

**MINUTES OF THE  
JOINT MEETING OF THE ASSEMBLY COMMITTEE ON TAXATION  
AND THE  
SENATE COMMITTEE ON TAXATION**

**Seventy-Fifth Session  
May 14, 2009**

The Joint Assembly Committee on Taxation and the Senate Committee on Taxation was called to order by Chair Kathy McClain at 1:40 p.m. on Thursday, May 14, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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/75th2009/committees/](http://www.leg.state.nv.us/75th2009/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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**ASSEMBLY COMMITTEE MEMBERS PRESENT:**

Assemblywoman Kathy McClain, Chair  
Assemblywoman Marilyn Kirkpatrick, Vice Chair  
Assemblyman Paul Aizley  
Assemblyman Bernie Anderson  
Assemblyman Morse Arberry Jr.  
Assemblyman Tom Grady  
Assemblyman Don Gustavson  
Assemblywoman Ellen Koivisto  
Assemblywoman Sheila Leslie  
Assemblyman Richard McArthur  
Assemblywoman Peggy Pierce

**SENATE COMMITTEE MEMBERS PRESENT:**

Senator Bob Coffin, Chair  
Senator Terry Care, Vice Chair  
Senator Michael A. Schneider  
Senator Maggie Carlton  
Senator Randolph Townsend  
Senator Mike McGinness  
Senator Maurice E. Washington

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Ed A. Goedhart (excused)  
Assemblyman Harry Mortenson (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legislative Counsel  
Russell J. Guindon, Senior Deputy Fiscal Analyst  
Michael Nakamoto, Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Mary Garcia, Committee Secretary  
Michael Wiley, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Alfredo Alonso, Lewis and Roca LLP, Reno, Nevada, representing  
Southern Wine and Spirits, Las Vegas, Nevada, and Nevada Beer  
Wholesalers Association, Sparks, Nevada  
Gary E. Milliken, representing Associated General Contractors, Las Vegas,  
Nevada  
David Goldwater, President, Goldwater Capital Nevada LLC, Las Vegas,  
Nevada  
Rocky Finseth, President and CEO, Carrara Nevada, Las Vegas, Nevada  
Jack Kim, Las Vegas, Nevada, Vice President, State Government Affairs,  
UnitedHealth Group, Inc., Minnetonka, Minnesota

David Kallas, Detective, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc., and Southern Nevada Conference of Police and Sheriffs, Las Vegas, Nevada  
Terry Hickman, Executive Director, Nevada State Education Association, Las Vegas, Nevada  
William Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada  
Jan Gilbert, Washoe Valley, Nevada, Northern Nevada Coordinator, Carson City Office, Progressive Leadership Alliance of Nevada, Las Vegas, Nevada  
Rusty McAllister, President, Professional Fire Fighters of Nevada, Las Vegas, Nevada  
Steve Hill, Chairman, Board of Trustees, Las Vegas Chamber of Commerce, Las Vegas, Nevada  
Josh Griffin, Griffin Crowley Group, Las Vegas, Nevada, representing MGM Mirage, Las Vegas, Nevada  
Tim Crowley, President, Nevada Mining Association, Reno, Nevada  
James Wadhams, Jones Vargas, Las Vegas, Nevada, representing Southern Nevada Home Builders Association, Las Vegas, Nevada  
Pilar Weiss, Political Director, Culinary Workers Union Local 226, Las Vegas, Nevada  
Bryan Wachter, Deputy Director, Retail Association of Nevada, Carson City, Nevada  
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada  
Daniel Markels, Regional Public Policy Director, National Federation of Independent Business, San Carlos, California  
Dino DiCianno, Executive Director, Department of Taxation

**Chair McClain:**

[Roll was called.] Good afternoon, everybody. The time has arrived to talk about revenues.

Early on in the session, we had many, many hearings where we talked about our revenue situation in this state. We had joint meetings for overviews of state and local tax revenues. We talked about uncollected taxes, tax collections, and tax amnesty. We talked about a business portal.

We were given presentations by the Department of Taxation, the State Treasurer, the State Controller, the Nevada Taxpayers Association, the Nevada Tax Commission, and the Gaming Control Board. We had an overview and discussion of abatements and exemptions, with a terrific report

that staff had worked on in the interim. We heard from the Nevada Association of Counties (NACO) and the Nevada League of Cities. We had county and city governments come to us to talk about the tax situation in this state.

We had an overview and discussion of Nevada's plan for kindergarten through grade 12 (K–12) education funding. We talked about some of the tax studies that have been done over the last 20 years, including one by Price Waterhouse and one that Governor Kenny Guinn had that was done in 2003. We had two separate meetings in one day—one in the afternoon and one in the evening—that were strictly for public input. There has been an awful lot of input from a lot of people about the revenue situation in this state.

I do not think anybody can deny that we have a flawed tax system. Nobody can deny what our economic woes are right now. We thought we were in bad shape when we got the Executive Budget. When the Economic Forum presented its findings on May 1, the situation turned out to be worse than anybody could have imagined. We have spent many, many hours trying to fix the budget without killing every program in this state that serves our residents. Our choice was to fix the budget or to do such things as close some prisons and build a \$200 million new one, cut higher education by \$400 million, close state parks and museums, close mental health facilities, and cut state salaries—not to mention positions—while increasing health insurance costs at the same time.

The budget committees have worked long and hard to try to restore the essential services this state needs. We still have a huge shortfall. I know everybody would like to see a better system devised in this state for revenues. I think everybody on this Committee and everybody in the Legislature would like to see a better, fairer, and more equitable distribution of tax revenue collections.

I had a simple chart made showing the distribution of General Fund revenues by source [later distributed as [Exhibit C](#)]. Here is our problem: Sales and Use Tax constitutes 29.9 percent of our revenue, gaming taxes constitute 26.6 percent, and other taxes, which include such things as the Insurance Premium Tax, the Bank Excise Tax, the Real Property Transfer Tax, and taxes on liquor and cigarettes, make up another 24.7 percent. On the other hand, taxes on mining are only 1 percent of revenues. The Modified Business Tax (MBT) contributes only 10 percent.

I think it is pretty clear that we have an imbalance. Add to that the fact that it is so late in the session that it would be impossible to fix our tax structure now. It would be impossible to come up with a new revenue source right now.

It would take many months to get something in place, and we are in a hole that we need to get out of quickly.

Unfortunately, I worry that we are not going to be digging a hole, but that we are running toward a cliff we are going to fall off of next session. I think there is going to be a lot of work done in the interim to try to balance this structure altogether.

But, for today, since we are going to have to stick with our current sources of revenue, we have to talk about raising those individual sources. Today we are going to have a discussion of the MBT. We have a mock-up of the language that we can use to increase the MBT ([Exhibit D](#)).

First, I would like to have Russell Guindon, our Fiscal Analyst, give us some background on the MBT—how we got to where we are with this and its revenue generation. Another thing Russell is going to share with us is Speaker Buckley's idea that, if we raise the MBT, there ought to be some way to give our small businesses a break, since about 74 percent of the businesses in our state are small businesses. After that, Brenda Erdoes, our Legislative Counsel, is going to walk us through a mock-up of the proposed bill.

**Russell J. Guindon, Senior Deputy Fiscal Analyst:**

I thought I might give a brief overview of the MBT on nonfinancial institutions. Those of you who were here during the 2003 Session and the ensuing special sessions will remember that the MBT was a component of the tax package put together at that time. The MBT, in current law, is a tax based on the wages paid by an employer to its employees. There is a deduction for allowable health care, as specified in the statute, and the net amount is what the tax is assessed on. The MBT is paid on a quarterly basis.

Those who were here in 2003 may recall that, when the MBT was first put in place, the initial rate, for fiscal year (FY) 2004, was 0.7 percent. It was then lowered to 0.65 percent for FY 2005. The rate was going to stay at 0.65 percent, but legislation during the 2005 Session lowered it to 0.63 percent. That rate was supposed to remain in effect for two years and then sunset. However, legislation was approved in the 2007 Session that set the rate permanently at 0.63 percent.

Another component of the MBT is the portion on financial institutions. The structure of that tax is the same. It starts with the gross wages an employer pays its employees on a quarterly basis, less allowable health care deductions.

The tax rate on that net amount is 2 percent. That was the initial rate, and it has been in place ever since.

If the MBT were to be considered this session as a source of additional revenue, Speaker Buckley asked staff if its structure could be changed to provide a bit of relief to small businesses and employers. Staff was able obtain the data compiled by the Department of Taxation for FY 2008, and we performed an analysis of that data.

[Distributed a pie chart: "Distribution of General Fund Revenue by Source, 2009–11 Biennium Based on Economic Forum's May 1, 2009, Forecast" and a table: "Modified Business Tax on Nonfinancial Institutions" ([Exhibit C](#)).] At the top of the table, you can see the Economic Forum's forecast for FY 2010 and FY 2011, based on the current structure, which is wages less health care at the 0.63 percent of the taxable wages. Below that on the table, Staff looked at the possibility of tiering the MBT such that there would be a certain rate on wages up to a certain amount and a different rate on wages above that amount.

What you see here is the scenario that has been presented and has been drafted in the mock-up ([Exhibit D](#)) that Brenda Erdoes will present to you. Under this proposal, an annual wage amount of \$250,000 or less—what employers would pay their employees on an annual basis, which amounts to \$62,500 a quarter—would be taxed at 0.5 percent rather than the current 0.63 percent. Anything over \$62,500 a quarter could be taxed at any higher amount you chose. The various rates given as examples in the table ([Exhibit C](#)) are 1 percent, 1.25 percent, 1.50 percent, 1.75 percent, and 2 percent.

There is nothing magical about these higher rates that were chosen for the table. I just asked Staff to put some scenarios together for the Committee's consideration. The 2 percent rate would be equal to the current rate for financial institutions.

The amounts you see on the table are not the amounts that would be generated by the tax change. They are the amounts that would be added by making this tax change. You would add that amount to the Economic Forum's forecast at the top of the table to get the total yield for the fiscal year.

As the Chair pointed out, when Staff was looking at the distribution of the taxes based on the actual FY 2008 information, approximately 74 percent of the taxpayers in FY 2008 paid annual wages of less than \$250,000.

**Senator Carlton:**

My question is on the original description you gave us of the basic formula of how this works. You take the wages and deduct the health care costs to come up with a number. You then multiply that number by the modifier we are talking about. In this case, there will be different modifiers depending on levels of income. Is that correct?

**Russell Guindon:**

Yes. Under current law, you are correct. If you are providing health care to your employees, you would deduct the cost of that health care from the gross wages. Under current law, you would multiply the resulting taxable wage amount by 0.63 percent, or 0.0063. Under the proposal in the table, you would take that quarterly taxable wage amount, and any amount up to \$62,500 inclusive would be taxed at 0.5 percent, or 0.005. Anything over \$62,500 a quarter could be taxed at any of the rates you see in the table, from 1 percent to 2 percent.

**Senator Carlton:**

Do we have any idea what the numbers are for the health care cost deduction and what impact that has on this tax?

**Russell Guindon:**

For the MBT on nonfinancial institutions, the health care is about 7 percent of the tax base. You start with the wages at 100 percent, and the health care deductions account for about a 7 percent reduction to get to the taxable wage amount.

**Senator Care:**

You used the figure of 74 percent for the businesses with payrolls of \$250,000 or less; is that correct? [Mr. Guindon confirmed that.] Do we have any data to suggest those businesses are any less profitable than businesses with payrolls in excess of \$250,000?

**Russell Guindon:**

No, I do not have any information that can tie the taxpayers' gross wages to their profitability.

**Assemblywoman Leslie:**

Does this have any effect on independent contractors or sole proprietors?

**Brenda Erdoes, Legislative Counsel:**

As to sole proprietors—people running their own businesses—it would depend on whether or not they are paying unemployment. If they include that option, their wages would be included here, and they might pay. However, if they do not have any employees, it does not usually work out that way.

We were actually asked to look at independent contractors during the interim. We have done that, and that leads nicely into the mock-up ([Exhibit D](#)). If it is all right, we can go through the mock-up now. [Chair McClain indicated her assent.]

The first three sections have to do with the MBT on financial institutions, which is covered by Chapter 363A of *Nevada Revised Statutes* (NRS). The next sections deal with the MBT on nonfinancial institutions, which is covered by Chapter 363B of NRS. That first section—lines 5–8 on page 1—deals with independent contractors when they are employed to work on the business activities of the business. The concept there is that the business has a choice, if it is making widgets, between having the widgets made by an onsite employee or by an offsite employee who is an independent contractor.

This proposed legislation would now capture the wages for both of those situations. It would capture employees who had not been captured before because they were independent contractors. It would not, however, cover ancillary things, such as an independent contractor hired to paint the business. Those wages would not be included because of the language that says "to perform any business activities of the employer."

The next part of the mock-up changes wages—in a concept that is included throughout the draft—to include unemployment under Chapter 612 of NRS as well as services provided by an independent contractor. We have changed the term from "wages" to "remuneration" so we can still talk about wages that are under Chapter 612 of NRS.

Page 2 of the mock-up explains the definition of "remuneration." It also covers the independent contractors. It covers only the amount paid by the employers to the independent contractors. This does not make the MBT apply to those independent contractors themselves but to the businesses that pay the independent contractors.

The change on page 3 simply changes "wages" to "remuneration." Page 4 starts talking about the MBT for nonfinancial institutions. This has the same changes as subsection 1 of section 1 for employment. Chapters 363A and



363B of NRS are basically parallel, except where they have to differ for financial institutions. The same language is added here for independent contractors.

The difference in the business tax under this draft is in section 5. This section sets up the tiered system that Russell Guindon was telling you about, where all quarterly wages up to \$62,500 will be taxed at the rate of 0.5 percent. No matter how much wages businesses pay, they are all taxed at 0.5 percent on the first \$62,500 for the quarter. Any wages in addition to that \$62,500 would be taxed at the higher rate.

The rest of the changes in the mock-up are simply the parallel changes to Chapter 363B of NRS regarding remuneration for the independent contractors.

**Senator Coffin:**

I want to make sure we do not run afoul of anything relating to independent contractors who are true independent contractors, such as real estate agents. They are paid commissions on sales, whether that comes from their own action as the broker or they are sharing the commission as the master agent. There are also insurance agents and brokers who receive commissions from companies and are independent contractors. I just want to make sure they are not included in this. We went through this six years ago. I want to make sure we are not accidentally catching people whom we never intended to catch.

**Brenda Erdoes:**

I believe that, under this draft, any remuneration paid to an independent contractor, if it is within the realm of the business activities of the employer, would actually be covered. It would be based on the amount paid to the independent contractor.

**Senator Coffin:**

We do not currently tax real estate agents on the commissions they earn. Would this start a . . . ?

**Brenda Erdoes:**

This would not tax real estate agents on the commissions they earn. Depending on how the business was set up, it might tax the employer if there is an employer/employee relationship or an independent contractor relationship for the person who runs the real estate company. They might pay the MBT for that independent contractor for anything that is within the realm of business activity.

**Senator Coffin:**

I am an insurance broker. I receive commissions or consulting fees. They would not be considered remuneration under this, would they?

**Brenda Erdoes:**

I believe they would be considered remuneration if you are paid by a business to perform those tasks.

**Senator Coffin:**

If I were working for a company of consultants or people who were paid a consulting fee by somebody, and I received a payment from them, I can understand where that would be considered payroll, and someone would have to pay a tax on me.

**Brenda Erdoes:**

I think you have identified it correctly. The point is, you have to have a business that is making payments to either employees or independent contractors to conduct their business before you have to pay the MBT.

**Assemblyman McArthur:**

Under this tiered system, are there any other parameters, such as how many people are employed by the company, or is it based solely on wages?

**Russell Guindon:**

The tax is based only on the wages that are paid, or the remuneration, as the mock-up words it. It is not based on the number of employees.

**Senator McGinness:**

Senator Coffin asked about real estate or insurance agents. Those are exactly the kinds of people this is trying to capture, are they not?

**Brenda Erdoes:**

I would not say those are exactly the kinds of people this is trying to capture. The concept is based more on an employer who has a choice of putting out an independent contract or bringing in an employee. To the extent that the employment relationship was set up in a business, I do not believe it would matter whether the remuneration came in the form of a commission or whatever else you call the payment from the employer to the employee or independent contractor. I believe it would be counted as wages.

**Senator McGinness:**

We have never captured them before, have we? They have to pay income tax because it is reported, but the state has never captured that wage in any way.

**Brenda Erdoes:**

The income tax would be paid by the actual independent contractor. This is being paid by the employer. Actually, they would be captured under the existing MBT if their employer paid unemployment compensation for them. If those kinds of benefits are being provided, then they are currently being captured under the tax as it stands today.

**Senator McGinness:**

But are there a lot of them that were not included that we are now going to pick up?

**Brenda Erdoes:**

I am sorry, but I cannot answer that.

**Russell Guindon:**

Staff has tried to look into this, but it is difficult to find precise information on the entities and the wages that would be picked up under this.

**Senator Care:**

Line 5 of the mock-up says, "The services of a natural person." That is your independent contractor. If the natural person has set himself up as a limited liability company (LLC) or a corporation, that would not count.

**Brenda Erdoes:**

I think you are right in terms of how the business relationship would work, but if the contract between the employer and the person was an independent contract for business activity, then it would be covered. It is just meant to be a contract between the employer and a person. If they contracted with the entire firm, then it would not be covered. It would just be with the person.

**Senator Care:**

I am thinking of the case where the independent consultant has, for whatever reason, such as a liability shield, created some sort of entity, so the check actually goes to the entity and not the natural person. That would fall outside the scope of this. On the other hand, I suppose that entity would then turn around and pay the wages, essentially paying himself. The money would flow from the entity to the individual, and that would be considered payroll.

**Brenda Erdoes:**

It would be if the person had chosen the option to pay unemployment compensation and the business is set up in that way.

**Senator Carlton:**

At the risk of throwing a monkey wrench into this, did anyone bring up the topic of allocated tips in any of these discussions? I know, when I worked as a waitress, I was allocated a wage per hour for tips for purposes of federal income tax. That was actually included on the paycheck. If we start talking about taxing people on these "wages," is there a way to make sure that is distinguished in the mix, because it is not true money? It was what they are taxing me on, but it was not actually a true wage.

**Brenda Erdoes:**

I believe that currently, under Chapter 612 of NRS, those are included in the reporting for unemployment compensation. To the extent they are included there, they would be part of the wages the tax is paid on.

**Russell Guindon:**

I would concur. I believe that tips are included in the definition of wages in Chapter 612 of NRS. If they are included, they would be picked up as wages for unemployment insurance and thus would be picked up as wages for the MBT.

**Senator Carlton:**

So they are already included, and they are not a variable we need to discuss.

**Senator Townsend:**

I have two questions. With regard to independent contractors who may bid on a job at a fixed fee, under current statute we pay the gross payroll based on wages as defined in law. Does the independent contractor have to break out of that bid what the wages are for himself, or would it be on top of the entire contract?

**Brenda Erdoes:**

The way this is currently drafted, it would be on the total dollars paid under the contract.

**Senator Townsend:**

Thank you. That is the way I read this, but I just wanted to make sure.

My second question has to do with those individuals throughout society who have a different arrangement with businesses—who are independent contractors but who actually pay for the privilege of being in the business. They either pay a rent of some kind for time they are going to be on the premises or they pay a fee for space. How would those be calculated, or do we not pick up those individuals?

**Brenda Erdoes:**

Under the current draft, those individuals would not be picked up, because this is solely based on what the employer would pay to those independent contractors. It is my understanding that there is no payment by the employer in those cases. In fact, as you pointed out, sometimes the contractors pay to work there.

**Senator Schneider:**

To expand on Senator Care's question, a lot of people have LLCs, which are established to shelter the owners. The LLCs collect payments and give the money to the owners. It is my understanding that, if you are not paying any workers compensation or unemployment, then there are no tax consequences. Is that correct?

**Brenda Erdoes:**

There are two issues involved here. It is true that if the business pays unemployment compensation for the person—either they choose to pay as sole provider or it is paid for the person—then they would fall under the existing structure. It would count as a wage, and they would currently be paying the tax on it.

What this mock-up does is add those cases where an independent contractor is being paid to perform a business activity of the business. In those cases it would add those independent contractors. Whether an independent contractor would be covered would depend solely on how the businesses were set up and how that payment was made.

**Senator Schneider:**

The LLC is a regular corporation that has annual meetings and so forth. However, rents on rental properties and payments on things that were sold are coming in and are paid out to the owner of the property. The LLC is just the shield to protect against lawsuits and such. Would there be a tax consequence then if the money flows through?

**Brenda Erdoes:**

It depends on whether, as part of the payment from the LLCs to the owners, they chose to fill out the forms saying they were employees, so they could pay into unemployment compensation. In that case, they would already be covered under the existing MBT. If not, and they are not currently taxed, this would not change that.

**Assemblywoman Leslie:**

The current permanent tax is 0.63 percent under 2007 legislation. Under the Speaker's proposal, the tax would go down to 0.5 percent, which is a tax decrease for those people.

**Russell Guindon:**

That is correct. The current rate is 0.63 percent, which is a multiplier of 0.0063. This proposal would lower that to 0.5 percent, which is a multiplier of 0.005 for those people who would have wages under the \$62,500 a quarter. That is a reduction of 0.13 percent.

**Assemblywoman Leslie:**

What percentage of Nevada businesses would come under that \$62,500?

**Russell Guindon:**

The only information available to me was that provided by the Department of Taxation for FY 2008. In FY 2008, approximately 74 percent of Nevada businesses that paid the MBT on nonfinancial institutions had wages of less than \$250,000 a year, or \$62,500 a quarter.

**Assemblywoman Leslie:**

So 74 percent of businesses would get that tax break under this plan. What does that mean in real money?

**Russell Guindon:**

My best estimate is that, had it been in place in FY 2008, it would probably have amounted to \$8 million to \$9 million.

**Assemblywoman Leslie:**

So that is the amount of money the state would forego under this plan? [Mr. Guindon confirmed that.] Is it an economic disincentive for people to make more than \$250,000? If they have to pay the higher rate once they get past that base amount, do you think people will try not to get past the base? It is not that much of an incentive.

**Russell Guindon:**

That it is a hard question to answer. When we talk about the \$62,500 a quarter or \$250,000 a year, we are not talking about an individual making \$250,000 a year. That is the total amount paid by an employer to its employees and/or independent contractors. It is the gross remuneration paid, less health care costs.

I think that goes to Senator Care's point that, whether an employer has 3 employees, 30 employees, or 300 employees, it is about the wages that are being paid to those employees. That is where it becomes hard to tell if there would be an incentive for people to try to do things to lower their wages. I think it is an even harder question in the current economy.

Obviously, each employer will make a decision, but I think the market will bear out the wages businesses have to pay to attract the necessary employees to their firms. Can a tax have an impact? It is a cost of doing business, but it would go along with the other costs of doing business when a company is deciding which qualified employees they need to hire in order to do their business.

**Senator Coffin:**

I need to get an electronic copy of this mock-up sent to me as soon as possible so I can get some comment.

**Chair McClain:**

Are there any other questions? I do not see any. Thank you both. We have some people signed in who would like to speak on this.

**Alfredo Alonso, Lewis and Roca LLP, Reno, Nevada, representing Southern Wine and Spirits, Las Vegas, Nevada, and Nevada Beer Wholesalers Association, Sparks, Nevada:**

We have had these discussions over the past year. We understand the plight of this body and the shape our state is in economically. We have also had these conversations with our clients, and I think the general consensus is that we clearly understand where you are trying to go. I do not think anybody would want to stand in your shoes for a moment. I think you have to make a very difficult decision over the next week or so, but we stand ready to work with you. Obviously, this is something we, as a state, must do. If you have any questions, or if we can be of any assistance, we stand ready.

**Assemblywoman Leslie:**

You stand ready. Does that mean you endorse this proposal? What does that mean exactly?

**Alfredo Alonso:**

Obviously, we do not know what the rate is, but we do endorse additional revenue. It is necessary. We have several thousand employees across the state, and those jobs pay well.

These are businesses that have been here for many years. From their standpoint, they live here and their children go to school here. The bottom line is that we will support your actions. We are going to need to know what that rate ultimately is, but we support your attempt to get there.

**Assemblywoman Leslie:**

I appreciate that, but we only have a few days left, so if there is a certain rate you prefer, let us know. I am curious about what you think of this new proposal the Speaker has come up with about the tiered rate. Does that trouble you at all?

**Alfredo Alonso:**

No, I have not received any negative feedback concerning this proposal. Is there a rate I prefer? A lesser rate? Obviously, these are hard decisions you are going to have to make. No one likes to pay more.

**Gary E. Milliken, representing Associated General Contractors, Las Vegas, Nevada:**

We realize you have made all the cuts you can possibly make, and it is time to look at the revenue side of the equation. We participated in the discussion in 2003, and we certainly want to become involved and participate in the discussion this time. Thank you.

**Chair McClain:**

It is going to have to be a really short discussion, because we have two days, unlike the months we had in 2003.

**Senator Schneider:**

Associated General Contractors (AGC) Las Vegas supports going forward with the tax and supports the cuts that were made to the budget?



**Gary Milliken:**

I think we need to take a look at the tax and discuss it, because there is no set rate there. We want to become involved in discussing that rate. I cannot give you a blanket yes or no without having a definite figure.

**Senator Schneider:**

But you do support the cuts that were made? You said you realized all the cuts were made that could be made. So AGC is aware that there have been real cuts made to real budgets such as the arts, mental health, all the state services, the Highway Patrol, and everybody else in this state from the 2007 budget.

**Gary Milliken:**

Yes, we understand those cuts. We think you have done about as much cutting as you can.

**Senator Schneider:**

Did you read the *Las Vegas Review-Journal* editorial this morning that said there are no cuts being made?

**Gary Milliken:**

No, I did not read that.

**David Goldwater, President, Goldwater Capital Nevada LLC, Las Vegas, Nevada:**

Goldwater Capital Nevada LLC is the quintessential small business. At one time, we had six employees. We are now down to three and will, hopefully, stay at three. We manage about \$75 million worth of private mortgage investments. At one time we made about \$1 million a year, but our revenue is way down now.

I paid more for toner for my business than I paid in MBT. Three days of advertising in the *Las Vegas Review-Journal* exceeds what I pay in MBT. When you talk about the rates here, you are talking about small businesses.

There are organizations that purport to represent small businesses, but they do not represent me. They do not represent the people who work with me or my customers or my lenders. On behalf of myself and those people, I would say, "Solve my problems. Keep the bad people in jail, take care of sick people, educate my children, and make my diploma from the University of Nevada, Las Vegas mean something."

That is all. Solve those problems, and do it in a broad-based fashion. Do not pick on anybody; pick on us all. I am happy to do it. It is the cost of doing

business in this great state. It is a state I am proud to live in, and I want to continue to be proud to live in it.

**Rocky Finseth, President and CEO, Carrara Nevada, Las Vegas, Nevada:**

Like Mr. Goldwater, I am here as a small business employer; I have seven employees. More importantly, I am here as the father of an eight-year-old son who loves this state. I understand you have a large and daunting task ahead of you. As a small businessman, I stand ready to assist you.

**Chair McClain:**

Thank you. Does anybody have any questions? [There was no response.]

**Jack Kim, Las Vegas, Nevada, Vice President, State Government Affairs, UnitedHealth Group, Inc., Minnetonka, Minnesota:**

We are here at the table to support you in what you are trying to do. We understand there is a big revenue hole in this state that needs to be addressed. We appreciate the fact that time is short and you need to find a broad source for the revenue you need to make this state as good as it has been for us, our company, and everyone else. We are here to lend our support in trying to find a way to do that—a balanced approach to raise the revenue. We will support that.

**Chair McClain:**

So you would support increasing the MBT?

**Jack Kim:**

At this time, we have not looked at that. We just received it today. I think what this Committee has been charged to do is find a broad revenue source to fund your needs. We are in support of that process, and we will be here to help out where we can.

**David Kallas, Detective, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc., and Southern Nevada Conference of Police and Sheriffs, Las Vegas, Nevada:**

Ironically, I think we fall into that small business category. We have the police officers who work for us, and we pay taxes on that. I have been here since the beginning of the session and have watched while cuts were made to public employees' salaries and benefits. Even though we disagree with it, we support it because we live in this state too. We invest in the economy and have children who go to school.

I commend the previous speakers for wanting to help solve the problems. I especially commend David Goldwater for stepping up and making the commitment he has on behalf of his small business. I looked at the pie chart ([Exhibit C](#)) that shows how the revenue comes in from the different taxes. As somebody who sits on a public pension system, if that were my portfolio, I would have concerns because it certainly is not diversified. If we are going to continue to move forward, then everybody needs to do their fair share.

If you are going to raise taxes, which I think you need to do, if you are going to punch me, I would like you to punch me hard one time. I will get up and recover, because I am an American. My job is to get up, recover, and move forward because we Americans are resilient. Do not just make small changes; make big changes so we do not have to come back next session and the session after that.

I have heard here in the halls that we have a limit of \$700 million or \$800 million because we do not want to have the largest tax increase in the history of the state. The majority of the people in this building already participated in the largest tax increase ever, so what is the difference if it was in 2003 or in 2009? Let us just get the problem solved once and for all and move forward, so we do not have to come back time and time again.

There were people in this building in 2005 and 2007 who said we had to cap property taxes because people were getting hurt. If we had not had a knee-jerk reaction to the economy at that time and had allowed it to smooth itself out, maybe our revenues would not be so bad today. Whatever you need to do, our Association, our members, and the people who live in our community that we represent are ready, willing, and able to support you in that endeavor.

**Chair McClain:**

Thank you. I have often said, "What is the difference if it is the highest tax increase in the state's history or the second-highest? They are still going to kill us." I also agree with you about dying the "death of 1,000 cuts." Everybody knows what a paper cut feels like. I would rather just get it over with.

**Terry Hickman, Executive Director, Nevada State Education Association,  
Las Vegas, Nevada:**

We are glad the legislators have recognized that the Governor's proposed budget cuts simply will not work for Nevada schools and have partially restored funding for some of Nevada's most essential programs. Now comes

the difficult task of raising revenue. It is time for certain interest groups to step up to the plate and contribute to the state's economy and Nevada's most basic public services.

We know you have many options. Even in these tough financial times, you can explore such things as increasing taxes on industries that contribute little to this state's economy. These groups benefit from our well-educated workforce and from K–12 public schools, yet they fail to properly support the operation and well-being of our schools. Year after year, they are given a pass and are able to skate by without paying their fair share.

However, it is not too late. The more than 28,000 teachers and support professionals, along with the more than 400,000 students in our public schools, are counting on you, today and for the rest of this session, to raise the revenue for public education—to make a difference for today and for the future in which we all wish to share.

**William Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:**

As an Association, we are a small employer. To the extent that there is a potential tax reduction, I applaud this proposal. As the representative of the Nevada Bankers Association, those folks who are paying, have been paying, and continue to pay 2 percent under this scenario—our taxes do not change according to the scenarios laid out here—I would suggest this is, in fact, an opportunity to level the tax rate. I am not suggesting it has to be leveled at 2 percent; it can be leveled at a different rate.

The bankers in this state employ people just like every other employer. As I pointed out the other day, we also pay the Bank Excise Tax. We also pay Interest on Lawyer Trust Accounts (IOLTA) that currently put \$2 million into legal assistance programs in this state, which are not legislated as taxes but are, in fact, ways in which the banks are contributing to the well-being of the state through excess interest.

I had a chance to scan the table that was passed out ([Exhibit C](#)). There are only nine months of 2010 showing. If you play with the numbers a little more, the reality is that, if all things were equal and it was 2012 or 2013, at your highest rate you would have about another \$110 million of tax revenue. At your lowest rate, there would be about another \$28 million in payroll taxes. If you picked one of these rates and did nothing—and there were no changes in the economy moving forward into the future—there would be additional revenues on the table.

When the bankers met with Speaker Buckley back in the fall, we said we perceived a need for additional revenues. To the extent you identify the need for additional revenues and find the combination of taxes that meets those needs, my bankers have said they supported that. They continue, though, to be concerned about being singled out to be taxed at a different rate from everybody else. I would urge you to make the rate the same for financial and nonfinancial institutions, whatever that rate is.

**Chair McClain:**

Are there any questions? [There were none.] Thank you, gentlemen.

**Jan Gilbert, Washoe Valley, Nevada, Northern Nevada Coordinator, Carson City Office, Progressive Leadership Alliance of Nevada, Las Vegas, Nevada:**

Early in the session, we came before you with our proposal, which included an increase in the MBT. We support this. I have sat through many hours of budget hearings and watched the painful process all of you have had to go through, making the cuts that are taking our state lower in every indicator of social well-being. We know we are going to be at the bottom, more so now than ever. But you did the job. You made those cuts, and you restored some of the money, and I applaud you for what you have done. Of course, this hole is still a pretty big hole to fill.

My group is interested in progressive taxes—a fairness tax, if you will. In our discussions, we talked about a tiered business tax, because the small businesses need to be protected. The fact that you found that level of \$250,000, which 74 percent of the businesses in Nevada are below, is amazing. I applaud you, because that means 74 percent of the businesses are going to have their taxes reduced. We have seen a lot of business people come before you to say they are willing to pay more. Thank you very much. I encourage you with this proposal and urge your support.

**Rusty McAllister, President, Professional Fire Fighters of Nevada, Las Vegas, Nevada:**

We also rise in support of the need to adjust the revenue structure within the State of Nevada. There has been a lot of publicity lately, through various media sources, about the cuts or lack thereof that have been implemented. I can tell you there are cuts that have been implemented, or are currently in the process of being implemented, concerning public employees. As a prime example, in Reno, they are currently shutting down two of their four ladder trucks and two fire engines every day.

Instead of closing the stations, they are keeping their commitment to the people by saying they are not closing the stations. However, they have taken the fire engines out of the stations, including the station that provides service to the University of Nevada, Reno, and put in two-person pickup trucks. They are providing two-person pickup trucks to provide medical care, and the nearest engine response in the event of a large fire is a minimum of ten minutes away.

Concessions have been made in contracts, wages, staffing, et cetera. The City of Sparks Fire Department is currently running with three-man engine companies. Up at Stateline, the Tahoe Douglas Fire Protection District is currently running with two-man engine companies. Although those things are safety issues for us, wages, benefits, and service levels continue to be cut by the local governments to solve this problem. The time has come to look for other means, for other sources of revenue.

From the personal side, I am a taxpayer, as are all our members in this state. We all pay these taxes, and we are all willing to step up to the plate to pay. We all have children in the education system.

I, personally, am the chairman of the board of trustees for a health insurance trust that provides health insurance to 2,000 firefighters, retirees, and their dependents. They need access to health care. They need all those services that are provided. We are willing to step up, we have been stepping up, and we will continue to do so in whatever fashion we need to in order to help out.

**Steve Hill, Chairman, Board of Trustees, Las Vegas Chamber of Commerce, Las Vegas, Nevada:**

The Chamber put out a letter in early December. We were before this Committee in early March. I came today to reinforce what we have been saying publicly for the last six months.

We understand times in Nevada are difficult. We recognize, with the revenue decreases in the budget, that additional revenue sources may be needed in order to solve our short-term problems. We have also said consistently, throughout this period, that we are asking the Legislature for a solution not only for the short term but for the long term as well.

The long-term solutions—the reforms—we have requested and advocated for are starting to make some progress. We appreciate the discussions along those lines. Time is short, and we look forward to some momentum on those discussions so we can also bring them to a conclusion. We understand that, at this late date, our discussions of reform and revenue must take parallel paths.

We cannot wait to get reforms done to talk about the rest of the budget, so we do appreciate the opportunity to be involved in those conversations. We know they are important.

Personally, I would like to thank you for your recognition that small businesses suffer, perhaps disproportionately, in these tough times. I know helping them by lowering the MBT on the first \$250,000 will be appreciated. We look forward to working with you over the next week to resolve these reform issues, as well as doing what we need to do to get the budget fixed.

**Chair McClain:**

Thank you, and it is two days, not a week.

**Senator McGinness:**

Do you know the makeup of your Chamber? How many of your members pay salaries of \$250,000 or less?

**Steve Hill:**

I do not know the answer to that question specifically. I believe about 85 percent of our members have fewer than 25 employees. That would indicate to me that the \$250,000 threshold may not completely exclude 75 percent of our members' businesses.

**Senator McGinness:**

I am thinking that 25 employees, even if they are making \$20,000 a year, constitute a \$500,000 payroll. Have you surveyed your members to find a list of taxes they would be willing to support?

**Steve Hill:**

No. We have reached out to our members in several different ways, such as seminars and budget presentations, and I have personally talked to probably a thousand of them. We have been having this conversation with our members, but we have not surveyed them.

**Josh Griffin, Griffin Crowley Group, Las Vegas, Nevada, representing  
MGM Mirage, Las Vegas, Nevada:**

I am here on behalf of the MGM Mirage. The MGM Mirage is Nevada's largest employer, Nevada's largest provider of health insurance, and Nevada's largest taxpayer. I believe it is the largest payer of the MBT.

We know the quality of life in this state affects us all: our employees, our employees' families, and our neighbors. The broad-based challenges we are

facing require broad-based solutions. We stand ready to work with this Committee and this Legislature to try to find those solutions.

I know you have a lot of work to do and want to hear a lot of testimony. We are here and want to help.

**Chair McClain:**

I assume that means you want to help us with raising the MBT.

**Josh Griffin:**

Yes. We certainly want to see what those rates look like in the final package. We know that is what you are working on now, though, and we are here.

**Chair McClain:**

All we are talking about here today is the MBT, but there are obviously other options out there. We could just pass the 2 percent rate, and we would have the revenue hole filled, but we will not do that.

**Tim Crowley, President, Nevada Mining Association, Reno, Nevada:**

As most of you know, I represent an industry that has 14,000 employees. Although that is not a huge workforce, these are Nevadans who enjoy a very high salary. We pay, on average, \$80,000 a year plus benefits in the gold industry, or \$75,000 a year plus benefits for all mining in Nevada.

Despite the fact that the MBT is a tax on those salaries, we fully recognize the need to fill the budget shortfall. We are in support of an increase in the MBT.

**James Wadhams, Jones Vargas, Las Vegas, Nevada, representing Southern Nevada Home Builders Association, Las Vegas, Nevada:**

I have been asked by Southern Nevada Home Builders, an industry that is still barely functioning, to nonetheless come forward to say we do definitely support an increase in the MBT. It is a broad-based tax. Industry-specific taxes have proven not to work. We would support the Committee's development of this one to assist in solving our budget problems.

**Pilar Weiss, Political Director, Culinary Workers Union Local 226, Las Vegas, Nevada:**

We simply want to echo many of the voices of support here today. Our 60,000 members and their families pay taxes. We work in an industry that is, like most industries, facing challenges in this economic recession. However, we see the need to raise revenue in this state.



Our members pay taxes, but they also depend on the services in which you have had to make very tough cuts. We want to see as many services retained as possible. We want to see Nevada remain a place where businesses actually want to come and where you can train and educate a workforce that can improve the state's standing in all sorts of indicators. We support this proposal and hope to see further discussion of broad-based business tax.

**Bryan Wachter, Deputy Director, Retail Association of Nevada, Carson City, Nevada:**

I think nobody other than small businessmen and yourselves understands what it means to cut a payroll or cut a service. When you cut the salary of one of your employees, it has a direct impact on swimming lessons, music lessons, where they can go, what they can do, where they can play. I think small businessmen and large businessmen understand the difficulty you have had over the past couple months deciding what to cut and what not to cut.

To address Assemblywoman Leslie's earlier concern, the Retail Association of Nevada (RAN) does not support a tiered or bifurcated MBT. While we recognize that, with this plan, the Speaker acknowledges that small businesses are hurting, all businesses are hurting. There is a direct correlation between anchor stores and small businesses when it comes to foot traffic in shopping centers or the ability of a small businessman to get a customer into his store. A lot of the time, those customers are there because of the large businesses.

If you would consider it, the Retail Association would suggest that the first \$250,000 of the payroll tax might be deducted totally so there would be a broad equalization of the MBT across all businesses that pay that wage. We understand the necessity of increasing the MBT, and we would be interested in seeing what the final rate would be. However, we would be interested in one rate for all businesses, recognizing the correlation between small businesses and large business in the way they coexist. There is a widespread belief those businesses are competitive when, for the most part, they create a system—a larger business organization—where they feed off each other.

**Assemblywoman Leslie:**

Let me understand your proposal. You proposed deducting the first \$250,000 totally, so you would not want to be taxed at all up to \$250,000?

**Bryan Wachter:**

That is correct. Instead of the decrease from 0.63 percent to 0.5 percent, a business would be able to write off that first \$250,000, so it would be possible for a small businessperson to have a greater recovery. Then the same rate would apply above \$250,000.

**Assemblywoman Leslie:**

So you want a complete tax break—zero taxes.

**Bryan Wachter:**

It would work out that way if you were only paying \$250,000 in wages. A question was asked earlier about our membership. I do not have our membership broken down as to how many employees they have or what their total wages are. I just have their sales figures. In Carson City alone, 87 member businesses have a profit above \$250,000.

**Chair McClain:**

Just for everybody's information, if you completely deducted the first \$250,000 a year in salaries—you do not have to report it or pay on it—how do you catch the companies that are growing when they go over that threshold?

**Bryan Wachter:**

Their tax liability would then be at the same rate it is for all businesses. You are allowing them to grow for the first \$250,000.

**Chair McClain:**

But you are eliminating them in your proposal, so they would not even be reporting.

**Bryan Wachter:**

They would still be reporting. The tax rate for that first \$250,000 would simply be zero.

**Senator Carlton:**

So the proposal is for the tax rate to be zero for wages from \$0 to \$250,000. Your proposal would actually mean that the rate for payrolls of more than \$250,000 would have to be higher in order to adjust for the gap you would create by going to zero for the small businesses.

**Bryan Wachter:**

Without debating numbers, I am not sure what the gap or that final percentage would be. However, at a certain point, you will start causing businesses to make an economic decision if that percentage gets too high.

**Senator Carlton:**

But with your proposal, it would be a higher rate on the people above \$250,000 and zero on the people below. Realizing that, are the bigger members of your association willing to pay more in order to have the smaller members pay less?

**Bryan Wachter:**

The larger members would be paying less as well, because that same deduction would apply to the first \$250,000 across the board.

**Senator Carlton:**

Depending on what the multiplier is above \$250,000, it could actually be more depending on how the formula is adjusted.

**Bryan Wachter:**

It could, yes. I have not polled my members, and that is something I would have to do before we could formally support or oppose any legislation. We were just offering an alternative suggestion. This was something we could consider, knowing the MBT was the topic of discussion.

**Chair McClain:**

Thank you. We will make note of that.

**Assemblywoman Pierce:**

What we are doing here is trying to make the best of a very bad situation we did not create. If your members want to know who to blame for this, I suggest they try calling the CEO of American International Group, Inc. (AIG).

**Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada:**

Prior to the beginning of this session, our Chamber had stated we wanted the Legislature to make substantial progress on six key budget reforms before asking for any more tax increases. Mr. Hill, of the Las Vegas Chamber, alluded to these earlier. They include public employee benefit reform, implementing the Spending and Government Efficiency (SAGE) Commission recommendations, reforming the transparency of the public employee collective bargaining process, prevailing wage reform, enhanced collection of uncollected fees and fines, and the implementation of a spending cap and budget reserve accounts.

We feel that there has been some movement, especially in the budget reserve account category—I testified in support of Assembly Bill 165, which is the Speaker's bill to create an actual forced, mandatory rainy-day fund—and there have been bills dealing with enhancing the collection of court-imposed fees. However, I have not seen any public employee benefit reform, any SAGE Commission recommendations implemented, any reform at all of the public employee collective bargaining process or prevailing wage.

So, as I sit here today, the Reno-Sparks Chamber of Commerce cannot support any tax increases, including the proposal in this mock-up. That being said, we do believe any tax system should be as low and broad-based as possible. We believe that no specific industry, including mining, gaming, or banks, should be targeted. We do not think large businesses or small businesses should be targeted.

To address Assemblywoman Leslie's point, we are concerned about an arbitrary threshold being placed in the MBT. We are worried it could send a message to small businesses that they should not grow or expand beyond that threshold. We worry it is a disincentive to hiring more people or to giving current employees much-needed raises.

This proposal is a large tax increase on some businesses and a small break for other businesses. We do worry that it is an introduction of new complexity into the tax code.

**Senator Schneider:**

So the Reno-Sparks Chamber supports no tax increases as it stands right now?

**Tray Abney:**

Yes, sir, as it stands right now.

**Senator Schneider:**

So the Chamber would suggest we go back and make more cuts to the budget?

**Tray Abney:**

We have suggested the long-term spending reforms I listed. Mr. Kallas says that if we do not have a huge tax increase, we will have to come back every two years. Madam Chair mentioned the "death by 1,000 cuts." If we do not implement long-term spending reforms, we will be back every two years, as the hole gets bigger and bigger, to take care of those issues.

**Senator Schneider:**

But, in the short term, right now, to get the next two years taken care of, you support no tax increases?

**Tray Abney:**

Until long-term reforms are implemented, we support no increases. That is correct.

**Senator Schneider:**

So you would tell your members we should start closing schools to make those cuts?

**Tray Abney:**

I would tell my members that the Legislature needs to undertake long-term spending reforms.

**Assemblywoman Kirkpatrick:**

We have made quite a few policy changes this year that go completely unnoticed. On the enhanced collection of fees, I guarantee you there are four or five bills out there trying to do exactly that at the same time some of your members are opposing them. I am at a loss.

I think this body needs to get some credit for some of the things we have already done and already tried to do this session. We have been working at a whirlwind pace to put accountability and transparency in place. Why can that never be part of this discussion?

**Tray Abney:**

Do you want me to respond, Madam Chair?

**Chair McClain:**

She is right. Can you?

**Tray Abney:**

I think this Legislature has done a lot of good things. I mentioned a couple of bills I have testified on. Being a one-man show for my organization, I cannot go in and support or oppose every bill. I want to applaud this body for having to make the tough decisions in the short term and the cuts you have had to make. I do not disagree with your statement at all. The Chamber fully supports transparency and accountability.

**Daniel Markels, Regional Public Policy Director, National Federation of Independent Business, San Carlos, California:**

The National Federation of Independent Business (NFIB) represents 1,500 small businesses in Nevada. I would echo many of the comments of the previous speaker from the Reno-Sparks Chamber. Of all the taxes, though, I have to say this is the hardest for our members to stomach.

Unemployment in this state is over 10 percent. Everyone in the press and in Washington, D.C., expects that unemployment will not peak for almost another year, so your 10 percent-rate-and-climbing is going to get even worse. We need to do everything to encourage employment if we are going to have a recovery, and taxing payrolls is not the way to do that. We need to dig ourselves out of this hole as a whole economy, not just the state.

While the \$250,000 exclusion is appreciated, I question the figure of 74 percent of businesses that are at \$250,000 or less. Of our 360,000 members nationwide, the average employee size is six to eight. We have not polled our members about the actual dollars in their payrolls, but I imagine we have a good number of members who are over that threshold and would see an increase in their tax rate.

The other thing I think is interesting to note is the health insurance exclusion. I have testified on other bills relating to health insurance. In fact, I was walking around today on Assembly Bill 162, which is an autism mandate bill that we feel strongly is going to increase health insurance rates for small businesses. That, in turn, could lead to more businesses not being able to afford health insurance. As the MBT stands now, businesses can deduct the cost of health insurance. The larger companies can do that, because 99 percent of them provide health insurance.

For the small employer, it is usually not their choice not to provide health insurance. The people who work for them are almost like their family. When you have six to eight employees, it is not as if you do not know these people. You know them, their families, and their children. You often go to their soccer games. They know these people and want to provide health insurance for them.

My point is that on the one hand, with A.B. 162, you are actually incentivizing small businesses to drop health insurance, which means they will not get that deduction on the MBT. I would encourage you to look elsewhere. Like I said, increasing the MBT, with the unemployment rate at 10 percent or more and climbing, does not make sense for our members.

**Chair McClain:**

You represent a national organization of small businesses?

**Daniel Markels:**

I represent the National Federation of Independent Business. We have members in all 50 states. I am serving as the Nevada State Director.

**Chair McClain:**

So you would have information about what small businesses pay in other states in payroll taxes, corporate income taxes, et cetera; is that correct? I would almost bet you that Nevada is the lowest-taxed state that any of your members deal with.

**Daniel Markels:**

I do not have those figures in front of me.

**Chair McClain:**

We will still be here tomorrow and the next day.

**Assemblywoman Kirkpatrick:**

You have been here before, and I thought you came from California. If you would, could you compare California's taxes to Nevada's—which you would know, because that is where you are from? How do we compare? I want you to include business tax and income tax and everything else you pay in California. I have several family members who are in business in California and who pay a lot more taxes. I am so tired of people comparing us. Well, let us compare apples to apples and not apples to oranges.

**Daniel Markels:**

I am wearing two hats this year, because we have gone through budget cuts in our organization and, unfortunately, with some of the smaller states, we have had to take on dual roles. I was hired at NFIB four years ago as the Regional Public Policy Director. I oversee lobbyists in 12 western states, excluding California. It is such a big state that we have someone there who reports directly back to our headquarters.

I can tell you how we compare to California, but I have been in every legislature this year visiting our other lobbyists from New Mexico, Colorado, Wyoming, and Montana, going west all the way to Alaska and Hawaii. I did not actually go to Hawaii this year, though, because it would have sent the wrong message. In any event, I can tell you that you can compare yourselves to California and your taxes are definitely lower.

Jobs are being lost in California at a very fast rate. Saying California is in a pinch is an understatement, but it is not just California. I would look at other states that you are more similar to in terms of population. I do not think you could make the same comparisons with the mountain states that you are trying to make with California.

**Assemblywoman Kirkpatrick:**

I have done comparisons on several different issues, and the only state that we are similar to in any respect, when you compare wages, the cost of doing business, the tax on your food, your insurance rates, et cetera, is Colorado, and even that is not comparing apples to apples. I guess what I am saying to you is that if you are going to do business in Nevada, please come to the table with a solution, because it is time we do what is best for Nevada. If you are going to do business in Nevada, do not just say you hate it—bring your solutions.

My children live here and will continue to live here. Many people in this room are third-generation Nevadans. We are all in a spot. If you come here, be part of the family and part of the solution. Do not just be the one who is always complaining.

**Daniel Markels:**

Let me just respond.

**Chair McClain:**

I do not think you need to. You also need to remember that we have a 44 percent budget hole as opposed to whatever Colorado's is. I know it is not that bad.

**Daniel Markels:**

Colorado has been very responsible in terms of passing the Taxpayers' Bill of Rights (TABOR) several years ago.

**Chair McClain:**

Okay, end of story. Thank you very much.

**Assemblywoman Leslie:**

I actually have a question for you. I just want to understand, because I thought you represented small businesses. You heard our economist say that, with the tax break Speaker Buckley is suggesting, 74 percent of the businesses that pay the MBT in our state would get the 20 percent tax break. Are you saying a majority of your members fall into the other 26 percent?



**Daniel Markels:**

I have not done that research, so I cannot tell you that. However, when I have seen similar statistics, I can tell you . . . .

**Assemblywoman Leslie:**

If you have time to go back and take a look at your Nevada members, I would be very interested in knowing how many of your Nevada members would not qualify for the 20 percent tax break. That is what I would like to know.

**Assemblywoman Pierce:**

We passed something in 1978 in this state similar to TABOR, and, in all of those years, the state government has not grown at the rate of growth and inflation. The fact is, we passed TABOR in this state a long time ago, and we have never hit the limit.

**Senator Townsend:**

Perhaps I could ask our resident expert, Mr. DiCianno, for some clarification. It has been reported in the press, and followed up here today, that under this proposal, approximately three-quarters of Nevada's businesses would receive a deduction. That is the fraction of the businesses. Could you tell what percentage of actual employees that is?

**Dino DiCianno, Executive Director, Department of Taxation:**

I do not know that. It is something I would have to look up.

**Senator Townsend:**

Is it fair to say it is not 75 percent of the employees?

**Dino DiCianno:**

It is 75 percent of the wages, not the employees.

**Senator Townsend:**

I am just trying to figure out what this means. If you have a payroll of \$250,000 or less, you will receive a break under this proposal. That is a business that might have four, five, or six employees. [Mr. DiCianno agreed.] That might affect, according to this, three-quarters of the businesses. How many people is that? Is it 20 percent of the total employees in the state? Is it 30 percent of the total employees?

**Dino DiCianno:**

Currently, businesses that pay the MBT do not tell us how many employees they have. Under the old business tax they did, but not currently.

**Senator Townsend:**

Okay. Perhaps it is not fair to the public who are trying to follow this to think that 75 percent of the employees out there are going to be exempt from the potential increase.

**Dino DiCianno:**

I believe that to be an accurate statement.

**Chair McClain:**

I believe it is not reported correctly.

**Senator Carlton:**

Mr. DiCianno, in looking at this proposal, I realize it is not an actual bill draft yet, but it does give us something to work from. I notice there is no enacting date. One of the big issues we probably need to discuss is how quickly we can implement this. I would like you to choose a much earlier date rather than a later one.

**Dino DiCianno:**

The earliest we could do this would be October 1, 2009.

**Senator Carlton:**

Can you explain to me why we could not do it any earlier?

**Dino DiCianno:**

Yes. There are probably three components to changing the process to make this work in our system. The first is a computer change. We would have to request a change to our system to accommodate the tier, depending on what the tier is. The issue is not the rate; the issue is the tier.

The second part is to provide notification to businesses so they know, in advance, what that change is going to be. From what I have heard here today, the rate on the second tier has not yet been determined. Businesses need to be notified of that rate.

The other part, which is the biggest part for us, is that we have a contract for a lockbox with JPMorgan Chase & Co., which handles the returns and processing of the payments. We would have to discuss with them a change to their process. That is the reason why the earliest I can do it is October 1.

**Senator Carlton:**

And you are absolutely sure about that?

**Dino DiCianno:**  
Absolutely.

**Senator Coffin:**

Whenever I see a definition I am not all that familiar with, I want to make sure it is a definition that you are comfortable with and that you and the Nevada Tax Commission understand, so you do not get into the problem of needing meetings to define terms we might put in front of you. Are you familiar with the term "natural person hired by an employer as an independent contractor," as defined in NRS?

**Dino DiCianno:**

Yes, I am familiar with that. I understand the definition in relation to trying to capture independent contractors, yes.

**Senator Coffin:**

Would you be able to differentiate between compensation paid to someone—what might be attributable as income or wages to that person—versus the other costs that person might have incurred in performing the service as contractor?

**Dino DiCianno:**

Yes, we do have the ability. We have a one-way agreement with the Internal Revenue Service (IRS) whereby we can verify that information through the reporting on 1099 forms to the IRS.

**Senator Coffin:**

So you do not feel you will have any trouble with the definitions as expressed in this mock-up?

**Dino DiCianno:**

None whatsoever.

**Senator Coffin:**

I need to know how broad we are getting here in terms of people who might work on commission. It is good to know if we are broadening this by accident. We had a lot of disputes in 2003 to make sure that, when we created the MBT, we did not create an income tax. Do you foresee this measure capturing the kind of people who are not considered today to be subject to this tax because they are sole proprietors and individuals in employment for themselves?

**Dino DiCianno:**

I do not believe that will be an issue. If it is necessary, the Tax Commission has the ability to promulgate regulations for further clarification. I believe that language is contained in the mock-up. I do not foresee us capturing people who should not be captured.

**Senator Coffin:**

I want to make sure we do not leave it to the Tax Commission to write regulations to determine whether or not I have an income tax. That has to be in statute.

**Dino DiCianno:**

That is true.

**Senator Coffin:**

This is all new to you. It is new to me, and I think we had better look at it over the next 36 hours and see how we really feel about it.

**Chair McClain:**

I think that was taken into account by the drafters of the mock-up. That is why it is drafted the way it is. Brenda Erdoes is the person you need to talk to.

**Senator Coffin:**

That is a good idea. I am willing to pay an income tax or a net profits tax. What I want to make sure of is that we do not have a bill here that can accidentally be construed as a net profits tax. There, you run into problems. You run into lawsuits and a lack of money.

**Chair McClain:**

You are on the record.

**Assemblyman Gustavson:**

My question is actually for the previous speaker, Mr. Markels. You were having a dialog with some of the other members about the differences in taxation between California and Nevada. Do you know why so many businesses are coming to Nevada from California and bringing their jobs with them? What is the main reason for that?

**Daniel Markels:**

Our California Executive Director recently participated with California's Assembly Minority Leader Villines and some folks in Reno, where they discussed that very subject. I am not an expert, but I can tell you, from living

in Silicon Valley, the cost of doing business there is very expensive. In my opinion, it is related to taxes, fees, the cost of housing and transportation, and all the problems we have in California that I hope you will not have.

It is a very complex question. In my opinion, our tax rates are not helping keep businesses in California.

**Assemblyman Gustavson:**

Do you feel that, if we raise the MBT, that will influence them not to come here?

**Daniel Markels:**

It is a much larger issue than one specific tax.

**Chair McClain:**

I appreciate everybody coming to weigh in on this issue. We will get this bill together. We are adjourned [at 3:26 p.m.].

RESPECTFULLY SUBMITTED:

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Mary Garcia  
Committee Secretary

APPROVED BY:

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Assemblywoman Kathy McClain, Chair

DATE: \_\_\_\_\_

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Senator Bob Coffin, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Assembly Committee on Taxation/Senate  
Committee on Taxation

**Date:** May 14, 2009

**Time of Meeting:** 1:40 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Russell Guindon	Pie chart: "Distribution of General Fund Revenue by Source, 2009–11 Biennium Based on Economic Forum's May 1, 2009, Forecast" and table: "Modified Business Tax on Nonfinancial Institutions"
	D	Brenda Erdoes	Mock-up of Proposed Amendment 4969