

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

**Seventy-Fifth Session
February 5, 2009**

The Joint Assembly Committee on Taxation and the Senate Committee on Taxation was called to order by Chair Kathy McClain at 2:02 p.m. on Thursday, February 5, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer 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/. 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).

ASSEMBLY COMMITTEE MEMBERS PRESENT:

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

SENATE COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Vice Chair
Senator Maggie Carlton
Senator Michael A. Schneider

Senator Mike McGinness
Senator Randolph J. Townsend
Senator Maurice E. Washington

COMMITTEE MEMBERS ABSENT:

Senator Bob Coffin, Chair (excused)

STAFF MEMBERS PRESENT:

Russell J. Guindon, Senior Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary
Kyle Casci, Committee Secretary
Mike Wiley, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Carole Vilardo, President, Nevada Taxpayers Association
Dennis Neilander, Minden, Chair, State Gaming Control Board
Thomas R. Sheets, Las Vegas, Chair, Nevada Tax Commission
Dino DiCianno, Executive Director, Department of Taxation

Chair McClain:

[Roll was called; Senator Coffin was absent; excused.] We have big issues today; we are going to have Revenues 101. Four very informed people will give presentations on revenue streams in the State of Nevada. First, Carole Vilardo will give us an overview of *Nevada Tax Facts*, and then we will hear from Mr. Neilander from the State Gaming Control Board. After they have fielded questions, we will hear from Mr. DiCianno and Mr. Sheets. We are going to spend about four weeks in joint meetings. Today is the 30,000-foot overview of our tax structure. Starting next week we will begin drilling down to the specifics. However, that does not preclude you from asking questions today.

Senator Care:

I will only be able to stay for about an hour. Also, even though there is no legislation before us today, I would like to disclose that Mr. Sheets is a member of my law firm.

Carole Vilardo, President, Nevada Taxpayers Association:

I have provided a number of publications ([Exhibit C](#), [Exhibit D](#), [Exhibit E](#), [Exhibit F](#), and [Exhibit G](#)), and I want to briefly go over what you will find in them. *Nevada Tax Facts* ([Exhibit C](#)) is a compendium we have been publishing since 1963. This publication contains histories of all the major taxes, including the years, so you can see how things have happened. It gives legal citations and the basis of the tax. It also tells you what the "exemptions" are. We use "exemptions" as a broad catch phrase. We use the same format for abatements or deductions, as is indicated in the narrative next to "exemption." The publication covers every tax levied at the state level, so I hope it will provide you with a quick reference.

In addition, we have *Understanding Nevada's Property Tax System* [exhibit not provided]. What may be important for you to know is that, although the partial property tax abatement was done in 2005, we have still included pages 5 and 6 that show you exactly what the provisions were of that partial tax abatement. To make it easier, those provisions are also incorporated.

Nevada is a hybrid state when it comes to property tax. However, you could say that for most every state because while every state levies a property tax, the last time I counted there were 32 variations on how that tax was levied. There are no other states that levy it exactly the way we do. *Nevada Tax Facts* includes a glossary of the terms we use, because they are not common in a lot of other states. For instance, we do not use "market value" except in making sure that the "taxable value" does not exceed "market value." You will also find an explanation of the process, from how to calculate the tax through how to appeal the tax.

The other booklet you have is our newest publication, *Understanding Nevada's Net Proceeds of Minerals Tax* ([Exhibit D](#)). I had no idea a couple of years ago how fortuitous it would be that we had published it, given what has been going on this session. I hope all those booklets will give you a layman's understanding of Nevada's tax structure.

There has been some discussion, both prior to this session and during the last three days, about relationships between state and local taxes. It is pretty simple. The relationship between state and local taxes is what you, the Legislature, and the state allow the local governments to do. That is the extent of it. You are the ones who have created the distribution formulas as a Legislature. You are the ones who have said what taxes there may be and to what degree they may be raised. There is not a give-and-take relationship, per se, as you might normally assume regarding what the relationship is, or why

one entity gets more, or why one entity has property tax and another does not. Those are all policy decisions that were made by the Legislature.

It is true that property tax is one of the most stable revenue sources. Everybody acknowledges it and there is no dispute. Unfortunately, property tax can fluctuate, as we are seeing right now. Because of some other circumstances, such as the partial abatement, we have not made that as stable as we would have hoped. However, we will come out of this; we have been through it before.

This sheet [page 2 of [Exhibit E](#)] shows which of our revenue sources fund the state, what funds local governments, what funds kindergarten through 12th grade (K-12) education, what funds the Nevada System of Higher Education, and what funds that wonderful "other" category. You will see where we duplicate—for instance, you see that sales tax funds the state, local governments, and schools. These sheets ([Exhibit E](#)) show you the relationships between taxes and what they fund.

Another sheet [page 1 of [Exhibit E](#)] addresses constitutional provisions and earmarking. For instance, everybody here is aware of discussions underway about a lottery. Policy-wise, you may decide a lottery is wonderful, but the reality is it will not be a revenue you can utilize beginning July 1, 2009, because it requires a constitutional change. On this sheet we have tried to break out for you those taxes that have constitutional provisions along with earmarked provisions. Earmarking, while it serves a purpose at various times for various programs, can also come back to bite you when you no longer have the same need, yet you have earmarked the funds. In many cases, you do not have the ability to transfer those funds.

One more comment about those sheets ([Exhibit E](#)): I have noted the relevant page in *Nevada Tax Facts* ([Exhibit C](#)) in the left-hand column next to each of those taxes so you can refer back to find more detailed information.

You have another handout, "Tax Exemptions: Are We All Speaking the Same Language?" ([Exhibit F](#)). It is easy to talk about exemptions, and everything looks like an exemption when, in reality, it is not. We classify exclusions, exemptions, deductions, and abatements, and we try to give you statutory examples of what these are. They have different meanings and different bases. I hope this will prove useful to you in your discussions, even those in committees other than Taxation.

Chair McClain:

Just for the benefit of people who might be listening in over the Internet, could you cover these just briefly?

Carole Vilardo:

If you go to our website, www.nevadataxpayers.org, go to "Publications" and click on "Tax Topics," the January issue contains the page I am referencing. It will take me about a week, but I would be happy to put up the other pages on our website under "What's New." Anybody who is listening from Carson City can contact me and we will get a copy to you.

Very generally, an exclusion refers to the fact that a tax never even included the provision. For example, take sales tax. That never included services except to mention them in the language that says "services in conjunction with a sale" when you define what a sale is. Services were excluded from the beginning.

Exemptions are normally things the Legislature has done after the fact when they believe a policy decision needs to be made and that is the way to do it. They will exempt that particular tax, or provide an exemption to a group of people.

We have partial abatements. Those include the veterans exemptions, because you are not totally exempting veterans from the tax. You are only taking a portion of that tax.

Then we have deductions. Deductions are where you start with a base, usually a gross base, and statute provides for a series of deductions that allow you to get to whatever the net is. Those are the four general categories.

There is another extremely important sheet ([Exhibit G](#)) covering the Streamlined Sales Tax Project, which we have supported since its inception. Sometimes there is confusion about the Streamlined Sales Tax Project being an Internet tax. This is not an Internet tax. It does not tax the way we access the Internet, or Internet providers, or anything like that. The Streamlined Sales Tax Project was put together by the National Governors Association and the National Conference of State Legislatures in 2000. It was designed for states with a sales and use tax who were no longer able to require out-of-state retailers to collect the tax on merchandise shipped to those states. This was due to two U.S. Supreme Court decisions: *National Bella Hess v. Dept. of Rev. of the State of Illinois*, 386 US 753 (1967) and *Quill Corp. v. North Dakota*, 504 US 298 (1992).

Since sales tax was enacted in 1955, we have required everybody to pay tax on goods they brought in from outside the state or that were shipped by out-of-state mail-order vendors. Now, as a result of those Supreme Court decisions, if goods are purchased over the Internet, or over the phone, from a retailer in another state who does not have a physical presence in Nevada, we cannot collect that revenue.

When I speak to groups, I ask how many of them have made purchases over the Internet in the last three or four months. Every other hand goes up. My next question is, "How many of you then went to the Department of Taxation's website, went to 'forms,' downloaded the Consumer Use Tax form, and paid the use tax?" There is usually dead silence and not one hand, because how would they know? How would you even have the Department administer this?

The Streamlined Sales and Use Tax was designed to put us back in line with this mechanism. The second U.S. Supreme Court decision, in 1992, effectively said Congress had the power to change the definition of "nexus."

On the sheets you have before you ([Exhibit G](#)), please remove the House and Senate bill numbers at the end of page 2. Once you have had a bill in Congress for two years, it is gone. We are relying on the new Congress.

You need to know that the Streamlined Sales and Use Tax is neither a new tax nor a tax on use of the Internet. It simply is a mechanism to allow us to go back to the way it used to be once Congress changes the meaning of "nexus" from physical to economic.

This project was needed because you could not ask companies from out of state to know what your rates were. I do not remember exactly, but there are either 1,600 or 16,000 different rates in this country, and computers are not set up like that. Under this provision, each state would be allowed two rates to make this easier for companies.

You are going to have a difficult task because of the economy. Remember that you are not going to find a perfect tax because it does not exist. If there were a perfect tax, every state would use it and implement it in exactly the same way. You implement taxes to fit your economy and the way business is done, and to try to keep your state, your businesses, and your individuals economically healthy. "Good tax" is an oxymoron, and a fair tax is generally defined as the tax somebody else pays.

I thought I would give you an explanation of what distinguishes a fee from a tax. A tax is considered as an absolute, mandatory levy used to fund general government. A fee is normally used to support a specific function or regulatory authority, or to provide a specific service to a specific group of people. Fees do not fund general government.

There is a big difference between a fee and tax, and it is a policy issue. I know that the Vice Chair of the Assembly Committee on Taxation is concerned about policy, so I wanted to be sure I gave you that to think about as you are deliberating these revenue issues.

In evaluating some of the various proposals, it is important that taxes be simple and relatively easy to understand. Individuals and business people who understand a tax and how it is to be complied with generally do comply. They do not need to hire tax accountants or attorneys. Simple taxes are much easier for governments to administer and for people to comply with. There is not a lot of red tape to go through. The simpler you can make your taxes the better.

A tax needs to have a fair amount of stability and predictability for business, for the individual, and for government. We all need to plan, so we do not want taxes changing every six months. I understand that what was done during the special session was done for the sake of expediency, but it was not good policy. It has a very chilling effect on taxpayers, both individuals and businesses, and on government, because they cannot plan for longer than six or nine months.

Taxes should be equitable. They should not interfere with economic decisions because their rates are so high. I do not want to be grocery shopping and decide I have to buy one-ply paper towels because the tax on two-ply towels puts them out of my budget. That is an economic decision. You do not want that to be the basis for businesses deciding whether or not they can get more equipment.

When you are considering a tax, you want the base to be as broad as possible so you are treating as many people as possible equally. You also want the rate as low as possible so you do not force an economic decision.

Also, please remember the competitiveness of taxes. The federal government has a cigarette tax. The state and local governments also have them. If you decide to raise the cigarette tax, that is fine, but make it a conscious decision. Do not look only at what the state gets as an entity; look at the potential impact of the total rate.

If you are going to impose a tax that somebody else, such as local government, has, but the state does not have, please make the provisions match. We do not need dueling provisions that make it harder to comply. That is a major issue. When, and if, you discuss room tax, I will be back to discuss some issues concerning its implementation.

Whatever you do with taxes and fees this session, it is my belief that if you try to design a new tax, you will not be able to estimate it accurately. That is not because people are not good at estimating; it is because there will be a double jeopardy situation this year. You have a tax for which you have no track record, so you cannot go back historically to see how it has performed during various cycles for the past 20 years. On top of that, you have the current economy. As you know from the existing taxes you can look at over the past 20 or 30 years, the situation is changing daily because of outside influences. A new tax, while it might sound wonderful, is going to be difficult to project.

Another problem is that you will probably want revenue beginning July 1, 2009. The last time you tried getting revenue for July 1 was in 1991, with the \$25.00 apiece head tax (Assembly Bill No. 303 of the 66th Legislative Session). To make sure you received the revenue, you made that a quarterly tax. You had the revenue paid by September 30, so it would show up for the first quarter. You did not want it in the second quarter, so it did not have an October 1 date.

The way the tax provisions were structured, a business needed until September 30 to be able to calculate the tax. If the business had a payroll company doing the tax, there was no way to get it to the state on time, so an automatic extension had to be granted. A paper transaction had to be performed just so you could say you received revenue for the first quarter. You were spending money for the first quarter, but you were not getting the revenue until the second quarter.

To make things worse, there was no computer system set up to accommodate this. There were cartons sitting all over at the Department of Taxation, which was an absolute fire hazard. That is the problem with implementing a new tax and thinking you can have it work immediately. You will probably be stuck looking at an existing tax and probably a rate structure, depending on what you ultimately need to do.

I can give you an example of unintended consequences of every major tax measure you have implemented. Many of you remember unintended

consequences because you have had to deal with them. You will have an unintended consequence, or series of them, with any new tax you pass. Attempts to correct those problems only compound them.

If there is any way we can provide additional information or explanations, we are more than happy to do it. Please do not hesitate to call us. I thank you all for your time.

Assemblywoman Kirkpatrick:

When I first came to the Legislature, I began working on property taxes. Last session, I worked on green-building taxes. This time I chose to talk about incentives, exemptions, and abatements across the board and give them a comprehensive look. I believe there are some things that could be considered loopholes. Could you explain that for me?

I also have a second question. Could you talk about the personal property tax exemption on some constitutional things such as materials or property within a building, which I suppose we give to encourage economic development?

Carole Vilardo:

To address your second question, in the booklet *Understanding Nevada's Property Tax System*, there is a separate section on personal property.

As for your first question, a report was issued by a group that referred to a collection allowance for retailers as a loophole. I am passionate about that; I spent 30 years as a retailer. That is how I got involved with taxes; I wanted to know where every tax I was paying was going.

I resented that group's implication. That allowance was something I was granted by the Legislature. It was not a loophole. The way the paper read, the retailer was getting something for nothing. Sometime I would like to share with the Committee what is required of a retailer who has to collect sales tax.

That is no loophole. The term "loophole" tends to be used derogatorily for an action that actually is granted because of the way the law is written. However, that is not the "loophole" you were referring to.

On property tax, that issue deals strictly with personal property. Back in 1975, the Legislature agreed to phase out inventory tax over a period of five years. The inventory tax we had at that time was levied, and the mechanism or basis for it was all personal property. In my case, at a retail store, I paid an inventory tax every year on all of my fixtures and on the clothes I was selling. If I did not

sell them I would pay the tax again. Hardware stores were terrible because of the way their inventories are.

We prevailed. The economy was good. We could prove it was not a huge expenditure, but the way the Legislature wrote the language, the inventory tax was essentially forgiven. The Legislature may also exempt any other categories of personal property that it chooses. That was done as more of a policy statement to allow you, the Legislature, the discretion as to when you would grant an exemption or an abatement from personal property. That is part of the language of the Nevada Constitution. How you are able to do it and why you do it, for the most part, is based on that.

The first exemption granted after the voters approved that measure was on household goods and furnishings. When most counties put a value on a house, they assumed that roughly 10 percent of the value of your property, including the house, was your furnishings, so an amount was put on your bill for that personal property. Household furnishings and livestock were exempted the very next session. As I say, it was a five-year phase out. I hope that answered your questions.

Assemblywoman Kirkpatrick:

One of our selling points is that we do not have an inventory tax. [Ms. Vilardo agreed.] Do you know how many other states do not have an inventory tax?

Carole Vilardo:

Actually, the majority of states (I can get you the exact number) have phased that out as an extremely inequitable tax. Never mind a clothing store, where you know your inventory will eventually be sold. Consider the inventory with livestock where you have breed cattle that you do not sell. A rancher can pay the same tax on the same animal for 20 years. Before we had depreciation, it was taxed at full value. If you have a hardware store, you might buy 2,000 different types of nuts and bolts. You could have 1,000 of them sitting in your stock for 10 years. It was just simpler to have that phase out.

Senator Care:

We have a number of taxes where there is a precise amount of money on a unit, such as a gallon of gasoline, a carton of cigarettes, and the slot excise tax. The last time we adjusted some of those was in 2003, but we did not provide for any sort of annual Consumer Price Index (CPI) or Producer Price Index (PPI) inflationary index to any of those. Are there any states that do that? It seems the taxpayer would actually see his tax liability go down annually as long as those numbers remain constant.

Carole Vilardo:

In a normal world your statement is absolutely true. In an economy like this, the taxpayers are actually seeing their liability go up if they have lost their jobs or their income has been cut. I am not aware of excise-type taxes that are indexed. There are some other provisions where I have heard of taxes being indexed, but not in cigarettes or alcoholic beverages.

Gasoline tax has been a flat tax except for nine states that impose a sales tax. In those cases where they have the gas tax and sales tax or just sales tax, not all states dedicate it just to transportation. In some states it is a general fund revenue source. I can try to get you more information if you would like.

Chair McClain:

Are there any other questions? [There were none.]

Dennis Neilander, Minden, Chair, State Gaming Control Board:

[Introduced himself.] The various gaming taxes we collect are outlined within the documents Ms. Vilardo has provided ([Exhibit C](#) and [Exhibit E](#)). I will go over them briefly, but I was asked to give you an overview of our agencies first.

The Nevada Gaming Commission is a body, composed of five part-time members, established by appointment through the Governor's Office. They do not have a very large staff, but they have the final say on all licensing matters and all tax disputes, and they have the ability to promulgate final regulations.

The Gaming Control Board is the full-time body that regulates gaming in Nevada. We currently have some 458 authorized positions. We consist essentially of three members on the Board who are appointed by the Governor.

The Board has seven different divisions. Probably of most note to this Committee is the Tax and License Division. That division is responsible for collecting all the gaming-related taxes and fees. We have two separate divisions that conduct all the investigative work on behalf of the Board. We have a separate Audit Division, a Technology Division, an Enforcement Division, and an Administration Division.

As most of you know, the bulk of the gaming taxes comes from percentage fees. There is a percentage that is taxed based on gross gaming revenue, which is essentially the amount the casinos have won after they have paid out all losses. There is currently in law a graduated scale that runs from 3.5 percent to a maximum of 6.75 percent of collections on gross gaming

revenues. That tax generated approximately \$771 million for the state in the last fiscal year. That is roughly 90 percent of the overall taxes collected from the industry, making it the largest tax out there.

The taxes that make up the other 10 percent are the quarterly non-restricted slot tax, which is \$20 per machine per quarter, and which generates about \$12.7 million a year. There is also a quarterly games tax—there are separate quarterly taxes for slot machines and for table games. The table game tax structure is actually a bit different. It is an escalating amount based on the number of devices or tables that are offered.

The next tax is a quarterly restricted slot tax, which generates about \$9.5 million a year. That tax is only for those licensees who offer 15 or fewer slot machines.

The taxes I have mentioned up to this point are not earmarked for anything in particular. When we collect taxes, our Tax and License Division transmits them through the Office of the State Controller or the Office of the State Treasurer, depending on the tax, for deposit directly into the General Fund.

The next major tax we collect is the Live Entertainment Tax. This tax is 10 percent of all amounts paid for food, refreshment, beverage, merchandise, and admission. At one time, this tax was applied only within a casino environment and was called the Casino Entertainment Tax. Three sessions ago, the Legislature broadened that tax to make it applicable not just to casinos but to other places where live entertainment occurs.

There is a bit of a bifurcation. The general tax is 10 percent, but with respect to non-restricted licensees who offer live entertainment and a facility with at least 7,500 seats, the tax rate is then brought down to 5 percent and is only applicable on admission and not on food, beverage, or merchandise.

At the restricted level the tax changes again. Live entertainment in bars and taverns with 15 or fewer slot machines is only taxed on the admission fee. There has to actually be an admission fee, and the facility has to have a seating capacity of at least 200 people. That tax is also deposited directly into the General Fund. In FY2008 it amounted to \$121 million.

The Board handles collection of those taxes in gaming facilities, and the Department of Taxation collects them from non-gaming facilities. The rest of the fees we collect—such as advance license fees, distributor's license fees, and manufacturer's license fees—do not really add up to much in the overall

scheme of things. I would be glad to go over them in more detail if you would like, but they are fairly minor matters.

With respect to taxes collected from gaming that go somewhere other than into the General Fund, there is an annual slot tax that generated approximately \$50 million in FY2008. The structure of that tax is \$250 per slot machine collected annually from both restricted and non-restricted licensees. The first \$5 million of those collections goes directly into the Capital Construction Fund for Higher Education. Twenty percent of the tax is then distributed to the Special Capital Construction Fund for Higher Education. The remainder is split between the General Fund and the State Distributive School Account. That is the only tax collected at the state level that is somewhat earmarked.

The final tax is the annual games tax collected by the 17 counties. It amounts to \$2.7 million a year, which is deposited directly to the counties. It is calculated on a graduated scale according to the number of devices. That concludes my brief overview of the gaming aspects of our taxes as they are currently structured.

Chairwoman McClain:

I would like to point out the handout from staff, "Tables of General Fund Revenues" ([Exhibit H](#)). On page 2 are the total gaming tax revenues from the Economic Forum's forecast. This handout basically shows all the tax revenue we collect in this state.

Mr. Neilander, for the benefit of the general public and people who might be listening in, could you give us some information about gaming in other states and why there is such a variety?

Dennis Neilander:

I can speak generally. Gaming taxes across the United States vary widely. Gaming was first made legal in Nevada in 1931. While there was a revenue push behind it, that was not actually the primary reason. Gaming was occurring throughout the mining camps and had gone back and forth a few times between being legalized and criminalized. Initially, the counties were the only entities that collected taxes from gaming. In the 1940s, the state began collecting a small percentage, but that was not the reason for legalization.

Most of the other states in the United States that have legalized gaming have done it principally as a revenue driver. They have fundamental policy differences both in their reasons for legalizing gaming in the first place and for how and why it is taxed.

Nevada is the only state in the U.S. that has open and competitive gaming. The next-closest state would be Mississippi. Mississippi has a more competitive economic environment, but it still has a limited number of licenses available. In Mississippi, those decisions are made, to some extent, through local ordinances and zoning matters.

Other states with legalized gaming are either monopolistic or oligopolistic. For example, New Jersey allows approximately ten large casinos in the state. A certain number of river boats are allowed in Illinois, Indiana, and Iowa. Gaming in Colorado is limited only to certain mining towns, and that was done under the guise of historic preservation and restoration. North and South Dakota have similar provisions. Some states, such as California, have Native American gaming, card clubs, and horse and dog racing, but no other forms of commercially legalized gaming.

As a result, when you look at tax rates, you will see a broad spectrum of rates. Mississippi and New Jersey are probably closer to Nevada in terms of the actual effective rate. Some of the states, like Illinois, where the tax rates have at times been up to 50 percent, issue a very limited number of licenses. In exchange for that monopolistic opportunity, licensees have entered into those markets believing they can still make money because their devices, such as slot machines, may hold three or four times as much a day as they would in an open and competitive market like that in Nevada.

There really are no artificial barriers here in Nevada to entering into this type of business. An applicant must meet the regulatory requirements of being suitable to engage in that activity. Financing also must be adequate for the proposed operation. There are no other artificial barriers, though, as there are in nearly every other state. As a result, gaming operates in a completely different economy in Nevada.

Assemblywoman Kirkpatrick:

Has there ever been a time when a hotel has gotten tax amnesty from the gaming tax?

Dennis Neilander:

No, not to my knowledge. In fact, gaming is a bit unique. Our tax rate on the percentage fees is 100 percent. There are a couple of reasons for that.

The first reason is that each licensee, upon issuance of a license, is required to pay an estimated fee. They estimate their percentage fees three months in

advance, so they pay three months worth of taxes in advance. Each month, when they pay their actual tax bill, they adjust up or down, depending on how much they missed the estimate by when they paid the tax three months earlier. The state already has three months worth of tax money paid in advance, so if a business were to miss a payment or close, there is a cushion that the state can collect and go back on.

The second reason is that, within the gaming laws, if a licensee does not make a timely payment of its taxes each month, there is a 30-day grace period during which penalties and interest may accrue. Once the 30-day grace period runs out, as a matter of law, that license is deemed surrendered. I do not have discretion, nor does the Gaming Commission, to put a stay on that. There are some due process requirements built in, but essentially if you do not pay your taxes, you lose your license. The state then has three months worth of your payments already sitting there. Our effective tax rate for percentage fees is 100 percent, so there would not be an amnesty in that type of situation.

Assemblywoman Kirkpatrick:

I am worried that if we cut your budget, you would not have the ability to make sure we are collecting the taxes of one of the largest revenue generators in the state. What kind of procedure do you have in place to ensure all the hotels or other entities are paying? Do you have a checklist? What is the actual procedure, and how are we staying on top of the situation?

When I was a child in Las Vegas, there were ten hotels. You could count them on your fingers and everybody knew where they were. Every day now new hotels and smaller gaming establishments are opening that all pay a gaming tax. What is the mechanism to ensure we are not missing someone?

Dennis Neilander:

In my opening comments, I mentioned the Board is constructed of seven divisions. One of our most important divisions is the Audit Division. We, at the Board, are certified by the Nevada State Board of Accountancy. About half the agents in the Audit Division are Certified Public Accountants (CPAs). If you work in the Audit Division, your work qualifies you to become a CPA. The work requirements for all CPAs are satisfied through working for the Gaming Control Board.

The reason for that is we engage in regular audits of all licensees, large and small. We do audits based on risk, but we audit every single licensee on an average of every 2 1/2 years. That is a full-scope audit where we render an actual CPA's opinion as to whether the taxes have been paid properly. It is the

same kind of audit you would see in a public company. The Gaming Control Act requires each licensee of a larger scale to employ independent accountants. Those independent accountants are auditing against the same things as our auditors. They also, in some instances, are required to have internal auditors. Those auditors in smaller locations may not be CPAs, but in larger locations, they are.

It is a fairly exhaustive audit process we like to call the three-legged stool. The licensees have their own auditors, there are independent auditors, and there is the Gaming Control Board. Our primary function is to see that the state is receiving its fair share of tax revenue. The second thing those auditors are looking at is compliance with internal controls. That goes to the heart of the matter of making sure we capture all our revenue. That is, in a nutshell, how we handle that aspect.

Assemblyman Anderson:

You talked about the three months in advance licensees would be paying. In this past year that would have meant there would have been an anticipation from 2007 of a gaming revenue, which would have declined rather dramatically. Noting Ms. Vilardo's earlier statements relative to the importance of predictability within taxes based on past practices, where do you perceive we are in terms of readjusting the level of expectation in the gaming industry at this moment in time?

Dennis Neilander:

To try to tie the question into Ms. Vilardo's comments, as the economy has declined, the estimated fee adjustment has gone down. When we report our numbers every month, the effect of the declining economy has been rather drastic. That affects the estimated fee adjustment. Currently, there are a number of estimated fees the state will ultimately collect over time, but it is not collecting them now because of the economy. That is one function of that percentage fee collection.

Assemblyman Anderson:

It is not unreasonable for us to expect that, given that they have suffered this initial shock, their projections are going to remain at a relatively low ebb, with the hope that, when the economy rebounds, we will only be lagging three months behind. Then, if all goes well, we will be able to make it up. [Mr. Neilander agreed.]

Assemblywoman Pierce:

Is the number of restricted and non-restricted licenses in the state essentially a local decision, or a zoning decision in each community, so there is no cap?

Dennis Neilander:

That is correct, with the exception of Boulder City. Each locality does have the ability to either accept or reject legalized gaming. In Nevada, only Boulder City has chosen not to allow legalized gaming.

Thomas R. Sheets, Las Vegas, Chair, Nevada Tax Commission:

I want to talk a little bit about the tax structure. I would also like to comment on some things we have done during the past two years.

The job of the Nevada Tax Commission is to fairly administer the taxes in the state in an unbiased manner. We do this by trying to follow the direction the Legislature has given us on tax policy. Sometimes we have been very good at doing that. At other times, the suggestion is we have been less than good at following the direction that has been given to us.

There are eight people on the Commission, citizen taxpayers who are appointed to the Commission by the Governor. We have staggered terms. There is a significant variety of people and demographics on the Commission.

We have Hank Vogler, a rancher from Ely. We have John Marvel, a rancher and attorney from Elko who also has a mining background. We have David Turner, a CPA who also has an extraordinary background in public accounting in these types of issues. We have two former legislators on the Commission, Joan Lambert and Bob Barengo, who distinguished themselves in this building during their careers, and who bring to the Commission a sense of what the Legislature goes through in enacting the laws we are then charged with implementing.

George Kelesis, in southern Nevada, is a tax lawyer who handles significant tax litigation and is involved in white-collar criminal activities. We have Ann Bersi, who is a former district attorney, a former public attorney, a former practitioner, and former leader of the State Bar of Nevada, who brings her talents to the Commission. Then there is me, a retired corporate lawyer who practices law with one of the local law firms. We bring a variety of backgrounds and demographics to the Commission.

We are political appointees, but we are not very different from you in the Legislature. We have accepted a call to public service—one that we have done

voluntarily. We do not come with agendas, but with a true sense that we try to administer what law you give us in a fashion consistent with the underlying policy you have told us to carry out. We have been both successful and unsuccessful with that in the recent past.

Since the last session, we have devoted a great amount of time to regulation making. We have done that because of the breadth of some of the tax measures given to us, particularly in the last two sessions. We have dealt with remainder parcels and common elements and centrally-assessed valuation and a number of other issues in regulation. We are working on some of those things now. We are working on equalization procedures.

Some of the regulation making has been because the Nevada Supreme Court's decision in *State, Bd. of Equalization v. Bakst*, 122 Nev. Adv. Op. No. 166 (2006). In its decision, the Court told the Commission that, in essence, they had not regulated enough and had not adequately defined the manner in which county assessors were to apply the property valuation and taxation methods that came out of legislation regarding those issues. We have heeded the Court's admonition in that regard, and our response has been that we have undertaken significant rulemaking, particularly in the last two years, to try to address what the Court suggested were shortcomings.

We tried to address the issues in the Bakst case. We went so far as to engage a blue ribbon subcommittee [Nevada Tax Commission's Blue Ribbon Subcommittee to Study Property Taxes] to assist us in doing that. We had the assistance of legislators such as Senator Townsend and Assemblyman Settelmeyer. Senator Bryan freely gave of his time to help us with these activities. The former Chair of the Tax Commission, Barbara Campbell, chaired these actions. All this was in an effort to address concerns expressed by the Nevada Supreme Court and by taxpayers, particularly in the northern part of Washoe County.

The more the Legislature gives us in the way of the intent behind the legislation regarding taxation, the better the Commission can implement the policy you have set and can properly apply what we have discerned your intention to be. I would ask you to think about that as you go about your activities because it is certainly helpful to us.

Our regulation-making activities consume significant amounts of time. Our blue ribbon subcommittee probably had ten meetings over four months on the land valuation regulations that were adopted by the Legislative Commission in June 2008. We must have held between half a dozen and a dozen workshops

and at least three extraordinary hearings. There were dozens, maybe a hundred, people involved of various interests. We try to take all these views into account in our attempt to implement legislative intent.

A comment was made about the Live Entertainment Tax, so I will give you a sense of some of the challenging cases we have dealt with. A mature entertainment enterprise or group of enterprises came to the Commission within the last year and constitutionally challenged the Live Entertainment Tax that had been adopted by the Legislature. Among other things, they claimed the tax was unconstitutional because it violated the first amendment free speech rights of the entertainers providing the mature entertainment.

Legitimate legal arguments were made by the other side, and they were directed to the Commission after they had instituted litigation in federal district court. The court had told them they needed to exhaust their administrative remedies before it could go forward. If you read their pleadings, they make credible arguments that a finder of fact or a construer of the law could conceivably buy into. We, of course, followed what we understood the intent to be, and we ruled accordingly, which was to deny the suggestion that this was an unconstitutional law. That is a decision for the courts, not the Tax Commission.

Cases like this, complex cases, do come before the Tax Commission. That is why having the group of people that we do on the Commission is a wonderful thing. The members are a collegial group who do not agree all the time, but who bring a great deal of experience to the table.

I want to tell you, as the Chairman of the Tax Commission, that we have been quite impressed with the degree of professionalism and dedication we see from the people in the Department of Taxation who put these cases together and bring the state's side of the case before the Commission. We do not agree with the positions of the Department personnel in every case, but we have no question about the professionalism of the people.

These people are sometimes outmanned, overworked to some degree, and just overwhelmed at times. Yet they maintain their good humor about these matters and are very good at what they do. Part of that, I think, is attributable to Mr. DiCianno. To a person, that is the way the Commission feels about the advice and the work it sees coming from the Department of Taxation.

Chair McClain:

I agree with what you said. I know 90 percent of our state agencies have wonderful employees. They make our lives so much easier.

Assemblywoman Kirkpatrick:

We have agreed to disagree at times, but that is because we all care, we all have the passion, and we are trying to do the right thing. As you have given us the Commission's perspective, I would like to give you my input.

I get frustrated when I try to get information. It is very difficult because there are so many outdated regulations. A regulation was put in place in 1988 that says someone can request this information. You are doing better at putting regulations in place, and I promise I will put a lot on record so you will know exactly what I meant. That is for a good reason, because I know you are challenged with a hard task. However, as a legislator, I get frustrated because I cannot get the information I requested because of a regulation implemented 15 years ago. I like to look at the whole picture and not just a piece of it; I can work better for the state when I can see the whole picture. If every other email I send elicits a reply saying I cannot have what I requested, I do not know where to go. I would hope you would go back and reevaluate some of those regulations and bring them up to date.

I know Mr. DiCianno does a great job, but I do not think he has enough staff. It can take a whole week just to answer the questions I ask in sufficient detail. I think this is important as Nevada moves forward. You are doing much better than you were before. In my opinion, you have improved 180 percent. However, there is still more to be done.

I asked about tax amnesty because I read your regulation. It is very clear-cut as to how it is supposed to work—if a business is a year behind, it is given a pass and told what to do. In the second year it is behind, it is given a pass and told to do something. How, seven years later, are you supposed to go back and collect it? I know this is an attempt to generate businesses we thought we had lost, but had I not spent a month and a half trying to figure out why we have tax amnesty, I would not know that today. The general public does not understand that. We need to be a little more transparent.

I hope you will take my concerns back to the Commission. I agree the staff does a great job. I worry, though, that there are not enough of you collecting the revenues most important to our state.

Thomas Sheets:

I do not disagree with you at all. We have gone back and looked at those regulations over the last couple of years. I do not want to say we were remiss in our ten-year review of the regulations, because I do not think that is fair. We

have been trying much more actively to review them. They are almost like the statutes in being cumulative over time, and some do become outdated. We do not always have the manpower to change what ought to be changed because time has moved on. We are trying to address that.

I do not mean this as an excuse, but at the same time, there have been such significant, immediate needs for regulations due to actions taken during the last couple of legislative sessions. Making the regulations takes an inordinate amount of time. There are only so many people and just so much opportunity to do this.

First and foremost, we have to collect the revenue for the state. That is where the focus has to be because that is the funding for all the programs the Legislature wants to consider. I told Mr. DiCianno we must remember at the end of the day that the revenue activities—policing and making sure we are collecting what we should—is job number one. If we do not do that, it does not matter how many regulations we have.

Senator Townsend:

Since 2003, when this body processed a rather complex package of revenue enhancements, a great deal of those enhancements relied on the Tax Commission to draft significant regulations. Having sat on this Committee, I thought it was important to attend those hearings. When Ms. Campbell, the former Chair, was there, she was nice enough to accommodate my limited input. I found this to be a fascinating and important part of our legislative process.

Since 2003, I have not missed many Tax Commission hearings. A number of you, including Mrs. Kirkpatrick, have been there. I want to compliment every member of the Commission. Ms. Vilardo never misses a meeting; she covers for me when I am not there. Chairman Sheets and the other members, as well as Mr. DiCianno and his staff, have been nothing but professional, courteous, and helpful.

They remind me of the way Nevada should be. When a taxpayer comes before them, they are a group of Nevadans trying to work something out. They really do listen and try to find a solution that meets the intent of the law, the regulation, and all the best interests of Nevada.

They really are to be commended. These are not jobs anyone goes through life looking for, but the members of the Commission have given us public service. I would encourage anyone who is going to remain in the legislative process, the

newer members in both houses who have an interest in tax policy, to experience some of these tax hearings at the regulatory level. They will gain an appreciation for this Committee they have not had before. They will see an entirely different segment of public policy that is very important to the people we represent. This is truly where the electorate is affected. I know Mrs. Kirkpatrick can share my views.

Chair McClain:

Mr. Sheets, we promise if something gets passed that requires you to write regulations, we will make sure the intent is there in writing.

Dino DiCianno, Executive Director, Department of Taxation:

[Introduced himself.] I want to first express appreciation for all the kind words. This job is not necessarily the most fun. It is difficult. We try to do everything we possibly can. We do try to keep the lines of communication and channels for discussion open not only with this body but with other agencies. We work especially hard with your Fiscal Division staff. Without that cooperation, we would never get anything done.

Your staff has provided you with our Department's "Perspectives 2008" ([Exhibit I](#)), which highlights the Department's purpose, philosophy, and goals. I would encourage you to take some time to read it because, at the end of the day, the bottom line for the Department is that if we have not provided service to taxpayers, we have failed. It is as simple as that. That goes hand in hand with our ability to collect the revenues that are rightfully due the state and local governments.

I would like to turn to another document, the "State of Nevada Department of Taxation Annual Report: Fiscal 2007-2008" ([Exhibit J](#)). The first page is a letter to the Governor, which highlights the revenue collections and distributions for FY2007 versus FY2008. I am not going to get into the discussion about the tremendous drop. We all realize we are in an economic downturn.

What I want to do is highlight that we collect and distribute 17 different taxes. We collect, administer, and distribute the Sales and Use Tax; the Intoxicating Liquor Tax; the Cigarette Tax and the fees associated with that; and Other Tobacco Products, which includes snuff, chew, and the like.

We also collect and distribute the Estate Tax, which due to federal limitations will now diminish to about zero—however, it is my understanding that might be resurrected, that there may be a minimum amount depending on whether the federal government takes a certain portion, which would be the only time the

state would get any of it—and that money is earmarked for education. Then there is the Lodging Tax, more commonly known as the room tax; the Net Proceeds of Minerals Tax; and the Centrally Assessed Property Tax—we value statewide the utility properties, railroads, airlines, and other similar properties.

There is the old Business Tax, which some of you heard earlier was a "head tax." We still collect revenues outstanding—old debt—on that tax. There is the Insurance Premium Tax; the Tire Surcharge Fee, which is \$1 assessed to you each time you buy a tire; the Government Services Fee, which is actually the short term lessor fee; the Bank Branch Excise Tax; the Business License Fee; and the Live Entertainment Tax that Mr. Sheets indicated earlier. That is a very interesting tax. As you can see, it amounts to about \$10 million, the vast majority of which is from mature entertainment. Then we have the Modified Business Tax, which is based on wages, and the Real Property Transfer Tax.

Before I move on, there is no question that our function is to collect and distribute those taxes. The number one revenue source for the state is the Sales and Use Tax. Next is the Modified Business Tax. Third is the Insurance Premium Tax. Last but not least is the Real Property Transfer Tax, which, as of late, has diminished tremendously due to the situation with the housing industry.

Assemblyman Anderson:

Of these 17 taxes, some of them, such as the old Business Tax, seem destined to disappear at some point in the future. Is that a reasonable assumption?

Dino DiCianno:

That is correct. The old Business Tax is destined to end; what we have are certain outstanding liabilities left.

Assemblyman Anderson:

So, of these taxes that show a decline in the letter to the Governor, which ones would have been negative in anticipation of the fact that we are working with something we anticipate disappearing anyway?

Dino DiCianno:

I do not believe there are any of those that would be disappearing.

There is one other item on page 6 of the Annual Report ([Exhibit J](#)) I would like to bring to your attention. I believe this relates to Assemblyman Anderson's question. The pie chart on that page shows the total Department tax revenue

and distribution by each individual type. It will give you a sense of how much each of those contributes either to the State General Fund or to local governments. The other chart shows the tax distributions to each of those functions. There is no question, looking at that pie chart, that there is almost an even split between the State General Fund and local governments. What we do supports not only the state but also local governments.

Carole Vilardo did an excellent job on this, but I would like to give you a little more information about the Streamlined Sales Tax Project. As you are probably already aware, Nevada is one of 22 states that are members of the Streamlined Sales Tax Governing Board. I act as the voting member for the State of Nevada.

It is truly unfortunate that the ballot measure last November did not pass. I think there was considerable misunderstanding about what its intent was. Given the current economic situation, it is no wonder, when people see something like that, they think the Legislature or the Department is trying to raise their Sales and Use Tax. Nothing could be further from the truth.

The intent of that bill draft was to allow this body to amend sales tax language to be in conformance with the Streamlined Sales and Use Tax Agreement. That is all it was ever intended to do. Otherwise, if we have to make changes to maintain our status as a Governing Board member, it takes us so long to make those changes because each time we have to go back to a vote of the public to make amendments to the Sales and Use Tax Act. Clearly, there should be a vote of the people with respect to any rate change; there should be no question about that.

All we were attempting to do was amend the language to conform to the agreement and allow this body to make the changes necessary because that agreement is a living document that changes constantly. To have to wait two years to make a change could put us at risk of no longer being a part of the Streamlined Sales Tax Governing Board.

Let me tell you why it is important to be a member of that Governing Board. Back in 2000, there was a U.S. Supreme Court Decision, *Quill Corp. v. North Dakota*, 504 US 298 (1992), which dealt with the inability of states to tax on remote sales because of Commerce Clause issues. A number of states petitioned the Court to address that very issue. The Court, in turn, gave the states a requirement that, in order for them to reconsider the issue, there would have to be at least 10 states and 20 percent of the population to enact Streamlined Sales Tax language.

That means we have to simplify, simplify, simplify. That means the rules for businesses, regardless of where they are, would be the same for any state that was a part of that agreement. Consumers would have the same knowledge of that effect. As Ms. Vilardo indicated, we would have to streamline the number of tax rates. Each state is allowed to have only two rates: the state component and the local component. That is why it is important for language to be put in a bill to go before a vote of the people to allow this body to make those changes.

If Congress does enact a law that would allow the states to collect sales tax on remote sales, unless you are part of this agreement, and unless you are a part of the Governing Board, you will not be allowed to share in those revenues. Those were the requirements.

Senator McGinness:

When we put that on the ballot last session, I made the comment that unless there is some sort of concerted effort to educate the public, this measure is not going to get two more votes than it did last time.

Dino DiCianno:

I could not agree with you more. We need to do a much better job of informing the public as to the reasons why. We at the Department failed, and we are just as much to blame as anyone else.

Senator McGinness:

I would not blame you; I would blame all of us. I made a couple of presentations, and the language you need to have to make it work becomes rather convoluted. When you try to explain it to people, their eyes glaze over.

Chair McClain:

Unfortunately, any ballot measure that has the word "tax" in it makes the hair stand up on everybody's neck.

Assemblyman Mortenson:

Suppose we are not able to participate in this national tax collection. In the instance someone buys something on the Internet from this state, the taxes will not come to the state, and they will not be collected from the purchase. Is that correct?

Dino DiCianno:

That is correct, as Ms. Vilardo indicated previously when she gave you the example of a consumer purchasing something over the Internet. I am sure there is not a person in this room who has not done so and not paid tax.

Assemblyman Mortenson:

My point is that it may not be that people are stupid. Maybe the people just do not like to pay taxes, and that is why they are not going to sign on to this.

Dino DiCianno:

You are absolutely correct. There are two schools of thought, but I would emphasize that what is occurring in the marketplace is that there is a direct competition between brick and mortar retailers and Internet remote sellers. What I have seen from the data is there are fewer sales occurring at brick and mortar establishments, which are directly competing with remote sellers who are selling exactly the same product. Why should they not be required to pay like the local brick and mortar business that are obligated to collect and remit that tax?

Assemblyman Mortenson:

Please understand I am not advocating they do not pay. I am just saying on the ballot there are going to be arguments for and against the measure. Clearly the argument against is going to say people will not have to pay sales tax. I would not pin a lot of hope on being able to collect that remote tax.

Dino DiCianno:

That would be truly unfortunate.

Chair McClain:

That would be unfortunate because we are talking about \$100 million or so a year.

Dino DiCianno:

There was a study requested by Senator Raggio in 2005. That study was conducted by the University of Nevada, Reno, in cooperation with the University of Nevada, Las Vegas. At that time, given the best information and the limited amount of time they had to put it together, they estimated there was a loss of \$30 million to \$100 million.

We are working with the other member states. An original study conducted by the University of Tennessee, even prior to the Nevada study, tried to calculate the amount of lost revenue on those types of sales across all states. That study

should be available within the next month or two, and I would be more than happy to share that with you.

Chair McClain:

That would be great. I know the National Conference of State Legislatures (NCSL) has a big issue in the Streamlined Sales Tax too. I have sat in on many of the committee meetings on that issue. When we have more time, I will tell you about the one state that hates it.

Could you give us a quick overview of Net Proceeds of Minerals? We will be talking more about it.

Dino DiCianno:

The best document you can get your hands on without going through all the statutes and regulations is a document put out by the Nevada Taxpayers Association, *Understanding Nevada's Net Proceeds of Minerals Tax* ([Exhibit D](#)). It is a very quick, simple, and direct guide. Basically, the mining industry reports a calculated amount of gross proceeds. Certain deductions—allowable under the statutes and further quantified and clarified through regulations the Tax Commission has adopted—are taken from that to get to net proceeds.

There are also provisions in statute that protect small mine operators. If a mine has net proceeds of less than \$4 million, there is a graduated scale going down to the level of the property tax rate at the locality where the mineral was extracted. Anything over \$4 million is automatically at the 5 percent rate.

Not only do we assess the mine operators, but we also assess the royalty recipients who receive royalties from those individual mines. They are automatically at the 5 percent rate.

I am sure there will be many more discussions about this issue. I would suggest it might be fruitful for this Committee or the Legislature to have either members of the mining industry or representatives of the Nevada Mining Association discuss the process with you. Issues relating to the Net Proceeds of Minerals Tax go back to the Nevada Constitutional Convention. Those statutes have been on the books for a very long time.

Chair McClain:

Absolutely. I would encourage everybody to start with the booklets ([Exhibit C](#)) and ([Exhibit D](#)). Then if you have any questions, feel free to talk to Mr. DiCianno or Ms. Vilaro.

Do we have anyone from the public who wishes to comment? [There was no response.] We are adjourned [at 3:46 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

Senator Bob Coffin, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: February 5, 2009

Time of Meeting: 2:02 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Carole Vilardo	<i>Nevada Tax Facts</i> booklet
	D	Carole Vilardo	<i>Understanding Nevada's Net Proceeds of Minerals Tax</i> booklet
	E	Carole Vilardo	Lists of "Taxes with Special Provisions" and "What Taxes Fund"
	F	Carole Vilardo	Article: "Tax Exemptions: Are We All Speaking the Same Language?"
	G	Carole Vilardo	Description of Streamlined Sales Tax Project
	H	Michael Nakamoto	Tables of General Fund Revenues
	I	Dino DiCianno	Perspectives 2008—A Biennial Report of Nevada State Agencies: Department of Taxation, Nevada Tax Commission
	J	Dino DiCianno	State of Nevada Department of Taxation Annual Report: Fiscal 2007–2008