is the result of an error by the Department;

(4) The Department determines that the taxes, interest and penalties are secured sufficiently by a lien on other property;

(5) The release or subordination of the lien will not jeopardize the collection of the taxes, interest and penalties;

(6) The release of the lien will facilitate the collection of the taxes, interest and penalties; or

(7) The Department determines that the lien is creating an economic hardship.

(l) To the release or reduction of a bond or other form of security required to be furnished pursuant to the provisions of chapters 365 and 366 of NRS by the Department in accordance with applicable statutes and regulations.

(m) To be free from harassment and intimidation by an officer, agent or employee of the Department for any reason.

(n) To have statutes imposing taxes and any regulations adopted pursuant thereto construed in favor of the taxpayer if

those statutes or regulations are of doubtful validity or effect, unless there is a specific statutory provision that is applicable.

2. The provisions of chapters 365, 366 and 373 of NRS governing the administration and collection of taxes by the Department must not be construed in such a manner as to interfere or conflict with the provisions of this section or any applicable regulations.

3. The provisions of this section apply to all taxes administered and collected by the Department pursuant to the provisions of chapters 365, 366 and 373 of NRS and any regulations adopted by the Department relating thereto.

Sec. 17. ***The Director of the Department shall cause:***

1. To be prepared in simple nontechnical terms a pamphlet setting forth the Taxpayers' Bill of Rights for Taxes on Fuels and a description of the regulations relating thereto adopted by the Department pursuant to NRS 360A.020.

2. A copy of the pamphlet to be:

(a) Posted on an Internet website maintained by the Department;

(b) Made available to any person upon request at the offices of the Department and the Department of Taxation, and public libraries in each county of this State; and

(c) Distributed with each notice to a taxpayer that an audit will be conducted by the Department.

Sec. 18. Chapter 363A of NRS is hereby amended by adding thereto the provisions set forth as sections 19 and 20 of this act.

Sec. 19. ***"Business activity" means the performance of a service or engagement in a trade for profit.***

Sec. 20. ***1. Except as otherwise provided in subsection 2, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant NRS 363A.130 any amount authorized pursuant to this section that is paid by the 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 a self-insured employer, 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 employees.

(c) Any amounts which are:

(1) Paid by an employer to a Taft-Hartley trust which:

(I) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(II) Qualifies as an employee welfare benefit plan; and

(2) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

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

2. An employer may not deduct from the wages upon which the excise tax is imposed pursuant to NRS 363A.130:

(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 health care or insurance.

3. If the amount of the deduction allowed pursuant to this section to an employer for a calendar quarter exceeds the amount of reported wages for that calendar quarter, the excess amount of that deduction may be carried forward to the following calendar quarter until the deduction is exhausted. An employer claiming the deduction allowed pursuant to this section shall, upon the request of the Department, explain the amount claimed to the satisfaction of the Department and provide the Department with such documentation as the Department deems appropriate for that purpose.

4. As used in this section:

(a) "Claims" means claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

(b) "Direct administrative services costs" means, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:

(1) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(2) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(3) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(4) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(5) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(6) The depreciation of property other than medical or office supplies, used for the provision of medical care or the direct administration of claims.

(c) "Employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.

(d) "Employees" means employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363A.130, and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

(e) "Health benefit plan" means a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

(f) "Self-insured employer" means an employer that provides a program of self-insurance for its employees.

Sec. 21. NRS 363A.010 is hereby amended to read as follows:

363A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 363A.020 to 363A.060, inclusive, ***and section 19 of this act*** have the meanings ascribed to them in those sections.

Sec. 22. NRS 363A.030 is hereby amended to read as follows:

363A.030 "Employer" means any financial institution who is required to pay a contribution pursuant to NRS 612.535 for any calendar quarter ~~[,]~~ ***with respect to any business activity of the financial institution,*** except an Indian tribe, a nonprofit organization or a political subdivision. For the purposes of this section:

1. "Indian tribe" includes any entity described in subsection 10 of NRS 612.055.

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

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

Sec. 23. NRS 363A.050 is hereby amended to read as follows:

363A.050 1. Except as otherwise provided in subsection 2, "financial institution" means:

(a) An institution licensed, registered or otherwise authorized to do business in this State pursuant to the provisions of chapter 604, 645B, 645E or 649 of NRS or title 55 or 56 of NRS, or a similar institution chartered or licensed pursuant to federal law and doing business in this State;

(b) Any person primarily engaged in:

(1) The purchase, sale and brokerage of securities;

(2) Originating, underwriting and distributing issues of securities;

(3) Buying and selling commodity contracts on either a spot or future basis for the person's own account or for the account of others, if the person is a member or is associated with a member of a recognized commodity exchange;

(4) Furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts;

(5) Furnishing investment information and advice to others concerning securities on a contract or fee basis;

(6) Furnishing services to holders of or brokers or dealers in securities or commodities;

(7) Holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of the banks whose securities the person holds;

(8) Holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities the person holds;

(9) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the holder of the security;

(10) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request by the holder of the security;

(11) Issuing unit investment trusts or face-amount certificates;

(12) The management of the money of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes;

(13) The management of the money of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research;

(14) Investing in oil and gas royalties or leases, or fractional interests therein;

(15) Owning or leasing franchises, patents and copyrights which the person in turn licenses others to use;

(16) Closed-end investments in real estate or related mortgage assets operating in such a manner as to meet the requirements of the Real Estate Investment Trust Act of 1960, as amended;

(17) Investing; or

(18) Any combination of the activities described in this paragraph,

➥ who is ~~[doing]~~ ***conducting a*** business ***activity*** in this State;

(c) Any other person conducting loan or credit card processing activities in this State; and

(d) Any other bank, bank holding company, national bank, savings association, federal savings bank, trust company, credit union, building and loan association, investment company, registered broker or dealer in securities or commodities, finance company, dealer in commercial paper or other business entity engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, ~~[doing]~~ ***conducting a*** business ***activity*** in this State.

2. The term does not include a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.

Sec. 24. NRS 363A.120 is hereby amended to read as follows:

363A.120 1. There is hereby imposed an excise tax on each bank at the rate of $1,750 for each branch office ***maintained by the bank in this State*** in excess of one ***branch office*** maintained by the bank ***in each county*** in this State on the first day of each calendar quarter.

2. Each bank that maintains more than one branch office ***in any county*** 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 under the provisions of chapter 678 of NRS or the Federal Credit Union Act ~~[.]~~ ***, or any person or other entity this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.***

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

Sec. 25. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. There is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment ~~[.]~~ ***in connection with the business activities of the employer.***

2. The tax imposed by this section ~~[must]~~ ***:***

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department ~~[:~~

~~(1) A]~~ ***a*** return on a form prescribed by the Department; and

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

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

[~~4. Except as otherwise provided in subsection 5, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to this section any amount authorized pursuant to this section that is paid by the 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. 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. An employer claiming the deduction allowed pursuant to subsection 4 shall submit with the return filed pursuant to subsection 3 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. As used in this section, "employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.~~]

Sec. 26. Chapter 363B of NRS is hereby amended by adding thereto the provisions set forth as sections 27 and 28 of this act.

Sec. 27. ***"Business activity" means the performance of a service or engagement in a trade for profit.***

Sec. 28. ***1. Except as otherwise provided in subsection 2, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant NRS 363B.110 any amount authorized pursuant to this section that is paid by the 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 a self-insured employer, 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 employees.

(c) Any amounts which are:

(1) Paid by an employer to a Taft-Hartley trust which:

(I) Is formed pursuant to 29 U.S.C. § 186(c)(5); and

(II) Qualifies as an employee welfare benefit plan; and

(2) Considered by the Internal Revenue Service to be fully tax deductible pursuant to the provisions of the Internal Revenue Code.

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

2. An employer may not deduct from the wages upon which the excise tax is imposed pursuant to NRS 363B.110:

(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 health care or insurance.

3. If the amount of the deduction allowed pursuant to this section to an employer for a calendar quarter exceeds the amount of reported wages for that calendar quarter, the excess amount of that deduction may be carried forward to the following calendar quarter until the deduction is exhausted. An employer claiming

the deduction allowed pursuant to this section shall, upon the request of the Department, explain the amount claimed to the satisfaction of the Department and provide the Department with such documentation as the Department deems appropriate for that purpose.

4. As used in this section:

(a) "Claims" means claims for those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

(b) "Direct administrative services costs" means, if borne directly by a self-insured employer and reasonably allocated to the direct administration of claims:

(1) Payments for medical or office supplies that will be consumed in the course of the provision of medical care or the direct administration of claims;

(2) Payments to third-party administrators or independent contractors for the provision of medical care or the direct administration of claims;

(3) Rent and utility payments for the maintenance of medical or office space used for the provision of medical care or the direct administration of claims;

(4) Payments for the maintenance, repair and upkeep of medical or office space used for the provision of medical care or the direct administration of claims;

(5) Salaries and wages paid to medical, clerical and administrative staff and other personnel employed to provide medical care or directly to administer claims; and

(6) The depreciation of property other than medical or office supplies, used for the provision of medical care or the direct administration of claims.

(c) "Employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.

(d) "Employees" means employees whose wages are included within the measure of the excise tax imposed upon an employer by NRS 363B.110, and their spouses, children and other dependents who qualify for coverage under the terms of the health insurance or health benefit plan provided by that employer.

(e) "Health benefit plan" means a health benefit plan that covers only those categories of health care expenses that are generally deductible by employees on their individual federal income tax returns pursuant to the provisions of 26 U.S.C. § 213 and any federal regulations relating thereto, if those expenses had been borne directly by those employees.

(f) "Self-insured employer" means an employer that provides a program of self-insurance for its employees.

Sec. 29. NRS 363B.010 is hereby amended to read as follows:

363B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 363B.020 to 363B.050, inclusive, ***and section 27 of this act*** have the meanings ascribed to them in those sections.

Sec. 30. 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 ~~[,]~~ ***with respect to any business activity of the employer,*** except a financial institution, an Indian tribe, a nonprofit organization or a political subdivision. 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.

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

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

Sec. 31. (Deleted by amendment.)

Sec. 32. NRS 363B.110 is hereby amended to read as follows:

363B.110 1. There is hereby imposed an excise tax on each employer at the rate of 0.65 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment ~~[.]~~ ***in connection with the business activities of the employer.***

2. The tax imposed by this section ~~[must]~~ ***:***

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department ~~[:~~

~~(1) A]~~ ***a*** return on a form prescribed by the Department; and

~~[(2) A copy of any report required by the Employment Security Division of the Department of Employment, Training and Rehabilitation for determining the amount of the contribution~~

~~required pursuant to NRS 612.535 for any wages paid by the employer during that calendar quarter; and~~**]**

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

[~~4. Except as otherwise provided in subsection 5, an employer may deduct from the total amount of wages reported and upon which the excise tax is imposed pursuant to this section any amount authorized pursuant to this section that is paid by the 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. 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. An employer claiming the deduction allowed pursuant to subsection 4 shall submit with the return filed pursuant to subsection 3 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. As used in this section, "employee welfare benefit plan" has the meaning ascribed to it in 29 U.S.C. § 1002.~~**]**

Sec. 33. Chapter 368A of NRS is hereby amended by adding thereto a new section to read as follows:

"Commission" means the Nevada Gaming Commission.

Sec. 34. NRS 368A.010 is hereby amended to read as follows:

368A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 368A.020 to 368A.110, inclusive, ***and section 33 of this act*** have the meanings ascribed to them in those sections.

Sec. 35. NRS 368A.130 is hereby amended to read as follows:

368A.130 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 Commission,*** the Board and the Department in determining whether an activity is a taxable activity under the provisions of this chapter.

Sec. 36. NRS 368A.140 is hereby amended to read as follows:

368A.140 1. The Board shall ~~[:~~

~~(a) Collect]~~ ***collect*** the tax imposed by this chapter from taxpayers who are licensed gaming establishments **.** ~~[; and~~

~~(b) Adopt]~~ ***The Commission shall adopt*** such regulations as are necessary to carry out the provisions of ~~[paragraph (a).]~~ ***this subsection.*** The regulations must be adopted in accordance with the provisions of chapter 233B of NRS and must be codified in the Nevada Administrative Code.

2. The Department shall:

(a) Collect the tax imposed by this chapter from all other taxpayers; and

(b) Adopt such regulations as are necessary to carry out the provisions of paragraph (a).

3. For the purposes of:

(a) Subsection 1, the provisions of chapter 463 of NRS relating to the payment, collection, administration and enforcement of gaming license fees and taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

(b) Subsection 2, the provisions of chapter 360 of NRS relating to the payment, collection, administration and enforcement of taxes, including, without limitation, any provisions relating to the imposition of penalties and interest, shall be deemed to apply to the payment, collection, administration and enforcement of the taxes imposed by this chapter to the extent that those provisions do not conflict with the provisions of this chapter.

4. To ensure that the tax imposed by NRS 368A.200 is collected fairly and equitably, ***the Commission,*** the Board and the Department shall:

(a) Jointly, coordinate the administration and collection of that tax and the regulation of taxpayers who are liable for the payment of the tax.

(b) Upon request, assist the other ~~[agency]~~ ***agencies*** in the collection of that tax.

Sec. 37. NRS 368A.160 is hereby amended to read as follows:

368A.160 1. Each person responsible for maintaining the records of a taxpayer shall:

(a) Keep such records as may be necessary to determine the amount of the liability of the taxpayer pursuant to the provisions of this chapter;

(b) Preserve those records for:

(1) At least 5 years if the taxpayer is a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; or

(2) At least 4 years if the taxpayer is not a licensed gaming establishment or until any litigation or prosecution pursuant to this chapter is finally determined, whichever is longer; and

(c) Make the records available for inspection by the Board or the Department upon demand at reasonable times during regular business hours.

2. The ~~[Board]~~ ***Commission*** and the Department may ~~[by regulation specify]~~ ***adopt regulations pursuant to NRS 368A.140 specifying*** the types of records which must be kept to determine the amount of the liability of a taxpayer ~~[from whom they are required to collect]~~ ***for*** the tax imposed by this chapter.

3. Any agreement that is entered into, modified or extended after January 1, 2004, for the lease, assignment or transfer of any premises upon which any activity subject to the tax imposed by this chapter is, or thereafter may be, conducted shall be deemed to include a provision that the taxpayer required to pay the tax must be allowed access to, upon demand, all books, records and financial papers held by the lessee, assignee or transferee which must be kept pursuant to this section. Any person conducting activities subject to the tax imposed by NRS 368A.200 who fails to maintain or disclose his records pursuant to this subsection is liable to the taxpayer for any penalty paid by the taxpayer for the late payment or nonpayment of the tax caused by the failure to maintain or disclose records.

4. A person who violates any provision of this section is guilty of a misdemeanor.

Sec. 38. 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]~~ ***occupancy*** of:

(a) Less than 7,500 ~~[,]~~ ***persons,*** 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 ~~[,]~~ ***persons,*** the rate of the tax is 5 percent of the admission charge to the facility.

2. Amounts paid for ~~[gratuities]~~ ***:***

(a) Admission charges collected and retained by a nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or by a nonprofit corporation organized or existing under the provisions of chapter 82 of NRS, are not taxable pursuant to this section.

(b) 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).

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

(d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum ~~[seating capacity]~~ ***occupancy*** of less than 300 ~~[.]~~ ***persons.***

(e) Live entertainment that is provided at 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, if the facility in which the live entertainment is provided has a maximum ~~[seating capacity]~~ ***occupancy*** of less than 300 ~~[.]~~ ***persons.***

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

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

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

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

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

(k) Food and product demonstrations provided at a shopping mall, a craft show or an establishment that sells grocery products, housewares, hardware or other supplies for the home.

6. As used in this section, "maximum ~~[seating capacity"]~~ ***occupancy"*** means, in the following order of priority:

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

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

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

Sec. 39. NRS 368A.290 is hereby amended to read as follows:

368A.290 1. Within 90 days after a final decision upon a claim filed pursuant to this chapter is rendered by:

(a) The ~~[Nevada Gaming]~~ Commission, the claimant may bring an action against the Board on the grounds set forth in the claim.

(b) The Nevada Tax Commission, the claimant may bring an action against the Department on the grounds set forth in the claim.

2. An action brought pursuant to subsection 1 must be brought in a court of competent jurisdiction in Carson City, the county of this State where the claimant resides or maintains his principal place

of business or a county in which any relevant proceedings were conducted by the Board or the Department, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

3. Failure to bring an action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayments.

Sec. 40. NRS 368A.300 is hereby amended to read as follows:

368A.300 1. If the Board fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the ~~[Nevada Gaming]~~ Commission within 30 days after the last day of the 6-month period.

2. If the Department fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may consider the claim disallowed and file an appeal with the Nevada Tax Commission within 30 days after the last day of the 6-month period.

3. If the claimant is aggrieved by the decision of:

(a) The ~~[Nevada Gaming]~~ Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(b) The Nevada Tax Commission rendered on appeal, the claimant may, within 90 days after the decision is rendered, bring an action against the Department on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

4. If judgment is rendered for the plaintiff, the amount of the judgment must first be credited towards any tax due from the plaintiff.

5. The balance of the judgment must be refunded to the plaintiff.

Sec. 41. NRS 368A.360 is hereby amended to read as follows:

368A.360 Any licensed gaming establishment liable for the payment of the tax imposed by NRS 368A.200 who willfully fails to report, pay or truthfully account for the tax is subject to the revocation of his gaming license by the ~~[Nevada Gaming]~~ Commission.

Sec. 42. NRS 368A.370 is hereby amended to read as follows:

368A.370 The remedies of the State provided for in this chapter are cumulative, and no action taken by ***the Commission,*** the Board, the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

Sec. 43. NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:

(a) The Governor.

(b) The Department of Corrections.

(c) The University and Community College System of Nevada.

(d) The Office of the Military.

(e) ~~[Except as otherwise provided in NRS 368A.140, the]~~ ***The*** State Gaming Control Board.

(f) ~~[The]~~ ***Except as otherwise provided in NRS 368A.140, the*** Nevada Gaming Commission.

(g) The Welfare Division of the Department of Human Resources.

(h) The Division of Health Care Financing and Policy of the Department of Human Resources.

(i) The State Board of Examiners acting pursuant to chapter 217 of NRS.

(j) Except as otherwise provided in NRS 533.365, the Office of the State Engineer.

(k) The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375.

(l) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

(m) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees' Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:

(a) Chapter 612 of NRS for the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;

(b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;

(c) Chapter 703 of NRS for the judicial review of decisions of the Public Utilities Commission of Nevada;

(d) Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and

(e) NRS 90.800 for the use of summary orders in contested cases,

➥ prevail over the general provisions of this chapter.

4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Human Resources in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184; or

(c) A regulation adopted by the State Board of Education pursuant to NRS 392.644 or 394.1694.

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

Sec. 44. NRS 463.145 is hereby amended to read as follows:

463.145 1. ~~[The]~~ ***Except as otherwise provided in NRS 368A.140, the*** Commission shall, pursuant to NRS 463.150, adopt, amend and repeal regulations in accordance with the following procedures:

(a) At least 30 days before the initial meeting of the Commission and 20 days before any subsequent meeting at which the adoption, amendment or repeal of a regulation is considered, notice of the proposed action must be:

(1) Published in such newspaper as the Commission prescribes;

(2) Mailed to every person who has filed a request therefor with the Commission; and

(3) When the Commission deems advisable, mailed to any person whom the Commission believes would be interested in the proposed action, and published in such additional form and manner as the Commission prescribes.

(b) The notice of proposed adoption, amendment or repeal must include:

(1) A statement of the time, place and nature of the proceedings for adoption, amendment or repeal;

(2) Reference to the authority under which the action is proposed; and

(3) Either the express terms or an informative summary of the proposed action.

(c) On the date and at the time and place designated in the notice, the Commission shall afford any interested person or his authorized representative, or both, the opportunity to present statements, arguments or contentions in writing, with or without opportunity to present them orally. The Commission shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

(d) Any interested person may file a petition with the Commission requesting the adoption, amendment or repeal of a regulation. The petition must state, clearly and concisely:

(1) The substance or nature of the regulation, amendment or repeal requested;

(2) The reasons for the request; and

(3) Reference to the authority of the Commission to take the action requested.

➥ Upon receipt of the petition, the Commission shall within 45 days deny the request in writing or schedule the matter for action pursuant to this subsection.

(e) In emergencies, the Commission may summarily adopt, amend or repeal any regulation if at the same time it files a finding that such action is necessary for the immediate preservation of the public peace, health, safety, morals, good order or general welfare, together with a statement of the facts constituting the emergency.

2. In any hearing held pursuant to this section, the Commission or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing from time to time and at such places as it prescribes.

3. The Commission may request the advice and assistance of the Board in carrying out the provisions of this section.

Sec. 45. NRS 360.770 and 360.785 are hereby repealed.

Sec. 46. 1. There is hereby appropriated from the State General Fund to the Department of Taxation for expenses relating to the annual salaries of the Chairman and the members of the Tax Commission:

For the Fiscal Year 2005-2006..... $153,500

For the Fiscal Year 2006-2007..... $153,500

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years and must be reverted to the State General Fund on or before September 15, 2006, and September 21, 2007, respectively.

Sec. 47. 1. There is hereby appropriated from the State General Fund to the Department of Taxation for expenses relating to the printing of the Taxpayers' Bill of Rights:

For the Fiscal Year 2005-2006..... $2,300

For the Fiscal Year 2006-2007..... $2,300

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years and must be reverted to the State General Fund on or before September 15, 2006, and September 21, 2007, respectively.

Sec. 48. 1. There is hereby appropriated from the State Highway Fund to the Department of Motor Vehicles for expenses relating to the printing and mailing of the Taxpayers' Bill of Rights:

For the Fiscal Year 2005-2006..... $3,920

For the Fiscal Year 2006-2007..... $3,920

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years and must be reverted to the State Highway Fund on or before September 15, 2006, and September 21, 2007, respectively.

Sec. 49. Any regulations adopted by the State Gaming Control Board pursuant to NRS 368A.140 or 368A.160 before July 1, 2005:

1. Remain in effect as if adopted by the Nevada Gaming Commission in accordance with the provisions of this act; and

2. May be amended or repealed by the Nevada Gaming Commission in accordance with the provisions of this act.

Sec. 50. This act becomes effective on July 1, 2005.

TEXT OF REPEALED SECTIONS

360.770 "Employee" defined.

1. "Employee" includes:

(a) A natural person who receives wages or other remuneration from a business for personal services, including commissions and bonuses and remuneration payable in a medium other than cash; and

(b) A natural person engaged in the operation of a business.

2. The term includes:

(a) A partner or other co-owner of a business; and

(b) Except as otherwise provided in subsection 3, a natural person reported as an employee to the:

(1) Employment Security Division of the Department of Employment, Training and Rehabilitation;

(2) Administrator of the Division of Industrial Relations of the Department of Business and Industry; or

(3) Internal Revenue Service on an Employer's Quarterly Federal Tax Return (Form 941), Employer's Monthly Federal Tax Return (Form 941-M), Employer's Annual Tax Return for Agricultural Employees (Form 943) or any equivalent or successor form.

3. The term does not include:

(a) A business or an independent contractor that performs services on behalf of another business.

(b) A natural person who is retired or otherwise receiving remuneration solely because of past service to the business.

(c) A newspaper carrier or the immediate supervisor of a newspaper carrier who is an independent contractor of the newspaper.

(d) A natural person who performs all of his duties for the business outside of this State.

4. An independent contractor is not an employee of a business with which he contracts.

360.785 Activities of natural person constituting business. The activity or activities conducted by a natural person shall be deemed to be a business that is subject to the provisions of NRS 360.760 to 360.795, inclusive, if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for the business.

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