MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Sixth Session
May 20, 2011

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 10:12 a.m. on Friday, May 20, 2011, in Room 3143 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:

Senator Steven A. Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Linda Blevins, Committee Manager
Mary Garcia, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

William Vassiliadis, CEO and Principal, R&R Partners; and representing Nevada Resort Association
Tim Crowley, President, Nevada Mining Association
Michael Brown, Vice President, U.S. Public Affairs, Barrick Gold Corporation
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
George Ross, representing Hospital Corporation of America, Inc.
Wendy Mueller, Private Citizen, Incline Village, Nevada
Carole Vilardo, President, Nevada Taxpayers Association
Dan Musgrove, representing The Valley Health System

Chair Kirkpatrick:
[Roll called.] We have a couple of things on the agenda today. We do not have a work session, so we are not bringing anything for a vote today. For the Committee, the Senate is having an overview on Assembly Bill 569. I did work on some of the questions so we could have a cleaner bill going forward and, if the Senate members decide to take it up, they will have a cleaner bill to work on as well.

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

I want to have staff go through some of the things I believe this Committee thought were policy decisions. There may be more, but this is what the Senate will probably take up if they have a hearing, or just an overview. So, if that pleases the Committee, we are happy to ask questions and continue to go through it. If everyone wants to, we can look at the bill over the weekend as well, and see if there are any additional things to cover. I know Mr. Livermore had a couple of concerns. We were looking at the transportation issue, but I thought the public should be able to see the progress that this Committee has made.

I will have Mr. Nakamoto go through the proposed amendment and explain it. For the Committee, I want you to look at a couple of key issues, such as the nonprofits, the homeowners' association issue we heard testimony on, and the transportation issue. It would be helpful if you could give me any feedback the first of next week. I think if we keep cleaning up the sheets, it will be easier for you. That is consistent with how we do business in the Assembly. It is easier to keep cleaning it up and seeing the mock-ups, so we will continue to do that. Mr. Nakamoto, if you would go through this for us.

Michael Nakamoto, Deputy Fiscal Analyst:
The members of the Committee should have in front of them a document entitled "Mock-Up: Proposed Amendment 6974 to Assembly Bill No. 569, Prepared for Assembly Committee on Taxation, May 19, 2011" (Exhibit C). This document has also been placed into the Nevada Electronic Legislative Information System (NELIS) for people in the audience, and those listening over the Internet. I am going to go through a brief overview of the changes that are in this document.

Section 5.5, which starts at the bottom of page 1, provides a definition of "financial institution" for the purpose of providing an exemption from any services provided by a financial institution in section 25 of this amendment. This definition of financial institution is similar to the definition used in Chapter 363A of *Nevada Revised Statutes* (NRS) for the purposes of the Modified Business Tax (MBT) on Financial Institutions.

On page 4 of the mock-up, paragraphs (f) and (g) of section 10, subsection 1, exempt tips and gratuities. This would include mandatory service charges imposed by restaurants for large groups. For example, if you go to a restaurant with a party of eight, and they have that mandatory 15 or 18 percent charge that would apply to the total bill, that particular service charge would be exempt under this proposed amendment. Also on page 4, section 10, subsection 1, paragraph (h) exempts interest charged on loans.

On page 5, section 17 is amended to specify that the payment of the tax by the consumer of the service is due at the time the payment for service is made. This was based on concerns raised by several persons who testified during the course of the hearings on A.B. 569.

On page 6, section 25, subsection 4 provides an exemption for any services provided by a financial institution in the course of business as a financial institution. This was in response to several concerns raised both by members of this Committee and those who testified.

Section 25, subsection 10, on page 7, provides an exemption for the transportation or delivery of any tangible personal property. Also on page 7, section 25, subsection 15 provides an exemption for services provided by a natural person on an occasional basis who is not required to obtain a state business license. This section is intended to address the issues that were raised about babysitting by neighbors, shoveling snow, or mowing lawns by persons who are just trying to raise a little extra money and are not intending to do this as a regular, full-time business.

On page 9 of the bill, section 31 removes the $2,000 limit for the taxpayer collection allowance. This would allow a business to receive the taxpayer collection allowance at the rate of 0.25 percent. This would make the allowance consistent with what is in the current law for the Sales and Use Tax on goods.

The language referring to bearer bonds was removed from section 34, subsection 5, on page 10, based on concerns raised that this language is outdated. Language on page 13, section 50, which allows the Department of Taxation to examine the books and records as part of enforcement of the tax, is amended to clarify that the Department may require these records to be produced for examination at a reasonable time and location. This was in response to concerns that the Department would be allowed, for a home-based business, to simply show up at that person's home. This clarifies that the Department can set the reasonable place and time for examination of those records if it is needed for the course of business for the Department of Taxation.

Finally, on page 23, the last page of the mock-up, section 73 provides that penalties and interest would not be imposed on this tax for the first six months it is in place, but any penalty and interest provisions could be enforced by the Department beginning on July 1, 2012.

Some policy decisions have been discussed by this Committee that are not included in language within this particular mock-up because it did not require any change in order to affect those decisions. Some of the policy decisions that were considered by this Committee include exempting 501(c)(3) organizations from the tax because the bill, as originally drafted, took only those into account. There was no need to change any of that language, so this mock-up retains the provisions that state that only 501(c)(3) organizations are exempt. Certain services that were discussed include advertising and freelance journalists because the bill, as drafted, includes services in the tax unless they are specifically excluded. There is no language necessary to affect those policy decisions.

To Mr. Livermore, the way the bill is drafted, services are included in the tax unless they are specifically excluded from either section 10 or section 25. There were policy decisions made by this Committee on whether certain services should be included or excluded. Because decisions were made to include certain services within the tax, there are no changes to reflect that in the mock-up, since they are already included, unless they were specifically written out in the first place.

That concludes my overview of this particular mock-up.

Chair Kirkpatrick:
These are the changes that I felt we had a consensus on so far. There is still work to do to look at those, Mr. Livermore, so this is just how far we have gotten. This is a work in progress, and I would like to continue to clean it up. It is hard to say what else could go in here, but at this point, I felt the Committee agreed to make most of these changes. If anyone has any questions, I will be glad to answer them.

Assemblyman Livermore:
Because we lack consensus, I suggest we make a list of what might be part of this Committee's decision to either move forward with a possible exemption, or to ignore it. I am referencing advertisement in newspapers.

Chair Kirkpatrick:
It is much easier to assume that everything is in except for what is in section 25, so make a list of the things you think you may want to come out. I want to reiterate that when you start narrowing the base, the higher the rate has to be to change the structure for the long term. This changes Nevada's structure for the long term. We currently have a revenue source we count on, so if it does not generate much revenue, it does not behoove us to change the structure. As we start narrowing it, keep that in mind as we discuss it. That is why I want you to have clean copies to take home over the weekend to look at and to bring back new and different ideas.

Committee members, I think we have made a lot of progress. We answered a lot of the technical questions. We have some issues with the More Cops Sales Tax Initiative in Clark County that we need to make technical changes to. I believe there is a bill coming that we will hear on Tuesday. I also believe we will finish reevaluating the Nevada Margin Tax.

Today, what I would like to do—and I think Senator Horsford is on his way—is to go through it, ask questions, and do the same process we did on the transaction tax. We have cleaned up some policy and answered a lot of questions. I hope Senator Horsford hears me. To give you an example because I am a visual person, you have a sample calculation to see what it does. There is a letter that was also submitted, and a brief overview of what it does.

Senator Horsford is testifying in the Senate Committee on Finance, so I am going to ask staff if they can start us through the mock-up. I know there are several people who want to testify. If Senator Horsford is tied up, we will go ahead and start with some testimony, and go from there.

Senate Bill 491: Makes various changes regarding public revenue and taxation. (BDR 31-1150)

Russell Guindon, Principal Deputy Fiscal Analyst:
As the Chair pointed out, you should have a document that says, "Nevada Margin Tax—Proposed Amendment 6801 to Senate Bill 491" (Exhibit D). You should also have a single-page handout (Exhibit E) with tables titled "Nevada Margin Tax—Calculation Example 1" and "Nevada Margin Tax—Calculation Example 2." I would first like to walk you through the proposed amendment (Exhibit D), and that should make it easier to understand the tables (Exhibit E).

Also, for the members of this Committee, I will give you a little overview. This is the Margin Tax that is a proposed amendment to Senate Bill 491. This was on the Nevada Electronic Legislative Information System (NELIS) for May 17, 2011. The amendment was heard in the Senate Committee on Revenue, so you would see the mock-up as a proposed amendment posted on NELIS for Senate Revenue under S.B. 491. For those of you who have not seen the bill, it is about 103 pages long, so you should be thankful we did not get you copies of it this morning. I want to point out for the members that it is such a long bill because it was the bill in Senate Revenue that was to remove or extend the sunset provisions. That is how it started. There is quite a bit of purple language [language proposed to be deleted in an amendment] in there because we are taking the sunsets out, and putting the Nevada Margin Tax and the Modified Business Tax (MBT) in. I just thought that might help when you look at the bill and are shocked.

With that, I thought I would go through a broad overview. Just like here, the Margin Tax is still being heard in Senate Revenue. They are hearing it again this afternoon, and could continue hearing it next week. Also, there might be proposed amendments to the tax there. I am going to go through the Margin Tax as it is in the mock-up as a proposed amendment. We will not discuss any proposed amendments that Senate Revenue may be considering.

The Margin Tax is proposed to be a new broad-based business tax, and it would be at a rate of 0.8 percent. Since there is some confusion, I want to make sure you understand 0.8 percent. To get your liability you will multiply your taxable margin by 0.008. This tax would be effective July 1, 2012. It would apply to all businesses whose total revenue exceeds $1 million a year. Does a business have $1 million or more in revenue? If it does not, then it does not have to file a return to calculate its margin or pay the tax.

I know there has been discussion about having a weird threshold where if you make $1,000,000.01, you have to pay the tax on the full $1 million. This $1 million is a test to see if you had enough revenue to have to file and compute your taxable margin and then pay the tax. Exempt businesses that are under $1 million are entities such as sole proprietors, general partnerships owned directly by natural persons, and nonprofit 501(c)(3) organizations.

At its most basic level, the Margin Tax is computed by taking the entity's margin times the 0.8 percent tax rate. "Margin" is defined in the bill. You determine your margin by subtracting your cost of goods sold from your total revenue, or the cost of compensation, or 70 percent of your revenue.

Madam Chair, I see Senator Horsford is here, so perhaps you want me to pause.

Chair Kirkpatrick:
Good morning, Senator Horsford. Sorry to drag you out of the Senate Committee on Finance. We were just getting started, so please come up.

Senator Steven A. Horsford, Clark County Senatorial District No. 4:
I would like to provide a few opening remarks similar to those I made in the Senate Committee on Revenue when this item was heard. I think it provides the context to why this discussion on reform to our revenue code is so important. [He submitted prepared testimony (Exhibit F), but did not read it verbatim.]

Let me start by saying we focused a lot this session on reform: reform of education, our budget, and how public employees are treated at the state and local levels. Just as important is reform of our revenue code, which has not substantially changed since the 1950s. For far too long, we have had study after study tell us that it is not fiscally prudent to rely on such narrow revenue sources to fund 50 percent of our state obligation, which is education.

Whichever party we belong to, we should all agree that, as Nevadans, we were sent here to make these decisions. It is important that we find a balanced solution that carries us forward from one of the most difficult economic times in our state's history. We have to do that, in my opinion, without compromising the quality of education or our children's future, and to ensure the basic services our citizens depend on.

I do not want to get into the budget discussion too much, but I have been here before on other bills. The reason we are here having this revenue discussion is we have closed all of the budgets as of yesterday. It is no secret that, for some of us to be able to support a budget, we want to restore funding. In order to do that, we would have to say how we are going to pay for it, and that is part of the decision today.

As I said in the Senate, I think the Governor's recommended budget goes too far in the cuts to education and other vital services, and that is why we are here. But the *Executive Budget* does something else which I feel is equally unfair, particularly at this moment in time, and I want to touch on this if I could before we go into the details of the Margin Tax. The budget provides large tax breaks to businesses and wealthier individuals by allowing portions of taxes that are already in place to sunset in the middle of this year. These are reductions in the MBT, the sales tax, and the state Business License Fee. Under the Governor's proposals, Nevada businesses would pay $438 million less in taxes in the upcoming biennium. Gaming, as an industry, would pay nearly $50 million less. Manufacturing would pay $28 million less. Mining, while gold is at an all-time high of over $1,500 an ounce, would pay $9 million less. Households with earnings of $150,000 or more would get a $232 tax break, while average Nevada households would get an $88 tax break. Even tourists, upon whom we have relied to provide funding for some of our basic services, would pay less—a total of $67 million less. And who would make up these lost revenues? You only have to look at the Governor's original budget to see who. Classrooms would include three to six more students. Teachers would have to take home at least 10 percent less in their take-home pay to give a tax break to mining. Children, families, and seniors would be receiving less health care. All the budgets we have reviewed, from child welfare to aging to autism to the mentally ill, would be reduced to give some of our largest corporate entities a tax break.

The list goes on. Average Nevadans would be served less, while major industries would pay less. That would be the legacy of this budget as proposed, and where we would be as a state for the next two years if we did not find that balanced solution. Now, I view that as unacceptable, and that is why we must choose a different path. As I said in my opening remarks, we have talked a lot about reform. To me, the reform of our revenue code is as important an issue as reform of our education policy, of how we budget going forward, and of how we pay our public employees.

Senate Bill 491 is a central part of this overall balanced solution—an overall reform we are desperately seeking to reach agreement on this legislative session. For years, we have all recognized that our tax system is neither fair nor stable. Not everyone pays his fair share, and our revenues dive into a prolonged tailspin every time our economy declines. It does not work. Senate Bill 491, the Margin Tax, would change that. It would give us both stability and equity that we do not have now.

As Russell Guindon began the overview on the details of the proposed Margin Tax, I want to emphasize a few important elements. First, we all know this state needs jobs more than anything else. I am very pleased with today's unemployment report at about 12 percent and the fact that it continues to decline. I will note, Madam Chair, that it is declining under the current taxes which would sunset, giving those tax breaks I referred to a moment ago. Despite that, our current MBT discourages job creation. It is a disincentive to the private sector to bring jobs. It penalizes employers who add to their payrolls. The Nevada Margin Tax would replace the MBT, and businesses would pay based on their revenues, and not on the number of their employees. At a time when we continue to have high unemployment and cuts to both hours worked and hourly earnings, Nevada continues to impose a tax on its businesses that discourages employment, and higher wages and salaries for employees. That is the wrong direction for the new economy that all of us are working so hard this session to create.

We also know that small businesses will largely be the engines of economic growth in this state as we craft this economic future. We want to grow our energy and health care sectors, and that starts with the many small businesses that coalesce around these industries, or support them. That is why the Nevada Margin Tax would allow these small businesses to grow by exempting the first $1 million of our businesses' revenues from this tax. This is a very important element to this proposal. The MBT does not do that and has not done that. The 2009 Session recognized this fact and reduced the rate, but it is still a disincentive to job creation.

Free of the MBT, and with this exemption of revenue below the $1 million threshold, small businesses will be able to hire and thrive. Now, some may ask why not get rid of the MBT right now if it is so inequitable and hinders our growth. I, and many of you, would love to do that. However, the reality is we need to have a bridge between the current revenue structure and the one we hope to put into place, particularly as we fund the basic services in our state budget.

It is also worth mentioning that the introduction of the Margin Tax is neither designed nor intended to expand the size or role of government. Nevada's total state spending will be less next year than it is this year under the spending proposals offered under the "Reconstructing Nevada for the 21st Century" plan. I also want to ensure from the outset that the Margin Tax is not a repackaged version of the gross receipts tax. Those who continue to define it as such are misleading the public and those who belong to their organizations. If we want to debate what a Margin Tax is, then debate that, but do not try to define it or frame it as something it is not. It does not propose to tax gross receipts of a business. Instead, it sets up reasonable options for deductions that businesses can take against total revenues, including their direct labor cost, and that is the amount subject to taxation.

Finally, I want to emphasize that all industries would pay under this Margin Tax. There are no exceptions and no breaks. We know, and our citizens know, that what Nevada has lacked has been a broad-based business tax that distributes the burden fairly—one that is equal, one that is equitable, one that is stable and less volatile. That is the Nevada Margin Tax, and that is the proposal before this Committee today.

Madam Chair, my staff is making copies of the information I referred to on the current taxes (Exhibit G), which are set to expire at the end of June, in order to show you the breakdown of the information I indicated. I also have information that shows the impact of the Margin Tax on a small, medium, and large business, and the impact of labor-intensive business versus capital-intensive business for your Committee's review and discussion (Exhibit H).

Thank you for having such an open and transparent discussion about how we reform our revenue code with all of the other reform policies that we are considering this legislative session.

Chair Kirkpatrick:
We appreciate your being here this morning. This Committee did the same thing with transaction services and we are cleaning up that policy as well. I believe your side is trying to address some of the concerns that came up. I explained to this Committee that this is probably the first time I have ever seen us have such open, long, thought-out conversations about changing Nevada's structure. We appreciate it as well.

Are there any questions for Senator Horsford? [There were none.] Will your staff be bringing those down so we can have Mr. Guindon go through them?

Senator Horsford:
Yes.

Chair Kirkpatrick:
Thank you. I appreciate it.

Russell Guindon:
The Margin Tax is part of the total revenue, which is the revenue, or receipts, from the business activity. But the tax rate is not imposed directly on the gross receipts because you calculate the margin. That is what I will go through here.

As I was saying, after determining the entity's total revenue, as defined in the language, you determine the entity's margin under one of three options: you can subtract the cost of goods sold to determine your margin, you can subtract the cost of the compensation to determine the margin, or your margin would just be 70 percent of your total revenue. That would be your total margin, and what we are talking about here is your revenue, your cost of goods sold, and your margin from the business's total operation. If it is a multistate or international business, it would be global, or what we sometimes refer to as "anywhere level of operations." We cannot really tax that in the State of Nevada, so we have to determine the portion of that margin that would be taxable in Nevada, and that is what we would call the "taxable margin." As do all states that have this type of business tax, Nevada has an apportionment, or allocation formula. The apportionment factor here would be the total income from the operations of the business in Nevada, divided by the total income from the business's total operations. You would take that factor times the margin to get your taxable margin, to which you would apply the 0.8 percent rate.

With that as the broad overview, I will quickly go through the sections that are before you, then I will go through the examples in the table.

Basically, there are the four steps that we have discussed. The first is that you determine your total revenue. As any tax law that this Committee has been hearing, we have statutory definitions for total revenue. You can see that it includes total income, and part of that income would be the business's revenue from selling its goods and services, or conducting its operations. It would also include rents, royalties, interest, and other types of income that would be included in the total revenue, which are specified in section 35 of the proposed amendment.

To the extent possible, we try to tie our forms to federal returns. Corporations that are filing an Internal Revenue Service (IRS) Form 1120, and partnerships that are filing the Form 1065, are using some of the items from the federal returns as the revenue items for the determination of revenue in Nevada. You can see that there are some exemptions, or exclusions, by which you can adjust that revenue. Since they are listed here, I will not waste time by reading them. As pointed out, if you do not have more than $1 million in total revenue, there is no need to compute, file, and pay the Margin Tax.

After calculating the total revenue for the purposes of the Margin Tax, you have to calculate your margin. As we discussed, there are three options for determining your margin. The first is to subtract the cost of goods sold, which is an accounting concept, from total revenue. It is a line on the federal return, although the definition that was used here is slightly different from the federal definition. The cost of goods sold includes any expenses that are directly related to producing the business's goods that it sells to generate the revenue from its operations. That would include labor expenses, as well as other material expenses and allocated overhead from producing those goods.

You can also subtract compensation from the revenue to determine margin. Compensation is the amount of wages, retirement benefits, and health care benefits that are paid to employees and officers. The important point here is that under the cost of goods sold method, you include the material purchased to produce the goods, and the labor costs that are directly related to producing those goods, which excludes officers. However, under the compensation method, all wages of all employees and officers are included. Basically, the method a business would use depends if it produces goods, or if it is a service business, whether it produces tangible goods or intangible services. Most services are very labor intensive, so the cost of compensation is a way of calculating the cost of services versus the cost of goods.

Finally, there is the third option. A business can simply take 70 percent of the total revenue, and that is its margin. It is the lowest of the three calculations that becomes your margin.

[He read example 1 of section 2 on the handout (Exhibit D).]

We will assume that this is a company that does its entire business in Nevada, so there is no need to allocate the margin, or apportion it. The $500,000 would be its margin.

[He read example 2 of section 2 on the handout (Exhibit D).]

What the 70 percent rule basically does is set a ceiling if you are a very high margin business. It would end up the 70 percent rule versus anything above 70 percent as your margin.

Now that the business has its margin, it has to determine its Nevada taxable margin. If it is an entity that produces goods or sells services outside of the state, or internationally, we cannot tax all of the income that it is generating, so we apportion the margin that we deem to be taxable under the Nevada Margin Tax. Take the total income that is derived from the business's operations in Nevada and divide that by the total income from operations everywhere. That factor is then multiplied by the margin to get the taxable margin.

[He read from the handout (Exhibit D).]

Finally, as we have discussed, the rate is 0.8 percent, or you would multiply by 0.008. For that example, the entity with the $50,000 in Nevada taxable margin would pay $400 in Margin Tax.

The due date for this tax is 30 days after the business files its federal return. I believe the federal law for filing a business's federal return is 75 days after its taxable year ends. After the federal return is filed, the business would be required to file its Nevada Margin Tax return and pay the tax. You can see there are provisions in the language that if the business files for an extension or for an amended return at the federal level, there are provisions to allow extensions or amendments to be filed for the Nevada Margin Tax.

You can see on the handout (Exhibit D) the entities that are subject to the Nevada Margin Tax. As Senator Horsford said, it is very inclusive in terms of the types of business entities that would be included. There are some entities that are excluded, but these are the ones that you are probably familiar with, governmental entities, nonprofit entities, and "Any other person or entity that is prohibited from being taxed under federal or state law." The sole proprietorships are excluded because it is personal income.

You can see more detail on the deductions for cost of goods sold. These are the labor costs, cost of material, and other overhead costs that are associated with producing the goods that you are selling to generate the business's revenue. They are listed there and in section 37 of the proposed amendment to the bill. There are some costs that are specifically excluded. As with any tax, when you define it, you say what is in and what is out. These are costs that are necessary for producing goods.

Under the compensation paid method, compensation is wages and cash compensation that is paid to all employees. It includes officers, employees who are allocated to producing the goods, and all other employees. You can see that it also includes health and retirement benefits with a cap of $300,000 per employee. If you have a business with production employees, but you also have officers that are getting paid $500,000 or $1 million a year, it would still top out at $300,000 for each employee.

That is basically the tax. What I would like to do is go through the provisions in the proposed amendment. They would extend the current MBT provisions that are scheduled to sunset on June 30, 2011. That is the tax structure that was put in place during the 2009 Session. The tax includes a 0.5 percent rate on wages up to $62,500 in quarterly wages paid to the employees, then, the tax is 1.17 percent on quarterly wages over $62,500. Under this amendment, those provisions would be extended, so the sunset would be taken off of the Modified Business Tax and the Modified Business Tax on Financial Institutions. You would be allowed to credit back the paid MBT against the Margin Tax. You can see the example. The way the provision works is if your MBT credit is greater than your Margin Tax, you can take a credit up to the amount of your Margin Tax liability. There is no allowance for a credit to carry forward.

The reason we are looking at this, as Senator Horsford pointed out, is that it takes a while to get new taxes on line, and we would need revenue to fund the state's operations. The taxes that are currently in place are quarterly taxes, so they generate revenue for the state to fund its obligations until the new tax comes on line. Businesses must pay the MBT, but then it is allowed to be credited back. In a sense, we are giving them back the MBT when they are filing their Margin Tax return.

The bill also provides for the filing of informational returns for the Margin Tax. Section 132 requires business entities whose taxable year ends between June 30, 2011, and May 31, 2012, to file these informational returns with the Department of Taxation. It would not be the full return, and there is no tax due. These are strictly informational reports. I would argue that more than the Department of Taxation wanting this information, the Fiscal Analysis Division staff would like this information in the spring of 2012. It would give them an idea what the tax base would look like. Before this tax is scheduled to come on line, we would be able to evaluate the tax in the interim and compare the estimates that we produce now with what the base may be. We would then be ready to make adjustments or any considerations. Otherwise, without this informational reporting, we would not get any information until late in calendar year 2012 or the first half of 2013.

All of the proceeds from this tax would go into the State General Fund, but there are provisions in the bill to allow any excess from this tax to be distributed to the Fund to Stabilize the Operation of the State Government (Rainy Day Fund). We would first make sure we met the state's General Fund balance, that we could at least get to the 5 percent minimum fund balance, then any excess from this tax would go to the Rainy Day Fund. There are provisions that require a portion of it to go to fund the unfunded liability for the Public Employees' Retirement System. Anything remaining after that would go back into the state's unrestricted General Fund balance and could be available for supplemental appropriations as we enter the 2013 Session.

We are extending the sunset on the Modified Business Tax, as I have discussed. Under the provisions of the amendment, beginning in fiscal year (FY) 2014, the Modified Business Tax on nonfinancial institutions would be repealed. Just the Margin Tax would be in place. The MBT on financial institutions would stay at the 2 percent rate for FY 2012, but at the beginning of FY 2013, the rate would be lowered to 1.17 percent, the same as the nonfinancial businesses. The Modified Business Tax on Financial Institutions would be repealed at the beginning of FY 2014, and they would only pay the Margin Tax.

This proposed amendment would repeal the Branch Bank Excise Tax. This is the $7,000 per year annual fee that is paid quarterly. It was put in place in the 2003 Session, and would be repealed at the beginning of FY 2012, July 1, 2011. The final provision of this amendment would be to remove the sunset on the Business License Fee. This is the $100 fee that was increased to $200 in the 2009 Session that is scheduled to sunset at the end of this fiscal year.

As you look through the bill, remember that the entities that have less than $1 million in total revenue would not pay the Margin Tax, but they would pay the $200 Business License Fee. That would be their annual fee as a business. That completes the overview.

You also have a form on the Margin Tax with two tables that the staff has put together to clarify the provisions in tabular form (Exhibit E). One side is the Nevada Margin Tax – Calculation Example 1, Compensation Deduction and pulls out some of the sections from the overview. This is to give you an idea of what the tax return might look like. This is a hypothetical return to demonstrate how the form works. It shows the items that would be required to be included as total revenue, and then the possible exclusions that get you to your total revenue. This is defined in section 35 of the proposed amendment. You can calculate the cost of goods sold as defined in section 36 of the bill. Again, it lays out some of the items needed to get the cost of goods sold. Box C is compensation. Compensation is the wages of the employees that you use to produce goods, and all other employees, including officers. You will compute your margin in Box D, using all three methods to discover which result is the lowest. First, you take your total revenue from line 14 and subtract line 19, the cost of goods sold, and for this example you get the margin of $1.225 million. For the second method, you subtract compensation, which is line 14 minus line 22, to get a margin of $1.005 million. The third method simply multiplies total revenue by 70 percent, which gives you approximately $1.522 million. Remember, it is the least of these three computations that you use. The least is the compensation method at $1.005 million.

Under this hypothetical example, let us assume the total income of the entire business is $2.08 million, and the total income from business in Nevada is $1.2 million, so you would have an apportionment factor of 57.7 percent. You multiply the apportionment factor times the total margin to get the taxable margin, which is $579,808. You multiply that by 0.8 percent, or 0.008, and get $4,638, which would be the amount owed. The business would pay $4,638 in Margin Tax compared to the total income from the Nevada operations. That is the compensation method.

The second example is the cost of goods sold method. All the numbers are the same as the first example except for the shaded areas, and that is what we are changing. You end up with the cost of goods sold method being the least of the three options. The distribution and allocation factors are the same, so you end up with a slightly lower margin because the cost of goods sold resulted in a margin of only $925,000. From this calculation, the business would pay $4,269 on the total income of its business operations in Nevada.

That is a broad overview of the Nevada Margin Tax for the Assembly Committee on Taxation's consideration.

Chair Kirkpatrick:
What I want is to have the Committee ask questions and I will write them down. We will do the same process that we did before, unless staff wants to ask them. I believe it will be the most efficient if we do the same process we did on the transaction tax.

Assemblywoman Neal:
I have three questions. When you were discussing the MBT and the credit back, is there an expectation that we are going to take a loss at the end of 2013 when the Margin Tax comes into place, and what is the amount of that loss?

Russell Guindon:
Staff is still working through the numbers as we work through this. It is being discussed in Senate Revenue as it is in this Committee. They are considering potential amendments. The answer to your question is that there would not be a loss. It depends, as Senator Horsford pointed out, on the level of revenue that you would like to have come out of this. I do not think there would be any desire to put this tax on line so that, when you net against the MBT, you have less revenue than you had on the current tax structure. Staff understands that the amount of the MBT credit would not exceed the yield that we intend to get from the Margin Tax.

Assemblywoman Neal:
My next questions deal with the financial institutions and the repeal of the Branch Bank Excise Tax. Since we are repealing the MBT and the Branch Bank Excise Tax, and I believe we are exempting them from the transaction tax, what is the average revenue that a bank pulls in? The second part of the question is, what are the benefits that the state is expecting to receive financially, or within market lending, from these institutions if we reduce the amount of money that we are getting back from them?

Chair Kirkpatrick:
We can look at our report from the beginning of session and see the numbers on the bank fees that are available. I will get those for the Committee. Would someone please verify that for me? Senator Horsford, can you please address the benefits to our state by repealing it.

Senator Horsford:
I was not here in 2003, but there was a rather contentious debate that resulted in the financial industry having a higher rate on the MBT than all other industries. Because we are trying to reform our revenue code in a way that is fair, equitable, and more stable, the proposal in the bill is to bring the MBT on financial institutions in line with all other industries. As you phase out the elimination of the MBT altogether, the banking industry would pay the Margin Tax along with every other industry in the state, with the exclusion of those small businesses below $1 million.

I do not know what the rationale was in 2003 for imposing a higher tax on the financial industry, but in going forward, we need a tax policy that is fair and equitable to all industry groups. I think your question on community reinvestment, and what we would require of banks, would be a discussion about what requirements can be put on banks. That is probably a commerce related issue. There are restrictions on what we can require of banks that are chartered out of state, but I would defer to your legal counsel on those other issues. The tax policy recommendation is to bring all industries into the Margin Tax in a fair and equitable way without singling out any industry groups over others.

Assemblywoman Neal:
I understand this, but if we are not going to tax them in the same manner and we are going to make it fair, when the banks have an increase in revenue and they still have very tight standards where no one can get anything out of them, what is the real benefit? Ultimately, for at least five years, their lending standards have been extremely tight. There has not been any reciprocal return. That is a concern to me.

Senator Horsford:
That is a very valid concern. One of the comments that I made in the Senate Committee on Revenue is the predictability of the revenue plan as offered by both the transaction tax and the Margin Tax. That gives something to businesses that they have not had in this state for a very long time: a sense of predictability of what their tax liability is going to be. By not addressing these problems, by not having a fair broad-based business tax in place, we have these every-two-year discussions about who should be taxed, why, and how much. I would say to those financial institutions that, by implementing this fairer, more equitable, and stable tax structure, they will now be able to predict what their tax liability will be. They will be able to make both short-term and long-term investments in loans and community reinvestment, as well as investment in our small businesses, which we desperately need at this time. The tax policy leads to the objective that we ultimately want to see: increased investments by the financial institutions.

Assemblyman Stewart:
I want clarification. If a company earns $10 less than $1 million, they do not pay any of this tax. But, if a company earns $10 more than $1 million, do they pay on the $10 or on the full $1,000,010?

Senator Horsford:
That is an issue that was raised by some in the Senate Committee on Revenue. There is an amendment coming forward later that will address that so that the $1 million threshold applies to revenue on the first $1 million period. It would apply to everyone equally.

Assemblyman Stewart:
Would they pay on the $10 or on the $1 million? A company that had $1,000,010 in revenue, would they pay on the $10 or on the $1,000,010?

Senator Horsford:
On the $10.

Assemblyman Stewart:
Just on the $10. This bill does not address the sales tax that sunsets. This would be taken up in the other bill. Correct?

Senator Horsford:
Correct.

Chair Kirkpatrick:
Are there any other questions?

Russell Guindon:
May I clarify a little bit? With regards to the $1 million, the question was if you have $10 more than $1 million, would you pay the tax on the $10? The honest answer is, "No." It is not a gross receipts tax. You have to calculate and deduct your margin. I want to get that out. Maybe that conversation is where some of the confusion is coming from. Since it is not a gross receipts tax, if you go $1 over $1 million, you are going to pay on it. You have to calculate your margin, and then you calculate your taxable margin if you are a multistate or international business, and then you pay the tax on that amount. I wanted to explain that again for you to know what it actually means to calculate tax based on the revenue threshold that you choose.

Assemblyman Ellison:
Under Senate Bill 491, is this based on the gross or the net? What deductions can be declared to offset it?

Russell Guindon:
Could you repeat your question?

Assemblyman Ellison:
What is the difference based on where there is a trigger? Is that based on the gross or the net? What deductions can be declared against that business, if any?

Russell Guindon:
As the proposed amendment currently is, the $1 million is just a criterion that determines if you are required to file for the Margin Tax. If you have less than $1 million, there is no requirement to compute your margin and pay any tax on it. If you have $1 million or more, you are required to determine your total revenue and margin. The things that you can deduct that are included in

the cost of goods sold to get the margin under that computation are included in the bill. Also, what you include is compensation; you can deduct that to get to your margin. And then there is the 70 percent rule. Currently, you do not have to do that calculation unless you have more than $1 million in revenue. As Senator Horsford pointed out, it came up in hearing in Senate Revenue, as well as in other discussions. You are not paying the tax on the $1 over the $1 million because you still have to calculate your margin. We have asked the staff to look into allowing the $1 million to be a deduction, and how that would work since it is a Margin Tax and not a gross receipts tax. I do not know if that answered your question.

Assemblyman Ellison:
If I had a company that did $2 million in sales, that would be my gross. If I had a net profit of $200,000, am I going to pay taxes based on the $200,000 or on the $2 million?

Russell Guindon:
You would base it on your margin which is not necessarily the net profit because there are other deductions that take place to get to a net income or a net profit. You would pay it on the margin. If you had $2 million in revenue, and you had costs of goods sold of $1 million, you would have a margin of $1 million. If you are a Nevada-only business, $1 million would be your taxable margin. You would pay the 0.8 percent of that.

Assemblyman Ellison:
That is the way I understood it, but I wanted to make sure that was clarified and put on the record.

Chair Kirkpatrick:
Mr. Ellison, did you envision this working differently? I want to get as many questions and answers out as possible so that, as the Senate continues to deliberate and look at the policy side, there will be more opportunity to address this.

Assemblyman Ellison:
We have two items that are here and I am trying to keep them straight. I have Assembly Bill 569 and Senate Bill 491. I am trying to keep these separate in my mind and making sure that one does not overlap the other one. That is why I asked about the difference between the gross and the net. Being in business, there is a difference. You can make $1 million, but at the end of the day you may have $5 in net profit. That is what is happening now in this economy.

Senator Horsford:
You received this overview (Exhibit H), which is an analysis of broad-based business tax burdens. I think this may speak to Assemblyman Ellison's questions. What I want to do is give a real-life example of a business under the current status quo and what its tax liability is versus what it would be under the "Reconstructing Nevada" plan.

As you can see on page 1, a small business in Nevada that has total revenue of $750,000 and total expenses of $712,500 has a net income of $37,500. Today, it would have an estimated tax liability of $1,234 to the State of Nevada. Under the Reconstructing Nevada plan, the Margin Tax, that business would have no tax liability because of the $1 million threshold.

Then, there is a medium-size business with $15 million of revenue, total expenses of $14.25 million, and net income of $750,000. Its current tax liability would be $56,065. Under the Margin Tax, depending on which approach it took to calculate its deductions, that medium-sized business would have a tax liability of approximately $70,200.

The large business with $100 million in total revenue, $95 million in expenses, and $5 million in net income, would have an estimated tax liability today of approximately $383,255. Under this proposal, that business would have an estimated tax liability of $468,000.

The handout (Exhibit H) also has some information on a labor-intensive business versus a capital-intensive business for the Committee's comparison, and a business that averages its business model between labor and capital. This may help everyone put this in real terms of how it would affect an average business, whether it is small, medium or large.

Assemblyman Livermore:
I have looked at the examples that you have provided. The way I read this is that anyone in the State of Nevada that owns and operates a business and has a business license is going to be required to file a return whether he owes a tax or not. Am I correct?

Chair Kirkpatrick:
From my perspective, they have to file a federal tax return, so why would we not want that information?

Assemblyman Livermore:
I am just asking.

Chair Kirkpatrick:
From my perspective, I would hope that is the case.

Assemblyman Livermore:
The reason I said that is the information given to me today is about small businesses that fit this category and are exempt from the tax, but are not exempt from the reporting or the calculations.

Senator Horsford:
They are not exempt from filing their Sales and Use Tax form. I have a small business; we do not make any revenue. I have had the business for some time and I still have to file my Sales and Use Tax report monthly.

Assemblyman Livermore:
I think you should file your report as long as the business is active, but if it is inactive, you should be able to report inactivity and not be required to file until it becomes active again.

Senator Horsford:
That could be, and I believe Ms. Vilardo made some language suggestions to that effect in the Senate. The issue of reporting is something that is required for current taxes under law.

Chair Kirkpatrick:
I want to follow up on that point after Ms. Neal asks her question.

Assemblywoman Neal:
Is it envisioned that businesses will have the capability of doubling deductions from their federal and state returns so the amount they are able to deduct is actually much larger than we think? When we had this conversation during a mining bill, I looked up the federal deductions that they were able to take. They were very large and in several different areas. Now, we have this long list of deductions. There is even a deduction for future deductions that says that if the property is held for future production, the direct cost of preproduction is allocable to the property. I am sure you have talked about it but, seriously, are we going to do double deductions from the federal government and the state?

Russell Guindon:
They will use the federal IRS rules regarding calculating. If you are a corporation, you would be filing a Form 1120 and you would use the federal definitions for filing that return. Then you start computing your Nevada Margin Tax based on our statutory language for what is revenue. We are tying that to some of the lines on the Form 1120, so it would be consistent

in determining revenue. We have statutory definitions for what you are allowed to deduct from the cost of goods sold. I am not worried about double deducting because the federal return has its provisions, and Nevada has its own statutory construct for what is allowed to be deducted in determining margin. Could there be comparable elements between the federal and state returns? Yes, but there are also differences.

Senator Horsford:
We are looking very closely at deductions, specifically to mining, as we craft the Margin Tax to ensure the language is clear as to what is in and what is out. To your point, we do not want there to be any ambiguity, nor do we want there to be more deductions than what would be reasonable. If we as individuals, or the average business, can take 20 to 30 percent deductions, then that would be reasonable. What is not reasonable is 50 to 70 percent deductions of the total amount. We have reviewed that and I believe there is a balance in the Margin Tax as proposed.

Assemblyman Livermore:
I am concerned about the reporting requirements for small businesses. I do not have a clue what a reporting document might look like and how much detail there would be. I am concerned about that.

Chair Kirkpatrick:
Senator, I assume the goal would be a simple form because the simpler the forms are, the easier it is for people to comply with the process. I hope it would be simple.

Assemblywoman Woodbury:
I am wondering how you would determine the amount of cost of goods sold. Would that be determined in regulation? Would you use current regulations or new ones?

Senator Horsford:
What was the question? I was fielding another question.

Assemblywoman Woodbury:
How would cost of goods be determined? Would it be determined through regulations, and do they currently exist?

Russell Guindon:
The cost of goods sold is actually defined in section 36 of the bill regarding what can and cannot be included. Regarding expenses, you use them to determine your cost of goods sold, and then subtract that from your revenue

to get your margin. Would the Department of Taxation have to develop regulations through the regulatory process to clarify some of these issues? Yes.

Chair Kirkpatrick:
Mr. Livermore, I want to point out on page 4, which is part of section 14, sole proprietors, governmental entities, and nonprofits are already excluded from the tax. I hope that clarifies your question.

Assemblyman Livermore:
It does, but you would have to make an application for exemption. Although you have a business license, you cannot operate a business without someone turning you in for not filing taxes. I would not want a person who is almost self-employed to wind up in the jaws of the Nevada Department of Taxation and having to legally defend himself to ensure he is applying the law appropriately.

Chair Kirkpatrick:
So noted. We will make sure that is clear. Senator Horsford, we have a floor session at 12 o'clock, and I want to take some testimony. If there is anyone who would like to testify in support of the bill, please come up.

William Vassiliadis, CEO and Principal, R&R Partners; and representing Nevada Resort Association:
I appreciate your taking on such a substantive discussion. I would like to answer some of the questions, like why the bank tax is what it is. This may be instructional for this legislative session.

If we were to be honest about why the bank tax is where it is, it is because the banks were doing well in 2003, unlike other industries. For that session, the theme was "get the banks," just as we have had sessions that were "get gaming," and the last few sessions were "get mining." We have also had sessions to "get truck drivers." The 2003 Session was the "get the banks" session. Not much more thought than that was put into it, which is why we really appreciate the fact that you are taking a substantive approach to this.

The Nevada Resort Association had hoped that the discussion would be much like this because, for too many years, the discussions here have been about "whose ox can be gored" and "the only good tax is the tax that someone else pays." The political sloganeering started during the campaign and continued through the legislative process, so this hearing has been great. There have been good, legitimate questions asked.

From the Resort Association's standpoint, we have been talking for a long time about the need for a broad-based tax. Sadly, the recession of the last three years has shown us how badly we need something stable, and that we need reform. I do not know if I am being politically incorrect using the word "tax" because apparently "revenue" is the word for the session, but I am too old to change.

A tax that is broad-based is a tax that we all participate in. Fortunately, I do not have the burden of too much knowledge, so I will let Carole Vilardo and the chief financial officers (CFOs) from our companies worry about the details of the bill. It is a good concept that you are looking to broaden the tax structure, to stabilize and reform it, and that you are getting rid of a tax that taxes us for hiring people. We are talking about having the highest unemployment rate in the nation. We are talking about asking companies to move here to build jobs, but we are going to tax them, not for their success or for their economic activity, but for hiring people. We absolutely support repealing the MBT and replacing it with something that makes sense.

We have concerns with some parts of the bill. There is no perfect tax bill. Maybe the Nevada Taxpayers Association has one; or the chamber of commerce may have one. Carole might, but I do not. We need something that is fair, that does not single an industry out, that does not punish for employment, that is reflective of business activity, and that allows you to reduce the core or essence of your business whether it is the amount of people you employ or the cost of creating or producing goods. That would be fair.

We are standing by what we have stood by for 20 years. Please, please, please stabilize the revenue of this state, give us predictability, and do not punish us for hiring people. For those reasons, we support this bill.

Chair Kirkpatrick:
Does anyone have any questions? I see none. We appreciate your coming to the table. Is there anyone else who would like to testify in support?

Tim Crowley, President, Nevada Mining Association:
We are united in supporting this bill. You may recall that Russ Fields, my predecessor from the Nevada Mining Association, participated in the 2002 Governor's Task Force on Tax Policy in Nevada in 2001 and 2002. I worked for Russ back then and went through that process with him. We determined that the fundamental change that this state needed to make was to stabilize its tax structure. The Association from prior to that point has consistently supported efforts to stabilize the tax structure. We stand by that policy today. We feel that the Margin Tax is a very positive move in providing stability. We also support removing the sunsets on the existing taxes,

recognizing the state needs bridge funding to sustain it until the implementation of this new tax. Those are the comments that I have for you today.

Chair Kirkpatrick:
Does anyone have any questions? I see none.

Michael Brown, Vice President, U.S. Public Affairs, Barrick Gold Corporation:
I just want to associate my comments with those of Mr. Crowley and Mr. Vassiliadis. We talk about all of the studies that have been done on the state revenue system going back to the one that Bert Goldwater chaired, the Special Citizens Committee on Taxation and Fiscal Affairs back in 1960. The Mining Association's long-standing position is that if new revenues need to be raised in Nevada, it should be done by some type of broad-based business tax. This meets the historic tests that the Mining Association has set down. My tax department has looked at it and has not seen any complications with respect to filing or the processing of the paperwork.

Chair Kirkpatrick:
Does anyone have any questions? I see none.

Assemblywoman Bustamante Adams:
Mr. Crowley, based on the way that you calculate the Nevada Margin Tax, from what I understand, and correct me if I am wrong, mining's total revenue would be on the rents, royalties, interests, and other income specified. If that is the case, can you please tell me what total revenue amount that would be for the mining industry?

Tim Crowley:
It is our understanding that this bill does apply to our total income. I think there has been a bit of confusion over that because of the *Nevada Constitution* and what it says. It says that our minerals can only be taxed in one way. That does not preclude our income from being taxed in another way. We believe this bill would apply to mining just as it would to any other business. The gross value is somewhere around $6 billion. I would like to add a caveat that I want to look that up and give you an accurate number.

Russell Guindon:
I will go through this quickly. You can see in our write-up (Exhibit D) that we have, under the exclusions from total revenues, the "Gross proceeds that are subject to the Net Proceeds of Minerals Tax." That is a specific exclusion. If you go to section 35, subsection 6, paragraph (d), it says "A business entity must exclude from its total revenue the amount of any revenue which represents the proceeds of minerals, except this paragraph does not require or

authorize the exclusion of any revenue derived from the proceeds of minerals after the identity of the proceeds as such is lost." There is an exclusion that, as we interpret this language, the total revenue that is coming from the extraction of minerals, the proceeds from that, would not be included in revenue for purposes of calculating the Margin Tax for mining. That is something that has been discussed and the staff is looking into it. For clarity for the members of the Committee, that is the specific language that is currently included in the proposed amendment of May 10, 2011, to S.B. 491.

Tim Crowley:
I find myself in an interesting predicament where I am arguing to be taxed, but we believe the intent of this bill, and understand that intent, to include us. There may be some lawyers who could argue over the language that Mr. Guindon just read and interpret it one way or the other. We would support any changes that you would make to the bill to clarify that we are included.

Assemblywoman Benitez-Thompson:
That was right in line with the questions that I have. In reading this language, your industry does not see any constitutional issues with it and does not foresee any as we are discussing it now. Is that right?

Tim Crowley:
That is right. We do not see any problems along that line.

Michael Brown:
The question came up in the Senate Committee on Revenue whether mining was a capital-intensive or labor-intensive industry. While we employ large numbers at high compensation levels, we are actually a capital-intensive industry. I just wanted to clarify that for the record.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:
You know that Progressive Leadership Alliance of Nevada (PLAN) put out a proposal of a broad-based business profit tax. When we first saw this Margin Tax, and I think all of us would agree, we felt it is a fairer and far superior tax than the one we proposed because of its ability to allow businesses to deduct according to the kind of business it is. It is not a gross receipts tax; it has been misrepresented as one. It is truly a tax that is going to allow businesses to choose one of three ways to make their deductions.

We also applaud the protection for small businesses. I do not know if Senator Horsford said it today, but at the presentation given to businesses the other day, it was said that probably 75 percent of the businesses in our state are under $1 million in revenue and would be exempt. To me, that is the right way to go about this. Currently, those small businesses pay too much tax at a time when they cannot afford it. The Modified Business Tax is not helpful to small businesses, nor is it helpful to growing businesses. I think you heard Mr. Vassiliadis say that it is a disincentive to hire people because the more your payroll goes up, the more you pay.

However, this is a great proposal. I would urge your support for it. It will stabilize our state. My group has brought all kinds of people together, so they can all understand that we need revenue. We cannot pass a budget without revenue or our state is going to decline. Today in the paper, Clark County School District said it gave papers to 1,700 teachers. You know there is a ripple effect of firing 1,700 teachers. We will see a decline in our economic growth. It has to happen. Unless we invest in education, human services, rural hospitals, et cetera, our economy is going to falter. I know the Governor is hopeful that we are going to keep growing, but if we have these cuts to the budget, we are going to see a decline. This tax will not hurt the small businesses in our community. You have heard from the business community and I am sure you will hear from more. They want to provide a stable tax so we can entice businesses around the country to come to Nevada. We are going to have the right kind of tax, a fair and stable tax. I would urge your support for this bill.

Chair Kirkpatrick:
Does anyone have a question?

Assemblyman Ellison:
I have been listening to all of the pros and cons. If I support or do not support the bill, is not the issue. The issue is that I am proud of the mining industry because they have been here getting beat up. They step up to the plate on almost any issue. When the special session came in, where were they? They were right here. Right now they are here. I do not see a lot of businesses breaking down the doors saying, "Tax me." The mining companies are here. If you go back and look at the history of the State of Nevada in its boom and bust, look at all of the cities that have made it and lost it. I have a lot of respect for those individuals who have walked up to the table and say that they will support the State of Nevada.

Chair Kirkpatrick:
Does anyone else have any questions? I see none. Mr. Ross, I know that you were going to send us a letter from someone who testified.

George Ross, representing Hospital Corporation of America, Inc.:
President Sylvia Young and I delivered testimony in Senate Revenue and we have submitted that as written testimony to this Committee as her testimony (Exhibit I). I would encourage you to read it because she lays out the dire straits that the health care industry is in and the current situation, and she suggests some alternatives.

Chair Kirkpatrick:
Does the Las Vegas Chamber of Commerce have a position on this yet, or is it waiting for the final language?

George Ross:
We are waiting. But I will tell you that Hospital Corporation of America (HCA) did endorse this bill.

Chair Kirkpatrick:
I know there are folks who want to testify in opposition, and they can come up now and those who are neutral, as well as those who have technical questions. This Committee is going to compile a list.

Wendy Mueller, Private Citizen, Incline Village, Nevada:
I have a written statement (Exhibit J). I have been a resident of the great State of Nevada for over 12 years. My husband and I moved here to create our businesses and to raise a family. We live in Incline Village and have two children aged 8 and 6. We are owners of three small financial businesses which employ 19 people who all have health insurance.

[Read from prepared testimony (Exhibit J).]

Chair Kirkpatrick:
Does anyone have any questions? I have one. We are in a structural situation currently. For the long term, are there any suggestions that you have? I can say from my boss's perspective it is a reason not to give me a raise. Structurally, we have to be able to count on something. The larger companies will tell you that the MBT is a deterrent, so I wonder if you see a different way, since going forward for all of our kids in 20 years will be a bigger problem. Do you have any suggestions?

Wendy Mueller:
I appreciate the comment and I was hoping for that question. When I moved here 12 years ago, we saw my businesses at this stage. [She held her hands horizontally close to each other.] We had some great years and they moved up. [She moved her horizontal hands farther apart.] Now they are back down.

[She returned her hands horizontally close to each other.] I would expect first and foremost government to be the same. I do understand that there is a sunset to take place. I would extend the sunset.

The third item that I would like to bring up is when a corporation registers with the Nevada Office of the Secretary of State, there is a $125 registration fee and a $75 business fee, for a total of $200. For our neighbors in California, the minimum tax is $800 as you have heard. I do not like the $800 number, but there may be some "wiggle room" in that. I would also point out what would be a very efficient method. When I go online for myself or my businesses, or for my clients, we are online with the Secretary of State's Office. We can pay by credit card, and it is done and filed immediately. It is not intensive. This Margin Tax that is being proposed is a lot of work, and a lot of overhead, not only from the business perspective, but also the administration of the Nevada Department of Taxation. I was in practice here when a lot of the revamp was taking place with the Modified Business Tax. We worked very closely with the staff there. It is burdensome administratively, which means more government.

Assemblywoman Neal:
I am interested in you giving us testimony—not now—on the transaction tax because that is also going to hit you. I would like to hear your comments since you are against this one. It seems that you would be against the other one, too. If you could write something up, I would like to hear your input.

Wendy Mueller:
That would be my pleasure. I will do that.

Assemblyman Ellison:
You did not declare what type of business you have. Is it construction?

Wendy Mueller:
I have a public accountancy firm and I am CFO of a financial business that buys distressed debt. My husband has a money management business. However, my clients are predominantly in construction.

Chair Kirkpatrick:
I want to follow up on one more thing. Would you benefit under the MBT sunset because you pay out more than $250,000?

Wendy Mueller:
My companies?

Chair Kirkpatrick:
Yes, your companies. Currently, the MBT applies to the first $62,500 quarterly. Do you pay out more in salaries than that?

Wendy Mueller:
We pay that and we pay the Business License Fee. There is no concern there. It seems reasonable.

Chair Kirkpatrick:
Do you fall under the 0.5 percent or the other?

Wendy Mueller:
The public accountancy firm is at the 0.5, and the other is in the financial institution.

Assemblywoman Flores:
I see in your written testimony, and you said in your verbal testimony, that you represent small businesses and their owners in their taxation matters. I am actually curious as to how you gauged all of your clients' opinions on this particular matter since you are here speaking on their behalf.

Wendy Mueller:
I do speak with them quite often. None of them have ever actually talked to me about the MBT. Usually I speak with in-house bookkeepers, which most of them have. Small businesses under $1 million usually have the spouse, generally the wife, do the books, and it is not burdensome. In this environment, any time you talk about margin, I understand it and most of the Committee members understand it, but small business owners usually shut down completely.

Assemblywoman Flores:
Then this is primarily based on your opinion on what you think they may tell you.

Wendy Mueller:
Yes.

Chair Kirkpatrick:
Let me follow up with you. I believe what I heard you say is that if the process was simplified, there might not be as much opposition. I did not hear you say that you oppose that particular tax as much as I heard you say there is concern over the process.

Wendy Mueller:
Yes. In listening today to how the calculations are figured, it just occurs in the normal practice. I am against a Margin Tax because I am used to thinking in "net." I have a hard time in a gross Margin Tax, even if it is a 70 percent calculation, or cost of goods sold, when ultimately there is a net loss. It is a difficult concept for me to support. I do understand the broad base though.

Chair Kirkpatrick:
I appreciate your coming out, and if you could get with Ms. Neal, she will share your thoughts on A.B. 569 with us and that would be helpful.

Carole Vilardo, President, Nevada Taxpayers Association:
You all know that I am technical. I am not going into the issues. I have not polled my board and I have no position because the bill, in my opinion, has too many issues to be addressed at this point. Because I anticipate you're having other meetings, I will not take the time to address them now. We are supposed to have an amended bill that may take care of some of the problems.

Two very quick points. First is that in the reference to nonprofits, take a look at the language. It is only 501(c)(3)s. There are 33 categories of nonprofits. Second, when a state, and I will use income tax, goes with income tax for the first time, historically what they have done is work off the federal forms. They see how it goes then they decouple from the federal provisions, such as the cost of goods sold. That is not the way this tax is. Except when you figure the revenue lines, you are not going to use your federal return. After that, you have created something totally different.

Chair Kirkpatrick:
We are going to ask Senator Horsford if they made any amendments on their side. We would like to work off of a clean document.

Dan Musgrove, representing The Valley Health System:
Today I represent The Valley Health System of hospitals: six hospitals in the State of Nevada, five in southern Nevada, and one up here in northern Nevada called Northern Nevada Medical Center. We testified in the other house on this bill in favor because we believe it is important, for one thing, to eliminate the MBT. The MBT is a tax that, because The Valley Health System is an employee-based company, has been regressive. When you talk about attracting employers to this state, we believe that health care is one of the greatest industries that this state can support. When you think about it, what kind of employers do you want to have? Do you want to have employers that employ and retain their employees? The Valley Health System has over 5,000 employees. You want an employer who pays a good wage. The average

wage and benefits of a Valley Health System employee is $84,000 a year. Do you want an employer that pays taxes? The Valley Health System pays over $108 million in taxes, of which $14.5 million goes directly to the State of Nevada. You want a clean industry. You want an industry that pays it forward. The Valley Health System provides over $170 million in charity care to the citizens of Nevada. That is the kind of business that you want to have, but you also need to retain them. You also need to create a climate in which they can survive.

One of the important things that this Legislature has done through the money committees is to try to put money back into the health care system. During both regular and special sessions, there have been dramatic cuts in the last few years to reimbursements that go to both hospitals and physicians to take care of the neediest of populations that this state has to deal with. One of the things that we see is this Legislature trying to put that money back in so that those cuts do not continue to happen. You are seeing physicians and hospitals that are making tough decisions on whether they are going to turn their backs on taking these individuals any longer because the reimbursements are so bad. We understand that you have to pay for it, and we appreciate the fact that there is a plan in front of us that looks at paying for that, but provides a stable tax base going forward. We hope we do not have to keep coming back over and over again and being threatened with additional cuts for patients that we have to take. We do not have the choice to turn these folks away when they walk into our hospital door. Because of the many regulations that hospitals are under, we do not have the luxury of saying that if you cannot pay you cannot play. If they walk in our door and are in an emergency condition, we take care of them. So often we do not get reimbursed, even to a dollar close to our cost. Those of you who sit on the health care committees have heard this story before, so I will not continue to belabor it.

My hospital system is in favor of S.B. 491, and we hope this Legislature considers it and looks to the future as to what kind of businesses you want in the state. Health care is an important business, and we believe The Valley Health system is an important player in the state and we want to be a part of the dialogue going forward.

Chair Kirkpatrick:
We appreciate your coming before this Committee. I know health care has been hit the hardest, and I hope they can stay in business with some of the choices having to be made this session.

Are there any questions? I see none. Is there anyone else who would like to testify in support, against, or neutral on this bill at this time? I see no one.

Senator Horsford, do you have any final comments? [Senator Horsford indicated that he did not.]

Committee members, we have no more matters coming before us. We are good to go. We will not be meeting tomorrow. On Tuesday, if the Senate has an amendment, we would like to work off of that for some more policy discussions. I believe there is a "More Cops" bill coming out that needs to be addressed. It is a big fiscal issue for local governments that should be dropping on Monday. There will not be a three-day time frame. This will work differently now that deadlines are even closer. I think we are at "T minus 18." It is going to move faster for the Committee members, so please continue to put the Assembly Committees on Taxation and Government Affairs on your calendars and watch the agendas. I know that we will not be having a meeting of the Assembly Committee on Government Affairs on Monday or Wednesday, but we will be having a meeting on Friday because we are getting some bills that we need to hear.

The same comments to the Assembly Committee on Government Affairs; it is a great Committee. I appreciate everything that everyone has done, and the policies that we have been able to discuss.

The Assembly Committee on Taxation is officially adjourned [at 12:12 p.m.].

RESPECTFULLY SUBMITTED:	RESPECTFULLY SUBMITTED:
______________________	______________________
Mary Garcia	Karyn Werner
Recording Secretary	Transcribing Secretary

APPROVED BY:

____

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: ______________________

EXHIBITS

Committee Name: Committee on Taxation

Date: May 20, 2011 **Time of Meeting: 10:12 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 569	C	Michael Nakamoto	Mock-Up: Proposed Amendment 6974 to Assembly Bill No. 569
S.B. 491	D	Russell Guindon	Proposed Amendment 6801
S.B. 491	E	Russell Guindon	Handout on Margin Tax Calculation
S.B. 491	F	Senator Steven Horsford	Prepared Testimony
S.B. 491	G	Senator Steven Horsford	Analysis of Tax Incidence
S.B. 491	H	Senator Steven Horsford	Analysis of Broad-Based Business Tax Burdens
S.B. 491	I	George Ross	Written Testimony from Sylvia Young
S.B. 491	J	Wendy Mueller	Written Testimony