

Amendment No. 822

Senate Amendment to Assembly Bill No. 492 First Reprint
(BDR 32-602)

Proposed by: Senate Committee on Taxation

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

RBL/BJE



Date: 5/18/2009

A.B. No. 492—Imposes certain requirements on the enactment of legislation and the provision of notice regarding certain tax abatements and exemptions. (BDR 32-602)



ASSEMBLY BILL NO. 492—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 23, 2009

Referred to Committee on Government Affairs

SUMMARY—Imposes certain requirements on the enactment of legislation and the provision of notice regarding certain tax abatements and exemptions. (BDR 32-602)

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 taxation; imposing certain requirements on the enactment of exemptions from property taxes and sales and use taxes; imposing certain requirements on legislation revising the authority of the Commission on Economic Development to approve abatements of taxes; requiring the Commission to notify affected political subdivisions before taking action on such abatements; requiring certain reports from the Department of Taxation; creating a permanent Legislative Committee on Taxation and Tax Policy; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill carries out the provisions of Section 6 of Article 10 of the Nevada Constitution, which became effective on November 25, 2008, through the statutory imposition of those constitutional requirements regarding the enactment by the Legislature of any exemptions from property taxes or sales and use taxes.

Existing law authorizes the Commission on Economic Development to grant to certain businesses partial abatements of property taxes, business taxes and local sales and use taxes. (NRS 274.310, 274.320, 274.330, 360.750, 361.0687, 363B.120, 374.357, 701A.210) **Sections 2 and 3** of this bill impose various requirements upon future state legislation expanding the authority of the Commission to approve any abatements of taxes and require the Department of Taxation to prepare biennial reports for the Legislature on whether the costs of such future abatements exceed the benefits thereof.

Section 4 of this bill requires the Commission on Economic Development to provide notice to affected political subdivisions at least 30 days before taking action on an application for any abatement of taxes imposed on a business. **Section 5** of this bill repeals various provisions which partially duplicate the provisions of **section 4**.

Sections 7 to 12, inclusive, of this bill create a permanent Legislative Committee on Taxation and Tax Policy to review and evaluate issues related to taxation in this State.

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, 3 and 4 of this act.

Sec. 2. *In accordance with Section 6 of Article 10 of the Constitution of the State of Nevada:*

1. The Legislature shall not enact an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail unless the Legislature finds that the exemption:

(a) Will achieve a bona fide social or economic purpose and the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

(b) Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

2. In enacting an exemption from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail, the Legislature shall ensure that the requirements for claiming the exemption are as similar as practicable for similar classes of taxpayers.

Sec. 3. *1. Any state legislation enacted on or after July 1, 2009, which authorizes or requires the Commission on Economic Development to approve any abatement of taxes or increases the amount of any abatement of taxes which the Commission is authorized or required to approve:*

(a) Expires by limitation 10 years after the effective date of that legislation.

(b) Does not apply to:

(1) Any taxes imposed pursuant to NRS 374.110 or 374.190; or

(2) Any entity that receives:

(I) Any funding from a governmental entity, other than any private activity bonds as defined in 26 U.S.C. § 141; or

(II) Any real or personal property from a governmental entity at no cost or at a reduced cost.

(c) Requires each recipient of the abatement to submit to the Department, on or before the last day of each even-numbered year, a report on whether the recipient is in compliance with the terms of the abatement. The Department shall establish a form for the report and may adopt such regulations as it determines to be appropriate to carry out this paragraph. The report must include, without limitation:

(1) The date the recipient commenced operation in this State;

(2) The number of employees actually employed by the recipient and the average hourly wage of those employees;

(3) An accounting of any fees paid by the recipient to the State and to local governmental entities;

(4) An accounting of the property taxes paid by the recipient and the amount of those taxes that would have been due if not for the abatement;

(5) An accounting of the sales and use taxes paid by the recipient and the amount of those taxes that would have been due if not for the abatement;

(6) An accounting of the total capital investment made in connection with the project to which the abatement applies; and

(7) *An accounting of the total investment in personal property made in connection with the project to which the abatement applies.*

2. *On or before January 15 of each odd-numbered year, the Department shall:*

(a) *Based upon the information submitted to the Department pursuant to paragraph (c) of subsection 1, prepare a written report of its findings regarding whether the costs of the abatement exceed the benefits of the abatement; and*

(b) *Submit the report to the Director of the Legislative Counsel Bureau for transmittal to the Legislature.*

Sec. 4. *1. If the Commission on Economic Development receives an application for any abatement of taxes imposed on a business, the Commission shall, at least 30 days before the meeting at which the Commission takes any action on the application, provide notice of the application to:*

(a) *The governing body of the county, the board of trustees of the school district and the governing body of the city or town, if any, in which the business is or will be located; and*

(b) *The governing body of any other political subdivision that could be affected by the abatement.*

2. *The notice required by this section must set forth the date, time and location of the meeting at which the Commission on Economic Development will consider the application.*

3. *The Commission on Economic Development shall adopt regulations relating to the notice required by this section.*

Sec. 5. NRS 360.750 is hereby amended to read as follows:

360.750 1. A person who intends to locate or expand a business in this State may apply to the Commission on Economic Development for a partial abatement of one or more of the taxes imposed on the new or expanded business pursuant to chapter 361, 363B or 374 of NRS.

2. The Commission on Economic Development shall approve an application for a partial abatement if the Commission makes the following determinations:

(a) The business is consistent with:

(1) The State Plan for Industrial Development and Diversification that is developed by the Commission pursuant to NRS 231.067; and

(2) Any guidelines adopted pursuant to the State Plan.

(b) The applicant has executed an agreement with the Commission which must:

(1) Comply with the requirements of NRS 360.755;

(2) State that the business will, after the date on which a certificate of eligibility for the abatement is issued pursuant to subsection ~~5~~ 4, continue in operation in this State for a period specified by the Commission, which must be at least 5 years, and will continue to meet the eligibility requirements set forth in this subsection; and

(3) Bind the successors in interest of the business for the specified period.

(c) The business is registered pursuant to the laws of this State or the applicant commits to obtain a valid business license and all other permits required by the county, city or town in which the business operates.

(d) Except as otherwise provided in NRS 361.0687, if the business is a new business in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the business meets at least two of the following requirements:

(1) The business will have 75 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation.

(2) Establishing the business will require the business to make a capital investment of at least \$1,000,000 in this State.

(3) The average hourly wage that will be paid by the new business to its employees in this State is at least 100 percent of the average statewide hourly wage as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The business will provide a health insurance plan for all employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its employees in this State will meet the minimum requirements for benefits established by the Commission by regulation pursuant to subsection ~~9-1~~ 8.

(e) Except as otherwise provided in NRS 361.0687, if the business is a new business in a county whose population is less than 100,000 or a city whose population is less than 60,000, the business meets at least two of the following requirements:

(1) The business will have 15 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation.

(2) Establishing the business will require the business to make a capital investment of at least \$250,000 in this State.

(3) The average hourly wage that will be paid by the new business to its employees in this State is at least 100 percent of the average statewide hourly wage or the average countywide hourly wage, whichever is less, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year and:

(I) The business will provide a health insurance plan for all employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its employees in this State will meet the minimum requirements for benefits established by the Commission by regulation pursuant to subsection ~~9-1~~ 8.

(f) If the business is an existing business, the business meets at least two of the following requirements:

(1) The business will increase the number of employees on its payroll by 10 percent more than it employed in the immediately preceding fiscal year or by six employees, whichever is greater.

(2) The business will expand by making a capital investment in this State in an amount equal to at least 20 percent of the value of the tangible property possessed by the business in the immediately preceding fiscal year. The determination of the value of the tangible property possessed by the business in the immediately preceding fiscal year must be made by the:

(I) County assessor of the county in which the business will expand, if the business is locally assessed; or

(II) Department, if the business is centrally assessed.

(3) The average hourly wage that will be paid by the existing business to its new employees in this State is at least the amount of the average hourly wage required to be paid by businesses pursuant to subparagraph (2) of either paragraph (a) or (b) of subsection 2 of NRS 361.0687, whichever is applicable, and:

(I) The business will provide a health insurance plan for all new employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its new employees in this State will meet the minimum requirements for benefits established by the Commission by regulation pursuant to subsection ~~9-1~~ 8.

(g) In lieu of meeting the requirements of paragraph (d), (e) or (f), if the business furthers the development and refinement of intellectual property, a patent or a copyright into a commercial product, the business meets at least two of the following requirements:

(1) The business will have 10 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation.

(2) Establishing the business will require the business to make a capital investment of at least \$500,000 in this State.

(3) The average hourly wage that will be paid by the new business to its employees in this State is at least the amount of the average hourly wage required to be paid by businesses pursuant to subparagraph (2) of either paragraph (a) or (b) of subsection 2 of NRS 361.0687, whichever is applicable, and:

(I) The business will provide a health insurance plan for all employees that includes an option for health insurance coverage for dependents of the employees; and

(II) The cost to the business for the benefits the business provides to its employees in this State will meet with minimum requirements established by the Commission by regulation pursuant to subsection ~~9-1~~ 8.

3. Notwithstanding the provisions of subsection 2, the Commission on Economic Development:

(a) Shall not consider an application for a partial abatement unless the Commission has requested a letter of acknowledgment of the request for the abatement from any affected county, school district, city or town.

(b) May, if the Commission determines that such action is necessary:

(1) Approve an application for a partial abatement by a business that does not meet the requirements set forth in paragraph (d), (e), (f) or (g) of subsection 2;

(2) Make the requirements set forth in paragraph (d), (e), (f) or (g) of subsection 2 more stringent; or

(3) Add additional requirements that a business must meet to qualify for a partial abatement.

~~4. If a person submits an application to the Commission on Economic Development pursuant to subsection 1, the Commission shall provide notice to the governing body of the county, the board of trustees of the school district and the governing body of the city or town, if any, in which the person intends to locate or expand a business. The notice required pursuant to this subsection must set forth the date, time and location of the hearing at which the Commission will consider the application.~~

~~5-1~~ 5. If the Commission on Economic Development approves an application for a partial abatement, the Commission shall immediately forward a certificate of eligibility for the abatement to:

(a) The Department;

(b) The Nevada Tax Commission; and

(c) If the partial abatement is from the property tax imposed pursuant to chapter 361 of NRS, the county treasurer.

~~6-1~~ 5. An applicant for a partial abatement pursuant to this section or an existing business whose partial abatement is in effect shall, upon the request of the Executive Director of the Commission on Economic Development, furnish the Executive Director with copies of all records necessary to verify that the applicant meets the requirements of subsection 2.

~~6.~~ 6. If a business whose partial abatement has been approved pursuant to this section and is in effect ceases:

(a) To meet the requirements set forth in subsection 2; or

(b) Operation before the time specified in the agreement described in paragraph (b) of subsection 2,

the business shall repay to the Department or, if the partial abatement was from the property tax imposed pursuant to chapter 361 of NRS, to the county treasurer, the amount of the exemption that was allowed pursuant to this section before the failure of the business to comply unless the Nevada Tax Commission determines that the business has substantially complied with the requirements of this section. Except as otherwise provided in NRS 360.232 and 360.320, the business shall, in addition to the amount of the exemption required to be paid pursuant to this subsection, pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made had the partial abatement not been approved until the date of payment of the tax.

~~7.~~ 7. A county treasurer:

(a) Shall deposit any money that he receives pursuant to subsection ~~6~~ 6 in one or more of the funds established by a local government of the county pursuant to NRS 354.6113 or 354.6115; and

(b) May use the money deposited pursuant to paragraph (a) only for the purposes authorized by NRS 354.6113 and 354.6115.

~~8.~~ 8. The Commission on Economic Development:

(a) Shall adopt regulations relating to ~~the~~

~~(1) The~~ the minimum level of benefits that a business must provide to its employees if the business is going to use benefits paid to employees as a basis to qualify for a partial abatement; and

~~(2) The notice that must be provided pursuant to subsection 4.~~

(b) May adopt such other regulations as the Commission on Economic Development determines to be necessary to carry out the provisions of this section and NRS 360.755.

~~9.~~ 9. The Nevada Tax Commission:

(a) Shall adopt regulations regarding:

(1) The capital investment that a new business must make to meet the requirement set forth in paragraph (d), (e) or (g) of subsection 2; and

(2) Any security that a business is required to post to qualify for a partial abatement pursuant to this section.

(b) May adopt such other regulations as the Nevada Tax Commission determines to be necessary to carry out the provisions of this section and NRS 360.755.

~~10.~~ 10. An applicant for an abatement who is aggrieved by a final decision of the Commission on Economic Development may petition for judicial review in the manner provided in chapter 233B of NRS.

Sec. 6. Chapter 218 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 12, inclusive, of this act.

Sec. 7. As used in sections 7 to 12, inclusive, of this act, unless the context otherwise requires, "Committee" means the Legislative Committee on Taxation and Tax Policy created by section 8 of this act.

Sec. 8. 1. There is hereby created a Legislative Committee on Taxation and Tax Policy consisting of eight legislative members. The membership of the Committee consists of:

(a) The immediate past Chairman of the Senate Committee on Taxation;

(b) The immediate past Chairman of the Assembly Committee on Taxation;

(c) Three members appointed by the Majority Leader of the Senate, at least one of whom must be a member of the minority political party; and

(d) Three members appointed by the Speaker of the Assembly, at least one of whom must be a member of the minority political party.

2. The immediate past Chairman of the Senate Committee on Taxation is the Chairman of the Committee for the period ending with the convening of each odd-numbered session of the Legislature. The immediate past Chairman of the Assembly Committee on Taxation is the Chairman of the Committee during the next legislative interim, and the chairmanship alternates between the Houses of the Legislature according to this pattern.

3. Any member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve until the next session of the Legislature convenes.

4. Vacancies on the Committee must be filled in the same manner as original appointments.

5. The Committee shall report annually to the Legislative Commission concerning its activities and recommendations.

Sec. 9. 1. The members of the Legislative Committee on Taxation and Tax Policy shall meet throughout each year at the times and places specified by a call of the Chairman or a majority of the Committee.

2. The Director of the Legislative Counsel Bureau or a person he designates shall act as the nonvoting recording Secretary.

3. The Committee shall adopt rules for its own management and government.

4. Except as otherwise provided in this subsection, five members of the Committee constitute a quorum, and a quorum may exercise all the powers conferred on the Committee. Any recommended legislation proposed by the Committee must be approved by a majority of the members of the Senate and by a majority of the members of the Assembly serving on the Committee.

5. Except during a regular or special session of the Legislature, each member of the Committee is entitled to receive the compensation provided for a majority of the members of the Legislature during the first 60 days of the preceding regular session for each day or portion of a day during which he attends a meeting of the Committee or is otherwise engaged in the business of the Committee plus the per diem allowance provided for state officers and employees generally and the travel expenses provided for state officers and employees generally. The salaries and expenses of the Committee must be paid from the Legislative Fund.

Sec. 10. 1. The Legislative Committee on Taxation and Tax Policy shall review and evaluate:

(a) Taxes imposed in this State, the rates of such taxes, tax exemptions, tax abatements and any specified use of revenues from taxes; and

(b) The efficiency and effectiveness of the collection and administration of taxes in this State.

2. The Committee may:

(a) Conduct investigations and hold hearings in connection with its review and study;

(b) Apply for any available grants and accept any gifts, grants or donations and use any such gifts, grants or donations to aid the Committee in carrying out its duties pursuant to sections 7 to 12, inclusive, of this act;

(c) Direct the Legislative Counsel Bureau to assist in its research, investigations, review and study; and

(d) Recommend to the Legislature, as a result of its review and study, any appropriate legislation.

3. The Committee may appoint a technical advisory group to assist the Committee. Members of any technical advisory group serve without compensation.

Sec. 11. 1. In conducting the investigations and hearings of the Legislative Committee on Taxation and Tax Policy:

(a) Any member of the Committee may administer oaths.

(b) The Chairman of the Committee may cause the deposition of witnesses, residing either within or outside of the State, to be taken in the manner prescribed by rule of court for taking depositions in civil actions in the district courts.

(c) The Chairman of the Committee may issue subpoenas to compel the attendance of witnesses and the production of books, papers and documents.

2. If any witness refuses to attend or testify or produce any books, papers and documents as required by the subpoena, the Chairman of the Committee may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books, papers and documents;

(b) The witness has been subpoenaed by the Committee pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books, papers and documents required by the subpoena before the Committee which is named in the subpoena, or has refused to answer questions propounded to him,

and asking for an order of the court compelling the witness to attend and testify or produce the books, papers and documents before the Committee.

3. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and to show cause why he has not attended or testified or produced the books, papers or documents before the Committee. A certified copy of the order must be served upon the witness.

4. If it appears to the court that the subpoena was regularly issued by the Committee, the court shall enter an order that the witness appear before the Committee at the time and place fixed in the order and testify or produce the required books, papers or documents. Failure to obey the order constitutes contempt of court.

Sec. 12. Each witness who appears before the Legislative Committee on Taxation and Tax Policy by its order, except a state officer or employee, is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of record of this State. The fees and mileage must be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the Chairman of the Committee.

~~(Sec. 6.)~~ Sec. 13. This act becomes effective on July 1, 2009.