

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

**Seventy-Sixth Session
April 5, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 9:04 a.m. on Tuesday, April 5, 2011, in Room 4100 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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Tray Abney, Director, Government Relations, Reno/Sparks Chamber of Commerce
Randi Thompson, State Director, National Federation of Independent Business
Jennifer Stoll-Hadayia, Public Health Program Manager, Washoe County District Health Department
Tom McCoy, Nevada Government Relations Director, American Cancer Society Cancer Action Network
Marlene Lockard, representing Nevada Women's Lobby
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
Amy Beaulieu, Director of Tobacco Control Policy, Las Vegas Office, American Lung Association
Christopher Roller, Director of Advocacy and State Health Alliances, American Heart Association/American Stroke Association; and representing Nevada Tobacco Prevention Coalition
Michelle Gorelow, Director of Program Services, Nevada Chapter, March of Dimes
Hilarie Gray, Vice President, Communications & Government Relations, Nevada Cancer Institute
Adam McGhee, Junior, Arbor View High School, Clark County; and Member, Verbatim
Susan Chandler, Associate Professor, School of Social Work, Division of Health Services, University of Nevada, Reno
Trevor Hayes, representing FreyBoy Tobacco
Michael Frey, Owner and Operator, FreyBoy Tobacco
Wendy Garner, Store Manager, Carson Cigar Company
Keith L. Lee, representing Distilled Spirits Council of the United States
Peter Krueger, representing Cigar Association of America; and Nevada Petroleum Marketers & Convenience Store Association
Sean T. Higgins, representing Terrible Herbst, Incorporated
Alfredo Alonso, representing Southern Wine and Spirits; Nevada Beer Wholesalers Association; and Reynolds American

Chair Kirkpatrick:

[Roll was called.] We are going to be pretty busy on April 12. We are going to try to have a meeting of the Assembly Committee on Taxation in the morning and a meeting of the Assembly Committee on Government Affairs upon adjournment of Taxation to try to get through both processes. We will have a presentation on Thursday on different structures of tax they use in other states and different options we think could work for our state. I think that is something we really need to start looking at, especially for those who plan on being here in the future. We really need to think outside the box and move forward.

We will have a work session. We are trying to get it together now, so we will post a rolling work session on our agendas next week. We will get through it as we can.

We will recess for a few minutes until the Speaker gets here.

[Recess called at 9:06 a.m.]

[Called back to order at 9:08 a.m.] Good morning, Mr. Speaker. We will open the hearing on Assembly Bill 436.

Assembly Bill 436: Provides a deduction from the payroll tax for wages paid to newly hired employees under certain circumstances. (BDR 32-724)

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

[Distributed PowerPoint presentation ([Exhibit C](#)) and proposed amendment ([Exhibit D](#)).] I am here to introduce A.B. 436, which would reduce the payroll tax for employers who hire Nevadans and pay them high wages. The current law requires employers to pay a payroll tax on the wages paid to their respective employees during each quarter. Businesses pay more taxes on wages paid to an employee who makes more than \$62,500. Under this bill, employers in Nevada would be able to deduct wages paid to newly-hired employees from the amount they are required to claim on the payroll tax for the first four years of employment, if the employee is paid wages that are twice the state or county average; whichever is lower. We think this is going to encourage high-wage job growth in rural counties because it would be easier to qualify in counties with a lower average wage. For instance, the wage needed to qualify for the high-wage credit would be \$76,000 versus \$85,000 based on the statewide average.

What does an employee have to do to qualify for that deduction? She must be a resident of this state, be hired after July 1, 2011, and cannot be an owner or

part owner of the company. The employee must also be paid 200 percent of the lesser of the average wages of the state or the county which is the primary workplace for the employee. The company must employ more workers than in the same quarter in the previous year, so it cannot simply reduce the workforce in order to qualify for this credit. The total number of hours worked by employees cannot be less than the same quarter of the previous year. Again, this is to keep them from reducing the hours of their employees in order to qualify.

In the past, this deduction was done over the period of a year. Now, it would be based on a quarterly reporting, and it could not exceed \$1,250 a quarter. That would be the most they could get in reduction under this bill, but it would be paid now and not later.

We think this bill would encourage job growth, especially in the rural counties. It would set a flexible bar that would rise with the stronger economy. As the average wage went up, so would the qualifications under this bill. We think, since this would occur on a quarterly basis, it would pay the deduction quickly, thus encouraging this to happen right away. Also, it would encourage accountability when done on a quarterly basis. If it were done over an entire year, it would be difficult to calculate how many employees a company had the last quarter and so on.

That is the bill in a nutshell. I would be happy to answer any questions.

Assemblyman Ellison:

In the last couple of meetings, we have heard bills similar to this one. Is there a way they can be combined? Instead of having two or three of these bills out there, it seems we might be able to combine them into this one bill.

Assemblyman Ocegueda:

I was not even aware of other bills like this, but I would certainly be open to such an arrangement.

Chair Kirkpatrick:

Thank you, Mr. Ellison. We did have a bill that was similar. However, there was an issue of a mechanism by which some of that would actually be reported. Also, that bill was for a much shorter time frame. I think this would encourage the employer to keep the employee for a longer period of time. I think there is merit to the other bill, but I also think there are some mechanical issues we will probably have to discuss either way. This bill, as I read it, seems to give some longevity to the employee.

Assemblyman Ocegüera:

I would be happy to work with the sponsors of any related bills. That is fine with me.

Assemblyman Ellison:

As an employer, I would rather see the other bill merged into this one, because I think A.B. 436 would be more helpful to the employment base.

Assemblywoman Neal:

Is there going to be a sunset provision on this, or will it go on indefinitely?

Assemblyman Ocegüera:

It goes on indefinitely, but the benefit of this is that it moves with the average annual wage. As goes the economy, so goes this bill. If the average wage is lower, a company will get this payroll tax benefit for a lower salary. If the average goes up, it will require a higher salary.

Chair Kirkpatrick:

Are there any other questions? [There was no response.] I think some other states do this on a regular, ongoing basis, so this would make us competitive. With that, Mr. Ocegüera, is there anybody you would like to have come up? [Assemblyman Ocegüera indicated there was not.] Is there anybody else who would like to speak in support of A.B. 436?

Tray Abney, Director, Government Relations, Reno/Sparks Chamber of Commerce:

We support the concept behind this bill. As you recall, we came up last week in support of a similar bill from Assemblyman Brooks. I saw that this one had the name "Ocegüera" at the top of it, so I thought it would be a good bill to support. We support the concept, but right now employers report only their gross wages to the Department of Taxation. We would have to figure out how to put in a separate line for the new employees they hire. We support anything that helps employers put our people back to work. Thank you.

Randi Thompson, State Director, National Federation of Independent Business:

We represent more than 2,000 businesses across state. My members tend to pay higher wages, but I am concerned with a bill that only supports creating jobs that have higher wages. I would like to create any job in Nevada right now, be it high wage or low wage.

Mr. Abney, Mr. Wachter, and I are meeting with Assemblyman Brooks today to discuss his bill. I think we can work out some of the mechanics of that bill, and any improvements we come up with could be applied to this bill.

Focusing on jobs in the rural counties is a great idea, but Las Vegas is also in desperate need of jobs. Again, I support this concept and anything else that will get people working. I am concerned with the mechanics, but I am sure we will be able to work out some details.

Chair Kirkpatrick:

Thank you. Are there any questions? [There were none.] Is there anyone else who would like to testify in support of A.B. 436? Is there anyone who would like to testify in opposition to A.B. 436? Is there anybody in a neutral position on A.B. 436? [There was no response.] Mr. Ocegüera, do you have any final comments? [He indicated he did not.] Okay, with that we are going to close the hearing on A.B. 436 and open the hearing on Assembly Bill 333.

**Assembly Bill 333: Increases taxes on intoxicating liquor and tobacco products.
(BDR 32-881)**

[Chair Kirkpatrick left the room, handing the gavel to Vice Chair Munford.]

Vice Chair Munford:

Ms. Pierce, are you ready?

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:

Thank you for hearing A.B. 333 today. I will start with a little overview. I have four tax bills, so I wanted to give an introduction that is for all of my bills.

Assembly Bill 333 increases the taxes on cigarettes and alcohol. This is the first of my tax bills to be heard, and I want to present some of my thinking on the budget issue facing our state. Then I will give an overview of the bill.

We are in the middle of the worst economic downturn in 70 years. Almost all states are struggling, but Nevada has the largest deficit of any state in the country. Our Governor has proposed a budget that has no additional revenue. Instead, it proposes enormous cuts to education and our health and human services, offloads state responsibilities to local governments that are themselves in crisis, and uses various budgetary gimmicks that only postpone dealing with some of the problems. I cannot support these ideas.

Some believe that, in this difficult time, Nevada simply needs to tighten its belt. That suggests that Nevada has a large and wasteful government. Nothing could be further from the truth. There is a great deal of focus in the media on the cuts we have made in the last couple of years, but the truth is Nevada has aggressively been cutting the size of government for more than 30 years.

If we decided to have the same size government today that Nevada had in 1978 in terms of public employees per capita, we would have to hire 44,000 more government employees. This aggressive downsizing in the last 30 years was not a general trend. Only seven other states have reduced the size of their governments over the last 30 years, and none have come close to cutting as deeply—and I believe as destructively—as Nevada.

How do we compare to other states today? Nevada has, by a very large margin, the smallest government in the country. Nevada could hire 10,000 government workers tomorrow and still have the smallest government in the country.

Instead of looking at the whole country, let us look at how Nevada compares to other states with populations similar to ours so we are comparing apples to apples. You know large states, like large organizations, can achieve efficiencies that small states and small organizations cannot. It is the phenomenon of economies of scale.

The five states that are closest to Nevada in population are Utah, West Virginia, New Mexico, Kansas, and Arkansas. How do we compare to these states? If Nevada today had the size of government of our neighbor to the east, Utah, we would have to hire 18,000 government workers. If Nevada had the size government today that West Virginia has, we would have to hire 33,000 government workers. If Nevada had the size of government today that New Mexico has, we would have to hire 64,000 government workers.

Kansas is one of my favorites. Kansas is a red state and has been since the time of the dinosaurs. If you lined up all the legislators in the Kansas Legislature, four-fifths of them would swear on the Bible they were fiscal conservatives. If Nevada had the size of government today that Kansas has, we would have to hire 64,000 government workers.

The last state I mentioned, Arkansas, was cited by the Spending and Government Efficiency (SAGE) Commission as doing something budgetary exceptionally well. If Nevada had the size of government today that Arkansas has, Nevada would have to hire 41,000 government workers.

The truth is, Nevada has engaged, over the last 30 years, in a very radical experiment in very small government, an experiment that no other state emulated. We cut, we downsized, and we cut some more. But that is not really accurate. We did not actually cut; we did not have to. For decades, we have been the fastest-growing state in the country. We did not have to cut; we just had to stand still.

When 50,000 more people moved here, we increased the size of government enough to serve maybe 10,000 more people. Then, when another 100,000 people moved here, we increased the size of government enough to serve about 18,000 people. We did that over and over again. We did not cut government so much as we starved it, biennium after biennium.

I was not surprised by the recent admission that our state is not auditing the mining companies adequately. Over the last 30 years, we got rid of any possible fat in our government, and then we got rid of muscle.

I believe our state needs more revenue, but I am not just proposing additional revenue because we are experiencing this difficult time. I am one Nevadan—and I know there are others—who, even before we were hit by the worst economy in 70 years, had grown weary and impatient with being at the top of all the bad lists and the bottom of all the good lists. I believe there is a neon-bright line between this radical, extreme downsizing of government over the last 30 years and our position at the top of all the bad lists and the bottom of all the good.

To be honest, no one promised us over the last 30 years that, if we made our government teeny-tiny and kept our taxes low, we would develop a good quality of life for Nevada families. We were, however, promised that if we made our government teeny-tiny and kept our taxes low, businesses would flock here and our economy would diversify.

That did not happen. It did not happen in 10 years; it did not happen in 20 years; it did not happen in 30 years. It is unconscionable to ask Nevada families to sacrifice any more decades to this utterly failed experiment in radically small government. Asking them to do so is not, for me, a moral choice.

Let me be clear. I am not suggesting we try to emulate the big-government states like Kansas and Arkansas. I am simply advocating for a rejection of the extremism of the last 30 years. I am advocating moderation. Our state needs more revenue and a new direction. Our state needs an immediate fix and a long-term plan that will give my constituents hope for a brighter future for them and for their children. To that end, I have proposed four tax measures, the first of which I am presenting today.

I will walk you quickly through A.B. 333. Assembly Bill 333 increases the rate of taxes on cigarettes, liquor, and other tobacco products within this state.

Sections 1 and 2 deal specifically with the excise taxes on liquor. Section 2 of the bill contains the new tax rates for these alcoholic beverages:

- Malt liquor, such as beer, increases by 9 cents a gallon, from 16 cents to 25 cents.
- Liquor whose alcohol content is between 0.5 percent and 14 percent, such as wine, increases by 30 cents a gallon, from 70 cents to \$1. I was speaking to Mr. Nakamoto earlier, and this is the equivalent of about 6 cents per standard-size bottle of wine.
- Liquor whose alcohol content is above 14 percent up to 22 percent, which often includes certain types of cordials and liqueurs, increases by 45 cents a gallon from \$1.30 to \$1.75. I would like to suggest that if you are reaching for that bottle of Glenlivet, 45 cents is not going to stop you.
- Hard liquors—those whose alcohol content is above 22 percent—increase by 90 cents a gallon from \$3.60 a gallon to \$4.50 a gallon.

I have estimates of how much that would bring in, but this is the policy committee, so I will not go into that.

Section 1 of the bill deals with a portion of the tax on hard liquor. For any beverage whose alcohol content is higher than 22 percent by volume, that revenue is dedicated to the Tax on Liquor Program Account. This account, which funds programs dedicated to alcoholism and drug abuse, receives a portion of the tax on hard liquor equal to 15 cents a gallon. Section 1 ensures the Tax on Liquor Program Account continues to receive this 15 cents a gallon distribution.

Sections 3, 4, and 5 of the bill deal specifically with the tax on cigarettes. Section 3 increases the tax rate on the tax stamp affixed to a pack of cigarettes by 45 mills a cigarette, or 90 cents per pack of 20 cigarettes. The rate increases from 40 mills per cigarette, or 80 cents per pack of 20, to 85 mills per cigarette, or \$1.70 per pack of 20. I chose that amount because it makes us equal to Utah. That seemed a good state to match.

Section 4 of the bill ensures that local governments will continue to receive the same share of cigarette tax revenues after the rate is increased. Under current law, the amount of tax generated from 5 mills per cigarette or 10 cents a pack is transferred to the Local Government Tax Distribution Account and distributed

through the consolidated tax. This section ensures that local governments continue to receive this revenue.

Section 5 increases the use tax rate on cigarettes by the same amount as the excise tax exchange made in section 3. This ensures the people who are buying cigarettes not subject to the tax, such as those who buy them out of state and have them shipped into Nevada, are liable for use tax at the same rate as those persons who purchase their cigarettes in the state.

Section 6 of the bill increases the tax rate on tobacco products other than cigarettes, such as smokeless tobacco and cigars, from 30 percent of the product's wholesale value to 55 percent of the product's wholesale value.

Sections 7 and 8 of the bill ensure the tax increases imposed do not become effective until July 1, 2011. With that, I will take any questions and then I have some people to invite up.

[Chair Kirkpatrick returned and reassumed the gavel.]

Chair Kirkpatrick:

Does anybody have any questions? [There was no response.] I will say, at least for the freshmen who were not here last session, we have had this debate before, but I think this is a bit different from what we have had in the past. Is that correct, Ms. Pierce, at least as far as having the discussion about liquor taxes and tobacco taxes? [Assemblywoman Pierce indicated agreement.] What I want to tell the Committee is that we are going to have some open discussions at least about Ms. Pierce's bills, if not some other ones. We hear all the time that we are not having an open debate, so here is our forum.

Ms. Pierce, who would you like to bring forward?

Assemblywoman Pierce:

I have Jennifer Stoll-Hadayia, from the Washoe County Health District. I also have Tom McCoy, from the American Cancer Society-Cancer Action Network. In Las Vegas, I have Amy Beaulieu, from the American Lung Association; Michelle Gorelow, from the March of Dimes; and Christopher Roller, from the American Heart Association.

Chair Kirkpatrick:

Okay, we will start up here in the north.

Jennifer Stoll-Hadayia, Public Health Program Manager, Washoe County District Health Department:

We are here in support of the tobacco portion of A.B. 333 for the simple fact that if you increase the price of tobacco products, then fewer people use them. I realize this is the Assembly Committee on Taxation and not the Assembly Committee on Health and Human Services, but I thought it was important for the Committee to know that though increasing tobacco prices is a revenue strategy, it also has significant public benefit. That is what I would like to speak to today.

If we increase the price of cigarettes by 90 cents and increase the tax on other tobacco products as proposed, we will see the percentage of adults who use tobacco products decrease. We will also see the percentage of our youth who use tobacco go down. This will have a real, direct, and lasting public health benefit to our state.

We need these benefits. Right now, adult smoking rates and youth smoking rates in Nevada are still above national averages. Twenty-two percent of our adults smoke, and 10 percent of our youth smoke. By youth, I mean people aged 12–17. That means 10 percent of our teenagers are still daily smokers.

Perhaps even more surprising, however, is Nevada's rate of smoking-attributable mortality. We have the third-highest rate of smoking-attributable deaths in the country. That translates into 3,300 people every year who die prematurely from the direct use of cigarettes. We know cigarette use is 100 percent preventable.

We also know how to prevent it. Decades of systemic reviews of the scientific literature on policy and program strategies to reduce tobacco use in our country have shown that increasing the price of tobacco products is the most reliable and proven method to reduce use. The research shows that if you increase the price of tobacco, it does two things. It prevents new smokers from ever starting, and it facilitates current smokers quitting. In general, the research shows that every 10 percent increase in the price of cigarettes results in a 4 percent decrease in adult smoking and an even greater percent decrease in youth smoking.

Our experience in Nevada bears this out. On the second page of my testimony ([Exhibit E](#)) is a chart showing our course in terms of cigarette excise taxes and adult smoking rates. The last time we increased our excise tax, in 2003, it was by 45 cents. In the year following, we saw a decrease in adult smoking of almost 8 percent. We have not seen a comparable one-year decrease in adult smoking except in the years following the Tobacco Master

Settlement Agreement. I think we all can agree that there is probably no additional Master Settlement Agreement coming. However, as a state, keeping those adult smoking rates going down through an increase in the tax on cigarettes is well within our control.

If we increase cigarettes by 90 cents and increase other tobacco products as proposed, the number of adults who smoke in Nevada will go down. The number of youths who smoke in Nevada will go down. As a result, the number of premature deaths due to smoking will go down, bringing real, lasting public health benefits to our state. For that reason, the Washoe County Health District and I urge you to pass A.B. 333 as an opportunity to improve the health of Nevadans. With that, I would be happy to answer any questions. Thank you for the opportunity to speak to this Committee.

Assemblywoman Benitez-Thompson:

Where does Nevada fall in terms of its rankings on its tax on cigarettes?

Jennifer Stoll-Hadayia:

There was some testimony submitted as well that shows all states and their current cigarette excise tax levels. At 80 cents, we are 35th in the country—right about the middle—and not comparable to all of the western states, as Assemblywoman Pierce pointed out.

Assemblywoman Neal:

Do you know the total amount of tobacco sold in Nevada?

Jennifer Stoll-Hadayia:

I do not know the total amount sold every year, but I am sure those figures are available to us.

Assemblyman Livermore:

I appreciate your testimony this morning. I am a nonsmoker and have been all my life. I am confused here. Is this about taxation, or is this about a health benefit? If this were to pass, how would you see the revenue from this tax utilized?

Assemblywoman Pierce:

For me, this is a way to increase revenue, but increasing the tobacco tax has an extra benefit that these folks are talking about. I see this money going into the State General Fund.

Chair Kirkpatrick:

Are there any other questions? [There were none.] I will disclose I am a smoker, so I contribute my 80 cents a pack to programs. The long-term benefit is, of course, that we have fewer smokers, but, at the same time, those of us who are contributing are keeping some of those programs going. It is almost like a seesaw for the time frame, so how would you see the bridge as far as keeping the programs going long enough while decreasing the amount of tobacco we sell?

Jennifer Stoll-Hadayia:

Currently, no cigarette excise tax goes directly into tobacco prevention and control programming. So, for us at the Health District, this is truly a public health policy we support because, over time, it does reduce smoking rates. For us, our position is not a revenue position. It is one of public health strategy. Research does show that, over time, it reduces smokers, and that is our goal.

Chair Kirkpatrick:

I do not disagree, but what I know—as I learned last session—is that, at the state level, we have some programs that are funded by that tax.

Assemblywoman Pierce:

But I think we discontinued them, and I think that money is not currently going into smoking cessation programs now. We would have to restore that.

Chair Kirkpatrick:

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

**Tom McCoy, Nevada Government Relations Director, American Cancer Society
Cancer Action Network:**

[Distributed prepared testimony ([Exhibit F](#)) and table, “State Cigarette Excise Tax Rates & Rankings” ([Exhibit G](#)).] Everybody likes to win. Our state has evolved, from my view, and it has grown from the concept of winning. First it was the miners, and then it was the gamers. Their goal was to win the proverbial pot of gold or silver. Our state treasury likes the gaming wins because that is how we generate the revenue from gaming. Each of you members of this Committee had to stand for election on November 2, 2010, and you are winners. Now you can help Nevada win by passing A.B. 333. Just briefly, I look at this as a win for the state of Nevada. It is a win for health and a beneficial win for our state’s deficit.

I want to take you back to 2003 because that was cited as the year we last raised the cigarette tax. We have not raised the tax on other tobacco products in a long time. Back in 2003, the annual health care cost to Nevada that was

directly related to tobacco usage was \$440 million a year, and Medicaid was impacted by \$96 million. Presently, that annual cost has jumped to \$565 million, and Medicaid has gone up to \$125 million. I thought those numbers were important for you, the Taxation Committee, to hear. Those are not biennial numbers; those are annual costs.

The annual federal and state tax burden that smoking places on every taxpaying household in the state of Nevada is \$555. In sports, the opposite of a win is a loss, and Nevada is a loser in the tobacco game. It is costing this state several more times in health costs than it gets back in revenue.

Some programs were mentioned that were designed to reduce starting—or increase stopping—the smoking habit. That portion of the Tobacco Master Settlement Agreement was extinguished by the Legislature. It does not exist. One of the benefits of A.B. 333 is that the increased cost will reduce consumption. We have seen that in other states, and we know it will happen here in Nevada. The projected reduction in youth smoking with this increase is about 13 percent. All of us who have children can agree that is a benefit.

Everyone in Nevada, including our fragile budget, wins with the passage of A.B. 333. Failure to pass this bill would continue our state's losing record of far too much revenue expended for tobacco-related health costs and far too much unnecessary suffering and death. Thank you.

Assemblyman Goedhart:

I am not a pack-a-day smoker—more like a pack a week. It is not a habit I am proud of, but I think I can agree with the bill's sponsor that if you want to raise taxes, this is conceivably a way to raise taxes.

However, when you talk about the health impacts, that is a different story. We might say we are against greenhouse gasses, so why not raise the price of gasoline to \$5 a gallon so people will drive less? Actually, if we want to have better health, how about looking at obesity? We can charge people calorie fees per hamburger. When you get into this type of public policy, a lot of it is about freedom of choice. I can see that, if you want to raise taxes, this is a way to raise taxes. But if you want to talk about public health policy, I think the biggest public health problem right now is that people are overweight. I think that is the number-one preventable disease facing us in the future.

If you want to single out tobacco as being an unhealthy activity, there are a lot of unhealthy activities out there.

Chair Kirkpatrick:

Are there any other questions or comments? [There was no response.] Ms. Pierce, I can try to call the people in southern Nevada again. I can see people in the room, and they have signed in that they want to speak. I can have staff call down to Las Vegas. I do not want to move on to the next subject without giving them a chance. Ms. Pierce, do you have anyone else in northern Nevada you think would like to testify?

Assemblywoman Pierce:

Yes, Madam Chair, there are other people here in support.

Chair Kirkpatrick:

Okay, we will stay up here in northern Nevada. I have Ms. Lockard. If there is anyone else who would like to testify in support, please feel free to come up to the witness table now.

Marlene Lockard, representing Nevada Women's Lobby:

We support new revenue for the State of Nevada. Given the current budget issues and the drastic cuts made to so many programs that the Nevada Women's Lobby and others have worked so hard to put in place, we think revenues, as well as the cuts that are being proposed, should seriously be considered. Thank you.

Chair Kirkpatrick:

Thank you. Does anybody have any questions? [No one responded.] Is there anyone else in northern Nevada who would like to testify in support of A.B. 333?

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada:

We struggle with this tax because it is a regressive tax, and we are concerned about the level of taxes that low-income people pay in our state. They pay a much higher level than people who are wealthy. But, in 2003, we did a tax study, and our group voted to increase alcohol and tobacco taxes because of the benefits to our community from stopping young people from smoking.

If we can improve the health of the people of Nevada by raising the tax, we may prevent people from dying. We might also prevent children from starting a lifelong habit that is not a healthy one, as we all can agree. I would highly urge you to support this bill, not only for our children but for our state and the amount of money it could generate, which could possibly belay the cuts to mental health and any number of other issues you all care about. We are in a deep crisis here, and this bill could make a difference. Thank you.

Chair Kirkpatrick:

Thank you, Ms. Gilbert. Does anybody have any questions? [No one did.] At this time, let us see if there is now anyone in southern Nevada who would like to testify in support. As you finish, just turn off the microphone so we can proceed to the next speaker.

Amy Beaulieu, Director of Tobacco Control Policy, Las Vegas Office, American Lung Association:

[Submitted written testimony and fact sheet, "State Cigarette Taxes" ([Exhibit H](#)).] Each year, the American Lung Association issues an annual report that grades each state on its tobacco control efforts. This year, for 2010, Nevada received a "B" for the smoke-free air law. We received a "D" for our tobacco tax, an "F" for our tobacco prevention and control spending, and an "F" for our cessation efforts. It is time for Nevada to quit failing and make changes to achieve passing grades.

Our cigarette tax is currently \$.80. We rank 35th in the nation. The national average is \$1.45.

At the end of January, the American Lung Association conducted a statewide poll of 800 registered voters. Seventy-three percent favored increasing the tobacco tax over other choices as a way to balance the state budget. Their other choices were gaming, mining, and sales tax. In addition, 81 percent supported taxing other tobacco products such as cigars or chewing tobacco. A lot of people will say this is a partisan issue, but it was not when we took our poll. Seventy-seven percent of the Democrats, 68 percent of the Republicans, and 69 percent of those who identified themselves as members of the Tea Party movement supported raising the taxes on tobacco.

We know that increasing the cigarette tax is a proven way to reduce smoking, especially among youths. Every time there is a 10 percent increase in the price of cigarettes, consumption is reduced by about 4 percent among adults and about 7 percent among youths. If the cigarette tax is raised by \$.90, it will generate \$63.4 million a year. That is brand new revenue coming in.

If the tax on other tobacco products is raised, it will bring in an additional \$5.8 million. We do urge you to increase that tax on other tobacco products because last time, when the cigarette tax was raised in 2003, the tax on other tobacco products was not raised. That tax has not been raised since 1997 and, with unequal rates, the state loses revenue each time a cigarette smoker switches to cigars or roll-your-own or smokeless tobacco.

One of the questions that comes up frequently, especially from policymakers, is whether increasing the tax on tobacco has a negative impact on gaming revenue. There is no evidence to support this assumption from either Nevada or anywhere else in the country where gaming revenue is measured. We took a look at the historical data here in Nevada. In 2003, the last time a tobacco tax was passed, and for the next 5 years after that, there was always an increase in gaming revenue, as high as 10.29 percent two years later. Clearly, there is no tie between gaming revenue and an increase in the tobacco tax.

Increasing taxes on cigarettes is a winning solution for states. Higher taxes deter children from starting to smoke and motivate adults to quit. These taxes also raise much-needed revenue. Thank you.

Christopher Roller, Director of Advocacy and State Health Alliances, American Heart Association/American Stroke Association, and representing Nevada Tobacco Prevention Coalition:

[Submitted prepared testimony, two fact sheets from Campaign for Tobacco-Free Kids, and results of a survey conducted by Fairbank, Maslin, Maullin, Metz, and Associates ([Exhibit I](#)).] The Nevada Tobacco Prevention Coalition is a coalition of dozens of health and other organizations within the state, as well as individuals that are focused on reducing the burden of tobacco in Nevada.

You have heard about tobacco use being the No. 1 cause of chronic disease and death in our state. You have heard statistics detailing the tobacco use cost to Nevada taxpayers—an estimated \$265 million annually, including \$123 million in direct Medicaid-related costs. You no doubt have had a family member or friend suffer the health consequences of tobacco use.

I will not go over what you have already heard in testimony. I will mention that, in addition to the lifesaving and health care cost-reducing effects of an increase in the tobacco tax in A.B. 333, there is a clear and evidence-based projection of increased revenue that can help close our state's budget gap and reduce the level of damaging cuts to programs, services, and education that Ms. Pierce had mentioned. Also, in response to Mr. Livermore's comment earlier, Nevada currently spends zero dollars on tobacco prevention and cessation.

With that, I would like to propose a simple amendment, which I had mentioned to Assemblywoman Pierce, to earmark 10 percent of the revenue of tobacco taxes to programs, services, research, and education on the prevention and cessation of the use of tobacco products.

It was said earlier that the cigarette tax was last raised in 2003 and the tax on other tobacco products even earlier than that. In 2003, when the cigarette tax was raised, we, at that time, were collecting about \$60 million in revenue from cigarettes alone. Immediately after that increase, the following year—2004—that revenue doubled to \$120 million. As was mentioned, this type of tax on cigarettes and tobacco has been raised roughly 65 times by 38 states in the last several years since Nevada last raised theirs. Every single time, there has been an increase in revenue to the state.

Smoking is a very powerful addiction. Unfortunately, although we do get some people to quit and we prevent youths from starting, a lot of people do not quit, so you do see an increase in revenue when the tax is raised. I will leave you with a quote from the book *The Wealth of Nations* by Adam Smith: "Sugar, rum and tobacco are commodities which are nowhere necessities of life . . . and which are therefore extremely proper subjects of taxation." Thank you.

Chair Kirkpatrick:

Thank you. Does anybody have any questions? If there is anybody else who would like to testify, please come to the table.

Assemblywoman Neal:

Ms. Pierce, I wanted to go back to your introduction. You discussed the nexus between taxes and government. You also implied that this tax bill was a strategy to affect the deficit in the State General Fund. I want you to swing back to the economic argument for the need to at least address the increase in taxes offsetting these health issues.

Assemblywoman Pierce:

I am not on the Assembly Committee on Ways and Means, so I cannot give you chapter and verse of the cuts that are looming if we do not raise revenue. But I know they are extraordinary. I know, from sitting on the Assembly Committee on Health and Human Services, that we are talking about cuts to the program for autistic children that will save us some money in the short run and cost us a great deal of money in the long run and will cause heartbreaking devastation to the many Nevada families who have an autistic child.

One of the things I said yesterday, and that is true of Nevada, to quote Assemblywoman Carlton, "Nevada will step over a dollar to pick up a nickel." We do it all the time. We save money so we can go home in 120 days, and we set ourselves up for enormous costs down the road. That is particularly true in terms of health care.

As I said in my introduction, I am looking at the need to raise revenue to get us through this terrible recession, which we are suffering longer and more deeply than any other state in the country. I believe that is because we pursued this strategy of extremely small government for 30 years, which did not result in our economy being diversified. I am looking for a way to get us through this recession and to give the people of Nevada a brighter future.

A number of economists have come out in the last month or so. One of them, Mark Zandi, the former chief economist for Senator John McCain during his last election, has said the cuts state and local governments are making are slowing down the recovery. That was predicted two years ago by Paul Krugman, Nobel Prize-winning economist. I believe there is every possibility that when we walk out in June and legislators walk out of their statehouses all over the country, the kinds of cuts being talked about here and all over the country could, in fact, slow the recovery or bring it to a halt.

From everything I read, the recovery is very fragile, and that is a part of my thinking here. Huge cuts in public spending and enormous layoffs of public employees are not going to help us.

Assemblywoman Benitez-Thompson:

I have a similar question to the one I asked about tobacco. For the alcohol part of this bill, sections 1 and 2, where does Nevada currently stand in how we tax alcohol? Are we in the middle of the pack, or are we at the high or low end? Also, if this bill passes, how will the increased rates affect our standing?

Assemblywoman Pierce:

I do not have that in front of me, but perhaps staff could come up with that information more quickly than I.

Michael Nakamoto, Deputy Fiscal Analyst:

The information I have is a comparison of alcohol taxes in the western states, but it is not necessarily ranked. That is information staff can put together and provide to this Committee.

Assemblyman Livermore:

I have some information regarding your revenue projections that federal and state governments have increased cigarette taxes 110 times since 2000. Of those, the 57 excise taxes the states implemented between 2003 and 2007, only 16 met or exceeded revenue targets. How reliable is your information?

Also, the average price of a pack of cigarettes would increase to \$6.50. The average cost in Idaho would be \$4.99 a pack. In Oregon, it would be \$5.41 a

pack. In California, it would be \$5.82 a pack. In Utah, \$6.24 a pack. I guess the normal consequence of this would be that our higher taxes would have succeeded in lower tax revenue. I question the reliability of the revenue this bill would claim to generate.

Chair Kirkpatrick:

Mr. Livermore, I think any time we talk about any revenue, it is always an estimate or projection. That is one of the reasons we are having some of these discussions. We speculate so much, and we are always taking a risk in trying to find a better solution.

I do not want to speak for you, Ms. Pierce, but did some people quit smoking when the fire-safe cigarettes came in? I considered it, but I really like smoking, so I did not do it. Did some people quit watering their lawns when water prices went up in southern Nevada? People have to pick their priorities and decide what they consider luxuries. I do not travel much; I hardly leave my house except to go to work. But I like lawn, and I like cigarettes. I think you have to pick your priorities as an individual and as a family.

I do not know that any revenues are certainties. I do not know that we can predict anything specifically.

Assemblywoman Pierce:

Mr. Livermore, I, in fact, did not give you any revenue projections.

Assemblyman Livermore:

It came in the package.

Assemblywoman Pierce:

What I would say is I have revenue projections from the Fiscal Division of the Legislative Counsel Bureau. I think they are as accurate as they can be. But I would also say that I believe this state will be devastated if we do not raise revenue. I think we will do an amount of damage to this state that will take us a minimum of a decade to fix. Whether or not the revenue projections are accurate is really not an issue of paramount importance to me. What is a paramount issue to me is that we save this state. Thank you.

Assemblyman Ellison:

I just brought some information up on the Internet. Nevada ranks 33rd in the nation in alcohol tax. If this did pass, it would bring us up to 15th in the ranking.

Assemblywoman Pierce:

To the other part of your comment, Mr. Livermore, it is my understanding that California is likely to raise their cigarette tax by \$1, so that would bring them to a comparable level. But it seemed to me that having it on a level with Utah was sufficient. I think more of traffic between Nevada and Utah, or between Nevada and California, than I think of there being a huge amount of traffic between Nevada and Idaho, although I know there is a lot of traffic between Nevada and Arizona.

Chair Kirkpatrick:

Let us get back to the other people who wish to testify in support of this bill. We will go to southern Nevada.

Michelle Gorelow, Director of Program Services, Nevada Chapter, March of Dimes:

[Submitted prepared testimony ([Exhibit J](#)).] I am here on behalf of more than 40,000 babies born in Nevada each year, as well as volunteers and staff members of the March of Dimes, in support of Assembly Bill 333. The March of Dimes is a leading nonprofit organization for pregnancy and baby health. The March of Dimes works to improve the health of infants and children by preventing birth defects, premature birth, and infant mortality. In line with our mission, we are also strong advocates for tobacco control initiatives.

Active cigarette smoking and exposure to secondhand smoke can be very unhealthy for pregnant women and infants and is one of the leading preventable causes of preterm birth, which is defined as a baby being born before 37 weeks gestation. A baby born preterm can face a lifetime of challenges including cerebral palsy, mental retardation, blindness, deafness, and learning and behavioral challenges. It is also the leading cause of death for babies during the first month of life.

In 2009, 21.9 percent of women in Nevada between the ages of 18 and 44 reported smoking. Most women who smoked during pregnancy were 20 years old or younger. Smoking affects more than 3,600 pregnancies each year in Nevada, with related health costs of approximately \$6.2 million. Just to give you an idea, the average preterm birth costs approximately \$49,000, which is about 11 times higher than a full-term baby with no complications.

Recently, in March 2011, *Pediatrics*, the journal of the American Academy of Pediatrics released a study showing smoke-exposed pregnant women were 23 percent more likely to experience a stillbirth and 13 percent more likely to have a baby born with a birth defect. Another study, released in February 2011, showed that women who smoked during the first trimester of

pregnancy also had a modestly increased risk factor for having babies with certain congenital heart defects.

If Nevada's tax rate was increased an additional 90 cents a pack, there would be approximately 2,250 fewer smoking-affected births over five years, with a savings of approximately \$3.8 million. As previously mentioned, an increased tobacco tax has proven to decrease the overall smoking rates. Studies also show that women who stop smoking before becoming pregnant or early in pregnancy decrease their risk of having a low birth weight or preterm baby nearly to that of a woman who has never smoked.

In conclusion, the March of Dimes strongly supports A.B. 333 in increasing the tobacco taxes for the above-mentioned reasons. Thank you for the opportunity to speak.

Chair Kirkpatrick:

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

Hilarie Gray, Vice President, Communications & Government Relations, Nevada Cancer Institute:

Thank you for this opportunity to testify in support of A.B. 333. As you know, Nevada Cancer Institute (NVCi) was established to lessen the burden of cancer in our state, in the West, and across the nation. This bill presents a real opportunity to support that mission by addressing the health impacts associated with tobacco use. Make no mistake, those are economic impacts as well as health impacts.

Damage from smoking is immediate and evident right down to a person's DNA. It harms nearly every organ in the body. Although most people understand the direct link between smoking and lung cancer, tobacco use is also associated with a number of other cancers including cancers of the mouth and throat, the kidneys, and the pancreas. We see these cases regularly at our clinics and through our outreach programs throughout the state. They are tragic, and they are preventable.

In addition to raising revenue, this bill will have far-reaching positive impacts on health care costs in the state. Today, Nevadans, all of us, whether or not we smoke, pay \$565 million annually in health care costs that are the direct result of tobacco use. Revenue raised through a user-based health impact fee is truly only one piece of the puzzle and only one of the potential wins for Nevada in this bill.

As has been mentioned, studies have shown that increasing the cost of tobacco is a significant deterrent, especially for children and adolescents and those smokers who are already on the cusp of quitting. Stopping those individuals from smoking will reduce the health care costs we all currently pay for treatment, for insurance costs, and more.

As more people are deterred from using tobacco products, businesses will also see a savings in their own insurance, their absentee rates, and even workplace safety. At NVCI, we currently offer a smoking cessation program to businesses, and we find that many businesses have us come in and talk to their employees for economic reasons as much as health care reasons because they see those long-term benefits.

As the official cancer institute of this state, Nevada's Cancer Institute strongly supports this bill. We see it as a great opportunity and an important step in lessening the burden of cancer in our state and reducing the health care costs that all of us bear today. It is a very small step to take for such far-reaching potential gains. It is a very important opportunity for Nevada, and thank you for the opportunity to testify before you today.

Chair Kirkpatrick:

I think there is one more person down south who would like to testify. If you could not repeat the same thing, that would be helpful for the Committee.

Adam McGhee, Junior, Arbor View High School, Clark County; and Member, Verbatim:

I am a junior at Arbor View High School in Las Vegas. I am also a member of Verbatim, a leadership council composed of several students in high schools in Clark County, which is in partnership with the American Lung Association in Nevada. Each member of Verbatim has been personally affected by a tragedy in his or her family because of tobacco usage.

One way tobacco has affected my life is that one of my close family members worked as a dealer in a Las Vegas casino and was exposed to tobacco smoke daily. Being a cigarette smoker as well, it has been very hazardous to this person's health. I also have a close family friend who uses chew tobacco and has recently noticed visible signs of damage in his mouth. That friend is only 17 years old.

I think tobacco companies need to stop persuading people to use their poisonous products just to make a quick buck. Watching these people struggle with their addiction to tobacco has made me realize that tobacco can damage a person's wellbeing. Additionally, an increase in the tobacco tax would deter

over 21,800 children in Nevada from becoming addicted adult smokers over the next year.

I believe the Legislature should pass this health impact fee because it will ultimately save lives. Thank you very much for your time.

Chair Kirkpatrick:

Thank you. Does anybody have any questions? [There was no response.] Mr. McGhee, you did a very good job of testifying. Please tell Principal Hayden I said hello. Is there anyone else in southern Nevada who would like to testify? [There was no response.] Okay, with that, we are going to come back up to northern Nevada.

Susan Chandler, Associate Professor, School of Social Work, Division of Health Sciences, University of Nevada, Reno:

I am here today with an extraordinary group of social work students and faculty. There are basically three things that bring us here. One reason is that we have had a very recent and very tough experience with what it feels like to be on the chopping block and what it means to see your life and livelihood potentially taken away from you.

The second is that our students and faculty have daily and personal experience with Nevadans who will be dramatically affected by cuts in services should the budget proposed by the Governor go through. I also have spent a fair amount of time studying the role of tobacco in this state as part of a book I have written called *Casino Women*.

My message today is very brief and echoes what Assemblywoman Pierce said earlier. Please pay attention to revenue. This is a message that we, as social work faculty and students, are united in bringing here. Please save our state. We cannot go down this path indefinitely. Thank you.

Chair Kirkpatrick:

Thank you. Are there any questions? [There were none.] Is there anybody else who would like to testify in support of A.B. 333? Okay, we are going to move to those in opposition. If there is anybody in southern Nevada, please go to the table now. In northern Nevada, we have four seats, so come on up.

Trevor Hayes, representing FreyBoy Tobacco:

I will start and then turn it over to Mr. Frey. I would like to speak on behalf of A.B. 333. Initially, I prepared my remarks in response to the discussion I had with Ms. Pierce and her comments about raising revenue. I am a little confused

now because most of the support for the bill was about smoking cessation, which would actually lower revenue.

I represent a retail tobacco company, which is under the other tobacco products (OTP) portion of the tobacco tax. Premium cigars are very different from most other tobacco products where you think of someone stopping by a convenience store and picking up a pack. About 50 percent of premium cigars are already purchased over the Internet or through a catalog, meaning that none of those taxes are coming to Nevada as it is. Yes, legally, they should be paying it, but they are not. In fact, there are advertisements on the Internet and on the radio regularly wanting people to buy premium cigars over the Internet so they can avoid the tax.

If we raise taxes on OTP, including premium cigars, the first thing to remember is that small premium cigar retailers are small businesses. They employ four to six people per store. Raising the tax even more will make it harder for them to compete with the Internet and catalog sales, which are not sending any taxes to us or charging any taxes, but which are putting small businesses in our state, along with their employees, out of business.

If you do feel the need to enhance revenues through the OTP tax, I would suggest you look at Oregon and five other states that have put a cap on premium tobacco. I have some statistics I would be happy to share with the bill's sponsor and others if this avenue is pursued. Here are just some highlights:

- Oregon was one of the first to do this. In 2002, Oregon had a 65 percent OTP tax. They put a 50-cent cap per cigar on premium cigars, and their tax went from \$6 million collected on cigars in 2002 to \$9.8 million this last year. This has gone up during the middle of a recession.
- Washington did the same thing. They went from \$7.5 million in 2004, when they had a high OTP tax, to \$8.5 million in 2008 after they initiated a 50-cent cap.
- Wisconsin had the same change for premium cigars, and they went from \$5.25 million to \$8.9 million in one year.
- Finally, Rhode Island went from \$573,000 in 2005 to \$779,000 in 2008.

I think you can see, from this example, that lowering the OTP tax will enhance the businesses we have in this state and enhance the revenues that come in

through premium cigars, because it is different from most other tobacco taxes. Currently, Arkansas, California, and several other states are looking at putting a similar cap in place. If the Chair would permit, I would like Mr. Frey to talk about how he believes an increase in the OTP tax would affect his businesses.

Michael Frey, Owner and Operator, FreyBoy Tobacco:

I am here only to talk about what economic impact the bill, as written, would have on the premium cigar segment here in this state. Unfortunately, we have always been lumped in with cigarettes and mass-market, machine-made products. We are the smallest part of that segment.

I am not going to debate the health issues, but here is what the bill would do for us. I operate six stores in the Las Vegas area. If the bill were to pass as written, I would close four of the six stores and would lay off 35 of the 50 employees that I now have.

It would not be a victory for the fine people who are in support of the bill because the truth is cigar smokers would not stop smoking cigars because it is not an addictive product. They would simply go on the Internet and buy the product with no taxes associated with it and have it shipped to their houses in Nevada. If they cannot find it on the Internet, all they have to do is hop in their car and go to an Indian reservation that is exempt from taxes.

All it would do, in effect, would be to eliminate what I would estimate to be about 80 percent of the tax revenue I and my fellow retailers pay. It would destroy that tax base for a small segment of the OTP tax. I thank you for the opportunity to testify, and I would be happy to answer any questions.

Assemblywoman Neal:

You said you would have to get rid of employees, but would the tax not be passed on to the customer, who, you say, will not stop smoking?

Michael Frey:

There have been several developments in taxes in the last few years. I have been in the business 15 years, and the increase in the federal excise tax on tobacco, which was passed about a year ago as part of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), has increased the price of premium cigars already another 20 percent to 30 percent. I think, with the economic downturn, the customer is at the absolute limit of what he would be able to afford to pay a Nevada cigar retailer. As much as mine are a loyal group of customers, they will just stop buying in the State of Nevada and go to the Internet to buy their products.

Assemblyman Anderson:

It is hard for us to conceptualize how much this bill would raise the price of cigars. Could you go into that? You do not necessarily have to tell us what the cost is now, but how much would this bill raise it?

Michael Frey:

Cigars, unlike cigarettes, are made with different tobaccos and have limited editions and such things. The difference would be anywhere from about \$1.50 to \$3.00 a cigar.

Assemblywoman Bustamante Adams:

Mr. Hayes, if I understood you correctly, you said a person could order their cigars off of the Internet, which would not benefit our state if we raised the tax. Would you say the same scenario might apply to cigarettes as well? I know you are speaking only about the cigar industry, but I am trying to see if this could actually motivate people to find other sources to purchase their product, so it may have a reverse impact on what we are actually trying to do.

Trevor Hayes:

I have not been a cigarette smoker for almost 15 years, so I am not sure how they are sold on the Internet. I do know that half of the premium cigars are already purchased over the Internet and taxes are not being paid on them. States like Oregon and Washington, who have gone to a 50-cent cap, have seen more cigars being purchased from local businesses in the state and contributing to the tax roll increase. I am not sure if there are cigarettes sold over the Internet or if it is prevalent, so I cannot answer that.

Michael Frey:

If I may answer that question, it is illegal to buy cigarettes over the Internet because it is illegal to buy cigarettes in any state without the state's tax stamp on that pack of cigarettes. So, you cannot go on the Internet and buy cigarettes.

Chair Kirkpatrick:

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

Wendy Garner, Store Manager, Carson Cigar Company:

Carson Cigar Company has been in Carson City for 15 years. We have contributed to the local tax base, given to charitable causes, and provided employment in this community. Over a year ago, when we were hit with the CHIPRA tax increase—and again, we are talking about premium cigars, not cigarettes—at 45 cents a cigar, sales plummeted.

Now this legislation is suggesting we raise the OTP tax from 30 percent to 55 percent. This would not only greatly affect our local business and the people we employ, but I feel this legislation is being misleading in terms of the true effect of a tax increase on tax collections for the state of Nevada. In the proposed bill, no consideration has been given to the potential decrease in the volume of OTP products sold if rates were to rise.

Our customers, and customers throughout the state, will stop buying cigars from local merchants, and they will start buying them off the Internet, where they do not have to pay the taxes. For example, instead of the State of Nevada getting our one little company's \$25,000 in estimated OTP tax revenue each year, you will get zero because we will no longer be able to sell cigars.

Carson Cigar has paid an estimated \$375,000 in OTP tax in the 15 years we have been in this community. Since CHIPRA went into effect, not only are our sales down substantially, but our annual tax payment to the State of Nevada for OTP is down \$10,000 annually. This legislation will be funneling money out of local communities and into the pockets of Internet companies who have no vested interest in Nevada or Carson City. So please, I urge you, do not pass this bill. You will be putting jobs, businesses, and Nevada tax collections at risk.

Assemblyman Ellison:

I am sorry. How many employees do you employ?

Wendy Garner:

Currently, we have seven employees.

Assemblyman Ellison:

And they are full-time?

Wendy Garner:

No; probably four are full-time and three are part-time. We provide benefits to the four full-time employees.

Assemblywoman Benitez-Thompson:

We were talking about other states that have exemptions or a cap on the OTP tax. I was wondering if we could talk a bit more about that. It looks like Virginia has a separate application fee of \$600 in order to become exempt or fall under that cap. I wonder if you would sincerely be okay with looking at paying an application fee in order to become exempt from those taxes.

Trevor Hayes:

First of all, we are definitely not looking to be exempted in any way. We want to be included in the tax. I was not aware that Virginia had a cap. I knew about Oregon, Washington, Wisconsin, Vermont, Rhode Island, and one other. I did not know about Virginia, so I am not familiar with that process of paying a license fee, but it is something we could explore if this Committee wants to look at the route of a cap on premium cigars. I would be happy to sit down with anyone and look at many of the different possibilities and what has been done in other states.

Assemblyman Anderson:

If we made you put tax stamps on your product like they do with cigarettes, would that make you, as local retailers who are supporting jobs, more competitive against the Internet?

Trevor Hayes:

I think that would come under the Commerce Clause [Article I, Section 8, Clause 3 of the *United States Constitution*], because that is interstate commerce so the federal government would have authority.

Chair Kirkpatrick:

Thank you. We can get clarification on that, but I believe Mr. Hayes is correct. The state only gets a certain amount of privileges.

Assemblyman Goedhart:

I just checked on the Internet and came up with "duty-free cigarettes," "how to buy cheap cigarettes online," "discount cigarettes," et cetera. It is out there for anyone who wants to avoid paying taxes; it is only a couple of clicks of the mouse away. As the taxes go higher, I know more and more people are having them delivered right to their houses. Whether it is legal or not—whether it is right or not—the more you raise taxes, the more people will find ways to avoid paying those taxes. Ultimately, you can end up in a situation where, instead of collecting more in taxes, you are actually collecting less. It is almost counterintuitive. You think if you tax something more, you will get more money but, in certain circumstances, where there are so many options for people to choose from, you might end up collecting less. Thank you.

Assemblywoman Benitez-Thompson:

We love the Internet. We love researching in the middle of a hearing. So, I think this begs the larger question of cigarettes that are sold by retailers and sent out of state. Oregon has a provision that, if they are sold over the Internet, they still have to be taxed.

Chair Kirkpatrick:

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

Keith L. Lee, representing Distilled Spirits Council of the United States:

[Submitted handout, "Excise Taxes Kill Jobs," ([Exhibit K](#)).] The Distilled Spirits Council of the United States, or DISCUS, is a trade association of most of the distillers and suppliers of spirits in our country. While the primary focus of our members is distilled spirits—those with 22 percent or more alcohol—many of our members also distribute beer and wine, so they would be affected by this.

The tax we are talking about here, of course, is the tax that is going to be paid, not by my clients or the members of the association, but by the citizens of the State of Nevada. It is a tax on the people of Nevada, and an excise tax, virtually by definition, is one of the most regressive taxes we could possibly consider imposing upon the people of this state.

Our surveys have shown, over time, that approximately one-third of the consumers of wine, beer, and spirits in this country come from households with incomes of \$50,000 or less. Clearly, a 25 percent increase in the tax on spirits is going to put a burden on these families with \$50,000 incomes.

I think it is important to note, right now, that approximately 54 percent of the price of a bottle of spirits in this state goes to pay taxes and fees imposed. More than half of the price of a bottle of spirits in this state is already a tax or a fee that is paid by the person who consumes it.

I might also point out that the economic modeling our economists have done is based on federal government statistics. The Bureau of Labor Statistics, the Department of Commerce, and historical data indicate that, should this tax be imposed on alcohol as you are suggesting in sections 1 and 2, it could lead to a loss of approximately 400 additional jobs in the Nevada.

Finally, I should note that our economic modeling shows that, should this tax be imposed, it would result in a reduction of sales in the neighborhood of approximately 120,000 gallons of spirits; 95,000 gallons of wine; and 340,000 gallons of beer.

The statement of the Distilled Spirits Council has been posted to the Nevada Electronic Legislative Information System (NELIS), and we have copies of it here available ([Exhibit K](#)). I would be happy to try to answer any questions you may have.

Assemblywoman Neal:

I found it interesting that you stated it was a regressive tax that would negatively impact families with an income of \$50,000 or less. The flipside of that is they are also your market. Those same families comprising a low-income, moderate-income, or middle-class group that is being affected are still the market from which you make a profit. The flipside of that argument is that, although you say it will have a negative impact on those families, there will still be a negative impact on them because of the alcohol consumption, which may be greater in that particular group.

That was not a question; it was a statement. I just find it interesting that we can create two sides of an argument, but if it was presented in a different format, would we still say the same thing? Yes, it is a tax, but, at the same time, there really is a lack of revenue in the landscape of Nevada right now. We have not created any. We are trying to figure out ways to generate some. I hear all the arguments, and I understand there would be a negative impact, but are you, at the same time, willing to remove that group from your target market to sell liquor to?

Keith L. Lee:

We do not set our markets. We simply know what our market is by surveys. We are not the ones who decide that one-third of our market is households with incomes of \$50,000 or less. Those are decisions that are made in the marketplace. I am just trying to relate to you that one-third of our market share is made up of households with incomes of \$50,000 or less, so any additional increase in taxes is going to be even more regressive and have a greater impact on their expendable income than it would on a household with an income of \$100,000.

Assemblyman Ellison:

Has there been any financial impact study done on the effect on the casinos? The casinos in Nevada are experiencing a downturn anyway because of the gaming in other states coming online. Right now, they give out free drinks to their customers to bring them in. If this bill were to go through, it would have to have a major impact on those who are giving away these complimentary drinks to their customers. Do you think this would have an impact? Do you have any kind of study or model that shows this?

Keith L. Lee:

I certainly agree with what you say. We have not done any such studies at my clients' level, but there are probably people from the gaming industry here who can speak to that question. Intuitively, if we increase the tax on alcoholic beverages, regardless of whether they are complimentary drinks or drinks that

are sold in the casino, that cost is going to be passed through. In the case of a drink sold in the casino, it will be passed to the customer. If it is not sold in the casino, then the company is going to have to pay that increase in tax. Clearly, there was going to be an impact. What that impact would be, I cannot say.

Peter Krueger, representing Cigar Association of America; and Nevada Petroleum Marketers & Convenience Store Association:

I want to commend the two retailers who have come forward to address their concerns. I want to take the convenience store or retail side first before I talk about cigars and other tobacco products (OTP).

The retail story you heard concerning OTP applies to alcohol and cigarettes as well. Here in Nevada it is indisputable that, when the smoking ban passed, the revenue from convenience stores—a particular segment of the marketplace that I represent—decreased significantly. Are gaming, tobacco, and alcohol interrelated? Absolutely. This is a tax question. I am not addressing the social question of whether that is a good or bad thing.

We would agree that the whole issue of an increase of 10 percent in tobacco reduces sales by 4 percent. They say that reduces the use of those products. It is demonstrated, every time we raise tobacco and alcohol taxes, that revenue to the state actually declines. If people are not giving up smoking or use of alcohol, where does that market go? The last few bits of testimony have highlighted once again that the Internet and other outlets are where people go. People who are committed users of tobacco and alcohol products are going to continue to use those products. They will just go to another source, howbeit illegal. It was just testified that cigarettes are also available, and alcohol, even in Nevada, is available over the Internet without any tax implications.

It is true, through the use tax, that each one of us who purchases from other than a brick-and-mortar business here in Nevada is obligated, by law, to pay that tax. However, that does not quite get done.

A concern is that the Department of Taxation is, according to testimony from members of this body, not able to keep up with the demands for audits at this time. If this bill were to pass, the additional drive for increased revenue would only force an increase in Internet black market and gray market consumption of products. Under the current budget, I can see no increase in auditors to help us actually get taxpayers to pay those taxes. As was testified to by the other retailers, there is no question that this will be one more nail in a coffin, so to speak, for the convenience store industry and would have a direct effect on the viability of a business.

Now, let me put on my Cigar Association hat and address OTP. Mr. Hayes talked about a cap. The Cigar Association of America has long supported a cap on premium cigars. It just makes sense.

Mr. Frey did a good job of describing the situation, as did the lady from Carson City retail. You have to understand that cigars and OTP, unlike cigarettes, are taxed on their wholesale cost. A \$10 wholesale cigar now has a tax burden of \$3 per cigar. Under this bill, as it is written, that amount would go to \$5.50, or more than half the wholesale price. That is what we are concerned with here. Just look at what happened as a result of SCHIP. As was testified, the federal increase in price has driven revenue up artificially.

Sure, revenues in this state have gone up in the last little bit, but has demand increased? We believe not. Consequently, the two groups I represent believe that this is not a wise revenue. The amount of tax revenue derived to the state is significant for cigarettes. Will it increase? Should this measure pass, it is our belief that it will not increase but will actually decline for both alcohol and tobacco. The same is true for OTP.

I was asked by the maker of the bill, Assemblywoman Pierce, if I would sponsor the bill. She asked, if I feel so strongly about this, were there taxes I would support. There absolutely are. I am one person who will sit here before this body and tell you I support increasing taxes. However, I want them to be fair. I want everybody to pay a fair share.

Ms. Pierce has a tax on services. I support the tax on services as long as this body does not take that universe of so many people and shrink it through exceptions, therefore making the burden higher on those that are left. So, I am there with you. I recognize the need for revenue in this state. I just believe this is not the right vehicle. Thank you.

Assemblywoman Bustamante Adams:

Mr. Krueger, I thought I heard in your testimony that you can purchase alcohol over the Internet. Can you please go into a little more detail? I think there are some limitations. Also, who collects the taxes if you purchase alcohol over the Internet?

Peter Krueger:

You are correct; there are some limitations. I am someone who does enjoy wine. As you know, state law allows a person to purchase a relatively small amount of wine over the Internet. I am responsible, when I make those purchases, for paying the tax, and I will tell you—and I am sure law enforcement will be right out here waiting for me—that I am sure there have

been times when I have forgotten to pay the use tax, which is the tax burden that applies. I have never tried to purchase spirits, but I have to believe that somebody who was intent on purchasing spirits could, in fact, purchase spirits as well as wine over the Internet.

Chair Kirkpatrick:

Mr. Krueger, we do not want you arrested. I think there are a lot of people who do not pay that use tax because it is unenforceable within our state. We will blame all the other 3 million people in Nevada that do not do it either.

Assemblyman Livermore:

I have a fiscal note ([Exhibit L](#)) here about increasing taxes on liquor and tobacco products. It was prepared by the Department of Taxation on March 24, 2011, so it is pretty current information. The amount projected by the Economic Forum, plus the 129 percent increase in cigarette tax and the 25 percent increase in OTP products would be in excess of \$110 million annually. For the biennium, that will come to about \$400 million, and households with incomes of \$50,000 or less will bear the brunt of that.

I think you are correct about a broad-based tax being appropriate, and I believe this is a narrow-based tax that would be borne by a segment of our society. As such, it is probably regressive.

Chair Kirkpatrick:

I did not catch all the math, but I understood that this bill would result in an increase of about \$235 million over the biennium. You do not have to do it right now, but if you could share it with the rest of us after the meeting, that would be helpful.

Peter Krueger:

I am familiar with what is in the fiscal note. There are several statements that, as I read and interpret them, indicate the Department of Taxation did not factor in alternative methods of purchase. In that case, given the current and Economic Forum projections, yes, those numbers are correct. My concern is that the demand will remain relatively stable, but alternative sources will be sought out to avoid the tax.

Chair Kirkpatrick:

Let us go down to southern Nevada. If there is anybody else in northern Nevada who would like to testify in opposition, there are two seats left. Otherwise, I will consider Mr. Alfredo the last speaker. In southern Nevada, if you would like to testify, please go ahead.

Amy Beaulieu:

I already testified in support, but I would like to address the question that came up about Internet sales. The federal Prevent All Cigarette Trafficking Act of 2009 (PACT Act), which was effective June 29, 2010, fights crime and increases government revenues by ensuring the collection of federal, state, and local tobacco taxes on cigarettes and smokeless tobacco sold through the Internet or other mail-order sales. To stop illegal Internet sales from using the U.S. mails to evade compliance, the PACT Act makes tobacco products nonmailable matters for the U.S. Postal Service.

Since 2005, FedEx; United Parcel Service, Inc.; and DHL Express have prohibited delivery of cigarettes to individual consumers nationwide. Also, in 2005, all major credit card companies signed an agreement banning payment transactions to the tobacco sites.

Chair Kirkpatrick:

Does anybody else have any questions? [There was no response.] Thank you, Ms. Beaulieu.

Sean T. Higgins, representing Terrible Herbst, Incorporated:

Terrible Herbst operates in excess of 100 service stations throughout Nevada. Cigarettes, beer, and wine sales make up more than 50 percent of the sales at those locations throughout the state.

I do not want to get into the debate about the health issue. I will just say what I always say, which is these are legal products that are legally sold in Nevada. They are sold to people over the age of 18 in the case of cigarettes and 21 in the case of liquor. Those are choices adults can and do make on a regular, daily basis.

I want to address the fact that sales taxes on tobacco are down nationwide naturally, without the increase in taxes, to the tune of over 3.7 percent over the last ten years. In Nevada alone, from 2008 to 2010, tobacco taxes dropped 12 percent and then 8.7 percent in taxable sales, from \$110 million down to \$88 million last year without an increase in tax. The fact of the matter is taxes on tobacco are a declining source of revenue, and they are declining naturally and not due to an increase in taxes at all.

Increasing taxes on tobacco and liquor in a convenience store will have a direct and negative impact on the sales of other goods and products. Over 60 percent of the customers who come into our convenience stores to buy beer, wine, or tobacco purchase another item. If customers do not come in to purchase beer, wine, or tobacco, those other purchases will decline as well.

I understand what Ms. Beaulieu was talking about. The fact of the matter is Internet sales are illegal, but whether they are legal or not is irrelevant. Internet gaming is currently illegal under the Unlawful Internet Gambling Enforcement Act, and people game on the Internet all day long. You could do it from this building if you cared to do so. You can, and people do, buy cigarettes over the Internet.

Also, people sell contraband cigarettes, and what has happened to us before is people will pull up a truck outside a store and sell out of the back of the truck. That will continue. It continues today and, if the tax is increased, it will increase as well.

It has been said before, in other people's testimony, that this is a regressive tax. It taxes lower-income smokers more severely than those with higher incomes.

Mr. Krueger brought up the fiscal note. I believe the fiscal note said it did not address any reduction in current sales based on the increase in taxes. It simply added the proposed percentage increase. If you look at the Economic Forum's projection without that reduction in sales, the number increases over the next two years. I think the forecast is flawed in that it does not take into account any of those issues.

That concludes my testimony. I would be happy to answer any questions.

Assemblywoman Bustamante Adams:

Your statement about illegal gaming made me think about Indian reservations. If I purchase tobacco at an Indian reservation, does the tax stay with the state? How does that work?

Alfredo Alonso, representing Southern Wine and Spirits; Nevada Beer Wholesalers Association; and Reynolds American:

The answer is that the tribe would have to increase the tax as well, but they would keep it. That portion is kept by the tribe, so, clearly, they would not have to increase their margin because they are keeping the entire tax portion of it. Ultimately, it is very beneficial to the tribes to have the state continue to increase taxes.

Assemblyman Goedhart:

I have never bought cigarettes at a tribal store, so I am not a tax evader. Does a tribe have the option of matching a tax, or are they mandated to have the same amount of tax as the state as a whole, and then they just keep that amount for their own tribal functions? Is that the way it works?

Alfredo Alonso:

Yes, the tribe would be required by state law to match it, so you would increase that. But, again, they do not have the margin to work with. Most retailers have to increase prices so they can make some money.

Assemblyman Goedhart:

The higher taxes are a built-in higher margin for the tribe.

Alfredo Alonso:

One could say that, yes.

Assemblyman Goedhart:

I just wanted to get that clear. Thank you.

Alfredo Alonso:

With respect to the liquor side of this, as the debate continues on revenue, I think it is important that you know that wholesalers in this state pay the tax at the time of purchase before they even go to retail. That is important because they are basically loaning the state money. If you raise this as significantly as this bill requires, that money is going to come out of the pockets of wholesalers all over the state. It is a big number they would have to pay and then hope they could sell that product quickly.

As we saw in the 2003 Session, when you raise excise taxes, the consumers are not going to simply say they will absorb the cost. They tend to either down-brand, or they cease to buy to the extent they were previously. We saw about a two-year lag in revenue. If the Committee is intent on passing this bill so you can create instant revenue, it simply does not work. It has been shown, state by state, that when that happens, there is a one- or two-year lag time, or even more, before revenue even catches up to where it started. Again, that is just something to keep in mind when dealing with either liquor or tobacco.

In light of what was said earlier about Internet sales, obviously liquor is a bit more difficult. We do have a statute that allows for wine sales. Mr. Krueger testified that it was an insignificant amount, but if he is buying a case a month, I would not consider that so insignificant.

The important piece of this is obviously you can buy almost anything on the Internet. It is something the state struggles with. I can tell you that some pay their excise taxes at purchase; some do not. Something the Department of Taxation has struggled with for years is to how to bring that tax into the state.

Every time you raise the tax above that of our bordering states, which you would under this bill, then people will cross borders to purchase both liquor and tobacco. On the tobacco side, obviously Internet sales are much more rampant.

It has been shown, over and over again, that when you raise those taxes a significant amount, you do not get what you expect. You will not raise the money instantly; it will take time if at all. As Mr. Higgins indicated, we have a reduction in sales anyway, so I am not sure you will ultimately raise anywhere near the money that is projected.

I think if you look at other states and what they have done over the years, some are actually looking at lowering their tobacco taxes because their sales increase. I am not advocating that. I am simply saying that is something other states have looked at.

Finally, there is the health issue, which I have to touch upon. The Tobacco Master Settlement Agreement (TMSA) was supposed to deal with the health issue. It was the policy of this body to educate individuals instead, and that is why we have the Millennium Scholarship. That was the logic of putting that TMSA money into the education of our children instead of completely into the health issues. I will answer any questions you may have.

Chair Kirkpatrick:
Thank you.

Assemblyman Ellison:
Do you think this would cause a downturn in employment based on casinos and distributors and such?

Alfredo Alonso:
Of course. Gaming pays a significant amount of these excise taxes, particularly on the liquor side. I think the impact would be very significant on gaming. It is being passed on to gaming. While you hear it is a regressive tax that hits those people making \$50,000 or less, it is also a huge hit on gaming.

Chair Kirkpatrick:
Okay, thank you both for testifying. Is there anybody in this room who is neutral on this bill? [There was no response.] Ms. Pierce, do you have any final comments?

Assemblywoman Pierce:
Thank you, Madam Chair, and thank you to the Committee. I will just address a couple of points.

Mr. Ellison asked about the impact on gaming. I would point out that no gaming company was here today to tell us or to speak in opposition to this bill.

As far as the regressivity goes, I would say that yes, I look at my four bills as a package, and this is the most regressive part of it. Overall, if you take all of my bills together, it will reduce the regressivity of our tax system, which is one of the most regressive in the country. It will reduce that regressivity considerably.

In terms of small businesses, I understand how small businesses are struggling and how they do create jobs. That is why I put a large deduction for small businesses in my broad-based business tax.

About a year ago, a couple of researchers at the University of Nevada, Las Vegas conducted a survey. They found that 40 percent of people in Las Vegas would move if they could. They cannot. We are all under water; we cannot sell our houses. But I would point out two things. Every one of those 40 percent of Las Vegans who is thinking about moving is thinking about moving to a state with higher taxes and a bigger government.

As I said before, I think this illustrates a real weariness with a lack of dedication to education in this state and a lack of a safety net—ours, in the best years, is the thinnest in the country. I believe if we do not make a considerable course change, then when people can begin to sell their houses again, they will go back to the states they came from with bigger governments, higher taxes, and a better education system, museums, libraries, and all the things that come from creating community through the collection of taxes. If that does not happen—if we do not have a course change and even a small part of that 40 percent begins to leave—that is not going to be good for the small businesses in Las Vegas.

I question that raising revenue is a problem for small businesses. It is not what I am hearing from people, but I think a lot of small business owners know we are at a turning point here.

I think I addressed everything that came up. I thank you for considering this bill.

Chair Kirkpatrick:

Are there any final questions? [There were none.] With that, we are going to close the hearing on A.B. 333. Is there any public comment? [There was no response.] For Thursday, we have two bills, a presentation about Nevada's tax structure going forward, and a recap from the National Conference of State Legislatures of what other states are doing.

With that, we are adjourned [at 11:12 a.m.] until 8 a.m. on Thursday. Please remember that some of your afternoon committees are starting earlier.

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: April 5, 2011

Time of Meeting: 9:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 436	C	Assemblyman Ocegüera	PowerPoint Presentation
A.B. 436	D	Assemblyman Ocegüera	Proposed Amendment
A.B. 333	E	Jennifer Stoll-Hadayia	Prepared Testimony
A.B. 333	F	Tom McCoy	Prepared Testimony
A.B. 333	G	Tom McCoy	Table, "State Cigarette Excise Tax Rates & Rankings"
A.B. 333	H	Amy Beaulieu	Prepared Testimony and Fact Sheet, "State Cigarette Taxes"
A.B. 333	I	Christopher Roller	Prepared Testimony; Two Fact Sheets from Campaign for Tobacco-Free Kids, "Raising State Cigarette Taxes Always Increases State Revenues (and Always Reduces Smoking)" and "New Revenues, Public Health Benefits & Cost Savings from a 90-cent Cigarette Tax Increase in Nevada"; and Results of a Survey Conducted by Fairbank, Maslin, Maullin, Metz & Associates
A.B. 333	J	Michelle Gorelow	Prepared Testimony
A.B. 333	K	Keith L. Lee	Handout, "Excise Taxes Kill Jobs"
A.B. 333	L	Michael Nakamoto	Fiscal Note and Table, "Estimated Cigarette and OTP Revenue Increase"