

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-fourth Session
March 13, 2007**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 1:34 p.m. on Tuesday, March 13, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Randolph J. Townsend, Vice Chair
Senator Dean A. Rhoads
Senator Mark E. Amodei
Senator Bob Coffin
Senator Michael A. Schneider
Senator Terry Care

GUEST LEGISLATORS PRESENT:

Senator Joyce Woodhouse, Clark County Senatorial District No. 5

STAFF MEMBERS PRESENT:

Tina Calilung, Deputy Fiscal Analyst
Russell J. Guindon, Senior Deputy Fiscal Analyst
Shauna Kirk, Committee Secretary

OTHERS PRESENT:

Russell M. Rowe, Focus Property Group
Dino DiCianno, Executive Director, Department of Taxation
Richard J. Pozesky, President, Nevada Association of Medical Products
Suppliers
Lester Burgwardt
Patricia McGowan

Senate Committee on Taxation
March 13, 2007
Page 2

Julianne Ormsby

CHAIR MCGINNESS:

I will open this meeting on Senate Bill (S.B.) 154.

SENATE BILL 154: Revises provisions governing taxes on transfers of real property. (BDR 32-712)

RUSSELL M. ROWE (Focus Property Group):

You have an amendment from us that proposes to delete section 2, which would be the new subsection 15. This bill did not come out as we anticipated. This new subsection created a new exemption under the transfer tax which is not what we were trying to do. We met with the Department of Taxation, and the fiscal note applies completely to subsection 15. Deleting it takes care of the fiscal note and concerns they have with some problems the language could have caused. We want that on the record because the Department of Taxation and others were concerned.

CHAIR MCGINNESS:

Senator Townsend, do you have the fiscal note on S.B. 154?

SENATOR TOWNSEND:

I do not.

CHAIR MCGINNESS:

The Committee needs to see the \$150-million fiscal note. As Mr. Rowe said, the fiscal note is going away with deletion of those lines.

MR. ROWE:

That is why I mentioned the fiscal note first so it is clarified for the Committee. The intention of the bill was to clarify subsection 1 of the *Nevada Revised Statute (NRS)* 375.090 which speaks to exemption for transfers between related entities. We represent Focus Property Group in their land acquisitions. They are sometimes involved in large transactions of land with the U.S. Department of the Interior, Bureau of Land Management (BLM). Land acquisitions involve the transfer tax. The problem involves transfers that occur after the acquisition of large parcels. We worked with the Clark County Recorder's Office on specific transactions in the City of Henderson wherein we received a notice of exemption. The exemption came partly under subsection 1

and partly under subsection 13 of the regulations dealing with liquidation of entities. That motivated us to ask for this clarification of subsection 1. The first hurdle was whether the exemption applies to only corporations or business entities. The intent seems clear from legislative history on the transfer tax and language of subsection 1. It just speaks to corporations. We want to make that clarification.

SENATOR CARE:

What business entities are you talking about? The reason I ask is because we have limited liability corporations (LLC), economic interests, limited partnerships, partnerships, limited liability partnerships (LLP) and we may soon have a Nevada LLP. They are not all the same and receive different treatment.

MR. ROWE:

My interpretation is it applies to all entities. We were not comfortable with subsection 15 because there is already a set of regulations and precedents on how the tax is interpreted in specific instances. Subsection 15 creates a lot of confusion and could potentially broaden beyond what we would accept. I do not want to speak on behalf of the Department of Taxation. It is better to leave it as set up than create the language in subsection 15. It always applies to all entities in my interpretation and with attorneys I work with on transfer tax issues. It is a matter of the transaction details that have to be proven to the recorder and their auditors.

SENATOR CARE:

Give me an example. Focus Property Group bids on public land auctions, and the purchaser is not Focus Property Group but perhaps an LLC or something set up for the particular purchase?

MR. ROWE:

That is correct. I can hand out a chart if you want to see it. What happens in these transactions, particularly with BLM property over 1,500 to 2,000 acres, is that no one entity can afford the purchase price. The land in Henderson, which is under an LLC called South Edge, was a \$500-million transaction. South Edge LLC is created; the members belong to the Focus Property Group and a number of nationwide home builders. Each member puts in a share of money to buy specific property. South Edge LLC's only purpose of existence is to acquire and transfer the property and then cease to exist. That is it. It is outlined in the operating agreement, and all members sign it before the acquisition of property.

Once acquired, the operating agreement is executed through the subdivision and distribution of land to its members. We worked with the County Recorder's Office over a six-month period and walked them through the transaction so they know the members, as well as each member's proportionate share. It can be tracked and traced. Nothing in that operating agreement can change once the property is acquired. Otherwise, the exemption does not apply. When combining the intent of subsection 1 with the exemption provided within the regulations for liquidation of entities, we have that property exempted. Having the language in subsection 1 changed to "business entity" provides clarification of legislative intent. The liquidation provision in the regulations speaks to corporations. It would not make sense if read strictly in comparison to the statutes.

SENATOR CARE:

You have a Focus Group LLC, and they buy so many acres; then you have another Focus Group LLC and another Focus Group LLC. These groups have the same members in each LLC and do not have the capital to purchase the property at one time, but you have common ownership in each one of the LLCs.

MR. ROWE:

You have one entity, whether it is a corporation or an LLC. The members do not necessarily have equivalent shares. One member may have an investment representing 20 percent of the purchase price. Is that what you are saying?

SENATOR CARE:

It states the group has identical common ownership. It does not address the issue of 20-percent economic interest here, 10 percent over here. It is the same players, correct?

MR. ROWE:

That is correct. The players do not change. We have a policy concern. In the process of building homes, the land is acquired from the BLM, and transfer tax is paid on that transaction. This exemption changed in 2001 or 2003. In this instance, a \$2-million transfer tax was paid. Then the property is subdivided and transferred as contemplated under the operating agreement to the owners in direct proportion to their shares. They become members of the LLC with intent to acquire the property. The LLC pays the transfer tax, distributes shares to its members and is potentially taxed again on the transfer. When the homes are built by individual builders and sold, the property is taxed a third time. You end up with three layers of transfer tax because the only way to acquire the

property is to get enough entities together to pool their money and buy the land. The intent of this tax was not to layer tax three times, particularly when outlined in an operating agreement and executed accordingly.

SENATOR COFFIN:

Is this the revised fiscal note or the original in the new handout we received?

CHAIR MCGINNESS:

No. This is the original fiscal note. If you eliminate lines 11 through 14 on page 3, this fiscal note does not apply.

SENATOR COFFIN:

If it is the same people, there is no reason we should tax the same land so many times. What they propose to do is take it to the other limited liability areas. We end up collecting the transfer tax twice if we amend this, or am I assuming too much? Is it still collected on the initial transfer?

MR. ROWE:

That is correct. It is paid when the property is initially acquired and paid again when the homes are transferred to the first home buyer.

SENATOR AMODEI:

I need to disclose that Mr. Rowe is a member of the law firm where I am employed. Pursuant to NRS 281.501, I have a disclosure statement which remains a public document on file with the Director of the Legislative Counsel Bureau. I also disclose no pecuniary interest on my part in the passage or failure of S.B. 154 nor do I have a commitment in a private capacity to Kummer, Kaempfer, Bonner, Renshaw and Ferrario or the Focus Property Group as to this bill.

CHAIR MCGINNESS:

Was the language you are proposing to delete on page 3 originally put in by you or something that came out of the Legal Division?

MR. ROWE:

That came from the Legal Division. We drafted language to clarify subsection 1 with similar language, never intending it to become a new exemption. When it came in this form, we immediately knew it was not what we intended. We sat down with the Department of Taxation to discuss their concerns and agreed we

did not need that language in subsection 1. The point is to clarify that subsection 1 applies to all entities as the original intent when drafted. We did not want to create additional exemptions nor potential difficulties for the Recorder's Office and Department of Taxation in continuing to interpret the exemptions.

CHAIR MCGINNESS:

Are the recorders currently collecting this layer of transfer tax?

MR. ROWE:

I can only speak for Focus Property Group. In that specific instance, they did collect it on the original acquisition from the BLM. They have not collected it on the distribution, per the operating agreement, which was determined under the notice of exemption from the Recorder's Office. That was based on subsection 1 and the liquidation provision of the regulations.

CHAIR MCGINNESS:

There should not be a fiscal note because they are not collecting the transfer tax.

MR. ROWE:

Yes, providing we delete subsection 15.

DINO DICIANNO (Executive Director, Department of Taxation):

Mr. Rowe is correct. It is important to read it in its entirety. Section 1, subsection 1 of S.B. 154 states "A mere change in identity, form or place of organization, such as a transfer between a business entity" In that situation, you are not creating an exemption. You are clarifying that any change in the identity of one business with another business does not create a transfer tax situation. The problem with subsection 15 is in terms of transfers between the business entity and its owners, which could create a taxable transaction. That is the distinction. If subsection 15 goes away, the fiscal note is zero.

CHAIR MCGINNESS:

We will close the hearing on S.B. 154 and open the hearing on S.B. 172.

SENATE BILL 172: Proposes to exempt sales of certain mobility-enhancing equipment from sales and use taxes and analogous taxes. (BDR 32-865)

SENATOR JOYCE WOODHOUSE (Clark County Senatorial District No. 5):

At the request of a constituent, I ask for an exemption from Sales and Use Tax for chairlifts prescribed by a physician. I would like to quote from a letter I received from Mr. Lester Burgwardt ([Exhibit C](#)). He approves and supports me quoting from his initial letter regarding his problem.

I have known Mr. Burgwardt for many years. He is a retired teacher. He is 85 years old. He and his wife are on a fixed income. They made every effort to sell their two-story home so they could purchase a one story. Because of their income, they were unable to make a purchase. In addition, Assembly Bill 169 introduced in the other House is similar to S.B. 172 with the addition of canes, hospital beds in the home, crutches, walkers and manual or motorized wheelchairs or scooters. If this bill passes, these items have to be prescribed by a physician for exemption from the Sales and Use Tax. I support these additions as an amendment to S.B. 172. I believe S.B. 172 is the right and fair thing to do for our senior citizens and so many others in these difficult medical situations. I urge your support of this bill.

ASSEMBLY BILL 169: Proposes to exempt sales of certain durable medical equipment and mobility-enhancing equipment from sales and use taxes and analogous taxes. (BDR 32-812)

RICHARD J. POZESKY (President, Nevada Association of Medical Products Suppliers):

I am here in support of S.B. 172. Assembly Bill 169 had a lot of input from me as this is my personal passion. When you review S.B. 172, you will see the need to clarify language as to who receives a tax exemption for mobility-enhancing equipment. The intent is not to give tax exemptions for medical devices to cosmetic surgery centers or radiological centers where they are paying \$250,000 for a magnetic resonance image system. This exemption is for the home-bound patient. I am going to read a paragraph from my summary ([Exhibit D](#)); the wording should be similar to this.

My summary lists some mobility-enhancing equipment considered medical devices. The question I am asked by Legislators is what is the fiscal impact? This is a difficult number to produce. Because I have the platform of the Nevada Association of Medical Products Suppliers, I asked my 90 members to give feedback as to what they pay in Sales and Use Tax each month. You will notice it is minimal. We estimate the cost to the state is approximately \$30,000 a

month. This \$30,000 is paid by the sick and injured. Governmental agencies including Medicare, Medicaid and the Veterans Administration are tax-exempt by Nevada law passed in 2001. Prescription drugs and prosthetics are also tax-exempt under NRS 372.283. We are asking to pass a bill to benefit citizens of Nevada who are sick or disabled and cannot afford it.

CHAIR MCGINNESS:
Is Mr. Burgwardt there?

MR. POZESKY:
Yes.

CHAIR MCGINNESS:
Does he wish to speak?

LESTER BURGWARDT:
I want to thank Senator Woodhouse for her support on this bill.

SENATOR TOWNSEND:
The fiscal note for S.B. 172 is listed in fiscal year August 2009 for approximately \$2.5 million. Is that because the bill must pass since it is a ballot question and that takes all the tax off, or is that the total loss? I am reading Local School Support Tax (LSST), a local government loss. Are all 7-plus percent gone based on this? Does a portion of the bill say that if the 2 percent passes, then the other is also lost?

RUSSELL J. GUINDON (Senior Deputy Fiscal Analyst):
Senator Townsend is correct in his interpretation of the fiscal note that says compliance division that was submitted by the Department of Taxation. The 2-percent General Fund loss would be the loss of the State General Fund from the 2 percent, and that portion requires this to go to the vote of the people. The 2 percent needs to amend the Sales and Use Tax Act of 1955, then the LSST goes to the school district. The local government losses are all the other rates in the basic city-county relief tax and supplemental city-county relief tax as well as any other optional rates imposed.

SENATOR TOWNSEND:
The devices affected are expensive. How did we get to \$2.5 million? Do we accumulate statistics somewhere in the Division of Mental Health and

Developmental Services? How do we come up with that approximate number? I would like to know the mechanism.

MR. GUINDON:

We should bring Mr. DiCianno from the Department of Taxation since they submitted the fiscal note and have attachments explaining the process.

MR. DiCIANNO:

We utilize the North American Industry Classification System codes provided to us based upon the Sales and Use Tax returns we receive from businesses that sell, rent or lease these types of mobility-enhancing equipment. The gentleman in Las Vegas is correct. Currently, the statute exempts certain supports and casts, appliances, supplies related to ostomy products for human dialysis and medicine exempt from Sales and Use Tax. By going to the vote of the people, this bill exempts canes, crutches, wheelchairs etc. prescribed by doctors.

SENATOR TOWNSEND:

I would like to see if we can get this done better and quicker. If medical devices are currently exempt from the Sales and Use Tax, if you talk to Legislative Counsel Bureau (LCB), we will have an opportunity to define the devices captured under that component. Then you do not have to go to the ballot. You are defining it better under the current statute of what is exempt. Do you understand what I am saying? I do not know if you can do that in your Department.

MR. DiCIANNO:

No, it would be better if it came from LCB. Let me explain why this has to go to the vote of the people the way it is written. We are part of the Streamlined Sales and Use Tax Agreement. We can no longer have split-rate exemptions. If it is a matter of legal definition, I look to you.

SENATOR TOWNSEND:

If we statutorily opined that we could define and encompass these devices in the Sales and Use Tax exemption, then that would be good enough for you. Is that a fair assessment?

MR. DiCIANNO:

That is a fair assessment.

SENATOR TOWNSEND:

When we received documents regarding the cost of these devices, we were surprised at the expense. These things are very important to people. I am not disagreeing with you. I want to get this done in a way that takes effect immediately. We should ask the Legal Division to look into that possibility.

CHAIR MCGINNESS:

That would be appropriate. Are any exemptions out there in the ballpark? Did we take away all exemptions with our vote on Question 8?

MR. DiCIANNO:

Not all of them.

MR. POZESKY:

Information from the federal government describes a medical device and includes everything from a tongue depressor to a complex, programmable pacemaker. If we utilize what the Food and Drug Administration and the Internal Revenue Service state as medical devices and ensure we utilize the language used at the beginning of my testimony, we can fine-tune this to help these citizens. The expense of a child dependent on a ventilator is approximately \$30,000. If you add 7 percent or more, it is a lot of money.

SENATOR COFFIN:

This Committee has been cautious about exemption bills over the last eight to ten years. We have had to make up the money somewhere else. The bills do not provide a method to replace the amount of money reduced in the General Fund.

MR. POZESKY:

I agree with you. We need the money. Do we need the money from the disabled, sick and injured? We need the money in the state, but look at who is paying. It is not the business owner or corporation; it is the people sitting in front of you today. I will volunteer my time to work with whomever you want to make sure this is as tight as possible.

PATRICIA MCGOWAN:

I have lived in Nevada since 1955. I live in senior housing and earn less than \$700 a month. Without this scooter, I could not be here because I cannot walk from here to the stairway. Medicaid pays for anything I need in the house.

I guess Medicaid does not care if I ever go out. I can do all my own shopping, go to the mall, get to the doctors and do a lot of things with this scooter. I can take care of myself. I do not know what I would do without it. I know several other people in the same position.

CHAIR MCGINNESS:
What is the cost of the vehicle you are using?

Ms. MCGOWAN:
I had to buy it used at \$600. They are \$3,000 new. It costs as much as the wheelchairs. They will not pay for a scooter because I do not need it in the house.

JULIANNE ORMSBY:
I am here on behalf of a relative who suffers from a debilitating disease. People with multiple sclerosis (MS) often suffer from exacerbations. They can be walking unaided one day, carrying a cane the next day and using a scooter or wheelchair thereafter. People with MS and other diseases often pay for multiple pieces of mobility-enhancing equipment. You have a lot of things to consider this session, but I hope you help people who need to buy this equipment.

CHAIR MCGINNESS:
We will close the hearing on S.B. 172. We have S.B. 147 for our work session that revises provisions governing the use tax on motor vehicle fuel that only affects Carson City by allowing them to use the fuel tax for construction, maintenance and repair. There is no opposition and no amendments.

SENATE BILL 147: Revises provisions governing the use in certain counties of taxes on motor vehicle fuel. (BDR 32-938)

Senate Committee on Taxation
March 13, 2007
Page 12

SENATOR TOWNSEND MOVED TO DO PASS S.B. 147.

SENATOR AMODEI SECONDED THE MOTION.

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

* * * * *

CHAIR MCGINNESS:

The meeting of the Senate Committee on Taxation is now adjourned at 2:18 p.m.

RESPECTFULLY SUBMITTED:

Shauna Kirk,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: _____