

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

**Seventy-Sixth Session
May 12, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 8:03 a.m. on Thursday, May 12, 2011, in Room 1214 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/76th2011/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 Marilyn K. Kirkpatrick, Chair
Assemblyman Harvey J. Munford, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblyman John Ellison
Assemblywoman Lucy Flores
Assemblyman Ed A. Goedhart
Assemblyman Pete Livermore
Assemblywoman Dina Neal
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Clark County Assembly District No. 16
Assemblyman Marcus Conklin, Clark County Assembly District No. 37

Minutes ID: 1179

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STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary

OTHERS PRESENT:

Craig Stevens, Director, Education Policy and Research, Nevada State Education Association
Peter Krueger, State Executive, Nevada Petroleum Marketers & Convenience Store Association
Carole Vilardo, President, Nevada Taxpayers Association
Chris Nielsen, Interim Director, Nevada Department of Taxation
Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Michon Martin, Lead Tobacco Counsel, Office of the Attorney General
Alfredo Alonso, representing Reynolds American, Inc.
Sam McMullen, representing Altria Group, Inc.
Wayne Seidel, Administrator, Motor Carrier Division, Department of Motor Vehicles
Russell Rowe, representing Taxpayers for the Protection of Nevada Jobs
Josh Griffin, representing MGM Resorts International
Matthew Griffin, representing The Capitol Company
Randy Robison, representing General Growth Properties, Inc.
Sean Higgins, representing Station Casinos, Inc.
Mike Alonso, representing Caesars Entertainment
John Sande III, representing Caesars Entertainment
Danny Thompson, representing Las Vegas Arena Foundation
John Griffin, representing The Capitol Company

Chair Kirkpatrick:

[Roll was called.] Thank you. This morning, we have four bills to hear. I want to go over the schedule for those listening on the Internet. I apologize; we posted the agenda later than I had wanted last night.

Here is what we are doing for the Committee: We will hear these bills today. There is no floor. The soonest we have to be out of here is 1:30 p.m. for our next committee. We are going to take testimony this morning on Assembly Bill 569, which is the transaction tax that we have heard a lot about. We will have a presentation, and then we will excuse the members to their other committees. We will have the public come up to testify, and we will ask

questions in order to understand what the bill does. We will also be meeting tomorrow night, upon the adjournment of the Assembly Committee on Commerce and Labor. I believe that is going to be at some time around 4 p.m. The agenda will say, "Upon adjournment of Commerce and Labor"; we will be in Room 4100. We will then go as late as we need to ensure there is plenty of public comment on this particular issue.

On Saturday, we will also meet from 8 a.m. until noon. I believe at that time we will probably hear the bill that will be presented in the Senate today, so it will be a little bit different option. I want to make sure the public understands there will be plenty of time for testimony. We may not have all the answers to questions today because it is a very complicated issue. However, we will work tirelessly to get the answers to you right away. Now is the time to ask the questions to ensure what the bill says.

With that, we will open the hearing on Assembly Bill 569 and invite the Speaker and the Majority Leader from the Assembly up. Good morning.

Assembly Bill 569: Imposes a Nevada transaction tax. (BDR 32-1290)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

Thank you, Madam Chair. It is a pleasure to be here this morning. I am here with Assemblyman Marcus Conklin. I appreciate the opportunity to introduce this morning a very important bill. It takes an important step forward to reform our tax structure and to raise needed revenue for education and other critical needs in our state.

The first question I want to answer today is, "Why are we bringing this measure forward?" Well, over a year ago, we recognized the challenges that we are facing in this legislative session: Our economy was slow in recovering, and our budget hole was going to be significant.

The term "significant" may be an understatement. According to the Center on Budget and Policy Priorities, Nevada has by far the largest budget shortfall as a percentage of the fiscal year (FY) 2011 budget. It is as daunting as 54.5 percent. Allow me to put that into perspective for you. In Illinois, the state with the No. 2 worst budget shortfall, the deficit is 40.4 percent. There is no doubt with a hole this deep, we would have to cut. We painfully recognize that, even with cuts of more than \$1 billion made over the last two years, more cuts would be necessary.

We have cut. As of last week, we closed 243 of the 442 budgets, and we have closed a few more this week. Most of these budgets have been closed at

the Governor-recommended levels, but after months of exhaustively reviewing the Governor's budget, we know there are cuts we cannot accept, including deep cuts to kindergarten through grade 12 (K-12) and higher education. We cannot accept proposals he has made that will create a billion-dollar hole in the budget facing the next Legislature. We cannot accept his recommendation to balance our state budget by taking the school districts' bond reserve money approved by the voters for school rehabilitation. Very simply, to avoid these severe cuts and the creation of a budget deficit in the future, we need revenue.

So we are coming to you today with a proposal for raising that revenue, but this bill is not just about raising revenue. It is about reform as well. It is about reforming our outdated, no longer effective tax structure. Our economy has changed, but our tax structure has not changed since the 1950s. It is no longer serving our state well. This bill is part of a package of legislation to bring our tax structure in line with the economic challenges we face today. The bill is about making our tax structure fairer and more stable. It is about broadening our base and spreading the tax burden to a larger number of taxpayers.

What we are proposing today is not brand new. Anticipating the budget shortfall we were going to face this session, Senator Horsford and I have been meeting for over a year with business leaders from large and small businesses, as well as groups and individuals from all walks of life, regions of the state, and political perspectives to get their input. We asked them: "How can we improve our revenue structure? How can we make it fairer? How can we make it less volatile so we never find ourselves in these dire straits again? How can we raise the badly needed revenue for our schools, community colleges, and universities so we can attract new businesses and retrain our out-of-work Nevadans whose jobs are disappearing? How can we raise revenue without hurting business or impeding our economic recovery?" There were no easy answers.

The bill we present to you here today and the bill being presented in the Senate this afternoon represent a common-sense, balanced approach that is a result of hours and hours of listening to business leaders, economists, working men and women, and regular citizens. It is interesting to note the approach we are presenting today actually dates back far beyond last year. Our challenges and the need to reform have been well documented in five different tax studies spanning from the Zubrow Report in 1960 to the Governor's task force in 2002. Assembly Bill 569 is a transaction tax on services that will enable us to lower the sales tax on goods by spreading the tax burden to service providers at an extremely modest rate of 1 percent. That is \$.25 on something that costs you \$25.

I would like to turn it over to Majority Leader Conklin, who will briefly walk you through how this bill will work. Thank you, Madam Chair.

Chair Kirkpatrick:

Okay, Mr. Conklin.

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:

I would like to turn your attention to the bill at hand. Assembly Bill 569 provides for the imposition of a transaction tax on services at the rate of 1 percent upon each person who uses or consumes a service in this state. A 1 percent tax is paid by the consumer, based upon the purchase price for the service, and the State General Fund will be credited with the proceeds of the tax. These provisions apply to any service used or consumed in Nevada on or after January 1, 2012. The provisions of the bill specify that any service is subject to the tax, except those services that are exempt or those services that are excluded from the definition of "purchase price."

Section 25 of the bill specifies the services that are not subject to the transaction tax on services. Those are:

- Any service that may not be taxed under state or federal law currently.
- Any services provided by or to a governmental entity.
- Any services provided by or to a nonprofit organization.
- Any daycare services provided outside the home of a child.
- Any healthcare services as defined in section 7 of the bill.
- Any services provided by a facility for immediate care, a facility for skilled nursing, or a residential facility for groups.
- Any funeral, burial, cremation, or interment services for dead persons.
- The cost of preparation or publication of obituaries for dead persons.
- Services related to the delivery of natural gas, electricity, or water through mains, lines, or pipes.
- Basic landline telephone service.
- Internet access service.
- Services for the collection, treatment, or disposal of waste materials.
- Any service for which the following taxes currently apply, those being:
 - Sales and Use Tax.
 - Live Entertainment Tax.
 - Fees for bouts or exhibitions of unarmed combat.

Section 10, which defines "purchase price" for the purpose of calculating the transaction tax on services, excludes the following activities from the definition,

and therefore from the tax itself, those being:

- The amount of any rent charged for the rental or lease of any transient lodging or any other real or personal property.
- The amount of any bet or wager made in the course of any lottery game or other gaming or gambling activity regulated by the State Gaming Control Board.
- The amount of any direct premiums or considerations charged for insurance.

Section 10 also excludes cash discounts allowed by the service provider that are taken by the purchaser and the amount of the transaction tax itself from the purchase price that is subject to the tax.

The transaction tax on services, which is required to be paid by the consumer and collected by the service provider pursuant to sections 16 and 17 of the bill, must be remitted to the Department of Taxation on a monthly basis in most circumstances. Section 27 requires the tax be paid to the Department by the service provider on or before the last day of the month following the month in which the tax is paid.

Section 32 allows for the payment of the tax to the Department on a less frequent basis as follows: A service provider whose purchase price for taxable services does not exceed \$10,000 per month may remit his taxes quarterly, or, a service provider who has no tax due for three consecutive quarters and whose purchase price for taxable services does not exceed \$1,500 for four consecutive quarters may remit his taxes annually.

Regardless of the frequency of payment of taxes to the Department, section 31 allows each service provider to deduct and withhold a one-time allowance of 0.25 percent of the tax as reimbursement for administrative costs, with a cumulative limit of \$2,000 per taxpayer. The taxpayer is eligible to receive the allowance, so long as timely payment of the transaction tax is made to the Department.

The Department of Taxation, which is responsible for administering the transaction tax on services, is required under the provisions of the bill to perform certain tasks, as well. These include providing for the manner and form for receipts to be issued by service providers, showing the amount of the tax due. This is in section 17. In section 22, the Department is required to issue permits to service providers. Collecting taxes remitted by service providers based on a tax return created by the Department is provided for in section 28. Collecting penalties and interest on unpaid tax amounts and issuing credits for

overpayments, as applicable, is provided for in sections 34 through 37 and sections 61 to 66.

Section 70 of the bill extends the sunsets for the 0.35 percent increase in the Local School Support Tax (LSST) portion of the state Sales and Use Tax from June 30, 2011 until June 30, 2012. This additional rate was originally approved as the result of Senate Bill No. 429 of the 75th Session for the 2009 through 2011 biennium. Effective July 1, 2012, the LSST reduces by 0.35 percent, from 2.60 to 2.25 percent.

Thank you, Madam Chair.

Chair Kirkpatrick:

Thank you. Committee members, I know Mr. Conklin did go through those sections, but maybe we can get a copy of your talking points later so we can go back through and look at them.

Are there any specific questions from the Committee? Mr. Stewart.

Assemblyman Stewart:

Thank you, Madam Chair. It is a lot to digest. On the tax extension, only the school taxes would be extended. The others about to sunset would not. Is that correct?

Assemblyman Conklin:

Mr. Stewart, I am not sure I understand your question. There is a bridge here. The current addition to the LSST, which is 0.35 percentage points, would be extended until July 2012. The new transaction tax would start in January, so there is an overlap, creating a bridge of revenue until we can get everything up and running and collecting on a normal basis. That would be reduced. So, functionally, from a consumer standpoint, we are reducing a goods tax and adding a different type of tax to broaden the base in front of us.

Assemblyman Stewart:

Thank you.

Assemblyman Ocegüera:

Mr. Stewart, the sunset, the 0.35 percent, that is exactly what we reduce it by one year from that date on the sale side.

Assemblyman Stewart:

Will the Modified Business Tax (MBT) reduction remain in effect? Would that be sunset or not?

Assemblyman Conklin:

If I am wrong, I am sure the Speaker will correct me. The MBT, as we know it, I believe is being dealt with in another bill. It is not part of this proposal in any way.

Assemblyman Stewart:

Thank you.

Chair Kirkpatrick:

Mr. Stewart, that is the bill that is being heard today in the Senate and more than likely we will hear it on Saturday. Ms. Bustamante Adams.

Assemblywoman Bustamante Adams:

What are the anticipated revenue projections if this transaction tax were put into effect?

Russell Guindon, Principal Deputy Fiscal Analyst:

Our staff is still working through this in terms of the provisions, but right now, we estimate that for the half year that it would be online—that is with the January 1, 2012 effective date as Assemblyman Conklin testified to—that it would generate approximately \$186.2 million in the last six months of FY 2012. It will generate approximately \$379.8 million in its full year of implementation in FY 2013. This is based on our belief that the services tax base from this proposal would be probably around \$37.2 billion in FY 2012. That is a complete year, so that is why you can see the yield is half of that. We think that in 2013, it could be around \$38 billion, thus the \$379.8 million in yield.

To give you a reference point, based on the State of Nevada Economic Forum's forecast of May 2, the current sales tax base is estimated at \$42 billion to \$43 billion in FYs 2012 and 2013. I think that is an important reference point because I think per the testimony that was provided by the Speaker and Assemblyman Conklin, if the goal is to broaden the tax base—as you remember, Jeremy Aguero testified that the services are a lot bigger portion of our state's economy—then you want to have the services tax base get close to the goods tax base.

Chair Kirkpatrick:

Thank you, Mr. Guindon. I have been listening to webinars across the country, what other states are doing. Mr. Aguero did previously testify in our Committee the way both Nevada and our nation do business has changed, so this is consistent with what other states are examining at this point. Some states already have quite a bit of transaction tax.

Assemblyman Stewart:

The exemptions that you came up with, were they based on the exemptions in other states?

Assemblyman Ocegüera:

Yes, they were partly based on other states, but also we wanted to be as inclusive as possible by broadening the base. Secondly, we wanted to eliminate anything that would be regressive in nature, something like rent and utilities—something that people absolutely have to pay. Although you could consider that a service, it does not seem to us that you would want to put a services tax on something like that. For instance, funerals seemed like a . . . You do not want a death tax, right?

Chair Kirkpatrick:

Mr. Anderson.

Assemblyman Anderson:

Thank you, Madam Chair. Good morning, Mr. Speaker and Mr. Majority Leader. Do you anticipate the transaction tax, as proposed, being more stable than the sales tax on goods?

Assemblyman Conklin:

We could probably debate that for a long time. Certainly, I would leave your fiscal staff to elaborate on this, but, from my perspective, anytime you can broaden the base and lower the rate, which means you have functionally more transactions across the board, you are going to create greater stability. You can sort of think about it this way: when a person buys a good, he buys a good, and he is done. It is usually not a repetitive thing, with the exception of something like groceries, which are exempted from our sales tax on goods. You buy a car, but you do not buy another car for six years. Or you buy a TV. The list goes on and on. That is the base with which our sales tax on goods is made. You can see the fluctuations in your own behavior in that.

When you broaden the base by lowering that rate and bringing in a rate on another proposal, for example, transactions of services, you are now looking at something that is repetitive. There are services that we buy one at a time. You want to get your carpet cleaned. That is not something you do every day, but many services that businesses or people buy go on for a very long time. Cleaning services are done on a regular basis. If you have a large facility and you have lawn care for your properties, that is an ongoing thing.

You can see that we are swapping out something that may actually encourage people to buy more goods, which is never a bad thing in terms of growth of an

economy. At the same time we are broadening our base and bringing in a revenue source that could be more stable in the long run and certainly represents the largest growth in our economy in the last, probably, 20 years. My short answer, if I went too long, is yes.

Chair Kirkpatrick:

Ms. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

My question has to do with section 22 and the permit. It is a two-part question.

Folks would have to register with the Department of Taxation and get a permit. That is the trigger for how we would know that we should be collecting this transaction tax from that entity. Would it necessarily be from the business license registration or the Office of the Secretary of State? Are they one and the same?

Assemblyman Conklin:

If I am not mistaken, this is very similar to the way that businesses already have to apply for sales tax on goods. It may be, in basic language, exactly the same as we have in other tax areas. You have to apply to have a permit as part of opening your business. That permit is how you remit your receipts and taxes collected therefore.

Assemblywoman Benitez-Thompson:

Great. So this is a process that business and industry is well acquainted with right now. It is not a new path for them to walk.

I see that, in section 23, subsection 5, for someone who has had that permit revoked or suspended, that it is just a \$5 fee for reinstatement. I am wondering why it is a \$5 fee for reinstatement if it has been revoked or suspended.

Assemblyman Conklin:

I am not 1,000 percent sure, but just guessing

Chair Kirkpatrick:

Ms. Benitez-Thompson, I think one of the directions to go is with what we know works well, and to go with the process that we have in place so that we are somewhat consistent in implementing things. I am sure we are going to hear from the Department of Taxation today, about when things are consistent. I can get you more details on that question, and I plan on tomorrow morning directly answering all the questions that come today from those in the public as

well as the Committee members and starting out the meeting with answering those questions first. If that helps, I am happy to do it. Mr. Guindon.

Russell Guindon:

Assemblyman Conklin is right on target here. A lot of the provisions in this bill are similar and consistent with the provisions we have in current law for administering the sales tax on goods. I think the reason why your legal and fiscal staff are going in that direction is because the Department of Taxation has experience with the sales tax on goods, as do businesses, so there should be some economies of scale or efficiencies that should come from trying to the extent possible to maintain that consistency. Hopefully it will aid the Department of Taxation in getting this tax online, as well as the taxpayers in the state.

To answer your question about the \$5 fee, those provisions are consistent with the requirements for the sales tax on goods.

Assemblyman Conklin:

Madam Chair, functionally, when we think about it, recognizing the other language that is in here, that the business has taken some steps to assure it will be paying these things, we do want to collect revenue. If you make it impossible for somebody to reapply, or if you make it too high, it goes against the mutual, beneficial relationship that is going on here. I am guessing that is where Ms. Benitez-Thompson was going. Why is the fee so low? It is probably because we are getting a service from that business as well. So, there is some mutual benefit to having that relationship.

Assemblyman Ocegueda:

Mr. Conklin mentioned it, but it is worth mentioning. There is a provision for those who have not had a tax in place—service providers—for a cumulative \$2,000 reimbursement for administrative costs. For example, if you had not had a tax system in place in your business because it is purely service, there is also basically a credit so that you could use \$2,000 to purchase software of whatever type needed by those few businesses that probably did not have anything in place before.

Chair Kirkpatrick:

Ms. Woodbury.

Assemblywoman Woodbury:

I understand the concept of broadening the tax base and that Nevada has become largely service-oriented. You speak of stability. With fluctuations in the economy, would not services decrease with goods, and vice versa?

Assemblyman Conklin:

You are never going to alleviate the business cycle fluctuations from your tax collections. That is impossible in the real world. We are trying to create the most predictable and the least reactionary collection of taxes that we can have. When I say "stability," I am not talking about a straight line that is easily predictable. It always grows with population, inflation, and some sense of economic growth. Those fluctuations are flattened out to some extent, because the mix of taxes and revenue sources we have are in the broadest sense and at the lowest rate. That is what we are talking about when we say stability. Will there be a perfect revenue source? No. There is not anywhere in the world, and I doubt there ever will be, but certainly we would anticipate that this would be more predictable.

In general, as the business cycle goes down, as economic growth slows or goes negative, as we have seen in the last couple of years, we would expect services to go down as well. The reality is that they will go down at a different rate because consumers are making choices, and their choices will vary. Some people will not buy that TV, but they will keep another service. Some businesses may slow down their investment in capital, but they still have services that they need to use, and vice versa. Some may choose to reduce the services they use because the capital purchases they are making are more important to the business.

On the one hand, yes, we will never get rid of some of the boom and bust of the business cycle. On the other hand, certainly smoothing it out would be a goal, and I think this would go a long way in getting us there.

Chair Kirkpatrick:

Thank you. Mr. Conklin, would it be fair to say that by having our current sales tax in place and the service tax—at least what I heard on a Council of State Governments webinar I recently listened to—we can now adjust based on what the economy is doing? That provides somewhat of a stable source so that we have the opportunity to adjust based on what our state's economy is doing.

Assemblyman Conklin:

I think that is absolutely right, Madam Chair. Another way to look at it is that our revenue sources and our General Fund are like a mutual fund. We are adding a new base with which that mutual fund can be stabilized. There is no such thing as a mutual fund that invests in one stock. Why? Because one stock alone is unstable. You invest in stocks in that mutual fund to sort of balance out what is going on. You will have some in one corner of the market that go up when another corner goes down so that you even out that cycle. That is literally what we are doing here. We are grabbing another base, roughly

equal in size to, say, sales tax on goods, and we are adding that, lowering the investment we have in sales tax and raising the investment in this new source in an effort to smooth out our cycles.

Chair Kirkpatrick:
Mr. Livermore.

Assemblyman Livermore:

Thank you, Madam Chair. This question is for either of you gentlemen. Section 21 talks about how one in violation of section 17, 19, or 20 of this act is guilty of a misdemeanor. Does that apply to the purchaser, provider, or both?

Russell Guindon:

Those sections are referring to the taxpayer. This language is consistent with the misdemeanor language we have for the sales tax on goods with regards to administrative provisions.

Assemblyman Livermore:

I understand that. This is a new service tax. I am going to draw for you a small conclusion. Here in Carson City it is not unlikely for me to hire somebody to shovel my snow. So, the neighbor comes by, he shovels my snow, and I give him \$25, and he is gone. Is he going to have to have a license and give me a receipt? Is he subject to a misdemeanor if he does not have that?

Chair Kirkpatrick:

You know, Mr. Livermore, that has been discussed. I would bet that maybe Mr. Guindon could address that, but there are already other rules in place. If you are a handyman, that is your responsibility, then I believe you would fall under this. However, if you are the teenage babysitter down the street, I would believe that you probably would not fall under this.

Assemblyman Livermore:

Madam Chair, thank you very much for that explanation. It would have been nice to have had this a couple of weeks or a month ago so that we could really debate it and understand who is subject to a misdemeanor crime and who is not.

Chair Kirkpatrick:

I do not disagree. That is why we will be having this discussion tomorrow, so that people have time to go back to their districts and ask those questions. I could believe that my district is going to be asking these questions as well. Last night, when I was reading the bill, in section 25, I was trying to think where some of this stuff might apply. I think that is absolutely our

responsibility, just like with any other bill. That is why on Saturday we will be having a hearing. I believe most of the general public have a little more flexibility to come testify, as opposed to during the week, because hopefully they are all working. Mr. Munford.

Assemblyman Munford:

I would like an explanation of funeral services. That will be your most consistent service. They are always going to have deaths. The price of funeral services is rising constantly. Will the tax that you attach to them be . . .

Chair Kirkpatrick:

Mr. Munford, I will clarify for you. That was something I looked at. An obituary is about \$400. That is why they are exempt. In section 25 of the bill, those are the only folks in the state exempt from the 1 percent service tax. In my mind, and I do not want to speak for the two folks who are doing it, but I really did go through this and see where this might apply.

You do not have a choice to have that service if there is a death in your family. You are caught in that situation. You do not have a choice. You have a choice to have a cell phone, but you do not have a choice to have a landline. You have got to have some means of transportation. If your kid plays baseball, typically, they are nonprofit, so you do not want to stop people from being part of society because they are afraid they are going to be taxed that 1 percent. But I will also tell you that on a \$10 haircut, it is \$.10, to put it into perspective.

When you go through section 25, and I think everybody today should spend quite a bit of time on section 25 to determine how that works. I called one of my friends with a lawn care service last night. I also called one who does pool cleaning. They said it is relatively a small amount, based on what we are facing. At the same time, some states charge 6 and 10 percent on some of these services. I thought the 1 percent proposed by the Speaker and the Majority Leader was fairer and easier for people to understand that amount. Mr. Speaker.

Assemblyman Ocegueda:

Thank you, Madam Chair. Mr. Munford, those funeral services provisions are specifically excluded in section 25, subsections 7 and 8.

Assemblyman Munford:

So they are all exempt.

Assemblyman Ocegüera:

That is correct.

Assemblyman Munford:

Is the owner of the mortuary taxed in some way?

Assemblyman Ocegüera:

There may be services that the mortician has to get. Maybe he gets the lawn trimmed at the place. There will be a service tax on that. There may be services that he may have to pay under the services tax, but not specifically related to the funeral services or the obituaries that are specifically excluded.

Chair Kirkpatrick:

Are there any other questions? I see none.

I will excuse you two, and we will start with public testimony. I am not necessarily going to do for, against, or neutral today, because I think this is a little bit different scenario. I would like to hear the questions you might have concerning the bill. I would hope that each of you in here would have a question because this is an important section of the bill. Also, as far as implementation or how this technically may not work, those are all important pieces that would help this Committee, our fiscal staff, and our Legal Division to understand the crux of where you see there might be a problem mechanically putting this in place. I think that is important. I would like that. If we do not have the answer to your questions, I will work with my staff tonight to ensure that we can clarify those, first thing. That way, we will make sure that we can answer some of these questions. It will help the Committee members go back to their constituents this evening and tomorrow to see if it makes sense to have this discussion.

It was intriguing for me because, when we had the National Conference of State Legislatures (NCSL) here, and the representatives talked about the services type of tax that they had done in other states, everybody was very interested.

I will ask you to please come up and testify in general. If you like the bill or do not like the bill, that could probably be your ending comment. If you see where there are problems or you would like clarification, please tell us that first. Mr. Stevens.

Craig Stevens, Director, Education Policy and Research, Nevada State Education Association:

Thank you for bringing this bill forward. I will be brief. How would lowering the LSST in 2012 affect the Distributive School Account (DSA), especially when you have this new services tax coming online? Because it is the LSST portion that is going to be lowered, is that going to affect the DSA and bring in less money for our schools? How will the new services tax make up for that lost revenue, if at all?

Chair Kirkpatrick:

That is a very good question. I believe Mr. Nakamoto or Mr. Guindon can answer that.

Russell Guindon:

Under the provisions in law, the General Fund would be required to replace any of that money lost from the reduction in the LSST. If the proposal was to go through, obviously, then the numbers would be worked out to determine the yield from the services tax. We would have to estimate the LSST, and all that would be put in place when the budgets were being developed and approved. So, there would not be any harm to the school districts through the reduction of the LSST because that is how the DSA works as part of the Nevada plan.

Chair Kirkpatrick:

Does that answer your question?

Craig Stevens:

Yes, Madam Chair. Thank you.

Chair Kirkpatrick:

Thank you, Mr. Stevens. Mr. Krueger.

Peter Krueger, State Executive, Nevada Petroleum Marketers & Convenience Store Association:

I have a question about the delivery of home heating oil. It is not a utility. I did not hear whether that is exempt, but that is an essential of life for some people. There are lots of people in northern Nevada and rural Nevada that heat with heating oil. Because we do not tax gasoline and diesel fuel in the sales tax mode, as some states do, I am thinking that is not a service per se because the excise tax on fuel is already collected. I am guessing that would not be part of this. The delivery of home heating oil is an important consideration. Thank you.

Chair Kirkpatrick:

Thank you, Mr. Krueger. We will get that answer for you tomorrow morning. If you could send me a hand-written copy, that would be good because I can then write it out and get you the answer. We will discuss that tomorrow first.

Ms. Vilardo, I know you have ten pages of questions. We love that about you because you are going to help us discuss it.

Carole Vilardo, President, Nevada Taxpayers Association:

I will call your attention to page 2. I realize we are using some language from other tax statutes, but some of the language is a little bit archaic, and it is probably time to clean it up.

My first question on this is regarding section 3. The definition of "Business" includes any activity, gain, or benefit, either direct or indirect. Can you please tell me what you mean by "indirect"? This should be fairly straightforward if I have to collect the service tax. If you are going to keep using the word, please define what it means. We will wind up with some cases before the Nevada Tax Commission.

Chair Kirkpatrick:

That is one I know we will have to look into.

Carole Vilardo:

I am looking at section 17. This is a very major point with my members, and we have discussed it previously when we have had transaction taxes up before. That is, do you use a cash or an accrual method? The bill reads, "Every service provider who provides any taxable services . . . shall, at the time of providing the services . . . if the use of the service is not . . . taxable under this chapter, at the time the use of the services becomes taxable"

I might use the services immediately, but, generally speaking, when you are looking at services, you are looking in many cases at invoicing out, paying a month later, and giving terms. It is much easier for my members if you define this as cash basis when they receive the money.

Let me give you some examples of a service and why it is important. I contract to provide a consulting service; and in providing that service, we come to a contractual agreement that I will charge \$1,000. I have to have it ready in X amount of time. I am going to bill for that service.

Now, the person falls on financial hard times or does not think I totally met part of the service agreement; we sit down, and we renegotiate the amount.

Instead of the \$1,000 contract to satisfy what I have done, it is now \$800. Have I paid you on the \$1,000? Now I am going to have a refund, but I do not have a refund because that is not something I can deduct from my federal income tax. That is why a cash method on this is important—because of the billings. You save that problem of technically having a refund that you cannot apply for because you negotiated a downward price. It was a service, not a commodity.

Chair Kirkpatrick:

Thank you, Ms. Vilardo. So, in reference to section 17, line 45, where “the use of services becomes taxable,” how does it work in the current system, as far as paying sales tax?

Carole Vilardo:

You have a slightly different system as it is now, if you want to look at tangible goods. I go into a store. There is a specific item with a specific price. Maybe I negotiate the price down because it is the last one, or I find some dirt on it. That is done at that time—when I receive the money. And then the check bounces. I cannot find the person. I try finding them. At the end of the year when I file my tax return, now I am going to deduct that because I have a specific loss, totally different from when I am negotiating some differences on service prices.

Chair Kirkpatrick:

That makes sense to me.

Carole Vilardo:

I now refer to section 19. I know that we use this language in other places, but if you go back to when we started using this, “It is unlawful for any service provider to advertise . . . directly or indirectly . . . ,” I do not understand the context of “indirectly.” Also, “will be assumed or absorbed by the service provider” does not mean the service provider is not going to pay the tax, but how many of you have seen the advertisements that say, “For this weekend alone, you not only get 10 percent off, but we will pay the tax for you”? The retailer pays the tax. The service provider is going to pay the tax if he has the liability. We ignore this in existing law, so why do we even have it in here? You have penalties for not paying the tax, but you are saying in this section I cannot advertise that. I am sure every one of you has seen an advertisement on a Sunday where somebody says, “I am paying the tax for you.”

Chair Kirkpatrick:

I have seen it on furniture and cars, but how would you, on the transaction tax, ensure that we were getting every single person to actually pay it? Currently, with the way we have our other structure, it seems we have a good . . .

Carole Vilardo:

Except that it is ignored because this language exists for goods, but you have another section in the bill where I think you could strengthen your liability provision for the tax. This is archaic language. It has been around since 1955. Maybe it made sense then. I do not think it makes sense now.

Chair Kirkpatrick:

Ms. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

Thank you, Madam Chairwoman. I get what you are getting at, but I would think that there has to be a way that the person who is providing the service would be able to say what he is trying to do is give that monetary benefit for making a purchase and that that might be applied some other way, such as an additional discount or sale—some way that he is still helping that consumer, other than taking off the tax and moving that somewhere else.

Carole Vilardo:

But why should you tell me how to do my promotion? I am trying to generate business. I am not trying not to pay the tax.

Assemblywoman Benitez-Thompson:

For me as a consumer, it is about the bottom line. Wherever that discount comes from, out of pocket, that number is the same no matter how that person slices or dices it.

Carole Vilardo:

I understand that. Let me try to come up with some language in another section that would satisfy the liability. All I am saying is you want to give that retailer—that service provider—the ability to do those things that might trigger you or me into making a purchase or using the service, however it works.

I will call your attention to sections 22 and 24.

Chair Kirkpatrick:

Ms. Pierce.

Assemblywoman Pierce:

On that last point, if you run an advertisement saying that you are going to pay the sales tax on my washing machine, my receipt says that there is a tax. So, basically, you are falsely advertising. There are laws against that, right? How do we say, "Okay, we will take this out of statute, but we are still going to have our statutes about false advertising?"

Carole Vilardo:

Ms. Pierce, as I said, let me try to get you some language that would satisfy that. That is just my point, when you say, "I absolutely cannot do something that I am doing." I am paying the tax. I am showing you that it is a discount. My receipt is showing the tax.

I think you want to make sure the tax liability is paid, irrespective of what the advertising is. I would like to see something cleaner that more closely reflects . . .

Chair Kirkpatrick:

Actual daily business. That is one of the reasons we are having this discussion. The way we do business has changed. It is something we, as a Committee, should definitely talk about.

Okay, sections 22 and 24 . . .

Carole Vilardo:

I have a problem marrying sections 22 and 24, because section 22 says, "A person shall not engage in or conduct any business as a service provider in this State unless the person has obtained a permit issued by the Department." And then we have what the application for the permit must do. It must be the \$5 fee, et cetera. If you go to section 24, it says, "Every service provider who provides any taxable services for use in this State and who is not required to obtain a permit," according to section 22, but section 22 says I have to obtain the permit.

It is a little problematic. I do not know if it is a numbering problem. I do not know if it is a variation. I know how rushed everybody has been to try to put things together, but that needs to be cleaned up, probably section 24 removed or something.

Chair Kirkpatrick:

Mr. Anderson, do you have a question?

Assemblyman Anderson:

Madam Chair, I was thinking about Ms. Vilardo's question about the section. Would that not be for the folks who provide services that we are exempting from the proposed transaction tax? Would that not be what that section is referring to?

Chair Kirkpatrick:

I do not believe so, but I can clarify that with the Legal Division.

Carole Vilardo:

This is just an alert to you. The Committee has worked, as have other committees such as the Assembly Committee on Government Affairs, on a portal. Because an actual signature is required in section 22, subsection 2(e), at such time as the Office of the Secretary of State is able to put this tax on the portal, you could not do it because you are requiring an actual signature.

Chair Kirkpatrick:

In statute, we are now also allowing electronic signatures.

Carole Vilardo:

There has got to be some accommodation made for that if you want to use the portal. Right now, this does not qualify—your signature.

Chair Kirkpatrick:

If currently, in a different part of statute, we are allowing businesses to provide an electronic signature, you would think that we would just have to clarify that an electronic signature is . . . Because this, to me, just says "signed by: (1) The owner, if he or she is a natural person," but it does not say one way or another whether it has to be on paper.

Carole Vilardo:

I am raising the issue because it may be in varying ways, and I think being able to use the portal in the future . . . So, if this does work for electronic signatures, that is fine. If it needs to be clarified, then it should be clarified.

Chair Kirkpatrick:

I appreciate you bringing all of these questions. I have read over it, and I do not see whether it clarifies one way or another. Of course we want to use the Nevada Business Portal. The Secretary of State would kill me if I said we did not.

Carole Vilardo:

Section 23 is very specific to a revocation of the permit. I would like to know what would happen if I disagreed with the decision of the Department, which would, in normal procedure for other taxes, go through a hearing officer. The way I am reading this, I could not appeal beyond this to the Nevada Tax Commission, which is something I am allowed to do every place else when there is an adverse determination against me for a tax. I wonder if there is a reason why I am not being allowed to appeal to the Tax Commission. Also, before so doing, the Department has to give me ten days notice. Before doing so, the Department must hold a hearing, but in what time frame? I do not want something hanging over my head that might be a public record sitting out six months before that hearing is held.

Chair Kirkpatrick:

After reading this last night, I thought of how there is an opportunity to do regulations, and maybe we want to put some of this into regulations, as opposed to statute. We have a little more flexibility with regulations, depending on the situation. Are you opposed to that idea?

Carole Vilardo:

Absolutely not. Sometimes there needs to be some parameters for how the regulations will be done, but generally, regulatory authority in the Department has been very good on that. We do not have a problem.

Section 25 is interesting to me. It is your policy decision. As an association, I do not care one way or another, but this is the first time that you have specified in an exemption that the exemption applies only to "26 U.S.C. § 501(c)(3)" organizations. It is specific to only one category, and that is the charitable nonprofits. The business tax, sales tax, and other taxes we have, leave it at 501(c)(3), and go so far as to use the Internal Revenue Service (IRS) codes because you have 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(9), and 501(c)(11) as some of those that are listed in that nonprofit category. That is fine. If that is your policy decision, then that is okay. I only raised it because it is different from anything that has been done so far.

Chair Kirkpatrick:

Ms. Vilardo, from my perspective, I have concerns with adding all those others in there, because we talk about the Las Vegas Monorail and all these other things that are exempted from sales tax. That is one of the things that I have heard. You continue to box yourself in. It is a Committee decision, and I am happy to get in statute what all those other things are, but you really should look at it, because if you let one in, you must let them all in. This kind of goes

back to my discussion about the Little League teams and the other things. I like it this way.

Carole Vilardo:

As I said, we are a 501(c)(4). I have no problem with it, but it is a total departure from what we have previously done. That is why I am raising the issue.

Section 25, subsection 4 was briefly referred to: "Any daycare services." Okay, so you get a nanny who is a permanent employee, and you are going to have that mother or parent or whoever collect a service tax, but you still have that babysitter. How are you going to identify that? Unless you want to capture the babysitter, I am trying to figure out if you pay, say, \$15 for two hours to a babysitter, is it going to be \$15 plus, what, \$.015?

Chair Kirkpatrick:

I can allude to that a little bit, because babysitting has gotten a lot more expensive than it used to be. Currently, we know there are certain daycare, child care, and babysitting services where you have to have a business license. I would think that if you had a business license, you would have to pay the 1 percent.

Carole Vilardo:

May I then suggest that you qualify it to that extent? Otherwise you are going to wind up with a level of confusion as to exactly what you are doing. It is the same thing with newspaper delivery and the MBT. These are policy decisions for you, but the point is, especially with something as broad as this, you want it to at least be understood as much as you can ever have a tax initially understood. You usually have to work through it.

I thank you very much for section 25, subsection 7. My moment of levity was to make sure we were interring *dead* human bodies. I suddenly felt like if I took the word "dead" off, that I was maybe going to look at a Soprano-type situation where we would charge them a service tax for doing the live bodies. Thank you for the moment of levity in reading these two tax bills. It was wonderful.

I have a question about section 28, subsection 1(a). "Each service provider who provides any taxable services for use in this State . . ." implies that, if I am a service provider in another state, and I am providing a service in this state, that it is taxable, and I do not know how we are going to capture those taxes. For example, I may do business in three or four states. I have an accountant in Chicago. He does my work here, as well as in the other states. Am I capturing him? I know this kind of looks like a use tax. Does the use tax have a use tax

provision where I would be liable if the transaction tax on the service was not paid?

Here is another example: I am a travel service, and I book a cruise for someone in this state. I assume that is a service. If that is a service, was I trying to capture that by this language?

Chair Kirkpatrick:

Mr. Anderson has a question.

Assemblyman Anderson:

If the Chicago accountant was doing business in Nevada, would he not have to have a business license and be registered here?

Carole Vilardo:

That has been a question that really cannot be easily answered. The accountant would have to assume that he would have a business. He could be an accountant that handles an individual who moved here. That individual does not have a clue, and the accountant does not have a clue. Should he be licensed? Maybe, but how do you do it?

Assemblyman Anderson:

I understand the difficulty, but by the law, would he have to be registered to do business here?

Carole Vilardo:

I would have to go back and take a look at the way that is worded, but there are some things that may be legal, like a consumer paying the use tax on an internet sale. It does not happen.

Chair Kirkpatrick:

I can think of a couple scenarios where it might happen, such as a national chain may have, say, 13 different businesses here, but payroll is done out of state. That is typical of a lot of chains. I know that just from my industry work. I could see where we probably would need to have some clarifying language. Mr. Goedhart.

Assemblyman Goedhart:

As a follow up to that, in my business, I also engage in using the consulting services of hydrologists from New Mexico. This bill emanates from New Mexico. I pay his bill to New Mexico, but he is assisting me with a service here in Nevada. I think that is the part you would like to have clarified. Even

though his office and business is in New Mexico, he is actually engaging and providing a service to me in Nevada.

Carole Vilardo:

That is true. I am questioning whether that was the intent of this language. If it was, so be it. We are going to have to figure out how to notify people when they do not have multiple operations or an operation in this state.

I cannot help but question section 29. It says, "In determining the amount of transaction tax that is due from a taxpayer, the Department shall allow a credit toward the amount due this State in an amount equal to any similar tax legitimately paid to a state or local government outside of Nevada" Because of the documentation you are adding, you would assume that, to even be able to apply for it, if I can show you that I paid it to another state, it is a legitimate claim. If it is not, it is not. I sometimes find these words interesting when we put them into tax law.

Chair Kirkpatrick:

That is why there are lawyers and policy decision makers.

Carole Vilardo:

And that is why some of us common folks sometimes have a problem figuring out what you want us to do.

Section 30 deals with the issue that assumes it is done on an accrual basis with the deduction. Depending on your policy decision, you may or may not need this. Or maybe you provide the option. That would be something that, I think, maybe Taxation might have a better feeling for.

Chair Kirkpatrick:

Ms. Vilardo, at the end you will give us a typed or handwritten copy of your questions. That way, we can go through them first thing tomorrow.

Carole Vilardo:

I had not quite planned on doing that, since I have another tax meeting and another tax bill to read, but I will do it. Each time I read it, I see something else.

Chair Kirkpatrick:

Ms. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

Can you repeat your latest comment?

Carole Vilardo:

It was regarding section 30, which is the one that is totally assuming we are doing accrual with the bad debt.

I went through tax statutes last night. This is the first time I have seen this level of violation put in like this. I am wondering why. I could understand, maybe, if we come back in a year or two, if you were to adopt this and there was a problem, but I was going to recommend something we did with the MBT in 2003 and say, "Okay, can we put a provision in that says for the first six months of implementation, if somebody messes up and does not do the form right or whatever—because you may have a delay in notification of certain businesses that they are now subject to the tax—that there be no interest and penalty." I find these violations extremely harsh, and I do not know why we have them.

Chair Kirkpatrick:

That is a policy decision for us, and I think that the point is to make sure that people pay these. We have had some issues with other taxes and people not paying them. That is why tax amnesty seems to be something we have to do. Maybe there is a better way to write this so that we can address it through the regulations, but I think that there needs to be some real talk about how we force people to pay this. I think that the first year, we are going to have some people who do not pay, who do not understand, or do not think that it applies to them. I do not disagree that they should not have time to catch up and put this in place. I think, for the long term, we must be serious. I used to go around and around with Mr. DiCianno about having the amnesty, but I get it now. It generates a lot of dollars. He worked and showed me how some of these conventions were not paying their retail tax because they did not know any differently. I get that, but I think that we need to have some type of hammer so that people understand that we are serious. Maybe this language can be somewhat massaged through the regulation process so that real business people who are required to pay these taxes have a mechanism in place. Ms. Pierce.

Assemblywoman Pierce:

Thank you, Madam Chair. I would point out that section 30, subsection 7(a) says, on your first return, if you have one or more violations, you get a warning letter. It goes on that if you continue to have violations, then that is when the penalties start. The first return is just a letter of warning.

Carole Vilardo:

What we have normally done is use the 10 percent penalty plus whatever the interest rate is, and I can tell you that is pretty substantial.

You are right. It is a policy decision. I am calling it to your attention because it is a total departure from what we have normally done.

Chair Kirkpatrick:

Mr. Livermore.

Assemblyman Livermore:

Thank you, Madam Chair. Ms. Vilardo, good morning. My question is about the broadness of this. I am thinking about who is going to end up paying some of these fees. When you start looking at the \$25 taxicab ride, a 1 percent tax on that is \$.025. Would you end up assuming the 2 cents is not going to be collected and that the driver is going to pay it out of his pocket? In a sense, you are hurting the hardworking people who are out trying to make a living. What is your response to that?

Carole Vilardo:

I have not polled my board on this bill. We have previously supported sales tax on selective services for a couple of reasons. First, if you are enumerating the services, there is less confusion about how to go about it, such as the nanny and the babysitter differential. You can look at services to see if they pyramid because we do have some services you would capture that are going to pyramid. If that is what you want to do, that is fine. I am not going to like it because I do not like pyramiding taxes. However, that is still your policy decision, and that is why I will not disagree with you. I am much more comfortable when I know which services are being enumerated so that everybody understands their liability, not that it may exist because of an interpretation as to what this is. I do not think a taxicab or a limousine driver initially would think that he is going to be subject to this. Maybe he would; I do not know.

Chair Kirkpatrick:

Ms. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

Thank you, Madam Chair. I would think that businesses are sophisticated enough in this state that they can figure out a way to track. Section 17 talks about the receipt that has to be issued that indicates the amount of tax paid. With QuickBooks and other software, there is a way to track this. It is not like we are reinventing the wheel or trying to come up with a practice that has never been done before, which is how to track a transaction tax. With taxicabs, we can track them whenever they are driving. If we can know where they are second by second while they are driving, I think we can figure out a

receipt and how to capture that data. I do not see that necessarily as a deal breaker.

Carole Vilardo:

Literally and figuratively, if I were to take off my hat and go back 40 years to when I was in the retail business Let me tell you my opinion. It is not my job. My job is to do my job, which gets me money, not to work for the state. If you make things so complicated that I have to hire somebody because I cannot do it, I cannot explain it, or I need a piece of equipment—such as the 1981 tax shift when electronic registers were just coming out and I was going to have to manually do everything—let me tell you, that does not thrill me. If I cannot get the answers I need immediately, I am going to say, “My first job is to do my business, not to worry about what the state is going to do, and maybe it will never even know I exist.” That is not a good attitude, but it is a real attitude on the part of very small businesses, and we have a lot of very small businesses. That is my concern, and that is why I raise these issues. I am not saying you cannot do it, but I am saying if you do it, it is going to be a policy decision. It may be a variation of what you are going to do. In fact, I am going to give you another one now.

I have consistently spoken to the Department about the issues covered in section 34. I opened a retail business in 1971 when I moved to Nevada. I had to do the bond posting and everything else. We did not have the Internet. It could take the Department as long as three or four tax reporting quarters to find out I was not paying my tax because I was doing everything manually. I was not using computers. I was using sheets, and I had a lot more employees. At this point, and I have spoken to the Department about this, we do not need bonds—the security to insure compliance—because of the fact that the Department is on computers. The Department gets those returns in right away. By the second reporting period, they would know if someone was delinquent and was not doing things well.

Instead of adding another expense with the posting of a bond, which is very difficult for small businesses to get, change it around so that it is more of a positive. If you want to apply and be in business, I expect that you are going to do business and meet the laws and the rules of the state. You are going to remit the taxes due. If you do not do this for, say, two reporting periods, the Department should set the security, which is what the other states do. I managed to check 18 states last session. Of the 18 I checked, not one requires a bond up front. I have spoken to national groups, and they cannot give me the name of a state that requires a bond up front, but they can tell me that there are penalties, if you will, for lack of reporting, and that is when the bonds are required.

I also would like someone to check the issue on bearer bonds. We had a regulatory hearing on tax a while ago dealing with security to be paid. The testimony then was that bearer bonds are no longer being used. They are no longer issued. I would think you would want that language out. That is in section 34, subsection 5.

Chair Kirkpatrick:

I like a lot of public discussion because I think that we have to vet things. I am very ridiculous about vetting things publicly so that we can think about unintended consequences, because at the end of the day, if you put something in place and nobody pays it, you did not accomplish anything. We have got to have some long-term solutions, and I have heard nothing more than that for the last two years about what other states are doing and how the economy has changed.

The other thing important to me is I have looked at other states. You can use Delaware as an example. They have rates all over the board. They are inconsistent. Depending on where you fall and what you do, some are at 0.38 percent, and some are at 6.25 percent. I particularly like the 1 percent because it is fair for everybody, and I would think that it is an easier tax to implement.

I am going to go to what I said yesterday in Government Affairs. As we keep cutting the Tax Department and taking bodies out of there, we cannot have any structure that is going to make it complicated, because we are going to hear that they did not do their job. Well, they did not do their job because we did not give them the tools to do their job.

I understand where everybody is coming from, but if we limit it, then you would have to believe that the rates would have to be higher, for one. For two, my hope is that this Legislature, after people like me are gone, does not go back and change those rates, that you have a consistent, long-term rate. I have seen other states change the rates every time there is a shortfall. I do not believe that is a good structure for our state.

I remember when we were in the property tax shift. I was in high school. We put some policy in place that has worked for a very long time. However, the economy has changed, as people have told us. So, I would hope everybody would have an open mind about this because we are having public hearings, we want to hear discussion, and we want to talk about things. Regardless of what happens this session, I am not done with this issue. I am invested in Nevada, and I think we have to continue these talks. We have to find a system that works for our kids and grandkids. Currently, I cannot offer them any stability.

For me, I am not done with this discussion. I have a great Committee. I know that each of you is very open-minded, so I would hope that we could have some real discussion and debate. Some of it is policy decisions on what we want for the long term. I really take the short term out of it because this is about what is good for our state as a whole. I am the biggest supporter of staff and agencies because we have to give them the tools to implement things in the safest and quickest way. I just want people to not be agitated on either side because I think we must have this discussion. Ms. Neal.

Assemblywoman Neal:

Thanks, Madam Chair. I want to know the date of that meeting because I had questions on section 34, but I was waiting for the Department of Taxation. What was the date of that meeting?

Carole Vilardo:

I am sorry?

Assemblywoman Neal:

You said you sat in a meeting concerning bearer bonds.

Carole Vilardo:

I want to say it was last year. Mr. Nielsen, I am sure, could better identify the date. As I remember, it was on the responsible party regulation.

Chris Nielsen, Interim Director, Nevada Department of Taxation:

The Tax Commission changed the regulation with respect to bonds for Sales and Use Tax purposes. They had the authority to determine what type of security and how much, and the types that were most problematic were the use of certificates of deposit (CDs) and bearer bonds. No one used bearer bonds, and if they did and they did not pay their taxes, well . . . The Department is here to collect taxes, not to go out to auction and sell a bearer bond. We are not really in that business, so it did not make sense. The regulation kind of narrowed the types of security that are now used. We have not had any complaints. It is cash. Our most common type of noncash security is a surety bond.

Chair Kirkpatrick:

Go ahead, Ms. Neal.

Assemblywoman Neal:

My questions concern section 34. Let us say this is a new business. Ms. Vilardo brought up that sometimes it takes a long time to catch the error, and this person could be listed as habitually delinquent. I have also seen where

they file their returns, and somehow the system says that they did not. For this business, what kind of securities are we looking at? Is there going to be a limitation to kind of security required if they are habitually delinquent? Let us say you have a year-old limited liability company (LLC). You have done your four quarters, but you do not have any securities to put up, yet you have been labeled delinquent. How is this going to be fleshed out and managed?

Chris Nielsen:

Those are good questions. That is really the policy that this Committee or the Legislature would have to set. It can be done in the same way the sales tax is currently administered. We have language very similar to this right now. As Carole said, if you are a new business, you do have to post a bond with the Department. If you have a clean record after so many months, you will get your bond returned to you, whether it is a surety bond or a cash bond.

The current process is you have to post a bond up front. Under section 34, my understanding is that the Department would have some flexibility in how to structure that if this services tax becomes law. I think that is something that would have to go into regulation. That is how the Tax Commission set that policy for sales tax within the scope of its authority. To me, it would not make any sense to have significantly different rules for sales tax as we would for services tax. It would be up to the Tax Commission, which consists of eight members who make decisions in open public meetings. I think that is how it would go.

Chair Kirkpatrick:

Ms. Vilardo, do you want to follow up?

Carole Vilardo:

Just be aware that we are going to ask for the bonding to be removed from sales tax initially. That is the reason I raise the issue. I said it took a long time. When I first went into business, everything was manually done. At this point, I see no reason for the bond because you are going to know within six months if you have somebody who is delinquent. Why take a small business—which is most of our businesses—and take some of its capital away from it because it has to go into bonding or cash? That is my policy statement.

Chair Kirkpatrick:

I want to go to section 40. I want to ask Mr. Nielsen some important questions about implementation. If this becomes law, we need to have buy-in from the Department of Taxation because it does not work otherwise. I will then recess on this bill to hear the other three bills on the agenda. Mr. Ellison is first.

Assemblyman Ellison:

Ms. Vilardo, concerning the bonding issue, being a business you have to either put up a cash deposit or something right now. If they went to this bond, what do they do with all the cash deposits? It does not make any sense, the way you are doing your tax reporting quarterly or monthly or however you do it. Is that correct?

Carole Vilardo:

They would not change it because when we have modified that language, it has stayed in place. I guess the other thing that bothers me with this is that after 36 continuous months, I believe it is, if I have not had more than one or two delinquencies in filing my report or paying the tax, then I can apply for the waiver through a reduction in the bond. Right now, the Department is asking for personal security. Again, this is not 1955, where some of this language comes from. If we are going to update things, let us acknowledge the way we do business. If you eliminated it, then, unless somebody was delinquent with the Department, I assume the Department would return the bonds and the cash.

Assemblyman Ellison:

I agree with Mrs. Benitez-Thompson. I had the same notes she did on sections 17 and 30. Maybe you could make some notes on that for when we have the work session. We could talk about that.

Under section 7 and the death benefits, the reason that is in there is "born free and tax to death."

Chair Kirkpatrick:

Ms. Vilardo, do you have anything else between sections 34 and 40? We will stop at that.

Mr. Nielsen, I want to talk to you about the implementation, because I truly believe that we must work together as a state. What do you think the implementation would cost? That must be factored in there. Also, what is the time frame for doing this?

Chris Nielsen:

First of all, the administration is opposed to this tax type. Nevertheless, if this becomes law, the Department will carry out this piece of legislation.

As far as implementation dates, your staff had requested the Department do a formal fiscal note. We received the request yesterday afternoon, and we are diligently working on it. I believe it is due in five or six days. We will have it done before then.

I will attempt to give you estimates on the cost and implementation dates at this point. There are a couple of other similar bills that I believe this Committee heard, or were at least out there, for which the Department had previously done fiscal notes. One was Assembly Bill 335. That was Assemblywoman Pierce's services tax bill. We had put down that the implementation cost for the next biennium would be \$9 million, I believe. In the future biennia, ongoing costs would be about \$16 million.

I do not know if those are realistic figures for this bill, but I believe it will be something in that range, probably a little higher. Just so everybody is on notice, the reason why the costs for the future biennia are higher than the startup costs is the fact that we would need significantly more auditors. It does not make sense to hire those auditors when you are implementing a new tax type. Even though you do not have the information technology (IT) costs, you have more personnel costs in future biennia.

As far as the implementation dates, we will get something written to the Committee in the form of a fiscal note. However, as we stated with A.B. 335, Assembly Bill 446, and Assembly Bill 336, the Department would need a minimum of 12 months to get this up and running. This assumes, first, that we do not go through the request for proposal (RFP) process. We get some sort of exemption. Secondly, it assumes that we are not asked to simultaneously implement two tax types at the same time. Doing so will extend that implementation date. It is as simple as this: We have one computer system that is very sophisticated. When you are trying to do two major things at once, it is a recipe for some problems, and it will take longer to flush out those problems.

Also, we could hire 500 people the day after this is implemented, and it still would not be implemented much quicker. The reason for that is existing staff is familiar with the computer system and how the Department works. They would be the ones working with the contractors who come on board to get this thing implemented. The new people are not going to be able to do that, nor will they be able to do the so-called "day jobs" of staff, working to get something like this online.

I am not here to bring bad news; I am just giving you a realistic perspective from the Department. We would need a minimum of 12 months to implement this.

Chair Kirkpatrick:

Mr. Nielsen, currently, the bill says "January," and I believe that because it is a calendar year, so it would be consistent by having it similar to some other taxes that we have in place. Does that help the situation at all?

Chris Nielsen:

A start date coinciding with the start date of either a quarter or a fiscal year would certainly help. I do not think anybody wants it to start on March 15 or Super Bowl Sunday, or whatever. I think it logically makes sense to start it on July 1, October 1, or something like that.

Chair Kirkpatrick:

Are there any other concerns? I realize you have not had enough time to go through it. Are there any other concerns that we should be wary of?

Chris Nielsen:

I have some high-level concerns. I think we will be getting into this a little more later, but Nevada is a member of the Streamlined Sales and Use Tax Agreement (SSUTA). I believe Senate Bill 34 will be heard by this Committee at some point. That is a technical compliance cleanup bill, and we can get into that when it is heard.

For the members of the Committee who are not familiar with the SSUTA, it is an agreement between the vast majority of states that impose sales and use taxes that came together years ago and asked Congress to essentially allow states to legally require out-of-state retailers to collect sales tax on behalf of individuals who live where the goods are being shipped. This applies to non-brick-and-mortar stores in Nevada.

So, there is a legal prohibition on states to require this now. It is a very complicated area of law. It implicates the Commerce Clause of the *U.S. Constitution*. There was a landmark U.S. Supreme Court decision years ago which kind of started all this. It basically stands that you have to have a brick-and-mortar physical presence in your state to require an out-of-state retailer to collect.

States got together. Nevada is a member. It is currently voluntary. We are currently receiving approximately \$10 million a year because of this program. If Congress acts and makes this mandatory, the revenue estimates are anywhere, I believe, between \$25 million and \$400 million in additional tax revenue to the State of Nevada.

I bring this up because under the SSUTA, certain states tax services. This has never been an issue with us. From a compliance standpoint, we have always been concerned about making sure our laws are in compliance with the SSUTA, as far as the sale of tangible goods. If a services tax is approved, we would have to be in compliance with the agreement with respect to the services provisions in the SSUTA. Also, the rate would have to be the same as the sales tax rate.

My concern is, if a services tax moves forward, the Department would certainly administer it, but it would certainly jeopardize Nevada's standing with the SSUTA.

Chair Kirkpatrick:

We could be waiting until the cows come home before Congress does something with this. Currently, how much money do we generate from that? Also, if that does come into play, will we then have the option to reapply? Is there an option to say, "I do not think it is going to generate enough for our state, compared to what we have?" There would be a legislative process where we could come back and address different things. I just think that we must decide policywise if that is something we want to wait for or to more stabilize our income. If you could answer that, it would be helpful.

Chris Nielsen:

Those are excellent questions, Madam Chair. Who knows when Congress will act? I cannot predict that. I can only tell you that they have had bills before Congress for, I believe, the last six or seven years to "turn this on," so to speak, and they have not acted. I do not know their intent.

If Nevada moves forward with a services tax, and it does not align with the requirements of the SSUTA . . . There is a formal process for a member state to be expelled. The state is found to be out of compliance, it is sanctioned, and if the problem is not cured, the state is out. It operates very similarly to any other organization. I do not know how long that process would take. I would think that the state would have an opportunity next session to make some corrections to get into compliance, but if it is the will of the Legislature to put the SSUTA on the back burner and reapply, I am sure that is an option as well.

Chair Kirkpatrick:

How much do we currently get from the SSUTA?

Chris Nielsen:

I understand it is approximately \$10 million. It is not a huge amount, but it is not insignificant, either. Also, it has been increasing. I think when it first came

on, it was \$700,000 annually, and it keeps going up. I am not going to say it will be \$100 million next year, but it is going up.

Chair Kirkpatrick:

Mr. Stewart.

Assemblyman Stewart:

Thank you, Madam Chair. Mr. Nielsen, did I hear you correctly in that under the SSUTA, the services tax and the sales tax have to be equal? Is that what you said?

Chris Nielson:

That is correct. That is my understanding after conversations and email correspondence with the executive director of the Streamlined Sales and Use Tax Governing Board. Yes, the rates have to be the same, as do the definitions of what constitute services; and the language in the exemptions has to mirror what the agreement says. I have not had the time to see whether the provisions mirror it, but I know the rate is not the same as the current sales tax rate.

Assemblyman Stewart:

So, under this bill at 1 percent, and our sales tax being higher, depending on the county, this bill would be problematic, then. Is that correct?

Chris Nielsen:

Yes. That is correct.

Chair Kirkpatrick:

Let me clarify. I did a little bit of research on this. First of all, Congress does have to act on it, and then there is an implementation date for Congress. I just spoke with representatives from Kentucky, Vermont, Virginia and some other states. Also, there is an opportunity for our state to then decide whether we want a sales tax and a services tax. Maybe the streamlined tax is not enough for us to generate. I do not think that by having the discussion and possibly if this became law, this bill would preempt us from going back and reevaluating which one of these stable sources works best for our state. I think that we would have opportunity. Like anything, you can never bind future legislators to do anything. People could come back, but we would have some structure in place.

I am hearing from other states that they are not waiting for Congress to act because they understand all that. They have taken the opportunity to tax some of their services at much higher rates than their sales tax. Or, they have been

consistent, but then they have not made a broad approach across their states. For instance, I spoke with Representative Wayne from Kentucky just this week. They are actually trying to broaden their services tax. They had said that the policy within their board was they wanted to wait and see what would happen with the SSUTA in Congress. They said their legal department was uncomfortable just having that discussion, but they have a much bigger body than we, and they do things very differently. They also have about 16 more taxes than we do here. They are not apples to apples, but he applauded Nevada for at least having the discussion and determining at a different time whether or not that needed to be part of our scenario within our state.

You could pick five services, and you could tax them equal to your sales tax on the transaction, but we are back to the same issue that I believe we have always had in our state. We go to a few industries, we pick on them, and then we say, "Oh, my heavens. Those industries are not doing so well anymore, and we need to diversify our economy." So, we are right back to the situation that we have always had.

Mr. Nielsen, I do not disagree that you have a responsibility to ensure that we stay within compliance, but I also believe this Legislature has the ability to come back and address it at a future date, depending on what goes on. I just want us to think about that, because it may be your son or daughter who is sitting in this chair, not us. I would not want to tie their hands as we have done with many of our sales tax exemptions.

Are there any other questions? I see none. Thank you, Mr. Nielsen. At this time we are going to recess the hearing on A.B. 569. We are going to open the hearing on Senate Bill 79 (1st Reprint). Good morning, Mr. Munro.

Senate Bill 79 (1st Reprint): Makes various changes relating to the Tobacco Master Settlement Agreement. (BDR 32-291)

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General:

Good morning, Madam Chair. With me is Michon Martin, who manages our tobacco unit. Also with me is Senior Deputy Attorney General Troy Jordan.

This bill is an important bill. It made it through the Senate. It is subject to potentially a lot of litigation, so there will have to be a lot of testimony read into the record about intent.

[Mr. Munro read from a prepared statement ([Exhibit C](#)).]

Nevada is involved in a nationwide arbitration with a group of tobacco companies over the Master Settlement Agreement (MSA), which Nevada signed, along with 46 states in 1998. We are involved with the arbitration because in 2009, the Nevada Supreme Court ordered the state to arbitrate its dispute with Big Tobacco, concerning Nevada's enforcement of its qualifying statute.

The stakes of the arbitration are significant. Nevada's potential liability is up to \$44 million for calendar year 2003. The same risk is assessed for every subsequent year up to, and including, the present year. Nevada will be required to participate in each of the subsequent arbitrations, and Nevada needs to continue to enforce it to qualify in statute.

The risk of losing substantial amounts of money year after year increases if the state is not given the appropriate tools to efficiently and successfully enforce the qualifying statute. At issue in the arbitration is whether our state diligently enforced its legal obligations under the MSA from 2003 to present.

The legislation before you marks the fourth time the Nevada Legislature has considered legislation regarding the diligent enforcement of the MSA. In 2009 the Legislature passed Nevada's qualifying statute. In 2003 complimentary legislation failed to pass the Legislature. Two years later the Legislature passed complimentary legislation to the qualifying statute. You will need some background on the MSA as you consider this legislation.

For decades, states were saddled with unfunded mandates because of tobacco. As our citizens contracted lung cancer or other diseases from smoking, states incurred massive costs in subsidizing the medical treatment of elderly and uninsured smokers. The United States Supreme Court has stated that tobacco use, particularly among children and adolescents, poses perhaps the single most significant threat to public health in the United States did not cause the health crisis, yet they spend billions of dollars over the course of decades in caring for citizens inflicted by it. Meanwhile, the tobacco companies bore none of the burden for the health costs incurred by the use of their products.

In the 1990s, the states developed a plan to alter that imbalance. They sued the largest tobacco manufacturers in the United States. In 1994, Mississippi was the first state to file suit. Mississippi Attorney General Mike Moore said the lawsuit was premised on a single notion: If you cause a health care crisis, you will pay for it. The free ride is over. Nevada and many other states followed suit and filed their actions. The claims varied from state to state, but causes of action included strict liability for selling an unreasonably dangerous product, product liability, unjust enrichment, breach of warranties, deceptive

trade, fraud, conspiracy, racketeering, and unlawful marketing to and contributing to the delinquency of minors.

These lawsuits, along with increasing publicity about the harms associated with smoking, put the tobacco companies in a bind. Their methods were under scrutiny, and they faced limitless financial exposure if juries held them responsible for the states' medical costs associated with smoking. Tobacco companies had a lot to lose if they did not settle. That dilemma sparked one of the most remarkable documents in American legal history, the Master Settlement Agreement. The MSA was initially a contract between the nation's four largest tobacco manufacturers—the original participating manufacturers—which are Phillip Morris USA, Inc.; R.J. Reynolds Tobacco Company; Brown and Williamson; and Lorillard, Inc. The litigants were 46 states and 6 territories.

The MSA gave the tobacco companies what they needed, an end to lawsuits in which they faced staggering exposure and could not use the personal responsibility defense. The states agreed to release permanently all claims for damages against the tobacco companies. In return, the original participating manufacturers agreed to pay a designated sum of money to the states annually and in perpetuity. Nevada's share of that payment is over \$40 million annually. Of course, that is the tobacco money the companies now want back through this litigation. They want it back for every year since 2003. The original participating manufacturers also agreed to significant restrictions on advertising, and particularly on advertising aimed at children.

The four original participating manufacturers who signed the MSA manufactured approximately 97.5 percent of all cigarettes sold in the United States at that time. The MSA permits other cigarette manufacturers to sign the agreement and thereby settle claims against them comparable to those asserted by the states against the original participating manufacturers. Since the MSA's execution, more than 46 additional tobacco companies have signed the agreement.

Many other tobacco companies doing business in the United States have not signed the MSA, however. These tobacco companies are referred to as the "nonparticipating manufacturers" (NPMs), and they are not bound by the MSA's marketing restrictions, nor are they required to make annual payments to the states. However, the NPMs remain potentially liable to the states for the health care costs of smoking-related illnesses. Because only four tobacco companies initially signed the MSA, the parties were concerned that companies that did not sign the MSA would gain a market advantage. The participating manufacturers' annual payments increase their per-cigarette cost, but the NPMs would not

share in those costs. The participating manufacturers did not want to lose their market share to other manufacturers, and the states were concerned that NPMs could increase sales of lower priced cigarettes, particularly to youth, and thereby undermine the MSA's public health goals. The NPMs were still potentially liable for lawsuits, but the states had no assurance that they could satisfy those judgments. Therefore, the parties created the NPM adjustment, and the corresponding model statute, which Nevada enacted as its qualifying statute in an effort to address those concerns. When the NPM adjustment applies, it acts as an offset on future payment for the participating manufacturers. The participating manufacturers are only entitled to an NPM adjustment when all four conditions are met. The NPM adjustment is allocated among the states, based on their allocable share. When a state is found to be diligent, then its share is reallocated among the nondiligent states. Therefore, a nondiligent state's loss due to the NPM adjustment increases with each state that is found to be diligent. However, a state cannot lose more than its final total MSA payment for the year in question. Therefore, what is at risk in arbitration for Nevada is the entirety of the MSA payment, which has been over \$40 million each year since 2003.

We brought this legislation so we could head to where we need to be: in a position that is tough but fair to all involved. We worked with everyone who had opposition to this bill in the Senate, and we do not believe there will be any opposition here in the Assembly. The amendments we brought to the Senate were to quell some of their interests but still protect the State of Nevada's concerns and needs. What we are proposing here today is not unique, however. This is the best starting point. There may be more to do.

Many other states have already enacted such laws or are in the process of enacting them as we are. I think you will agree that we need to be in as strong a position as possible, and S.B. 79 (R1) puts us on that road. As I noted previously, with me is Michon Martin, our lead tobacco counsel. She will provide an update on the current nationwide arbitration and go through the sections of the legislation before you.

Chair Kirkpatrick:

Thank you, Mr. Munro. Good morning.

Michon Martin, Lead Tobacco Counsel, Office of the Attorney General:

Madam Chair, good morning. Committee members, good morning. I have been fortunate enough to meet with most of you to discuss pieces of this bill, but I would like to go through it, just so you know what the mechanics are and how it works.

Before I do that, I would like to provide you with a brief update on the nationwide tobacco arbitration. We are currently representing the State of Nevada in the 2003 NPM adjustment arbitration, which is the nationwide arbitration involving 46 states and 6 territories against the nation's largest tobacco companies. The arbitration finally began in July 2010. We are in the first phase of the arbitration, which involves deciding preliminary legal issues that are common to all of the states, as well as conducting discovery, which involves the handling and review of millions of pages of documents.

[Ms. Martin read from a prepared statement ([Exhibit D](#)).]

In conclusion, by enacting S.B. 79 (R1), you will allow the State of Nevada to have the further necessary tools to diligently enforce its qualifying statute and help Nevada secure the entirety of the MSA payments Nevada is entitled to and relies on to support such important programs as the Governor Guinn Millennium Scholarship. But again, it is up to this Committee to make the determination as to whether S.B. 79 (R1) is good for Nevada and its further enforcement efforts. Thank you for your time.

Chair Kirkpatrick:

Thank you. Ms. Neal has a question.

Assemblywoman Neal:

Thanks, Madam Chair. I know we talked, and I had this question that I could not get to when we did talk. I am looking at section 2, subsection 3, paragraphs (a) and (b), where we are getting into how the wholesale dealer may require a nonparticipating manufacturer We talked about that when you mentioned that now the contract arrangements would change between the wholesaler, the dealer, and the NPM.

In the contract clause, it imposes some limitations to abridging the existing contractual rights and relationships when you are adjusting the rights and responsibilities of contractual parties, even when you are exercising your legitimate police power. I know there are exceptions, but it seemed that when you are altering the relationships permanently, immediately, and irrevocably that the retroactivity could pose a problem. How does section 2, subsections 3(a) and 3(b) work within that framework?

Michon Martin:

When you talk about section 3, are you talking about the bonding requirements?

Assemblywoman Neal:

No, I am talking about where it says, "A wholesale dealer may require . . . as a condition of the agreement of the wholesale dealer to purchase the cigarettes" When we talked before, I understood there was a different contractual arrangement, and then as you went through the process, you were trying to figure out what kinds of tools you could use to get the escrow payments either prepaid or in another way. This would change that relationship that existed before this statute. Is that correct?

[Chair Kirkpatrick left the room, and Vice Chair Munford assumed the Chair.]

Michon Martin:

We are attempting to protect our wholesale dealers. They are the ones doing business in Nevada. We are not telling them how they have to contract. We are allowing them to be able to contract in a way that provides them the protection that they indicated they need to run a successful business. We are not indicating that it has to be contracted in this way. The state is not dictating that. We are saying that, so the wholesale dealer is able to protect itself, it can require by contract with its NPM the prepayment of that escrow. It is not that this state is becoming involved in the contract process; it is that we are trying to protect the wholesale dealers and give them just another piece of protection that they can then contract for.

Vice Chair Munford:

Mr. Stewart.

Assemblyman Stewart:

Thank you, Mr. Vice Chair. I have three questions. First of all, in your opinion, without this bill we are very much in danger of losing the \$40 million a year. This is retroactive to 2003 and into the future indefinitely. Is that correct?

Michon Martin:

Yes. I am currently handling the 2003 nationwide arbitration. If Nevada loses that arbitration, we are risking up to the entire \$40 million that we would then have to pay. Every arbitration is set through the current time. Senate Bill 79 (R1) gives us the tools we require to be more efficient going forward so that we are not continuing to risk that \$40 million every year.

Assemblyman Stewart:

So, we would be billed for \$280 million if we lost this arbitration.

Michon Martin:

If we lost each and every arbitration, and we were subject to our entire MSA payment, yes, you are correct.

Assemblyman Stewart:

Is this bill patterned after states that have already put into effect action against the NPMs?

Michon Martin:

Yes. Many states are in the process of enacting almost identical language, and other states have already enacted much of what this bill does. Many states have gone far beyond what we are requesting to do now so that they can have a better handle on the tobacco market, as well as making sure to diligently enforce their qualifying statutes related to the NPMs.

Assemblyman Stewart:

Do you have any figures as to what percentage of the total tobacco market in Nevada is from the NPMs?

Michon Martin:

I can readily get that information for you. Sitting here now, I do not have the percentage, but I am happy to provide that for you.

Assemblyman Stewart:

Thank you.

Vice Chair Munford:

Are there any other questions? Mr. Goedhart.

Assemblyman Goedhart:

I have a question regarding the NPMs—the ones that, in some cases, have basically sold cigarettes and skated out of the state without paying their appropriate funds. What amount of dollars per year do you think that is for the proper taxes they have evaded paying?

Michon Martin:

I can actually give you much more information after this hearing. There are a couple components to that question. What happened in 2003 is what we discussed—that we would have these NPMs come in, sell cheap cigarettes, and leave without paying that escrow. There are various amounts that we lost. I will indicate that with one company in particular there is \$500,000 outstanding for escrow. That is just one company, and we have a whole host of different companies. I am looking at a document now which gives

indications for other states. I can provide a copy of it to you if you wish. It involves significant amounts of money. Now, what we are dealing with in this current nationwide arbitration is whether or not escrow is complete and the state can do anything about that.

Assemblyman Goedhart:

Does this bill also address all the cigarette sales that have been made on reservations where the taxes are not going to the state fund? Where do you think that component is on taxes that currently are not being collected by the state?

Michon Martin:

Right now, this bill does not impact any sales on tribal reservations to nontribal members. So, if the question is about the potential tax revenue on tribal sales, the tax revenue is approximately \$3 million a year. But this bill does not do anything by way of tribal sales or give the state the authority to escrow on tribal sales.

Assemblyman Goedhart:

How does that work without existing law in comparison to other states that also have tribal sales to nontribal residents? What are they doing? Are they also missing out on that revenue stream, or do we have some states that have created a law by which that money gets funneled back into the state general fund?

Michon Martin:

We reference them as tribal states. There is a group of us that has tribes contained within our borders. States have done many different things. There are states that are capturing tribal sales, both getting the tax on tribal sales and requiring escrows on tribal sales. So, the states are doing many different things, depending on the state. I know there are states seeing that revenue come into their state instead of going to the tribes.

Assemblyman Goedhart:

It sounds like if we can get our hands around that issue, we can create millions of dollars of additional revenue for the state without increasing the tax rate.

[Chair Kirkpatrick reassumed the Chair.]

Michon Martin:

I probably cannot speak to that directly. I am just trying to give you information about what the ranges are and what the volume looks like.

Assemblyman Goedhart:

Okay. Thank you.

Chair Kirkpatrick:

Are there any other questions? Do you have anything more for the record?

Keith Munro:

No, thank you.

Chair Kirkpatrick:

At this time, we are going to ask those who would like to voice support for S.B. 79 (R1) to please come up now. If there is anybody in opposition, come up now. If there is anybody neutral, please come up now. Mr. Alonso.

Alfredo Alonso, representing Reynolds American, Inc.:

Even though we are neutral, we support this type of legislation. It is basically what is being used across the country to solve this problem. Obviously, there is great liability to the state, and we believe that this is one way to get there. You will probably have more in the future as these arbitrations complete, but this is a good first step. I think it protects the wholesalers as well, so they do not have as much liability as they had in the first version.

Chair Kirkpatrick:

Okay. Thank you. Are there any questions from the Committee members? Mr. Ellison.

Assemblyman Ellison:

From what I gather, cigars are exempt from this process. Is that correct?

Michon Martin:

Sir, we are talking about S.B. 79 (R1) and what this bill addresses. Cigars would be excluded from that. You are correct.

Assemblyman Ellison:

The only reason I ask that is because it is still a tobacco product.

Chair Kirkpatrick:

Mr. McMullen.

Sam McMullen, representing Altria Group, Inc.:

I just want to echo Alfredo's remarks. We are neutral, but it is a positive step. Thank you very much.

Chair Kirkpatrick:

Thank you, we appreciate it. That helps when the industry supports. Is there anybody else who would like to testify as neutral? Are there any final comments from Mr. Munro?

Keith Munro:

I have no final comments, but we would make ourselves available to each member of this Committee and staff between now and the work session if anybody has any questions regarding this difficult issue.

[A letter in support of S.B. 79 (R1) ([Exhibit E](#)) was submitted into the record by Brett Kandt of the Office of the Attorney General.]

Chair Kirkpatrick:

Okay. Thank you. We are going to close the hearing on S.B. 79 (R1). For the Committee, as we do in our other committee, you will have documentation before a work session is done. The goal is to hear all the bills today and Tuesday, and maybe have a rolling work session on Tuesday, with Thursday being the day before the deadline for moving bills out.

At this time, we will open the hearing on Senate Bill 13 (1st Reprint).

Senate Bill 13 (1st Reprint): Revises provisions relating to the collection and payment of certain fuel taxes. (BDR 32-494)

Good morning. I apologize you had to wait until almost after noon.

Wayne Seidel, Administrator, Motor Carrier Division, Department of Motor Vehicles:

Good morning. The bill proposed by the Department of Motor Vehicles (DMV) was drafted to address the inconsistencies in statutes governing special fuels—diesel. *Nevada Revised Statutes* (NRS) Chapter 366 governs motor fuels. Gasoline is covered in NRS Chapter 365; NRS Chapter 360A is the administrative chapter for fuels; NRS Chapters 365 and 366 are not consistent regarding requesting an extension of time for payment of taxes; NRS Chapter 366, governing special fuels, does not allow for extensions of time for making reports or returns; while NRS Chapters 365 and 360A, governing motor fuels, allow for extensions.

The allowance for extensions of time was removed from the NRS through the passage of Assembly Bill No. 595 of the 74th Session. Unfortunately, these sections were missed during the cleanup process.

The following proposed amendment strikes the repeal of NRS 360A.050. It was discovered that the repeal of the language in NRS 360A.050 will have a detrimental effect on other language in NRS Chapter 360A and therefore needs to remain in the statute.

The bill provides the ability to assess the interest at a rate of 1 percent per month on the outstanding balance of any tax due to the Department of Taxation. Although there is a statutory authority in NRS 360A.080 to allow the Department to enter into payment agreements, the only place authority is granted to apply interest to the unpaid balance is in NRS 360A.050. Therefore, repealing this language would prevent the Department from collecting interest on the unpaid tax balances during the repayment period.

The other part of S.B. 13 (R1) is providing audits, notifications, and findings to be sent to the taxpayer electronically. Currently, the law provides for all audits, notifications, and findings to be sent to the taxpayer via the U.S. mail and does not provide for the electronic delivery of information. The change in the bill should reduce mailing costs and increase efficiencies for delivering information to the Department's taxpayers and customers. The Department is anticipating savings of over \$4,300 in postal costs, as well as staff time in preparing those notices. With that, I would open it up for any questions.

Chair Kirkpatrick:

Thank you. Are there any questions? Ms. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

Thank you, Madam Chair. I wonder what the process would be if you are sending notices by email which would include fines or any type of notice the DMV would send out. If the email address is not good, or if it comes back, what would be the process? Would you just automatically default to a hard copy mailing?

Wayne Seidel:

You are absolutely correct. We contact the people via phone, we fax, and we do it electronically. It seems like the industry is getting more and more online in their business practices, and the DMV is following that for efficiencies. It is just another method versus the U.S. mail to contact them. It is more direct and more responsive than the phone and the fax methods.

Chair Kirkpatrick:

I would like to follow up on her question. People change emails quite often. Would these emails be directed to a couple of different people at the business? Let us just say that a secretary is the one who does the receivables. What if

she was out sick or on maternity leave? We would have a mechanism so that the fill-in person would get the email.

For example, I am on a leave of absence from my job during the Legislature, and no matter how many times I put in that automated reply window that I am unavailable until June 7, I still go back to work and I have a couple thousand emails, and people asking why I do not return their emails. I think, "Are you kidding me?" So, I end up responding to email from March, saying, "Let me show you the window again." So, is there a mechanism in place? I would believe that we could monitor it because you guys do some interim reports to the Legislative Commission every three months on missed payments and different things like that. Has that been talked about policy wise, how to ensure they pay? Or is that something that the owner is going to provide and it is his responsibility?

Wayne Seidel:

Typically, we are receiving taxes on these accounts on a monthly basis, so we are very connected to them. The exceptions of payment extensions are really a small percentage of the bulk.

It is the fuel industry. We are very connected and working with them on a monthly basis.

Chair Kirkpatrick:

Perfect. Mr. Anderson.

Assemblyman Anderson:

Thank you, Madam Chair. I am looking at section 3, specifically line 15. I see you have crossed out "Except as otherwise provided in NRS 365.135" I am wondering why. It seems like that is taking away some of your own flexibility, is it not? If I am reading that provision right, it grants you flexibility.

Chair Kirkpatrick:

Would it be correct to say that it is repealed in section 5 of the bill? They are now going to go by their own provision of NRS 365.175 instead. Is that correct?

Wayne Seidel:

I believe in the amendment it was repealed. Are you talking about NRS 365.135?

Assemblyman Anderson:

I would then amend my question. That section seems to give you flexibility in dealing with situations that come up. Why would it be repealed?

Wayne Seidel:

My staff prepared this, and I believe striking the repeal of NRS 360A.050 gives us enough flexibility to set up the repayment plans with an interest rate of 1 percent a month.

Assemblyman Anderson:

That is fine. I am just curious. I am sure you do not willingly want to get rid of your own flexibility. I would take your word on that.

Chair Kirkpatrick:

Are there any other questions? Okay, thank you. With that, we will invite anyone who would like to testify in support of S.B. 13 (R1) to the table. Is there anybody neutral on S.B. 13 (R1)? Is there anyone in opposition? Do you have any final comments? No? With that we will close the hearing on S.B. 13 (R1). We are going to open the hearing on Senate Bill 495. After this bill, we will take a ten-minute recess, and we will resume Assembly Bill 569.

Senate Bill 495: Proposes a competing measure to Initiative Petition No. 1. (BDR 32-1275)

Good morning, Mr. Griffin and Mr. Rowe.

Russell Rowe, representing Taxpayers for the Protection of Nevada Jobs:

Thank you, Madam Chair and members of the Committee. I am here today on behalf of Taxpayers for the Protection of Nevada Jobs, which is a coalition of Nevada employers in support of S.B. 495. Our coalition consists of Boyd Gaming Corporation; General Growth Properties, Inc.; Las Vegas Sands Corporation; MGM Resorts International; Olympia Properties; South Point Hotel and Casino; Stations Casinos, Inc.; and Tropicana Hotel and Casino.

I would like to make some brief remarks and then have a few members of our coalition make some brief remarks as well. We also have attorney Matt Griffin available for any questions regarding the measure or the process.

As you know, Initiative Petition 1 was placed on the ballot for the specific purpose of creating a special taxing district to raise the sales tax rate within an area encompassing roughly a 3-mile radius around the gaming corridor in the City of Las Vegas. The revenue from the tax increase would fund a sports arena behind the Harrah's hotel in Las Vegas. Our coalition was formed in

opposition to I.P. 1. Senate Bill 495 would place a competing alternative, pursuant to the *Constitution of the State of Nevada*, on the 2012 ballot.

Although emanating from I.P. 1 and the arena issues occurring in southern Nevada, S.B. 495 is not only about arenas. It is also about simple tax fairness to citizens, taxpayers, property owners, and businesses. It is about fairness on a level playing field among competing business entities. A basic tenet of tax policy is that the people upon whom a tax is imposed have the ability, through their vote or their representatives, to determine whether or not a tax should be imposed upon them. Whether it is a tax increase within a municipality, a county, statewide, or even a local improvement district, the people upon whom a special tax assessment is imposed within the chosen boundaries determine whether or not to impose that tax.

Initiative Petition 1 has circumvented this basic tenet and attempts to have a sales tax increase imposed upon a very small group by a significantly larger group of people, thereby creating unequal sales tax rates within Clark County and having a small group of citizens and businesses endure a higher sales tax rate than the rest of the County. To our knowledge, this has never occurred in Nevada. Indeed, all sales tax rates are equal within each county in Nevada today. This has not occurred as a requirement of law; it is a matter of good tax policy and simple fairness in treating each of our citizens equitably and uniformly with respect to sales tax. Senate Bill 495 would correct the inherent unfairness proposed in I.P. 1 by ensuring that the sales tax rate within each county must be uniform and equal throughout the county.

Senate Bill 495 is also about maintaining fairness and equity among competing businesses within our state. Tax policy should not be used to give any one business or group of businesses a competitive advantage over others. By definition, I.P. 1 will raise the sales tax rate within the defined district and thereby force retailers to charge more for their goods than their competitors outside the district and, in some cases, across the street. Moreover, as explained above, it is a competitive disadvantage forced upon them, rather than chosen by those people within the boundaries of the district.

We submit to you that this is inherently unfair and should not be tolerated within our state. Today, it is an arena district in Las Vegas. Tomorrow, it may be an artificially created district in the City of Ely, Battle Mountain, or Pahrump, imposed upon it by a large majority of people outside that district, and who would not have to endure the same tax burden.

The same tax mechanism proposed in I.P. 1 was rejected by the Clark County Board of Commissioners last year. On behalf of our coalition and our roughly

90,000 employees impacted by I.P. 1, we respectfully ask this Committee for its support of S.B. 495. Thank you.

Chair Kirkpatrick:

Thank you, Mr. Rowe. Mr. Griffin, do you have anything?

Josh Griffin, representing MGM Resorts International:

I just crossed out most of my testimony because Mr. Rowe said it, and he said it far more artfully than I could have.

As was stated, fair and uniform sales tax rates are current Nevada policy, and this bill sets out to codify that into law. By passing S.B. 495, taxpayers should feel comfortable that the voters in different jurisdictions should not be able to raise taxes on another group of citizens that they would not impose on themselves. This is not fair, and this has not been policy of this state. Senate Bill 495 will protect taxpayers and make Nevada's current policy the law. Thank you, Madam Chair.

Chair Kirkpatrick:

Thank you, Mr. Griffin. Are there any questions from the Committee? The one thing I want to be very clear about—and I am going to ask you what your legislative intent is so that it is very clear—is that I do not believe that this precludes us from giving abatements where we exempt the Currently, within our abatement system, we are allowed to keep the sales tax. We are allowed to abate the sales tax. So, the sales tax is 8.1 percent in Las Vegas, and we tell our different industries that with our different abatements, they are required to pay the 2.6 percent plus the 2 percent constitutional. That does not preclude us, because I verified with my Legal Division that, as long as the rate is the same in the beginning, we can abate what we like in our state. So, I just want to be sure that your intent is the same as the way I understand the bill.

Russell Rowe:

We appreciate that question. We also have been very sensitive to that concern. We did not want it to impact the abatement policies of the State of Nevada. Considering the research we have done, we do not believe that is the case; and it is not the intent to impact abatements.

Chair Kirkpatrick:

As long as your legislative intent is the same as mine. Are there any other questions from the Committee? Mr. Griffin, do you want to chime in?

Matthew Griffin, representing The Capitol Company:

I will elaborate a little bit on what Mr. Rowe mentioned. The intent of this legislation is not to affect any part of the existing structure or the abilities of any local government to effect any changes in the taxes it assesses. Typically you will see instances where the state law allows for local governments to increase a property tax, or whatever the case may be, but there are mechanisms in state law that allow for that to occur. The proposal we have before you today in S.B. 495, in my legal opinion, does not affect those; nor is it designed to affect those. That is inclusive with the abatements; it is inclusive with any process where somebody might want to run an advisory question, because, ultimately, advisory questions come to this body for approval anyway. It is not designed to affect those issues, nor do I believe it does.

Chair Kirkpatrick:

Thank you, Mr. Griffin. The only reason I have concern is because we are working very hard now to, for instance, be a renewable hub. If we change the rules on them, then we did exactly what we said we would not do. I think we must be somewhat consistent. As long as the legislative intent is clear, I believe that in itself puts everybody at ease.

If there are no other questions, then thank you, gentlemen. At this time, I would like to call up those who are in support. Please come forward.

Randy Robison, representing General Growth Properties, Inc.:

As Mr. Rowe indicated, General Growth Properties is part of the coalition. Being somewhat risk averse, we distributed a letter to each of your offices, as well as to the Committee. I believe it is on the Nevada Electronic Legislative Information System (NELIS). I would like to read a portion of it into the record.

[Mr. Robison read from the letter ([Exhibit F](#)).]

We ask for your support of S.B. 495. Thank you.

Chair Kirkpatrick:

Thank you, Mr. Robison. Does anybody have any questions? Mr. Higgins.

Sean Higgins, representing Station Casinos, Inc.:

I just want to echo what the previous gentlemen said. My client is in support of S.B. 495 and asks that you give it consideration.

Chair Kirkpatrick:

Thank you, Mr. Higgins. Does anybody have any questions? I see none. Is there anybody else who would like to testify in support of S.B. 495? Is there

anybody neutral on S.B. 495? Is there anybody in opposition? Mr. Alonso and Mr. Thompson, good morning.

Mike Alonso, representing Caesars Entertainment:

Good morning, Madam Chair and members of the Committee. Mr. John Sande was supposed to present this, but he walked out a couple minutes ago. Oh, here he is.

Chair Kirkpatrick:

Good morning, Mr. Sande.

John Sande III, representing Caesars Entertainment:

I have been doing this for approximately 30 years, and this is the first time that I have seen major gaming companies fighting each other publicly. It must be because of the economy. It is a little bit disturbing to me.

In any event, Caesars Entertainment gathered approximately 220,000 signatures to put the initiative on the ballot, and the court has just ruled that it is a qualified initiative. The initiative seeks to impose a 0.9 percent sales tax in a discreet district around the Strip, which would cause the vast majority of the money to come from tourists. It also would have a great economic benefit for the area. It would create numerous jobs, not only construction, culinary, and other sectors, but it would also create significant economic activity. Our analysis indicates that the arena project would have an annual impact of \$20 million in taxes. There would be a Live Entertainment Tax of \$4.8 million, a Property Tax of \$4 million, a Sales and Use Tax of \$2.2 million, a Modified Business Tax of \$400,000, and taxes from incremental visitors of \$10.1 million. It would also position us as the entertainment capital of the world. We could accommodate a National Basketball League team, a National Hockey League team, boxing, the rodeo, and local events for University of Nevada at Las Vegas (UNLV) athletics and other events.

We believe that S.B. 495 and I.P. 1, under the *Constitution of the State of Nevada*, if you were to adopt this, would have to be on the same subject. Clearly, we do not believe that they are on the same subject, as is required by the *Nevada Constitution*. Initiative Petition 1 seeks to amend Chapter 244A of the *Nevada Revised Statutes* (NRS) to essentially define, finance, and construct an arena. Initiative Petition 1 defines an arena district, a qualifying arena, and other terms.

On the other hand, S.B. 495 amends NRS 360.291 to provide that Sales and Use Tax administered throughout the counties must be uniform and equal within each county. Senate Bill 495 also amends NRS Chapter 244A for the sole

purpose of providing that a special district cannot be created if it would cause the rate of Sales and Use Tax to be higher in one part of a county than in another part of a county.

Initiative Petition 1 deals with a sales tax increase in the small core of the Strip for the purpose of constructing an arena. However, S.B. 495 basically talks about Sales and Use Tax being uniform and equal throughout the State of Nevada in every county. Clearly, they are not on the same subject, in our opinion. Also, we think, if you put this on the ballot—and I have seen this before—you are going to confuse the voters. They will not understand how to vote. You will have a lot of confusion, and who knows how it might come out. That concludes my remarks.

Chair Kirkpatrick:

Thank you, Mr. Sande. Maybe Mr. Alonso can answer this: I do not think I have ever seen anything in our state where this issue actually exists. I have had questions this morning from different members, saying it might. Have you heard anything?

Mike Alonso:

No, I have not. I think it is worth going back on trying to understand what the purpose of S.B. 495 is, other than to thwart an initiative petition by another gaming company. Sales and Use Tax is uniform and equal in every county now. The reason for that is because if a municipality or some kind of local government tries to increase the sales tax, it would have to come to this Legislature to get that authority. So, I think part of what S.B. 495 is doing is taking that authority away from you and saying that you cannot have a different Sales and Use Tax rate within a county, and the Legislature cannot even touch it for two sessions, essentially, because of what is in the *Nevada Constitution*.

Chair Kirkpatrick:

Ms. Neal, do you have a question?

Mike Alonso:

Madam Chair, I have a couple of other things I want to touch on, if that is okay.

Chair Kirkpatrick:

Okay. After that, we will let Ms. Neal ask her question.

Mike Alonso:

To clarify what the proponent said, they sort of throw around this 3-mile radius, which is what I.P. 1 talks about. However, I.P. 1 is very specific. The imposition of the Sales and Use Tax increase would not be a 3-mile radius.

It is within the Gaming Enterprise District. That is very clear in I.P. 1. This is not exclusive to Caesars Entertainment. Anybody who meets the conditions of I.P. 1 could use this and build an arena. You have to be within 2 miles of 95,000 hotel rooms, so you can go up and down the Strip, and if you meet that definition, you would be able to use this mechanism for the arena. To make it clear, the imposition of the sales tax would be in the Gaming Enterprise District, which, as you understand, is the Las Vegas Strip corridor, 1 1/2 miles from the centerline of the Strip. There are other areas that are picked up that are around casinos.

The other qualification is that you would have to provide the land. The sales tax could not be used to buy the land for the arena, and Caesars is contributing that land to a charitable foundation that would own that land, build the arena, and then hire someone to manage the arena. It would be open to anybody. I just want to be clear on that.

To wrap up, Madam Chair, and to touch on what you said about the fact that Sales and Use Tax is uniform and equal now. The process you would have to go through would be to put it to a vote of the people, and then you would have to come back to this Legislature to get authorization to increase the tax within a municipality. To touch on what Mr. Sande said, this bill is not being brought by any county, municipality, or tax policy group. It is brought by some competing gaming companies with one purpose in mind, which is either to confuse the voters, or to thwart I.P. 1. I am not sure whether that is what good tax policy is about. I would be happy to answer any questions. Thank you.

Chair Kirkpatrick:

Mr. Thompson, go first, and then we will go to our questions.

Danny Thompson, representing Las Vegas Arena Foundation:

Today, I am representing the charitable foundation that Mr. Alonso just spoke of. I am on the board of directors of this foundation that was created to own and operate this arena. When we form this foundation, Harrah's will donate the property to the tune of \$151 million, what I believe the land is worth, to this charitable foundation. We would open an arena that would benefit everyone. When we could not get agreement with the County, the board made a decision to draft an initiative, which we did. It was qualified and brought to the Legislature. We had 40 days to do something with it. In fact, this bill was introduced as a competing measure. Our initiative will be on the ballot. It was challenged in district court, and we just won this week, I believe. Depending on the outcome of this bill, our initiative may be on the ballot.

For disclosure purposes I would tell you why I am here, but from a practical standpoint, this bill is simply a bad idea. I understand why it is here. Like Mr. Alonso said, it is an attempt to thwart and stop the initiative petition that we introduced to the people. We gathered over 220,000 signatures of citizens to put this thing on the ballot.

This response to that initiative, in and of itself, is a terrible idea. I have been actively involved on most committees of the Southern Nevada Water Authority (SNWA). Currently, 90 percent of the water from Lake Mead supplies Las Vegas. Ninety percent of the water we get comes from Lake Mead. If there is a problem with that, I do not need to tell you what happens in Las Vegas. We had one way to take the water out of the lake. It was a single straw. It was evident that we needed to do something as a community. Literally, the economic viability of the State of Nevada depends on Clark County. We joined together in a coalition with the Las Vegas Chamber of Commerce. In fact, Tim Cashman did television commercials to raise the sales tax a quarter of a cent to pay for this project. Ultimately, we did that. Today, you have a water system in Clark County second to none because of that. If you pass this measure, and if there was a need somewhere like that, to do something different for something that needed to be done, like water for Clark County, you would not be able to do that under the terms of this bill.

This bill is a bad idea. It puts you in the middle of a very hefty fight, which I think is a bad place to be. But forget all that. This is not the answer to that initiative. If you want to do something about that initiative, do not do this bill, because you are tying everyone's hands for the future. It is not just Clark County; it could be in any county where it has a need and could solve it by having an unequal tax rate in the sales tax. We are opposed to this bill, and I would be happy to answer your questions.

Chair Kirkpatrick:

Thank you, Mr. Thompson. Ms. Neal has a question.

Assemblywoman Neal:

Thanks, Madam Chair. Mr. Sande, you said S.B. 495 would confuse the voters. When this ballot question was presented to the voters, it was not wholly truthful. I do not know if that was vetted out. My constituents who signed it were not sure who was on the hook to pay for this arena with the way that it was positioned and postured out there. I specifically remember a guy passing around a petition, and he was like, "Oh, it is going to bring jobs," and "This is to benefit different people." At no point did he discuss who would pay for it. That poses a problem for me with that initiative.

You talked about a public benefit. Between those two issues, how can there be a public benefit when it is probably only going to benefit a small minority, right? The negative impact upon the constituents was not truly understood as the initiative was presented.

John Sande III:

When they put this on the ballot, an explanation will be prepared, and anybody will be able to read that. It will list the pros and cons. Both the proponents and the opponents will have an opportunity to give their input when they prepare the ballot measure.

Why will it be confusing? Because now you will have an explanation, talking about something that will be on the Strip in Clark County. They will describe exactly what benefits are anticipated, who will pay the tax, and those types of things. That will be in the measure, but you will also have an explanation of why this competing measure is dealing not with the arena, not with the Strip, not with an increase in sales tax on the Strip, but with a question of whether or not we should have uniform sales tax everywhere.

In 2003, we put something on the ballot because of the Streamlined Sales and Use Tax Agreement (SSUTA), which had like six exemptions, including things like sales of used cars and trade-ins. The explanation was so confusing that the voters basically turned it down. As a result, we had to go back in and get another ballot measure the next session. The more confusing it is, the more difficult it is for the average person to understand.

Chair Kirkpatrick:
Mr. Goedhart.

Assemblyman Goedhart:

Thank you, Madam Chair. Mr. Thompson, I believe you indicated that if S.B. 495 was passed, it would preclude Clark County from passing a countywide ordinance to increase the sales tax to help out the SNWA with a water delivery system. It was my understanding that this bill seeks to have a uniform rate across the whole county. Am I missing something here?

Danny Thompson:

That is the intent. That is my understanding. It would preclude an unequal sales tax. Initiative Petition 1 would create a taxing district on the Strip in a gaming enterprise zone that is very well defined. It would increase the taxes there alone. This bill would prevent that.

Assemblyman Goedhart:

I am going to circle back around to what you said earlier in testimony. You said that S.B. 495 would preclude Clark County from enacting an increase in sales tax, as well as funding, to improve the water delivery system from the SNWA. From what I am reading in the bill, it would not preclude that. Am I looking at it incorrectly?

Danny Thompson:

The intent of this bill is to preclude that, to have an equal sales tax. You named the project. I do not know what it is. In the future, it could be something in Nye County that it had a need to create. That is the intent of this bill.

Assemblyman Goedhart:

In the case of the water project, I would have rather seen it gone toward higher water rates. Therefore, you would have more of a nexus between the need for the additional infrastructure and water conservation and having it directly pertinent to the people who are using extra water. I do not see how this bill would preclude Clark County from imposing a countywide increase in sales tax to fund a specific project. I do not see that in this language.

Danny Thompson:

Maybe it would not be countywide, but in a specific area in the county. If I misspoke, I apologize.

Assemblyman Goedhart:

Thank you.

Chair Kirkpatrick:

Are there any other questions? I see none. Thank you, gentlemen. If there is anyone else who would like to testify in opposition, please come forward now.

Does anyone have any final comments?

Russell Rowe:

We greatly appreciate the time to respond. I would like Matthew Griffin and John Griffin to respond, both of whom have extensive experience with initiative petitions, both legally and procedurally.

Chair Kirkpatrick:

Okay, go ahead.

Matthew Griffin:

Thank you, Madam Chair. I want to clarify briefly what the language of *Nevada Constitution*, Article 19, Section 2 says. It was represented to the Committee that, should you enact S.B. 495, it is a hands-off policy for a three-year period. For two sessions, you cannot touch it.

I ran the elections for the Office of the Secretary of State as the Deputy of Elections. The three-year hands-off period applies to initiative petitions. What is in front of you today is not an initiative petition. It is simply a bill being offered as an alternative to an initiative petition. Nothing in *Nevada Constitution* Article 19, Section 2 can be read to say that a bill passed by the Legislature cannot be amended by future legislature action.

Secondly, when offering an alternative—and it happens somewhat infrequently in the State of Nevada, but it happens very frequently in most other petition states, and it happens a lot on the county level, where counties have the ability to run petitions—in no way does it affect the ability of the petition to appear on the ballot. Regardless of what this Committee does today, I.P. 1, absent intervention from the Supreme Court, will appear on the 2012 ballot. All we are discussing with you today is whether S.B. 495 will appear as an alternative. If you notice the language of S.B. 495, there is language at the beginning and the end of the bill that informs the voters that this is offered as an alternative to the arena petition and that it is a competing measure. There is language in there to inform voters of that.

Chair Kirkpatrick:

Thank you. Are there any other comments? Mr. Griffin.

John Griffin, representing The Capitol Company:

I want to clarify Mr. Goedhart's question, in light of what Matt Griffin said about the hands-off policy. If S.B. 495 is on the ballot in 2012, and it passes and becomes law, if the SNWA water example came forward in 2013, it would be an advisory vote in Clark County: Should we raise sales tax 0.25 percent to help pay for a water project? If the voters agreed, Clark County would have to come to this Legislature to get legislative authorization to increase the sales tax rate. Once authorization happened, based on the SNWA example, it would, in fact, apply countywide. That entire process would not run afoul of the language or the intent of S.B. 495 to the extent that Clark County said, "Let us just have this apply to Henderson." And let us say every voter in Clark County said, "Yes, let us have Henderson pay for the water." That would have to have legislative enactment. To the extent that legislative enactment was different from S.B. 495, it would simply be an amendment. We do that all the time here; we would amend existing law. It would probably read, "Except as

otherwise provided in NRS," which allows Henderson to pay for Clark County's water, "All sales taxes shall be uniform and equal."

That is the intent. That is the way we read the language. We just wanted to clarify that.

Chair Kirkpatrick:

Okay, thank you, Mr. Griffin. Are there any other questions? I see none. With that, we are going to close the hearing on S.B. 495. We are going to take a break until 11:30 a.m. At that time, we will resume our conversations on Assembly Bill 569, which is the transaction tax bill, so that we can have more testimony and finish Ms. Vilardo's technical questions as well as those of anyone else. We will stand in recess until 11:30 a.m.

[The meeting was recessed at 11:10 a.m. and reconvened at 11:34 a.m.]

I will reopen the hearing on Assembly Bill 569.

Assembly Bill 569: Imposes a Nevada transaction tax. (BDR 32-1290)

Ms. Vilardo, you were on section 40. Can we finish with you? I believe I had Mr. Nakamoto pass out the sections that Mr. Conklin went over so that you have those particular pieces. We will go ahead and start on section 40 of the bill and resume from there.

Carole Vilardo, President, Nevada Taxpayers Association:

I have nothing up until section 45, where it reads, "If any amount in excess of \$25 has been illegally determined" I do not think that the State Board of Examiners wants to get a number of these types of refunds. If you take a look at the way refunds are currently handled, the Nevada Tax Commission sets an amount each year. I think Mr. Nielsen is better equipped to speak to the amount they currently set, but you could bury the Board of Examiners with refunds that are \$25 or less. I think you had better have Mr. Nielsen identify for you what is currently being done. It is a very substantial number, as memory serves.

Chair Kirkpatrick:

Mr. Nielsen.

Chris Nielsen, Interim Director, Nevada Department of Taxation:

The current policy of the Department of Taxation and the Tax Commission is any refunds over, I believe, \$250,000 are agendaized on the public agenda for

the Tax Commission with a recommendation of either approval or denial. They are heard in public, and they either approve it or they do not.

I have to echo my concerns administratively. This section could be interpreted as every time someone makes a transcription error or if there is some minor adjustment that needs to be made I mean, that happens every day at the Department with our amended returns. We do not want to burden my staff, or more importantly taxpayers, any more than we have to as far as getting their money back, especially in a refund context. Clearly, there needs to be an approval process, and in fact, we audit any refund request over \$10,000. We go into the business and do not just verify that its refund is due, but we do make sure it is doing everything else correctly.

I share Carole's concerns with section 45.

Chair Kirkpatrick:

Mr. Nielsen, would it be possible for you to get our current practice on what we do with these dollars so that we could address that or at least determine whether that is something in regulation that needs to be discussed?

Chris Nielsen:

Do you want something written about what the current policy and practice is?

Chair Kirkpatrick:

Is that easy enough for you to get? I do not want to put any additional burden on you at this time, but I want to determine if maybe . . . I am not a huge fan of doing things by regulation, but I think that we need to have some of this stuff fluid in regulation so that we can adjust accordingly if there becomes an issue.

Chris Nielsen:

Absolutely. As you know, Governor Sandoval has asked every agency to review its regulations and the need for any additional regulations. That is something that I think is an important issue. For clarity, I think the Commission would be receptive to reducing regulations.

Chair Kirkpatrick:

For the Committee to know, the regulation process, even if the Tax Commission did the regulations, we would then see them. Mr. Stewart and I currently sit on that board. It is not like there is not any oversight. We could go back and revisit some of this, but I would bet that it would take a little while to get the regulations in process.

Chris Nielsen:

That is correct. You are right. Nevada is unique in its regulations. The Department, or any other agency, does not just type up a statement of policy and present it. That is what California does for taxes. For that matter, the IRS does it, too. We go through a public process, so it will take some time.

Chair Kirkpatrick:

Thank you, Mr. Nielsen. Ms. Vilardo.

Carole Vilardo:

Thank you, Madam Chair. The next section is not an issue, per se, with the language in section 50, but an issue that arises in conjunction with section 50 and most of the rest of these sections are administrative, and so the Department probably can weigh in on some of these.

Here is one of the issues that happens when you are talking about services: A lot of service is provided from the home, unlike retail. You are required to keep books, which is fine. That is standard. You are required to have them available for inspection anytime during normal business hours, but do you really want Department staff to be going to somebody's home to audit records? Effectively in these administrative sections, you are requiring it. I think that needs to be thought out. This may be a case where, with a certain amount of notice, you want the person to make the records and books available at one of the Department offices and allow him to transmit those records by email. You have a provision for travel, but you have to recognize so many service businesses are home-based businesses. If you want somebody to go to their home, that is fine, but I really do wonder how effective that is going to be. It is unlike the normal business hours of a retail operation, where the hours are posted in most of the counties. There is not going to be a home location for retail, but a physical, store-type location. That is not the case in service businesses.

I am trying to figure out why you need section 51. It seems to be totally superfluous to me. You get the money. You have to keep records. You keep receipts. In some instances for a service business such as a bowling alley, a person will rent shoes. I have not been bowling in a long time, but I never had to give my name and address. So, what is the purpose of this section, where it reads, "The report must: 1. Be filed when the Department requires; and 2. Set forth the names and addresses of purchasers of taxable services" Now, I can see if it is a service that tends to be commercial for which you are invoicing or billing, but this is an all-encompassing bill. You can go to a bowling alley, where you will rent shoes. That is a service. I do not think you should take names and addresses. There are a number of other instances where you

are providing a service for which it would not be necessary to provide a name and address, so I seriously question the need for section 51.

Chair Kirkpatrick:

Ms. Vilardo, there are some Committee questions. I was hoping to get through the remainder of the bill. I believe there are only 70 sections. Can the Committee hold its questions for about 15 minutes? I think there will be some questions for you and Mr. Nielsen.

Carole Vilardo:

If I may, Madam Chair, most of this is administrative and pretty clean-cut, if you will, with a couple of minor exceptions, although section 51 is not so minor. I am almost through with the actual point by point. Most of this tracks pretty well with other tax provisions. You have a sunset extension and a deletion of the sunset in this, and you have the provisions with the Internet being removed, I believe, in 2014. I have not figured that out yet.

Chair Kirkpatrick:

I can let Mr. Nakamoto respond to that. I think it is a federal issue.

Michael Nakamoto, Deputy Fiscal Analyst:

After talking to legislative counsel, I understand that is correct. There currently is a federal limitation on the taxation of the Internet until 2014. With the way the bill is drafted, as soon as that federal limitation on that taxation is lifted, then this tax would pick that up.

Carole Vilardo:

As memory serves, that went in moratorium in 1995 and has been extended in four- or five-year increments since then. There was a huge dispute. That is the taxation of actually providing the service, and not providing a moratorium for things you can purchase, whether goods or services, over the Internet. That actually finishes specific comments to the bill. I would like to raise some other questions, if I may.

Chair Kirkpatrick:

On that point, that may be a case where we put in language that says, "until such time that Congress" Are there other questions?

Carole Vilardo:

I have a number of things that I think are policy issues and that deserve your consideration. I raised the issue with the home-based businesses of how you feel about audits and how you should do them. I do not have an answer. It is something that is obviously in the bill, and you will have to consider it.

I was thinking about some of the things on services provided. You have the section about the dead human persons and the obituaries. What about a journalist? A journalist provides a service. I assume you are capturing advertising with a copywriter. There are freelance journalists out there. Are you capturing them? Are you going to run afoul of, I think it is, the Freedom of Information Act? I am no attorney, but when strip clubs file a lawsuit based on the fact that the freedom of expression is being denied them under federal constitutional laws, anything is possible. So, I wonder about journalists.

Relative to a bank, you eliminated rents and leases, but there is nothing about mortgages. What services provided by banks are you taxing? Banks provide a service, as do investment brokers, et cetera. Did you want to capture every time I make a deposit? Was it your intent to capture my mortgage payments? Was it your intent to capture automatic teller machine (ATM) withdrawals? If it is, how are you calculating the ATM withdrawal? Are you calculating it on the amount of money I take out of the ATM, or are you calculating it based on the charge that I may or may not have from the bank?

I will use my own association as an example. We are a 501(c)(4) organization, and, as I said, you are not going to get any opposition from me because you want to put a services tax on. But can you tell me what you are taxing? Are you taxing my membership dues? Or when I do my tax and budget workshops and have a charge for those, is that what you are taxing? I need to know.

I made a statement at the beginning of this hearing that when we supported the services tax, we have supported it based in a very specific delineation of what services we were looking at, because then it is always easier to know what to expect from me. Again, I will use the 501(c)(4) as an explanation for the issues. You tell the Department to write regulations, and I am captured. What are the parameters for the regulations? Is it every ounce of money I generate, or is it specific to something I am doing? It is the same thing. Included in here are the services that banks and brokerage houses would provide. So, is it the intent to tax every service based on every transaction? If you are looking at deposits I make, are you going to tax 1 percent if I am depositing my paycheck? How is that going to be calculated? That is a service.

That is my concern with being so open-ended. I hope you get a lot of testimony, not from people who want the tax, or for those who arbitrarily do not want the tax, because that is not going to benefit you. If you are going to process this tax and do it so it can be clearly administered and complied with, and the Tax Commission knows what regulations to do, you have got to hear a lot more of these types of examples to determine exactly what you want to do

and just how wide a scope that you want from the services tax. With that, I conclude, reserving my right when I read it again.

Chair Kirkpatrick:

You always have a right. I have sent an email to our chambers of commerce across the state and our business groups, asking them to please come tomorrow to have that very discussion. We need the businesses to tell us specifically where there might be some unintended consequences.

Carole Vilardo:

I apologize. I thought of one other thing. I said there was a pyramiding aspect, and I want to give you an example of pyramiding. Again, it is a policy decision for you. Pyramiding, generally, is when you have a tax layered on a tax. Most frequently, it is associated with value added, where every level of movement of a product has a tax, and then the price you sell at the next level has the tax included in it. What happens is this: You have design-build, and you know the way design-build works. You wind up pyramiding because you would have the engineer and the architect pay the tax. You might have somebody who is doing your soil testing, paying the tax. All of them would bill for services with the tax included effectively to the general contractor. The general contractor would have their services that they are paying you for. That would have a tax on it, but he would have to recoup what he paid to the engineer, the soil tester, and the architect, which included the tax. You have had those taxes included in a service price to the general contractor, who then has to add a tax on those items. That increases the amount you are spending. You can have that example happen with home construction.

Regarding how far you want to go and what you want to do, there needs to be an acknowledgment that, because it is so broad, you have a certain amount of pyramiding in this.

Chair Kirkpatrick:

Thank you, Ms. Vilardo. I do not know whether we will get rid of all the pyramiding, but I think those points are important. I can see where that would be the indirect consequence, as we discussed in section 3 early on.

I have some questions. Mr. Nielsen, I believe some of them are for you. Please come up to the table. Ms. Neal.

Assemblywoman Neal:

Thanks, Madam Chair. In section 22, line 38, I have a question about that. It impacts section 28, line 38. Let us say, for example, I have a limited liability company (LLC). I need to get a permit. Concerning the written evidence by the

signer, what written evidence is that? In section 28, line 38, there is no requirement of an oath for the return. What kind of evidence is needed for another person to act on my behalf?

I have another question.

Chair Kirkpatrick:

It will probably be easier if your questions are answered one at a time.

Assemblywoman Neal:

Okay.

Chris Nielsen:

Ms. Neal, to answer your first question, I do not know. I think, if this passes without any further clarification . . . Again, this is not the Tax Department's bill, but we would have to administer it, so I appreciate you bringing these questions forward.

I think if this bill becomes law with section 22 as it is currently written, the Department of Taxation would require a copy of, for example, the bylaws or some sort of official documentation that proves the person is there to register or purchase a permit on behalf of the LLC, corporation, or limited partnership. We do not expect people to come in wanting to sign up with the Department of Taxation who do not want to pay taxes, but I can foresee some shenanigans occurring. It could certainly happen. We want to make sure we get everything straight.

This is something we could clarify via regulation, as we talked about. If it is the pleasure of the Committee and the Legislature to go farther than that, for example, to require photo identification, we would administer it that way.

Assemblywoman Neal:

I have a question about the language in section 29. Because this is going to be consumer-based, how will this credit be offset? I remember your earlier testimony when you said the services tax should be equal to the sales tax. If I am going to pay, and then it is going to be offset to any other . . . It says, ". . . any similar tax legitimately paid" How does this work? Walk me through what that looks like.

Chair Kirkpatrick:

Let me just clarify. Is this the section where Ms. Vilardo had an issue as well?

Chris Nielsen:

Assemblywoman Neal, I am not the author of this legislation. I am just going off how I would interpret it, if that is what you want me to do.

To take a step back, for Sales and Use Tax, we offer a credit for taxes paid in other jurisdictions. We have to, if you think about it. Say I go to California and pay 9 percent or whatever the tax rate is. I then bring it to Nevada and get audited. I did not pay taxes in Nevada, but I am using the equipment in Nevada. Yes, I would receive a credit. We have a similar provision in the Sales and Use Tax Code.

Section 29 is intended to operate similar to that, but administratively, it is going to be much more difficult to determine A sales tax operates largely the same in every jurisdiction, where a services tax does not. I do not know how the services taxes work in other jurisdictions, but some are Sales tax has been around for a long time, and that is why it is similar in most jurisdictions. Services tax is more of a newer concept.

I think regulation would have to determine what has been legitimately paid. I can certainly see taxpayers saying, "Well, I paid gross receipts in Montana on this service, and now you want me to pay a services tax here in Nevada? I am not doing it." We hear those arguments. Whenever there is a new tax type, there will always be litigation on certain issues. I can see this occurring with respect to section 29. If it is a straight tax that operates largely the same as what is proposed here, yes, the proof would be a receipt of payment or something to that effect.

Assemblywoman Neal:

Regarding section 43, I have a question about how the language will be implemented, because the way it reads is, "A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the name of an assignee" What does that mean? How does that look? Does that mean that it is always going to be in favor of the Department and against me?

Chris Nielsen:

No, I do not interpret it that way. I think you would have to ask the Legal Division for a legal interpretation. I think it is saying that if you have a claim, such as a refund claim, you cannot assign or sell that claim to someone who then steps into the shoes of the taxpayer and tries to recover the money. I think that is the intent of that section. It prohibits that. It is not whether a taxpayer who thinks he is owed money and say, for example, will get due process and be able to go to court.

Chair Kirkpatrick:

We can get that legal answer for you, but I think there are some very good scenarios out there that apply in the real world, like with collections. They take the amount owed, and they sell it to about four different people every few years, and then they allow for it to go back. I think it is somewhat similar, but I can clarify that with the Legal Division for you this evening.

Assemblywoman Neal:

Okay. Now, this is my last question. Let us say I have an LLC. It is a research company, so the transaction tax goes to the consumer with whom I am contracted. I pass this cost. I charge them for each document that I do, I am assuming. And then maybe it could be done per contract, if I had like five clients. How do I tax the service? If I am saying, "Well, I am charging you for the hours I spent researching, and I am charging you for the actual writing of the document," what does that look like?

Chris Nielsen:

Assemblywoman Neal, I have the same questions myself, to be honest. I think this is something Carol had brought up. There are several issues in that scenario. Number 1 is, say you sign a contract for 20 hours of consulting services, or something like that, to be rendered over a period of time. But you have to prepay the money. You have to pay, say, \$1,000 up front. Does the taxable event occur at the time that you write the check, or is the tax due as the services are rendered? I do not know. That needs to be clarified in this bill.

Also, we are going to have hybrid transactions. We have this with sales tax now. It is part service and part tangible goods, and I think a services tax is going to have some of those issues, as well. Say you contract out with somebody to render a legal opinion, for example. He will deliver something tangible to you, such as a memo, but what part of that is service, and what part is tangible product? I think, at some point, you have to look at substance over form. I think that most people would agree that in getting a legal opinion, you are not really paying for the paper; you are paying for what is written on it. So, I think that is a service in that scenario.

It gets a little dicier, I think, when you talk about consulting scenarios that involve tangible personal property. Interior designers not only consult, but they sell. I think there is an infinite amount of scenarios I could come up with. If the Legislature had all the time in the world, it could never anticipate all of them. As Ms. Vilardo said, from an administrative standpoint, the more parameters and the more certainty you can provide the Department, the easier it would be to administer.

Chair Kirkpatrick:
Ms. Vilardo.

Carole Vilardo:

Thank you, Madam Chair. Ms. Neal, you made me think of something. I appreciate your questions. I would have expected, within the exemptions section, to have seen something that probably needs to be there, or begs another question, which is a little more difficult. That is, in the Sales and Use Tax statutes, the definition of the price includes any service provided. Now, that would be a simultaneous transaction of goods and services.

I will give you an example. You go to a retail store, and you buy a suit, but you decide you need it to be altered. If you do the alteration as part of that purchase right then, and let us say the suit costs \$100, the alteration is \$25 When the bill is totaled, the full amount of sales tax appears on the bill. Now, you buy the suit, and you get home and realize you should have had it altered, but you have already paid for the suit. When you go back two days later, the alteration is not taxable because the service was not provided in conjunction with the sale of the tangible item.

That made me think of another question. There are certain services that would be captured under sales tax law, such as my previous example. However, you also have freestanding businesses that provide the service. I can be a dressmaker who does alteration services, so in one instance I am paying 8.1 percent, but for the freestanding person doing alterations, I am paying 1 percent. That is interesting. Thank you for raising the question because I had not thought about that.

Chair Kirkpatrick:

I think that has been a point of discussion, at least with the sponsors of the bill. I will clarify it with them that the same could be said. Currently, we have that same issue with sales tax, whether or not they include the service in their one-time total or if they itemize it. I believe those are the options. It kind of goes back to your topic. If free alterations are included with the transaction of the suit, then you report differently than if you are just going back and saying,

"Oh, darn. The pants are too long. I should have had them altered." Then, you would be paying a different rate.

Carole Vilardo:

I am sorry, Madam Chair. There is something else that I just realized that I did not make a comment on. Within your list of exemptions, I would have expected to see something relative to an exemption for services taxed under *Nevada Revised Statutes* (NRS) Chapter 372 or 374. If it is here, I missed it.

Chair Kirkpatrick:

I believe there also was that discussion, and there are some things in there, and I do not know in what section of the bill it is in anymore, but . . .

Carole Vilardo:

I was going through it real quickly, and I did not . . . Maybe Mr. Nakamoto has found it.

Chair Kirkpatrick:

It is under section 25, subsection 13, I believe. That was a topic of discussion as well. There are also some that currently may be exempt from sales tax but will now pick up the transaction tax.

Carole Vilardo:

Thank you.

Chair Kirkpatrick:

Mr. Livermore.

Assemblyman Livermore:

Thank you, Madam Chair. I have a couple of questions. Ms. Vilardo, one of the things we talked about is kind of what Ms. Neal just talked about—the amount of services fees in a price. I have been a retailer for years. The wholesalers sell me products and equipment. They did not charge me a delivery fee; it was all embedded in the cost. So, is he going to be responsible in deciding what to charge me for the pizza boxes he delivers to me? How are you going to separate that component out?

Let me give you another example. Coffee and beverage companies typically provide equipment if you purchase their products. Maybe there is a small fee. They agree to service the equipment. When they come out and service it, will I be assessed and charged a fee every time they come out? You are talking about double taxation. You do not know what the taxes are going to be upstream or downstream.

Chair Kirkpatrick:

Mr. Livermore, if I could elaborate just a little on that. I truly understand your point. Remember I am in food sales, so I was trying to understand how that would work with the distribution and wholesaling. At least for coffee, a lot of that service is included in the lease contract. I know, at least in my real world, that when we give someone a machine, he currently pays the sales tax on the machine if he chooses the option to buy. But, if he chooses to lease it, then he is required to purchase a certain amount of product to offset that cost. I also know, at least in working with the larger food industries, that in their contract, they do have certain provisions for the service of the equipment. I do not believe they charge a separate invoice for those, which probably begs another question, but I believe it goes back to what we talked about. I, too, was sitting here wondering how it would work in the wholesale industry. We have several wholesalers within our state, because we are unique to being the food capital of the world. Food is exempt, but at the same time, there are many trucking firms which charge a delivery fee, which is taxable for fuel costs. I believe the service would then be taxable.

It is an accounting nightmare for the hotels when a fee is tacked on for delivery. We worked very hard with some of the trucking companies from other states. It really does not behoove you to put a separate fee on there, because it then becomes taxable, and it has to go into another category, and you are really not getting the true cost of your product. I do not disagree that that is a question or a policy decision we must discuss. Ms. Vilardo.

Assemblyman Livermore:

I have one more question, if I may. Section 51, subsections 1 and 2 read, "1. Be filed when the Department requires; and 2. Set forth the names and addresses of purchasers of taxable services, the purchase price of the taxable services, the date the taxable services were provided and such other information as the Department may require." Why is that information important to collecting taxes? In a retail establishment, I collect sales tax. I do not ask people where they live, although there are examples of when you go to a retailer, they want to know your zip code so they can plug it in for research. Even that has been ruled unconstitutional in some states, maybe not in Nevada, but typically when I am asked that, I will give them a suspicious email or a zip code for someplace else because I do not want them to know. What is the responsibility of the person collecting this information to make sure it is authentic and could be qualified?

Chair Kirkpatrick:

I am just going to go back to when Ms. Vilardo raised that question earlier. I believe that the Legal Division is going to have a good answer for you

tomorrow. There are some other states that have recently had this discussion on that particular issue, with Colorado being one of them. However, I am not an attorney, so I do not want to elaborate on it, but I believe Ms. Vilardo did bring a very valid point and that Legal will have an answer for us tomorrow, so that we can determine whether it needs to be in or out.

Assemblyman Livermore:

Thank you very much, Madam Chair, for clarifying that. I am not an attorney, either. I am a policy person, and it helps to understand whether the policy we adopt is fair and equitable. The devil is always in the details. In this case, I am giving this momentous amount of text. There are a couple of hours before the meeting, and we are going to be expected to make a decision on this in three or four days.

Chair Kirkpatrick:

Mr. Livermore, in all fairness, I have never put this Committee on the spot by voting something out the same day. That is not my style. I am not doing that. I have not done it. Well, I take that back. Mr. Stewart, I did pass out Mr. Rhoads' bill, but you will never find me ramming-jamming legislation. I was here in 2003, but last session, we made some tax decisions that were not fully vetted. When I went home I had to tell my constituents, "That is not the testimony that we heard." I apologized personally that someone's 1993 vehicle tax just went up 125 percent, because that was not the testimony. I do not want to be defensive here, but that is not how I run a committee. That is not what we are going to do. That is why my family plans are on hold for this weekend. We are going to have some real testimony. My point to the whole thing is, I could tell you about the Colorado case and all that great stuff because I did some research on it last night, but I do not believe that it is to the benefit of this Committee for me, as a non-attorney, to represent anything that we put in a bill to make that decision.

All I was saying was that I would prefer that Ms. Erdoes be the one to give us her legal opinion so we can decide as a policy what is in the best interest of Nevada consumers. That is all I was saying. I get that there are only about 23 days left, but I do not ram and jam legislation. That is not my style. I would never do that to anybody on this Committee. I have always been pretty fair in doing it the right way. I think if we are going to determine policy and fail to vet it, we are going to have far more problems than when we started.

Assemblyman Livermore:

Thank you, Madam Chair.

Carole Vilardo:

Madam Chair, if I may. Mr. Livermore raised a point that then created another issue on transportation. Thinking through, I can own a company with my own trucks, so that there is no charge. A company that uses United Parcel Service (UPS) is getting a furniture delivery from California. Is it capturing both interstate and intrastate transactions? If I choose to use U.S. mail, am I not creating an unlevel playing field, relative to who has to pay the tax and who does not? I think, maybe, transportation costs or the service of providing transportation needs to be much more thoroughly vetted, because you have three different tiers of doing that.

Chair Kirkpatrick:

Mr. Anderson.

Assemblyman Anderson:

Thank you, Madam Chair. I have a quick series of questions. Ms. Vilardo, I want to go back to a few of the things you were talking about earlier. First, I want to go back to the questions you raised about financial institutions. I think that when you are bringing up transportation costs, whether it is interstate or intrastate, you are sort of getting at what I was getting at with the financial institutions. I understand that a lot of transactions with a lot of banks, which are global, would basically be taken out. They would be exempted, because of section 25 and anything not allowed under the *Constitution of the United States*. You have the *Nevada Constitution*, laws of the state, federal law, or whatever. It is a pretty broad exemption. I believe it is the first exemption under section 25, so I do not think any of those issues will be super relevant as you look at that exemption because I think that is pretty clear guidance. The Tax Commission and the Department of Taxation would have that as their guidance as they are administering this tax. Would you read that the same way?

Carole Vilardo:

I am not familiar with all the aspects of the *Constitution of the United States* as it might apply to taxation. What comes to mind on that is, when, in 2003 the Modified Business Tax (MBT) and its financial section were being created, the only thing that I remember being testified to relative to banks was that credit unions are different than banks. Legal needs to answer that, but to the best of my knowledge, a service from a credit union might be tenuous. You would definitely need to know that. The banks never came up, nor did the mortgage companies or the insurance companies. Those were all put in because there were no problems with violations of commerce clauses or anything else in the *U.S. Constitution*. Again, the Legal Division should address that.

Assemblyman Anderson:

If you are creating a tax that deals with interstate commerce, I think it is pretty clear—and I am not a lawyer, so no one take as gospel—at least on the surface level, that if we are taxing interstate commerce, that is violating the Commerce Clause, if I understand the case law correctly.

Chris Nielsen:

I might be able to weigh in on that a little bit. First, I believe a clause or clause similar to that is contained in every tax type we have, so I do not think the intent is to exclude certain transactions. I think it is just a catchall. We want to make it clear that the State of Nevada does not want to violate the *U.S. Constitution*.

You would have to ask the Legal Division what the specific intent is in this clause. You are right; I believe it does relate to the Commerce Clause. I am an attorney, but I am here in a nonattorney capacity. I can tell you that the Commerce Clause and tribal are the two most complex areas of constitutional law. It is not an easy answer, and that is part of the reason why I go back to the Streamlined Sales and Use Tax Agreement (SSUTA), which is there to create certainty.

With respect to the financial services or certain financial questions, I do not know what would be exempt. Clearly, if there is a federal law that says a state cannot tax X, Y, and Z transactions, then I think this would come into play. If a Nevada resident goes to New York and pays for a service rendered in New York and then comes back to Nevada, clearly, I think under this provision and the Commerce Clause, we cannot tax that. I think it is dicey when a service is rendered out of state to someone while they are in state. Someone could purchase, for example, a fantasy baseball service where he receives advice from someone in, say, Indiana. Here in Nevada, is that taxable? Is that the intent of this bill? Is it prohibited under the Commerce Clause? Those are the scenarios that are much grayer. I do not think there is an easy answer.

Assemblyman Anderson:

Thank you for that clarification. My next question is for Ms. Vilaro. It is in regards to section 51, which you say is superfluous. I do not see it that way. I think it might be superfluous for small items, but if there is a huge amount of money being collected on big-ticket services, if you are billing large amounts, for example, and you have that data available, it seems like this could make the job of auditing easier for the Department of Taxation. I would leave that open to representatives from the Department to answer.

Carole Vilardo:

I did identify that it is available with the large amount, because most of those commercial contracts have names and addresses. When an audit is done and they are asking for records, it is there. My point on doing this is that you have a number of small services provided for which there is no reason to take a name and address. You are telling me that I need to do this. It says the report "must"; it does not say "if the information is readily available." My concern is for those people who normally would not take the time. They would just ring up an amount on a register. They would now have to do a receipt.

Assemblyman Anderson:

I think that is a valid concern. For the larger ticket items, I think it would be good, because you are talking about a huge amount of money that would be due to the state. In that case, it is probably better, if you are talking about bigger ticket items.

You mentioned freelance journalists. It has been my experience with freelance journalists that most of them have a very thorough accounting system. They hire accountants to make sure they are in compliance. Whenever someone works freelance or something like that, he always has the IRS watching his income and everything else. They are always keeping track. If this ends up applying to them, I think they would be able to handle it.

Chair Kirkpatrick:

Let me chime in here. Those are two very distinct legal issues. We need to allow the Legal Division to weigh in on them. I believe that anytime you talk about freedom of speech or privacy, at least from the perspective of the Committee, it is the Legal Division's position to weigh in, and then we have to determine one way or another. I would prefer that we go that direction. In fact, we are going that direction. Ms. Vilardo.

Carole Vilardo:

Madam Chair, I am afraid that question made me think of something else, which is not in here. I apologize.

Chair Kirkpatrick:

That is why we are here, to vet the issues.

Carole Vilardo:

Commercial contracts made me think of Sales and Use Tax law. You have some large commercial contracts for which there are established prices. There may not be a clause in the contract that allows it to be reopened to change the contract. In sales tax law, the provision that we have effectively says that if

you have a nonescalating clause contract, then the company would be exempt from the provisions because it has no way of recouping that tax. It is going to be an expense put on them similar to income tax. I request that the Committee consider that as an addition to the provisions that you add to treat it as we have done. I think even with the MBT we did that.

Chair Kirkpatrick:

We have plenty of time. These are exempt bills. I know I just said we have about 23 days left, but we still have plenty of time to vet these. I think that before any of us decides, we should feel very comfortable about what is in this bill, as we do with all the other bills.

I think that, initially, there could be some unintended consequences, but I believe, that we will be back in session in a very short time before it actually takes place. Like I said, I will work tonight with the Legal Division and staff to get all of these questions answered.

Tomorrow, the business community will be here. I invited them because I think it is important. They are not necessarily in the building every day. We can start out with answering a lot of these questions, and we can ask them questions about implementation. I called some of the business owners within my district. They had questions and concerns, mostly about who was in and who was out. I think it is a little more complicated than that because there is a provision in the bill that says if you are currently paying the Live Entertainment Tax, you are out for that portion; but you are in if you generate a ticket sale. You do have to pay a service on that. I will work through the night to make sure we have as many questions . . . It is not too late to submit any additional questions. I would hope that, as Committee members, you take time to digest this, which is quite frankly much longer than the one I got last session on Department of Motor Vehicles increases. I think this is a much bigger policy issue for the long term, and we really need to vet it. Ms. Benitez-Thompson.

Assemblywoman Benitez-Thompson:

So, are you talking about today, Friday, and Saturday?

Chair Kirkpatrick:

And that is it, basically, so far. Do I think that next week we could be having discussions? Absolutely. Do I know that there is also . . .

Assemblywoman Benitez-Thompson:

We are having at least three hearings of multiple hours on this material.

Chair Kirkpatrick:

Correct. There will be at least three hearings and the opportunity for constituents to send emails. I am personally sending out an emailed newsletter in my district, as I have done throughout session, to ask them to please read the bill, weigh in, and give me input. I would hope that everybody else keeps in contact with their constituents. I am ridiculous in how I do that. I can identify 26,296 constituents in my district that care.

Are there any other questions from the Committee? I appreciate both of you giving us some insight. Sorry, I hope it does not appear that you are in front of the firing squad because this is really a bill that we have to determine and your input does matter to us.

Is there anybody else from southern Nevada or here in northern Nevada who would like to get his questions on the record? I will tell you, though, that I would prefer that you put them on the record. I will have the audio, and I can go back and listen. When I left to get some lunch, I had people already asking me what is in and what is out. It is more helpful to me if you just put it on the record. Or send an email to the staff so I can remember all of the questions and address them accordingly tomorrow.

Is there anybody else in general who would like to testify on this bill? Okay, with that we are going to adjourn until tomorrow in Room 4100 upon the adjournment of the Assembly Committee on Commerce and Labor. I believe they will be done about 4 p.m. Mr. Goedhart, Mr. Ellison, Ms. Bustamante Adams, and I sit on that committee.

I want to reiterate for the people watching on the Internet. On Saturday, we will have videoconferencing in Las Vegas from 8 a.m. to noon. The hope is to continue the conversation on this transaction tax. However, I believe that we may be hearing the margin tax, which is about to get started at approximately 1:30 p.m. I am not sure which particular bill we will be hearing, but tomorrow I can let you know more. I encourage your constituents to testify one way or another about whether they believe this is headed in the right direction for the long-term stability of our state. With that, we are adjourned [at 12:34 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Recording Secretary

RESPECTFULLY SUBMITTED:

Jeffrey Eck
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: May 12, 2011

Time of Meeting: 8:03 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|--------------|----------------|-------------------------|--------------------|
| | A | | Agenda |
| | B | | Attendance Roster |
| S.B. 79 (R1) | C | Keith Munro | Prepared Statement |
| S.B. 79 (R1) | D | Michon Martin | Prepared Statement |
| S.B. 79 (R1) | E | Brett Kandt | Letter of Support |
| S.B. 495 | F | Laurie Paquette | Letter of Support |