

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Fourth Session
March 29, 2007**

The Committee on Taxation was called to order by Chair Kathy McClain at 1:37 p.m., on Thursday, March 29, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Kathy McClain, Chair
Assemblyman David R. Parks, Vice Chair
Assemblywoman Francis Allen
Assemblyman Morse Arberry Jr.
Assemblyman Mo Denis
Assemblyman Tom Grady
Assemblyman William Horne
Assemblyman John W. Marvel
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Peggy Pierce
Assemblywoman Valerie E. Weber

GUEST LEGISLATORS PRESENT:

Assemblyman James A. Settlemeyer, Assembly District No. 39
Assemblyman Bernie Anderson, Assembly District No. 31

STAFF MEMBERS PRESENT:

Russell J. Guindon, Senior Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary



OTHERS PRESENT:

Dino DiCianno, Executive Director, Department of Taxation
Carole Vilardo, President, Nevada Taxpayers Association
John Auer, Pastor, Reno First United Methodist Church
Pat Smith, Member, Reno First United Methodist Church
John Emerson, representing California-Nevada Conference, United Methodist Church; Conference Committee on Children and Poverty, United Methodist Church; and Nevada Sierra District Council on Ministries; and Pastor Emeritus, Reno First United Methodist Church
Larry Struve, representing Religious Alliance in Nevada
Gene Savoy, Jr., Pastor, International Community of Christ
John Swendseid, Bond Counsel, Swendseid & Stern
Gerard H. Cote, Accounting Manager, City of North Las Vegas
Jennifer Lazovich, representing Focus Property Group
Bill Gregory, representing The Howard Hughes Corporation
Susan Fisher, representing City of Reno
Shaun Jillions, representing City of Henderson
Roberta Ross, representing Downtown Improvement Association, City of Reno

Chair McClain:

[Meeting was called to order at 1:37 p.m. Roll was called.] We have two bills to hear today. The first one is Assembly Bill 236. Is Assemblyman Mabey here?

Assembly Bill 236: Makes certain changes regarding the reporting, payment and collection of sales and use taxes. (BDR 32-1096)

Assemblyman James A. Settelmeyer, Assembly District No. 39:

[Distributed ([Exhibit C](#)) and ([Exhibit D](#)).] Assemblyman Mabey was kind enough to request this bill on my behalf. An envelope is being handed out to you now ([Exhibit C](#)) dealing with sales tax in the State of Nevada. I had originally sold some garlic at a farmers' market. Agricultural products are not taxed, so I was not paying anything. However, with a business license, you have to pay tax either monthly—if you make more than \$10,000 in saleable income—or quarterly. Those are the two choices. I did not make much money selling garlic so I quit doing it.

When I got elected, I thought maybe I should request a bill on this issue. I was thinking about myself, and that is not the way we should be. We should think about other people.

Then I got a call from a constituent who had the same problem. He sells Christmas trees and a few wreaths. The wreaths are made products, so he has to pay a tax on them. He was turning in a total of about \$27 a year in taxes.

The envelope you have in front of you ([Exhibit C](#)) can be dealt with in one of two ways. The form inside the envelope is what a business person has to fill out either quarterly or monthly. Then the business person puts the form in the envelope with a check—or alone if he owes nothing—and puts it in the mail. As you can see on the front of the envelope, it goes to Arizona, at which point we are paying someone else to open the envelope, process the form, and enter the information into a computer. If we are not getting any money back, and we are paying someone to do this, that is not a good business idea.

I started researching the data. Mr. DiCianno from the Department of Taxation was kind enough to give me the data from Fiscal Year (FY) 2004–05 and FY 2005–06. I will speak to the most recent data, which only covers 11 months. The Department switched over to a new computer system, so they did not have data available for the full 12 months.

In FY 2005–06 there were 61,000 active sales tax accounts, 22,000 of which owed \$0; 5,260 of them had \$100 or less total liability for the year. The total number of accounts that owed less than \$100 was nearly 45 percent of all accounts, and the total revenue from those accounts was \$199,000. This bill asks that individuals who have three consecutive zeroes be switched to filing yearly. Those individuals who have collected sales tax for the year of \$100 or less would also switch to filing yearly.

As for the benefit to the State of Nevada, it costs anywhere from \$20 to \$25 to process the paperwork for an individual. That means the State will save anywhere from \$1.2 to \$1.5 million a year and be a friend to businesses who are filling out forms for zero returns and who occasionally forget to file. I, myself, am guilty of such. I got called by someone at the Department of Taxation who angrily told me I had to submit this form or I was in trouble. I asked them if the penalty had changed. They said no, they were still authorized to fine me up to 20 percent of what I owed. I feel the bill is fairly simple in that it saves the State and reduces the business load on smaller businesses.

Chair McClain:

Are there any questions from the Committee? Can we get Mr. DiCianno to corroborate your theory?

Assemblyman Settlemeyer:

I forgot one aspect of the bill. Mr. DiCianno had come to me and asked for de minimis billing, the ability to wait until billing someone made economic sense rather than going after those individuals who only owe a couple of dollars. He came to me with that provision, and I appreciate it. It makes a lot of sense not to spend thousands of dollars going after someone who only owes \$5.

Dino DiCianno, Executive Director, Department of Taxation:

It is not often that I am able to speak to a bill that actually relieves some of the administrative burden of an agency while, at the same time, providing a benefit to the taxpayers of the State. The numbers Mr. Settlemeyer gave you are correct. Under current law, there are no exceptions to the reporting and filing for sales and use tax. Even if there are no taxable sales to report for a specific period, the requirement is still there to file a return. Mr. Settlemeyer mentioned the situation of someone selling Christmas wreaths. There are individual sellers, such as those with Christmas tree lots, who only have to file one time with us. All they have to do is notify us in advance.

This bill would complement what the Tax Commission does with respect to offers in compromise, which the Legislature passed last year. I do need to make the Committee aware that the new computer system we are putting in place will require a change if this bill is processed. It is unfortunate, but the system was developed based upon the law as it currently exists. I do not know what the cost of that change would be.

Chair McClain:

If a retailer who collects sales tax realizes he can skim \$20 off of that tax and nobody is going to come after him for it, is that not a windfall for him, and are we not defeating the purpose of retailers being intermediaries for transferring the sales tax they collect to the State?

Dino DiCianno:

That retailer acts as an agent for the State. The consumer is the one who has paid the tax. The retailer has collected it on the State's behalf. If they choose not to report it, we have every obligation and duty to go after them to collect that revenue. I do not believe the bill addresses that. The bill is trying to say that if someone legitimately does not have any taxable sales for a particular reporting period, and he files zeroes, we are going to allow him to file on an

annual basis. That does not remove that retailer's responsibility if he does collect any sales tax. He still has to remit it.

Chair McClain:

I understand that. If somebody does not collect any sales tax, it makes perfect sense to me for him to file once a year. The State will save a lot of money by not having to process several thousand returns with zeroes on them; is that right?

Dino DiCianno:

That is correct. I need to reiterate that there will still be a cost to the Department in changing our computer system, but from a business standpoint, it does not make much sense for me to expend resources chasing ghosts.

Chair McClain:

My point is that when you talk about it costing you money to implement this, you are actually going to save a lot of money.

Dino DiCianno:

There would be a one-time cost to effect the change, but you are correct. There is no question that there would be benefits in the long term.

Chair McClain:

So the fiscal note for the one-time charge is truly going to be mitigated down the road, probably within the first year. Is that right?

Dino DiCianno:

We were not requested to do a fiscal note. At this point in time I do not know what that cost would be. Even if you asked us to do a fiscal note, the only cost showing on the fiscal note would be that change to the computer system. That cost would be incurred in just one fiscal year.

Chair McClain:

That is separate from my other question. By forgiving a tax bill for someone who has collected and reported \$19.95 in sales tax, are you not letting them keep the State's money illegally?

Dino DiCianno:

Section 1 of the bill is permissive. It says:

Except as otherwise directed by the Nevada Tax Commission and notwithstanding any other provision of law, the Department is not

required to take any action for the collection of any unpaid sales and use taxes for which a person may be liable.

They still owe the money. We have to make a determination that they are liable first.

Chair McClain:

It seems to me that if they have collected \$15 in sales tax and they send in a report, they are liable. [Mr. DiCianno agreed.] So you need to collect it.

Dino DiCianno:

The bill further says if we determine that the cost of taking an action against that taxpayer exceeds what they owe, then we need to make a determination whether we should or should not attempt to collect that money.

Chair McClain:

I understand where you are going with that. All I am saying is that in this provision we are letting people keep money that is not theirs and that they are not entitled to. I love the part of the bill about letting retailers file annually; this part I do not like.

Assemblyman Settlemeyer:

In FY 2004–2005, the total liability for those who owed \$100 or less was \$199,000. You are correct; that is a significant amount of money, and I agree that those people are still liable. I believe this would just allow the Department the ability to allow retailers to wait until they owe an amount that is worthwhile for the Department to collect. I believe the Department would go after that money within a reasonable period, but they could wait until the collection effort made sense. I question the concept of spending \$1,000 to get \$10 back.

Chair McClain:

If that is the way this would work, that is reasonable.

Assemblywoman Weber:

What does the Department do now in that same scenario?

Dino DiCianno:

We operate under the current statutes. We make every attempt to collect the money.

Assemblywoman Weber:

Regardless of what the liability is on the part of the taxpayer? [Mr. DiCianno verified that.]

Assemblyman Settlemeyer:

They do currently do that. As I said, I owed \$0. I do not know how you would assess their time, but they tried to call me six different times to collect \$0.

Assemblyman Grady:

Mr. Settlemeyer commented on the Phoenix, Arizona, address. I have had a lot of calls about this. Could you explain once more the reason for that Phoenix address?

Dino DiCianno:

The key point about a lockbox service is that when they receive the money, that money is deposited instantaneously. It provides the State with an interest float immediately upon deposit, before those records are transferred to the Department.

Initially, the lockbox service was provided by Bank of America. That initial contract was through the State Treasurer's office. We were notified by Bank of America that they would no longer be providing that service. We worked hand in hand with the State Treasurer's office to put out a Request for Proposal (RFP) for a new bank to act as our lockbox service. We made every attempt to get an in-state lockbox service provider. We did have several applicants who were Nevada banks, but upon investigation, we found they were going to outsource the service out of state.

The contract with the Phoenix bank is through the Treasurer's office. The bank is afforded certain contractual pay for that service. However, the money is still Nevada's, and it gets distributed accordingly regardless of whether it was collected by a Nevada bank or an out-of-state bank. We did everything we possibly could to keep it in-state, but unfortunately that did not work out.

Assemblyman Mortenson:

I like this idea very much. When I was elected to the Assembly I mothballed a business. I decided to keep it viable, though, so that if I got tired of the legislative process, or if my constituents got tired of me, I might go back into the business again. I have turned in these forms every month for ten years with nothing but zeroes on them. At that time I did not even know I could choose to do it quarterly. I like the idea of being able to do it annually.

Assemblyman Horne:

I, too, have concerns about Section 1 of the bill in that I think it is bad public policy. I understand what you are trying to get at about spending a dollar to collect a dime. However, it sends the wrong message. We often spend money in various areas in order to enforce the laws on our books. In the area I am

familiar with, I have people who went into Target or Wal-Mart to steal \$50 worth of clothes and who were charged for burglary. A lot of money is being spent on that, but we do that because our society has set rules within which we are to operate, and that is the cost of having our society run the way we want.

The Chairwoman stated properly that business people will discover that the consumers pay the tax and, if it is under a certain amount, it will not get collected. You say their liability will grow to where the Department may act, but the bill does not necessarily say the Department must act. That is the section that concerns me. I do not have much problem with the rest of the bill.

Assemblyman Denis:

Currently, what happens to somebody who owes \$5 but even though the Department tries to collect it, they do not pay it?

Dino DiCianno:

There are already statutes on the books regarding sales and use tax. If we exhaust every remedy to collect but that amount is still on the books after five years, the Tax Commission has the authority to write it off.

Assemblyman Denis:

So currently the business owner could owe \$5, and the Department could try to go after it. Then at some point you might write it off if you could not collect it. Is there no other punishment for the individual who owes the money?

Dino DiCianno:

There is one other point to that. Even though the Commission writes off the liability, it still remains a debt to the State. We have just exhausted every possibly way of collecting it.

Assemblyman Denis:

When a high school student loses a textbook and does not pay for it, he goes on with life. The school district does not come after him, but if he needs something from them, they look him up in their records and see that he owes that money. Is this something similar where, if that person later needs to do something with the State, he first has to pay that money?

Dino DiCianno:

Let us not assume a low dollar amount. Let us say it could be any dollar amount owed by a retail business. If we exhaust every possible way to collect that money, and we know they have physical property in the State, we usually file liens against that property. Even if the Commission writes it off, it is still a

debt to the State. If they attempt to refinance or do something similar, that lien will hit and we are notified. Normally, we get those amounts that are owed through the escrow payment.

Assemblyman Denis:

Have we ever gone after somebody who owed a low amount and actually put a lien against their property?

Dino DiCianno:

I cannot definitely say yes or no to that. I look at the big picture of what debt is owed to the State. We have different collection tools in our toolbox: letters, calling people, visiting them, establishing liens, and things of that nature. The Department of Taxation is neutral with respect to this bill. I can understand the Chairwoman's and Mr. Horne's concerns about sending the wrong signal, but from a practical business application standpoint, I can also appreciate Mr. Settelmeyer's viewpoint. Why should the State expend resources trying to collect something when the return on the collection will not meet the amount of resources expended?

Assemblywoman Weber:

Does the Tax Commission put together a list of the write-offs on a periodic basis so we know what the amount of debt is? I know the Controller's office does the same thing where they write off debt to clear it off the books.

Dino DiCianno:

We do an analysis of the accounts twice a year and provide a list of write-offs to the Tax Commission. That list contains confidential information about individual businesses, so we do not make it public. Even though the Commission writes off that debt, it still remains a debt to the State. We just stop pursuing the collection process.

Assemblyman Marvel:

Can you revoke a business license? [Mr. DiCianno said he could.] That could be one of the penalties, could it not?

Dino DiCianno:

It is. We have done that. I want to make it clear for the record that the individual business is entitled to due process. There is a hearing and the business has every opportunity to appeal the hearing results to the Commission, which eventually renders a decision. That retailer or business can then file for judicial review. The process does not simply stop once we revoke the license.

Assemblyman Marvel:

The taxpayer probably would not go to that expense for a minimal obligation, would he? [Mr. DiCianno agreed he probably would not.]

Chair McClain:

When forms come back with zero to report, does that get put into the computer?

Dino DiCianno:

We refer to those as "deadheads." Since they are zero, there is nothing to input. We have an electronic record of that zero, though.

Chair McClain:

What I am trying to get at is whether you have an electronic record that someone has reported zero for three quarters so you can generate a notice to bill him annually.

Dino DiCianno:

If we are aware of it, that is what we do. What the bill tries to do is direct us to do that on an automatic basis based upon a certain occurrence. We do not do this right now. If a taxpayer contacts us, says he owes us \$0.23, and asks if he can file annually, we do that for that account.

Assemblyman Parks:

My question is about lost interest on these accounts. I understand these are individually small amounts, but they would add up to a certain larger amount. Have you looked into how much this would translate to in lost interest?

Dino DiCianno:

No, I have not. I do not know what that amount would be.

Assemblyman Parks:

I know that receiving one of these forms in the mail, whether quarterly or annually, is certainly a reminder to individuals to stop and think if they have collected any tax they need to remit to the State. If we suspend doing something like this, might there be some way to calculate what kind of loss of submittals might result?

Dino DiCianno:

That individual business is still on record at the Department. Are you asking us to establish some kind of flagging system that would double check that they did not have any sales? We could do that on a periodic basis, but you are talking

about twenty-some thousand accounts. I do not know quite how we would do that.

Chair McClain:

Do you send these forms out every month?

Dino DiCianno:

To monthly filers, yes. Quarterly filers receive them quarterly.

Chair McClain:

If somebody can justify going to annual filing, how would you do that?

Dino DiCianno:

We would code the system to only generate the return once a year.

Chair McClain:

Monthly filing is for big businesses, is that right?

Dino DiCianno:

The threshold is \$10,000.

Chair McClain:

So the more you collect, the more often you have to file and remit? [Mr. DiCianno verified that.] If there are 22,000 that file zero, do they get monthly statements to fill out?

Dino DiCianno:

It is a mixed bag. Mr. Settelmeyer has the exact numbers, but it could be either monthly or quarterly.

Assemblyman Settelmeyer:

For FY 2005–06, 10,000 of the monthlies were zeroes, while 2,445 of the monthlies had less than \$100 in total liability for the year, if that answers your question.

Chair McClain:

It does, and it sounds like we need some standardization of who gets monthly statements and who gets annuals.

Assemblyman Settelmeyer:

This bill could help do that.

Chair McClain:

Are there any other questions? Does anybody in the audience wish to voice an opinion on this?

Carole Vilardo, President, Nevada Taxpayers Association:

This is one of the most efficient things you could do, and I think the Committee has heard enough testimony as to why. I have one concern about the liabilities. I do not know how to reinforce what Dino was saying, but that liability never goes away. It remains there whether it is sales tax or use tax. I cannot say whether \$5 being five years in arrears would cause a lien. However, what normally happens when these small amounts are owed is that the letter alone is enough to intimidate a small business that owes \$11 in tax. I think the concern would be more from the large taxpayers whom this could not possibly impact.

I can appreciate your concern because I do not disagree with you. We want everybody to pay the tax that is due. However, those of you on the money committees have seen cases where we have tried to collect a bill for \$0.28, which has cost that much in postage alone. I do not have a problem with that section. If you would initially be more comfortable with the amounts, though, you might want to state that it is a de minimis amount that is established by the Tax Commission. Then, depending on how that works out, you could come back in two years and change it.

This bill gives you efficiencies that you do not currently have. We definitely support it.

Chair McClain:

Would you like to put your suggestions in writing? [Ms. Vilardo agreed to do that by Monday, April 2, 2007.]

Mr. Settelmeyer, did you say something about another amendment, or were you talking about this portion the Department of Taxation wanted to put in your original bill?

Assemblyman Settelmeyer:

I was referring to the fact that when I came out with this bill, I talked to Mr. DiCianno about calculating these numbers and how he felt about the bill. He had commented that it would be nice to entertain the concept of mixed billing so that he would not have to chase someone for \$0.13 when the postage was more.

Dino DiCianno:

I believe what Mr. Settelmeyer was referring to dovetails with what Ms. Vilardo just talked about, which is providing the de minimis amount. Once the Commission can establish that de minimis amount, that is something we could live with.

Chair McClain:

Do you just want that wording, or do you want an amount?

Dino DiCianno:

I will leave that policy question to this Committee.

Carole Vilardo:

We already have statutory language that speaks to a de minimis amount. I will go back, reference it, and if it looks like there are some qualifications, I will do a separate note that the Committee might want to consider for additional wording.

Chair McClain:

That would be great.

Assemblyman Horne:

Remember when they were having the debate about sending checks back for vehicle registration and how much it would cost to send that back? The consensus was that we had to send those checks out; we had to spend that money to do it.

Chair McClain:

I believe at that time it cost roughly \$35 to process a check, not to mention the ones that never got cashed because they were for a penny. Then there was the reprocessing to get the checks off the roll. I am glad to know there is a reference to "de minimis."

Are there any other questions, comments, or concerns? [There was no response.] I will close the hearing on A.B. 236. We will open the hearing on Assembly Bill 339.

Assembly Bill 339: Exempts property owned by certain nonprofit organizations from certain taxes and assessments. (BDR 31-106)

Assemblyman Bernie Anderson, Assembly District No. 31:

I was surprised to discover that religious and educational institutions were not exempt from tax language in special districts, as they are in other places in our

statutes. If there is a new curb or sidewalk or sewer line that benefits an educational institution or a religious institution, I think they should be taxed for the cost of putting in that kind of infrastructure. If, however, the situation places a financial burden that will destroy those institutions, I feel there is a reason and need for this bill.

I understand that the people who have raised the questions have reached something of an accord with the city of Reno, and they have additional requests that may be made by the Committee. I still feel there is an issue here that should be addressed and resolved, and I await input from this Committee in determining this. It may be an issue that would be better resolved in the interim. One way or another there has to be an equitable solution to this problem.

John Auer, Pastor, Reno First United Methodist Church:

[Read from prepared testimony ([Exhibit E](#)).]

Pat Smith, Member, Reno First United Methodist Church:

[Read from prepared testimony ([Exhibit F](#)).] I have held a number of positions in the church, one of which was chairing our finance committee for quite a few years. This morning's lead story in the *Reno Gazette-Journal* was about the Virginia Street Bridge. It is very possible there could be an assessment levied to replace or repair that bridge.

John Emerson, representing California-Nevada Conference, United Methodist Church; Conference Committee on Children and Poverty, United Methodist Church; and Nevada Sierra District Council on Ministries; and Pastor Emeritus, Reno First United Methodist Church:

[Read from prepared testimony ([Exhibit G](#)).] This morning I received a report from a Legislative Counsel Bureau (LCB) staff researcher indicating that the state of Ohio has a statutory exemption for churches, and the churches are able to opt in to an assessment district rather than having to opt out. It is a lengthy report, but that is the gist of the statute in Ohio.

Since preparing my testimony, I have learned that the Religious Freedom Restoration Act of 1993 ([Exhibit G](#)) was struck down by the U.S. Supreme Court. My life is full of surprises.

Chair McClain:

What is the difference between subsections 2 and 4 of *Nevada Revised Statutes* (NRS) 372.3261?

John Emerson:

Subsection 2 references organizations created for religious purposes. There is a rather lengthy description, which I can read if you need me to. Subsection 4 refers to operating schools, colleges, and such institutions.

Chair McClain:

So subsection 2 refers to churches and subsection 4 refers to schools. Do you know right offhand what the assessments or taxes imposed by these other chapters are?

John Emerson:

Yes, Chapter 244A of NRS refers to counties and public improvements. Chapter 268 of NRS refers to powers and duties of cities. Chapter 271 of NRS refers to local improvements. Chapter 318 of NRS refers to general improvement districts (GIDs). Chapter 543 of NRS refers to flood control. Chapter 555 of NRS refers to control of insects, pests, and noxious weeds.

Chair McClain:

Thank you for knowing that. We usually have to go look it up. Are there any questions?

Assemblywoman Weber:

Do other states do it like this? Have they exempted nonprofits that own property that would be assessed these taxes or assessments?

John Emerson:

So far we have discovered that Ohio has a statutory provision. I do not know of any other state that does at this time.

Assemblyman Anderson:

Before I had the drafting of the legislation, I had the LCB Research Division look at the overall question of special assessment districts, how unusual they were, how many other places in the State were doing this, and how it might impact not just the community in which this particular religious institution and educational institution are. It has been a strange discovery because some communities have already exempted them by the way they drew their lines, recognizing the difference in property taxes and ad valorem tax. What the group with this bill is suggesting is that the Standing Committee on Taxation would take this up as part of their burden in the interim to look at this along with other examples as further review.

The nature of development in Nevada is that we have created large blocks of land that are developed by a single developer, and then a certain predicated

development within that for roads and streets, and those general assessments are put forward. This bill makes a clear statutory change forward, rather than backward, in time, so it would not change the kinds of statutes that are already in place. As Rev. Emerson has already indicated, Ohio legislation, which takes up just the question of churches, is currently the clearest example, so yes, other states have done this.

Relative to the Supreme Court decision Rev. Emerson referred to, I had a bill last session and was about to introduce it when I recognized it created a certain series of problems relative to constitutional language. I wanted to wait for a resolution to that question. In the state of Texas there has been a longstanding question of historic properties, which often predate cities—in fact, the organization of cities often follows the establishment of a particular church in a community, and the city grows out and around it. When the church wants to change its property, how is it affected by city statutes? That, by itself, creates an interesting set of problems constitutionally. However, the tax question in Ohio has been solved. There is a legitimate question of tax policy that should be clearly drawn by an interim committee. That would, in my opinion, be a good thing to add to your burden.

Chair McClain:

Would you be willing to let staff look at how we could rewrite this little bit so it “highly urges” that interim committee? Would you like us to look at it that way?

Assemblyman Anderson:

I believe the best solution in the long term would be to try to bring accord to this group so there is a clear resolution. There is a real, urgent need because special assessment districts, water districts, and GIDs all come into play here. As the communities continue to grow, I think we should clearly make religious institutions that are qualified know what their tax burden is going to be. Their contribution to a community cannot be measured in dollars and cents, and we have always recognized that as one of the basic principles. They do not charge people who come in the doors of their sanctuaries. They neither charge admission nor expect a profit. It is what people carry away from there that is of greater value that cannot be measured in dollars and cents.

Chair McClain:

We will have staff work on that language to highly urge that standing committee to look at this. Is there anyone else in support? Then, just for the Committee’s information, we will have some of the people who have concerns about the bill put their concerns on the record.

Assemblyman Marvel:

Have you read the letter from the bond counsel ([Exhibit H](#))? [Chair McClain indicated she had not yet read it.] It is very important.

Larry Struve, representing Religious Alliance in Nevada:

The United Methodist Church, including the First United Methodist Church in downtown Reno, is a part of the Religious Alliance in Nevada (RAIN). There has been quite an active discussion within RAIN about this bill. The RAIN board met yesterday and has instructed me to come here and put on the record that they are in support of the concept behind this bill. The reason they are in support is that there are times when trying to make nonprofits pay their fair share results in such substantial burdens on those nonprofits as to threaten their very existence. In fact, that is the reason Congress passed the Religious Freedom Restoration Act of 1993 referred to by Rev. Emerson.

The United States Supreme Court struck that act down because they found it went beyond the scope of Congress's authority to enter this area. They were not given that power in the *United States Constitution*. What the Supreme Court said was that individual states have the power to protect the free exercise of religious freedom. Since the Supreme Court struck this law down in the mid-1990s, many states have adopted religious freedom restoration acts. We have talked with Assemblyman Anderson about this concept, but we did not want to come forward to this Body until we had some concrete examples where the free exercise of religion had been burdened. You now have a case before you.

It seems what you are talking about here is proportionality. You heard the Methodists say they are willing to pay a fair share. However, when they are being asked to pay assessment upon assessment, and no consideration is being given to the cumulative burden on the ability of that congregation to exist, then you have something that may very well cross the constitutional line. As a matter of public policy, you want to enact a law that makes local governments as well as the State consider the free exercise of religion when considering how much of a burden to place on a particular organization.

It appears you are interested in studying this issue, and RAIN would strongly support that. As you study the impact of special assessments on religious organizations and others, we would also respectfully ask that you consider a state religious freedom restoration act because we cannot anticipate all the instances where government action could impose substantial burdens on free exercise of religion. It may or may not be appropriate to consider it, but now you have a case where a substantial burden has been imposed, and we want to

protect the rights of our faith communities—not just those in RAIN but all faith communities—to the free exercise of their religion in this State.

Gene Savoy, Jr., Pastor, International Community of Christ:

I am also here to support my colleagues and friends at the First United Methodist Church. I am here to support the bill. The International Community of Christ has been in Reno as a functioning 501(c)(3) since 1972, and we are currently paying two local assessments that total several thousand dollars annually. Our concern is that it places an undue financial burden, and we are concerned about the potential for future assessments. We do not know when they will come up, and we do not have the option to buy into them. We are required to pay.

I would like to reiterate my belief, as Mrs. Smith stated, that you may call a tax by a different word, but it is, nonetheless, a tax. I would encourage you to move the bill along so we can realize eventual passage of the bill. I appreciate your time and effort in this regard.

Chair McClain:

I think that is all the people I have signed in to speak in support. Others signed in as being in support but not wanting to speak, and we appreciate you being here. With the Committee's indulgence, we will listen to a few who have signed in with grave concerns or in opposition.

John Swendseid, Bond Counsel, Swendseid & Stern:

[Provided a letter from Stone & Youngberg, an underwriter of tax-exempt assessment bonds ([Exhibit H](#)), and a copy of his prepared testimony ([Exhibit I](#)).] I serve as bond counsel to most of the cities and counties in the State of Nevada. [Read from prepared testimony ([Exhibit I](#)).] Some of the proponents of this bill acknowledge that it will affect local improvement districts. No nonprofits, religious, educational, or otherwise, are exempt from these assessments. The Legislature has generally been very careful to assess everyone according to benefit, including government, nongovernment, profit, nonprofit—everyone within the district who has benefited from the water or sewer.

If you now exempt revenue sources that are already pledged to bonds, the bondholders may have a legitimate complaint that the Legislature has impaired the contract it has allowed cities and counties to make with bondholders. We are further concerned that even if you exempted existing districts but provided that any time a church acquired property within an assessment district in the future, that property would become exempt from the assessment, we would have difficulty selling assessment bonds. A person might not want to buy a

bond where we could say the security for the bonds is the assessments against these 100 parcels, but 10 of the parcels might be owned by churches in the future, 10 might be owned by schools in the future, and they would then not have to pay their assessments and we might not have enough money to repay that bond.

We do not think this is the way Nevada wants to go with assessment districts. So far, we have had a very successful assessment district program that has provided a way for local government to add streets, water lines, and sewer lines that have been needed to keep up with our fantastic growth. Also associated with that growth are more churches and schools, and the idea beyond existing law is that those institutions, along with everybody else, pay their fair share.

Chair McClain:

We will make sure this letter gets put in the record.

Assemblyman Horne:

Have you done an assessment of what you think that loss would be if this bill were to pass? [Mr. Swendseid indicated he had not.] That would be helpful. If we had a number, it would be something more realistic.

John Swendseid:

We have had several assessment districts in which churches and schools were part of the property assessed. We have noticed that because it has been marked as a school parcel or a church parcel. We know there would be some loss, but to do a study of all the districts in the State would take quite an effort. However, if you do an interim study on this project as has been suggested, that should provide the time to look at and maybe get some samples of what revenue would be lost in particular districts.

Assemblyman Horne:

I have heard numbers of \$1,700 per property per year, so I am trying to conceptualize in my head how many properties we are talking about and what that impact would be.

John Swendseid:

The way we do assessment districts under Nevada law is that the bonds are issued in exactly the same amount as is assessed against the property owners. If there is \$100,000 of assessment against property owners, we issue \$100,000 in bonds. That means if we lose the assessment against even one of those properties, even if the assessment for that property is \$10,000 over 20 years, there will not be enough to pay the bonds. There is no extra money in assessment district financing.

Assemblyman Denis:

When we make an assessment, do we have the ability, if a church is able to opt out, to increase the assessment on the rest of the property owners?

John Swendseid:

That depends on the circumstances. State law provides that we cannot assess any property for an amount more than the amount by which that property is benefited by improvements. State law also provides we cannot assess any property an amount greater than its fair market value. Many times that limit will mean the city cannot pass on to other property owners the cost of putting the street, water line, or sewer line in front of the church or school. Instead, if the local government decides to exempt the church or school, the local government has to make that up from its general fund.

Sometimes that is done. Churches in downtown Reno have experienced times when the city has taken their protest into account. The city has sometimes relieved churches and schools of this burden, but other times has felt it is fairer to all the taxpayers in the city for them to pay their share. However, they do get the opportunity to present their arguments to the city council, and the city council can see whether the other property owners or the general fund can help.

Gerard H. Cote, Accounting Manager, City of North Las Vegas:

This bill would have a significant negative impact on the city of North Las Vegas for future special improvement district (SID) debt. Bondholders would be subject to significant risk. This would make it more difficult to develop districts and sell bonds. Although we currently do not have any nonprofits that would affect our current collections, our concern is going forward, as we want to use SIDs to revitalize the developed areas of the city that already have churches and educational facilities in place. Structuring the SID would be more cumbersome. Other unintended consequences could result in a reluctance for investors to buy SID bonds, and developers may not want to have nonprofits in their developments.

Jennifer Lazovich, representing Focus Property Group:

Focus Property Group develops master planned communities in southern Nevada. My testimony would echo that of John Swendseid. Obviously, churches and schools are integral to any great community, but the things assessments are generally used for, such as roads, sewer, and water, really bring an advantage to them as well. From that standpoint, with the language as it is written today, we think the bill is too broad, and we cannot support it at this time.

Bill Gregory, representing The Howard Hughes Corporation:

[Distributed an internal communication ([Exhibit J](#)).] I will echo the comments of Ms. Lazovich and Mr. Swendseid. The Howard Hughes Corporation welcomes churches and schools in the development. In fact, most of the time, the land is severely discounted to them. Assessments are another issue, though, because of the bonds. Hughes currently has nine active SIDs, anywhere from \$20 to \$40 million and 300 to 1,100 acres, and those bondholders are expecting that revenue back. When you have this land, you have no idea where a church or school is going to buy land, and as they purchase that land, you do not have the ability to tell the bondholder he is not going to get his money from this piece of land. You also cannot pass that loss of revenue to the other land holders. That is a problem from our perspective, also.

Susan Fisher, representing City of Reno:

I hate to come up here and be a Scrooge, and I would like to thank the people from the First United Methodist Church for meeting with the city and with Nick Anthony. He gets to play good cop; I get to play bad cop today. We have worked with them in good faith. On different occasions when they have come to the city of Reno, to the council, to ask for a waiver, if the city feels it can, at that time, take the money out of the general fund to pay for it, that has been done. On occasion, Mayor Cashell has even written a check out of his own personal account to pay for their assessment for the year to help them.

However, these assessments, as you have heard, are direct improvements and direct benefits to all properties in the assessment district. We have the police assessment district. We had complaints in prior years about some of the elements in downtown Reno, and businesses, churches, and nonprofits in the downtown corridor said we needed to clean it up. We hired extra police to patrol those areas day and night. We have them on bicycles downtown, and that is a direct benefit to those people paying that assessment. It is not spread out over the entire town.

We are also, as Mr. Swendseid said, very concerned about the bond rating. If we exempt it for them, how far does it go? We think that is a problem. We are willing to work with them some more. We have tried but have not yet come to an agreement on what it could be reduced to for particular properties.

Shaun Jillions, representing City of Henderson:

[Distributed fiscal note from Henderson ([Exhibit K](#)).] Mr. Swendseid does represent us on bond matters, and he did a great job of addressing our concerns about the broadness of the language.

Assemblyman Marvel:

I noticed in your fiscal note ([Exhibit K](#)) that Henderson is going to be impacted by \$500,000. How did you derive that figure?

Shaun Jillions:

I will be happy to get that information to the Committee. All I have is the final breakdown. We do have a lot of local improvement districts within the city of Henderson. I would imagine they are assuming that rather than doing an additional assessment on current property owners, we would make up for it in general fund dollars. I would be happy to get the Committee an actual breakdown of those costs.

Chair McClain:

That would be great.

Roberta Ross, representing Downtown Improvement Association, City of Reno:

I am a business and property owner across from the First United Methodist Church, with whom I have discussed this matter. As a downtown improvement association, I would like to share a simple example with you. We are concerned about certain nonprofits not paying the special assessments. We believe the improvement benefits them as much as it does everyone else. Downtown Reno was definitely a deteriorating city, and the redevelopment agency came in, as did the Downtown Improvement Association. The Association was very much in support of the police tax district because downtown Reno was in such a bad state with such a large criminal element. The police tax district is able to afford 14 police officers who have made a direct improvement in downtown Reno regarding crime and the homeless element.

Having a building in downtown Reno, I see the improvements. I know they help all the people involved, including those people who frequent any business downtown. Whether the business is a profit or nonprofit, it does benefit. We have concerns about this bill going forward and about its unintended consequences.

Chair McClain:

Are there any questions for these witnesses? Do we have anybody else who wants to weigh in on this bill, either pro or con? [There was no response.] I will close the hearing on A.B. 339. We do not have anything for work session

yet. In fact, we are still waiting for fiscal notes for some of the bills we are going to be hearing in the next two weeks. With that, we are adjourned [at 3:05 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: March 29, 2007

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 236</u>	C	Assemblyman Settlemeyer	Envelope containing sales and use tax return
<u>A.B. 236</u>	D	Assemblyman Settlemeyer	Issue for <u>A.B. 236</u>
<u>A.B. 339</u>	E	John Auer / Reno First United Methodist Church	Prepared testimony in support
<u>A.B. 339</u>	F	Pat Smith / Reno First United Methodist Church	Prepared testimony in support
<u>A.B. 339</u>	G	John Emerson / United Methodist Church	Prepared testimony in support and Religious Freedom Restoration Act of 1993
<u>A.B. 339</u>	H	John Swendseid / Swendseid & Stern	Letter from Stone & Youngberg in opposition
<u>A.B. 339</u>	I	John Swendseid / Swendseid & Stern	Prepared testimony in opposition
<u>A.B. 339</u>	J	Bill Gregory / The Howard Hughes Corporation	Internal communication in opposition
<u>A.B. 339</u>	K	Shaun Jillions / City of Henderson	Fiscal note