

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

**Seventy-Fifth Session
March 12, 2009**

The Committee on Taxation was called to order by Chair Kathy McClain at 1:36 p.m. on Thursday, March 12, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Kathy McClain, Chair
Assemblywoman Marilyn Kirkpatrick, Vice Chair
Assemblyman Paul Aizley
Assemblyman Bernie Anderson
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Don Gustavson
Assemblywoman Sheila Leslie
Assemblyman Harry Mortenson
Assemblywoman Peggy Pierce

COMMITTEE MEMBERS ABSENT:

Assemblyman Morse Arberry Jr. (excused)
Assemblywoman Ellen Koivisto (excused)
Assemblyman Richard McArthur (excused)

STAFF MEMBERS PRESENT:

Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

None

Chair McClain:

[Roll was called. Assemblymen Arberry, Koivisto, and McArthur were excused.] Today is just a work session, and we have three bills to consider. We will take care of the two Department of Taxation bills first.

Michael Nakamoto, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau:

We will start with Assembly Bill 23.

Assembly Bill 23: Revises provisions governing the crediting and refunding of overpayments of certain taxes and fees. (BDR 32-346)

Michael Nakamoto:

Assembly Bill 23, sponsored by the Department of Taxation, revises various provisions governing the crediting and refunding of overpayments of certain taxes and fees. The bill requires the Department to credit any overpayment of a tax or fee administered by the Department against any tax or fee due from that taxpayer before the overpayment is refunded.

Testimony was received in support of the bill from Dino DiCianno, the Executive Director of the Department, who indicated the Department wishes to have the ability to apply these overpayments to deficiencies as stated in the bill, but he is not currently authorized to do so under the law. He stated he hoped this would allow the Department to reduce its accounts receivable balance and that it would also reduce complaints from customers who wish their overpayments to be applied to other tax liabilities.

The Committee expressed concern about whether it was clear in section 1 of the bill that the overpayments would be applied to deficiencies of taxes collected by the Department. Mr. DiCianno indicated this was the intent of the bill. I would also note for clarification by staff that section 1 is amending Chapter 360 of *Nevada Revised Statutes* (NRS), which deals with taxes collected by the Department of Taxation.

There was no testimony in opposition to the bill, and no amendments were presented.

Chair McClain:

Are there any further questions on this bill from the Committee? [There were none.]

ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS
ASSEMBLY BILL 23.

ASSEMBLYWOMAN LESLIE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, ARBERRY,
KOIVISTO, AND MCARTHUR WERE ABSENT FOR THE VOTE.)

Chair McClain:

Thank you. Okay, Michael, on to the next bill, Assembly Bill 37.

Assembly Bill 37: Provides relief from paying the penalty for the late payment of the annual fee for a state business license under certain circumstances. (BDR 32-347)

Michael Nakamoto:

Again, this is one of the Department of Taxation's bills. It authorizes the Department to waive the penalty for failure to make timely payment of the Business License Fee under certain circumstances. This fee is \$100 a year. The penalty for failure to make a timely payment of the fee is also \$100. Mr. DiCianno of the Department testified in support of the bill, indicating the Department does not currently have the authority to waive the penalty for failure to make timely payment of this fee as they do with other taxes and fees they collect. He indicated his belief that this was unfair to the taxpayer in that there are certain circumstances, such as when the Department makes an error or in the case of an act of God, where it is reasonable for the Department to waive that particular fee.

There were questions on whether regulations would be developed by the Nevada Tax Commission regarding when this would be waived. Mr. DiCianno indicated that regulations currently exist regarding the waiver of penalties for other taxes, and that regulations would likely be developed that mirror those existing regulations.

There were also questions about whether the business license portal bill, which will be heard in this Committee next week, would affect the provisions in the bill. Mr. DiCianno stated that regardless of whether the Office of the Secretary of State were to take over administration of the Business License Fee, the Committee should process this bill, as there will be taxpayers who are unable to

pay the fee in a timely manner for good cause, regardless of whether this particular fee is administered by the Department of Taxation or by another agency.

There were also questions regarding the application of the fee to businesses that do business in more than one location in the state. Clarification was provided by Mr. DiCianno that a business such as Wal-Mart, if it is registered in this state and all of its locations are registered as DBAs (doing business as) to that corporation, then the Business License Fee is paid once, but if they are not operating as DBAs, then separate business licenses are required.

Assemblywoman Kirkpatrick:

I just want to make sure this is clear. I know Mr. DiCianno agreed to make sure that, within the tax regulations, we address the tax amnesty portion for the business licensing. We do not want to give tax amnesty if we do not need to.

Chair McClain:

Are there any other questions? Seeing none, does somebody want to make a motion?

ASSEMBLYWOMAN KIRKPATRICK MOVED TO DO PASS
ASSEMBLY BILL 37.

ASSEMBLYMAN GRADY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON, ARBERRY,
KOIVISTO, AND MCARTHUR WERE ABSENT FOR THE VOTE.)

Chair McClain:

The bill passes. Thank you. The next bill is Assembly Bill 72.

[Assembly Bill 72](#): Eliminates the Alcoholic Beverage Awareness Program Account.
(BDR 32-420)

Michael Nakamoto:

The last bill on today's work session is A.B 72, which was sponsored by this Committee on behalf of the Commission on Postsecondary Education. The bill proposes to eliminate the Alcoholic Beverage Awareness Program Account, which is funded through the levying of administrative fines by the Department of Taxation for violations of provisions relating to alcohol education cards. These funds are to be used to defray the cost for employees to complete an Alcoholic Beverage Awareness program.

David Perlman, the Administrator for the Commission on Postsecondary Education, testified in support of the bill. He indicated that, in spite of the changes to the law in Senate Bill No. 457 of the 73rd Session, which required the Commission to provide these refunds to persons who complete these education programs, no refunds had been issued to date, and no money had ever been made available for the refunds. Mr. Perlman indicated there was a significant administrative burden in processing the refund requests that were received, which he noted numbered as many as 1,000 a month, and also in responding to persons who called regarding the status of their refunds.

Mr. Perlman acknowledged the nature of the program, but he also noted that, given the average cost of \$15 or \$20 per course, it was unlikely there would ever be enough money in the account to provide refunds to everyone who requested one. He thought it was unfair to promise a refund that could never be delivered by the Commission.

The concerns raised by the Committee were that there was no money in the account and that there had never been any money in the account. That raised the question of whether there had actually been any violations of this particular section of NRS.

Mr. Perlman noted he was not the person in charge of enforcement. He noted that, based on his discussions with persons in Clark County, there was little enforcement of the provisions in NRS requiring these cards, and commonly, establishments were given a period of time to rectify violations before these fines were levied.

The question was then raised to Dino DiCianno, the Executive Director of the Department of Taxation, which is the agency required to administer these fines to violators of the provisions. Mr. DiCianno noted that no money had been placed into this fund because he had not received any notification of any fines that needed to be administered for violations of this particular law.

As a result of the testimony that was given, staff was asked to contact law enforcement agencies in Clark and Washoe Counties to obtain information from them regarding the number of violations of these provisions they had noted, how many of these violations were reported to the Department of Taxation, and what their particular enforcement mechanisms were for these provisions. Staff sent a letter, copies of which are attached to your Work Session Document ([Exhibit C](#)). You will note that a letter was sent to the Washoe County Sheriff's Office, the police departments in Reno and Sparks, Las Vegas Metro, North Las Vegas, Henderson, Mesquite, and Boulder City.

The responses staff received are behind these letters ([Exhibit C](#)), and you will note there are not very many of them. To date, staff has only received responses from the Reno Police Department, the Sparks Police Department, and the Henderson Police Department. The North Las Vegas Police Department asked for a one-week extension of the deadline we gave them for providing this information. It has now been nearly two weeks since that one-week extension was given.

The crux of the responses given by the agencies were that they were, indeed, not enforcing these particular provisions, either because they did not know they had to, or perhaps they did not think they had to. I have received follow-up from the Henderson Police Department, who had indicated they would start enforcing these provisions. They have since discovered two violations of these provisions. Fiscal staff has informed them they need to notify the Department of Taxation regarding the levying of these fines.

Chair McClain:

Thank you, Michael. I am assuming, and correct me if I am wrong, that this is an issue that still has not been resolved.

Assemblywoman Kirkpatrick:

I think it is too soon to pass this bill out of Committee if we do not know anything about this fund and who collects it. Maybe local governments can get the answers to us a lot faster. I would prefer to wait, because I am uncomfortable with what this fund does and why we have it if we do not know anything about it.

Chair McClain:

I tend to agree. If we need to do something to get the enforcement to happen, maybe this is what we need to get it going.

Assemblywoman Leslie:

It is pretty clear that they have not been enforcing this, that there has been wholesale non-enforcement. Therefore, nothing has been reported to Taxation, and therefore, there is no money, and therefore nobody is getting a refund. To me, the crux of the decision we need to make—and maybe we need to get Mr. Ocegüera involved in this, also, since it was his original bill—is whether we want to leave this.

It is clear the law enforcement agencies are not enforcing this. I do not know why they are not—whether they were not aware of it, or they do not want to. We need more testimony.

Chair McClain:

Exactly. I am not sure why nobody knew about this, but you know that is going to be the answer: They did not know they were supposed to do it. Maybe we need to make it more clear.

Assemblyman Grady:

I tend to agree with Ms. Leslie. They are all in the building; let us get them up here and ask them why.

Chair McClain:

I do not think you are going to get an answer today.

Assemblyman Grady:

I do not think we are going to get an answer today, either. I think we ought to schedule them to come in here.

Chair McClain:

We will try a second, stronger letter. If we do not have any response by next Thursday, the word will go out. How is that? We will hang onto this bill and roll it to the next work session, but we will get it fixed one way or another. Is there any other business to come before the Committee? [There was no response.] We are adjourned [at 1:52 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: March 12, 2009

Time of Meeting: 1:36 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 72</u>	C	Michael Nakamoto	Requests for information to, and responses from, various law enforcement agencies