

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

**Seventy-Sixth Session
April 7, 2011**

The Committee on Taxation was called to order by Chair Marilyn K. Kirkpatrick at 8 a.m. on Thursday, April 7, 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 Richard McArthur, Clark County Assembly District No. 4

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Jack Mallory, Private Citizen, Henderson, Nevada; and representing
Southern Nevada Building and Construction Trades Council
Dave Dawley, President, Nevada Assessors Association
Jeremy Aguero, Principal Analyst, Applied Analysis
Luke Martel, Research Analyst II, Fiscal Affairs, National Conference of
State Legislatures, Denver, Colorado
Hugh Jackson, Private Citizen, Las Vegas, Nevada
Michael Ginsburg, Southern Nevada Director, Progressive Leadership
Alliance of Nevada
Brian Fadie, representing ProgressNow Nevada
Craig Stevens, representing Nevada State Education Association
Kyle Davis, representing Nevada Conservation League
Alfonso Ayala III, Private Citizen, Henderson, Nevada
Janet Carter, Optometrist, North Las Vegas, Nevada
P. Michael Murphy, representing Clark County
Jan Gilbert, representing Progressive Leadership Alliance of Nevada
Cynthia Ryan, Private Citizen, Reno, Nevada
Elvira Diaz, Private Citizen, Reno, Nevada
Jerry Purdy, Private Citizen, Reno, Nevada
Vishnu Subramanian, representing American Federation of State,
County and Municipal Employees Local 4041
Aimee Riley, Private Citizen, Las Vegas, Nevada
Erin Neff, representing ProgressNow Nevada
Tim Crowley, President, Nevada Mining Association
James Wadhams, representing Newmont Mining Corporation
Curtis J. Cadwell, Regional Controller, Barrick Gold Corporation of North
America, Inc.
Kelvin Buchanan, President, HB Engineering Group; and Project Manager,
Isabella/Pearl Mining LLC,

Chair Kirkpatrick:

[Roll was taken.] We will open up the hearing on Assembly Bill 392.

Assembly Bill 392: Provides exemptions from certain taxes for certain veterans.
(BDR 32-613)

Assemblyman Richard McArthur, Clark County Assembly District No. 4:

This morning, I am presenting A.B. 392 which contains two parts, both having to do with tax exemptions for veterans (Exhibit C). The first part revises current law regarding property tax exemptions for certain veterans. The second part exempts fully disabled veterans from the Governmental Services Tax (GST) on vehicle registrations. Current law already exempts certain veterans; however, the strange thing about this exemption is that right now it only applies to those veterans who served during certain dates declared as times of conflict. This bill would get rid of those specific dates, so that all veterans who served honorably would be eligible for these exemptions regardless of the time when they served. Looking at section 1, subsection 1, paragraph (a), the language reads, "Has served a minimum of 90 continuous days on active duty," and after that, everything else in statute has been crossed out. Getting rid of those dates is the only change to current law in the first part of the bill.

The second change is covered in section 2, which has been amended by adding subsection 1. Subsection 1 gives a fully disabled veteran an exemption from the Governmental Services Tax on registration for all his vehicles. Subsection 1 contains paragraphs (a), (b), and (c) which lists the vehicles—passenger cars, light commercial vehicles, and motor homes. Section 6 contains the same wording but that wording is placed into a different chapter of the *Nevada Revised Statutes* (NRS). Section 3 lists all the dates that were crossed out in section 1.

There is a small fiscal note on this bill; however, it should not be too large because only those qualified veterans who did not fall within those specific dates are being added. Looking through the statistics I have, we would only be adding about 25 percent of the veterans, because most veterans already were covered.

Chair Kirkpatrick:

Currently, the bill does not include the GST and typically the two are kept together. Was it your intent for both the GST and the exemption to be kept together, which would be consistent?

Assemblyman McArthur:

The GST on vehicle registration is in both parts of the bill.

Chair Kirkpatrick:

We want it to be consistent for all these dates, is that correct?

Assemblyman McArthur:

That is correct. Right now, veterans can either use their exemption for the vehicle registration or for their property taxes. Last year, I received around \$110 and could use it for the GST on my vehicles. If there was any money left over, I could apply it to my property taxes, so that is already there.

Assemblywoman Benitez-Thompson:

Mr. McArthur, could you explain more about the motor home exemption? When I think of a motor home, I think of it as being more of a luxury or discretionary item versus a passenger car which can be very necessary in getting people from point A to point B.

Assemblyman McArthur:

The vehicles in the second part of this bill are for those who are 100 percent disabled. Sometimes those people need special vehicles, so the second part of this bill helps out those people who are 100 percent disabled.

Assemblyman Stewart:

Mr. McArthur, you are already exempt, so this bill will not benefit you at all. Is that correct?

Assemblyman McArthur:

That is correct. I am sure my colleague from Assembly District 22 is a veteran and receiving this benefit also.

Assemblyman Stewart:

Yes, this will not benefit me either.

Chair Kirkpatrick:

Thank you. Are there any other questions? [There were none.] Is there anyone else who would like to testify in support of A.B. 392?

Jack Mallory, Private Citizen, Henderson, Nevada:

I am only representing myself today. I am a disabled veteran who was severed out with a service-connected disability on October 31, 1992. I have never claimed the exemption; however, I believe what Mr. McArthur is proposing is appropriate, particularly for those veterans who are substantially worse off—those people who absolutely need that exemption. Those who have served our country honorably should be entitled to it.

Chair Kirkpatrick:

Thank you. Does anyone else want to testify in support of A.B. 392? [There was no response.] Does anyone else want to testify in opposition to A.B. 392? [There was no response.] All right, we will now hear from those who are neutral to the bill.

Dave Dawley, President, Nevada Assessors Association:

We are neutral on the bill, but would like some clarification. Currently for a 100 percent disabled veteran in Carson City, it works out to be a little over \$700. That \$700 exemption can be split and used on the Governmental Services Tax and also on the real property taxes. We are looking for clarification. If the Governmental Services Tax is 100 percent exempt, will this full exemption go onto the real property taxes or will it be split the same?

Assemblyman McArthur:

The intention is to be either/or. Right now in the first part of the bill, veterans can split the exemption. If the 100 percent disabled veterans want to use it strictly for their vehicles they can. In some cases where they have to have special vehicles, the full amount can be used for that. But they cannot take that and split it off from the other. It would just be for the vehicles, if that is what they want to use it for.

Although this is not a money committee, some of the statistics I saw on this show a pretty good-sized fiscal impact. In actuality that fiscal impact is for the full number of veterans, but only about 25 percent of the veterans would be added under this bill. So the statistics are valid, but they include everyone and most veterans already receive the exemption.

Chair Kirkpatrick:

Maybe we can contact the U.S. Department of Veterans Affairs and have them break down the dates for us. They must have a list of how many people fall within these dates and how many are disabled.

Assemblyman McArthur:

Looking at the statistics from 2000 up to 2010, Nevada has roughly 240,000 veterans. About 176,000 are already exempt, so we would only be adding about another 60,000. Generally, only 9 to 12 percent of those actually apply for the exemption. Probably only another 5,000 or 6,000 veterans would actually apply for this exemption. I understand that there is going to be a small fiscal impact with this bill, but I think that impact will be very insignificant compared to the sacrifices made by our veterans, so I would really like to see this bill go through.

Chair Kirkpatrick:

Thank you. If this entire Committee agrees, we could always send the bill to the Assembly Committee on Ways and Means. Then, depending on the budget, Ways and Means could make that determination. Are there any other questions? [There were none.] With that, we will close the hearing on A.B. 392.

Now we will start with one of our presentations.

Jeremy Aguero, Principal Analyst, Applied Analysis:

This is the third in the series of presentations I was asked to give you and is specific to revenue-generating alternatives for the state. I have prepared a matrix for you ([Exhibit D](#)) of some of the most common revenue sources that get discussed. This is not all of the revenue alternatives available. Before I begin, I want to mention a couple of items I did not include. I did not include transfers of money between state and local governments. I did not include elimination of exemptions to specific taxes which would have the opportunity to generate revenue. I did not include alternatives such as implementing a lottery or imagining that we did something we are not doing today and taxing that. I am happy to talk through anything you would like to go over, but I will just touch on the matrix I have prepared for you briefly, answer any questions you may have, and go into more depth wherever that might be helpful.

The analysis I have presented to you ([Exhibit D](#)) is broken down into principal categories. The first is extension of taxes that were passed in 2009 that are scheduled to sunset the end of this fiscal year. The second is the Initiative Petition No. 1 of the 75th Session or the room tax diversions that have been discussed. The third is new sources of General Fund revenue.

Extension of the sunsets on revenues generally includes the following:

- The mining claims fee
- The mining tax prepayment
- The Modified Business Tax (MBT) on nonfinancial institutions at a higher rate—0.5 percent up to \$250,000 a year or \$62,500 a quarter—and then 1.17 percent after that
- The business license fee—the tax each individual business pays dropping from \$200 back to \$100 where it was before
- The incremental sales tax—the Local School Support Tax which is a General Fund offset. Those monies are deposited directly into the Distributive School Account and are essentially a one-for-one offset in terms of what the Legislature's General Fund obligation is to fund K-12 schools.

If we add all these together, it comes up to roughly \$706 million.

Diversions include the I.P. No. 1 of the 75th Session, or room tax, dollars. These are monies that were essentially slated to go toward funding education in a "will-not-supplant" type of approach; that is to say, to expand the expenditures on K-12 education. They have been diverted into the state's General Fund during this legislative session, and there is some discussion as to what will happen to those after this fiscal year (FY) ends. Those monies would generate an estimated \$225 million.

Chair Kirkpatrick:

Can we talk about how the MBT was structured? In case the sunsets become an issue, I would like to hear a little more in depth for those Committee members who were not here when the tax was instituted. Also, could you touch on the intent of I.P. No. 1 of the 75th Session? The intent for the voters was that it not go into effect for four years, so could you elaborate, please?

Jeremy Aguero:

The Modified Business Tax is the primary business tax the State of Nevada generally imposes on all businesses within the state. Historically, we had a "head tax" in that businesses were charged \$100 for each employee. That was changed in 2003 and supplanted by the Modified Business Tax which is a payroll-related tax. The tax charges businesses on their payrolls, less a deduction for employer-paid health care coverage, so the tax was imposed on the net. That tax was 0.63 percent. Almost every business would add up their total combined payroll, deduct any employer-paid health care coverage expenses, and what was left over they paid a single rate of 0.63 percent on.

Last legislative session, the MBT was modified, and in modifying it we got away from the single rate of 0.63 percent and created a two-tiered rate. That two-tiered rate lowered the tax burden on smaller businesses, which are the vast majority of enterprises, from 0.63 percent to 0.5 percent. That is because any company with payroll less than about \$250,000 per year would bear only the lower rate. The higher rate of that tax, 1.17 percent, was imposed upon a smaller number of businesses, but those with the largest number of employees and that generate the most payroll. That tax created a new framework concerning how we were going to tax businesses. Those taxes were temporary. They were designed to last for a two-year period and to expire at the end of this fiscal year, so on June 30, 2011, we will revert to the 0.63 percent tax unless this Legislature opts to take some other action in that regard.

With regard to some of the other taxes that are sunseting, the mining claim fee was a new tax instituted during that session. The mining tax prepayment came about because the state went to the mining industry, said it was having financial difficulties, and requested that industry pay its taxes early. Now there will be a period during which the mining industry will not contribute because that money has been paid in advance. The business license fee is a per-entity fee.

Chair Kirkpatrick:

I want to point out for the new Committee members that the business fee is \$100 and is not based upon the number of locations a business might have.

Jeremy Aguero:

Right, it is based on the enterprise.

Assemblyman Ellison:

For clarification, you mentioned prepayment of the mining tax. Is there any other business in the State of Nevada that does that?

Jeremy Aguero:

That has a prepayment requirement?

Assemblyman Ellison:

Yes.

Jeremy Aguero:

No, not that I am aware of. There is some degree of prepayment that goes into something like the gross gaming tax which is reconciled going forward by the estimated fee adjustment. But on the level being discussed here and with this sort of structure, there is historical precedent for it in the State of Nevada, but in terms of what we did in 2009, I am not aware of any industry that has that.

Assemblyman Stewart:

Most people do not realize that when the taxes sunset, there will be an increase in taxation on the small business owner. Can you tell me approximately how many small business owners will go from 0.5 percent to 0.63 percent?

Jeremy Aguero:

If I remember correctly, something on the order of 60 percent to 70 percent of all businesses fall under that category. Of course, many of those are sole proprietors or very small businesses that employ very few people and therefore have relatively small salaries and wages.

Assemblyman Stewart:

Could you give us a ballpark figure?

Jeremy Aguero:

Yes, I believe a ballpark figure would be about 60 percent to 65 percent of all businesses.

Assemblyman Stewart:

What is the actual number?

Jeremy Aguero:

Of enterprises?

Chair Kirkpatrick:

I have that number and it is 71.1 percent of the smaller businesses. These are mostly mom-and-pop stores and are the people struggling the most now. I do have the specific number of businesses, if that will help the Committee.

Assemblywoman Benitez-Thompson:

What was the difference in the amount of tax dollars the state took in from the MBT between the old formula and the new formula? Was it higher?

Jeremy Aguero:

The amount generated in terms of revenue was significantly higher than it was before. The estimated collection from the Modified Business Tax in 2009, before the increase, was about \$253 million per year for the nonfinancial portion of it. In fiscal year (FY) 2010, that number jumped up to \$363 million, so there were about an additional \$110 million generated. Granted, there were some changes in the overall economy, but most of that increase has to do with the difference in the rate. The expectation in FY 2012, going from the two-tiered rate we currently have and dropping back down, takes us from \$351 million down to about \$203 million in total, so we will lose about \$150 million from what we would have collected if the rates today were to continue.

Chair Kirkpatrick:

I have a couple more questions, but Mr. Guindon, could you answer Mr. Stewart's question concerning specifically how many businesses would see a tax increase?

Russell Guindon, Principal Deputy Fiscal Analyst:

Based on actual information on taxpayers provided to your staff from the Department of Taxation for FY 2010, the latest year for which complete

information is available, there are approximately 45,000 taxpayers who paid the Modified Business Tax. Of those, about 31,000 were in the lower bracket—the 0.5 percent—which is close to the 70 percent number that has been referenced.

Assemblyman Goedhart:

Looking at this handout, the "Analysis of Nevada Revenue Alternatives" ([Exhibit D](#)), why do we always use the term revenue instead of using the term taxes? I thought taxes were what we were talking about. Use of the term revenue assumes one is making more money; the term tax assumes we are taxing someone who is making money. Is that correct?

Jeremy Aguero:

No, sir, I do not think that is correct. I think the word revenue is probably more accurate because it not only includes taxes, it also includes fees and other things with different names. The percentage fee often gets classified as a tax, but it is called a fee. It may be just semantics, but when I think about revenue-generating alternatives, I think about things such as interest proceeds, redistribution of funds, and the use of funds, as well as the generation of new monies.

Assemblyman Goedhart:

So for these purposes, we call them taxes and fees.

Jeremy Aguero:

Sure. I am happy to call it whatever you want to call it. We can call it taxes and fees to the extent you want to talk about the redistribution of funds. I would refer to it as the redistribution of funds or the reallocation of monies from capital accounts and those types of things. From what we are talking about in terms of new sources of revenue—taxes, fees, charges, those types of things—I would certainly classify it as probably those three, particularly if you include things such as Secretary of State fees which have traditionally been increased. That has a tendency to be classified slightly differently, but again, we are saying the exact same thing. It is something of a semantics debate.

The second item you asked me to dig into a little bit deeper is this idea of the I.P. No. 1 of the 75th Session dollars. The idea behind the original I.P. No. 1 of the 75th Session was to increase the hotel room tax by 3 percent, not to exceed 13 percent, and generate money from the largest hotels and casinos in the State of Nevada. The I.P. No. 1 of the 75th Session provisions specifically required that the monies be used to enhance educational opportunities or education spending throughout the State of Nevada. There was a provision that the monies would be used for a two-year period to be deposited within the state's General Fund as an offset—a measure to try to balance the state's

General Fund. Those dollars would later be used for their original purpose—to increase educational attainment or to fund education programs at a greater level. That period is about to expire, and now the question becomes what will ultimately be done. Madam Chair, your analysis was accurate in that the intent was that the money be ultimately be used for education purposes, but there was a relatively short window during which those funds would be used solely to offset shortfalls in the state's General Fund.

Chair Kirkpatrick:

I just want to clarify for people who may not remember the ballot question, the voters knew they were voting for it to benefit education, but agreed that the money would go into the General Fund for two years. Now they are expecting that money to be part of education. I bring that up because my constituents are asking where the room tax dollars are as we are talking about cutting education spending. To keep the spirit of the voters, I want to be sure people remember the intent the people voted for.

Jeremy Aguero:

Madam Chair, that is completely accurate. There has also been commentary that those monies would not just be deposited into something like the Distributive School Account where they would be an offset to the General Fund's requirement for K-12 education. There have been a lot of questions on that regard, but your analysis of the initiative petition's intent is consistent with my understanding of it.

Assemblywoman Bustamante Adams:

I think you answered my question, Madam Chair, but I am getting confused between the four-year and two-year periods. I thought I heard Mr. Aguero say that the two-year period was coming to an end.

Chair Kirkpatrick:

My recollection is that it is a two-year time frame.

Jeremy Aguero:

That is my understanding. There is a two-year window, and that two-year window will end at the end of this legislative session. There are also other taxes that had four-year windows.

Now I will discuss other sources of revenue. I tried to label these generally as taxes and fees, but you will notice in some places I call it, for example, gaming taxes, but they are actually percentage fees.

Sales taxes, which we discussed the last time we got together, are among the largest sources of revenue in the State of Nevada. Your ability to make augmentations with regard to the sales tax is limited. That is because when the sales tax was a state sales tax, it was voted on by the people, which means it can only be modified by a vote of the people. That is why we have created a number of taxes that go along with our state sales tax. Those include the Local School Support Tax, the Basic City-County Relief Tax, and the Supplemental City-County Relief Tax. All of those get added together to have the minimum statewide rate that is currently imposed on the State of Nevada. Then there are a number of county-option taxes that give rise to the rates that are paid in every county within the State of Nevada.

The ability to increase the tax would be through an increase to the Local School Support Tax. Although we are increasing taxes deposited within the state's Distributive School Account, they are a direct offset to your General Fund obligations, so it frees up money within the state's General Fund. How much does that get for us? Every 0.25 percent generates about \$95 million to \$100 million per year, or about \$195 million over the biennium. There are also collection allowances, although there have been some substantial adjustments, and for some allowances, only a one-tick increment would drive them down to zero. There is a collection allowance for retailers. Retailers who collect the sales tax are allowed to keep 0.25 percent of what they collect, and then the state also takes an administrative fee associated with collecting the sales tax at the state level. That gets deposited in the state's General Fund. Those generate about \$7.5 million and \$3.1 million respectively per year.

A number of discussions have taken place in sessions past, and more recently, about the idea of a sales tax on services. As Carole Vilardo would say if she was sitting here, "The devil is in the details without any doubt with regard to a sales tax on services." Again, we cannot expand our sales tax to include services. What we can do is create a new tax, and I have them listed here under "Nevada Services Tax." I have also heard it referred to as the Nevada Transaction Tax or any number of other levies. It does not matter what you call it; the idea behind this tax is to expand what is currently subject to Nevada's retail Sales and Use Tax by creating a new tax that would focus more specifically on those items that are not subject to that tax today.

I have broken that tax into three tiers and can go into detail concerning what is included in each tier. Tier 1 items are things that are taxed more generally in other states. They are things that have come up in discussions around sales taxes or service taxes in the last decade. The items in tier 2 are more difficult. They are the ones people generally have some aversion to in terms of what is being included or are the ones we believe would be more difficult.

Tier 3 services are the ones that are generally not included in any sales tax you would find. Taxing health care services, for example, tends to be outside the mix. Using that example, I would caution you that, while we can and are working with legislative staff to refine these estimates and get a better understanding of what value is exactly in each category or would be included in the service, refining that to a very large degree is difficult. For example, I have a pretty good gauge regarding how much we spend on health care every year. Not a whole lot of people want to tax health care, although when some people talk about taxing health care, they talk about taxing such things as elective cosmetic surgery. That is a service not subject to tax in the State of Nevada, and that is something we may want to consider at some point. But the ability to carve out certain segments within each subset gets increasingly difficult in order to get any type of precision relative to how much this tax would ultimately generate.

Today, our economy is about a \$130-billion economy—everything we do and everything we produce totals to about \$130 billion a year. The portion of our economy that is subject to the retail Sales and Use Tax is about \$40 billion a year, so the balance of the transactions surrounding the rest of our economy is not subject to sales tax. It may very well be subject to some other type of tax, but it is not subject to the sales tax as it is today. Our sales tax includes explicit exemptions such as on food and services.

Chair Kirkpatrick:

This is an original idea from the 1990s developed by the Governor's Task Force; however, Nevada never went any further with it.

Jeremy Aguero:

The idea of modifying the sales tax goes back much further than 1990. If we look at the history of our tax studies, they have included expanding the tax, contracting it, or trying to make our sales tax look more like our economy. The general premise that the best tax is one with a wide base and a relatively low rate is generally viewed as being a superior tax. With regard to the Governor's Task Force on Tax Policy, the answer to that question would be no. The Governor's Task Force on Tax Policy did not propose a sales tax on services. It proposed a gross receipts tax, which is essentially a broad-based, low-rate tax applied, but the business person is the entity who would be ultimately responsible for it as opposed to passing it on to the end consumer. That said, during the 2003 Legislative Session, there was a great deal of debate surrounding whether gross receipts was better or worse than expanding the sales tax to include services, so the answer to your question is generally yes with a couple of caveats.

Assemblywoman Neal:

I have a question about the Nevada service tax. Could you give some specific examples of tier 1 and tier 2?

Jeremy Aguero:

To the extent that the Committee would like to see any of my background data, I would be happy to provide that. As a frame of reference, the Federation of Tax Administrators does an analysis every several years of what services are taxed in various states. The last one they did was in 2007; they subsequently updated it through March 2010 and made some revisions to some areas. During the 2007 analysis, of all the services they looked at, Nevada taxed about 18 of those. By comparison with some other states we are commonly compared to, Colorado taxed only 15, Florida taxed 63, Georgia taxed 36, Hawaii taxed 160 classifications of services, Texas taxed 83, and Washington taxed 158. With regard to the specifics in terms of our analysis, I can tell you what is included in our tier 1, tier 2, and tier 3 outline.

Tier 1 is the top group—the ones other states are taxing, and there is room to find some movement in that area, particularly given what we know today. Those are things such as:

- Cell phone services, which are taxed in 44 states, but not in Nevada.
- Services delivered to buildings and dwellings.
- Office and administrative services.
- Warehousing and storage activities.
- Commercial and industrial machinery and equipment servicing and repair.

Today the goods you buy are subject to the tax, but the services you provide are not subject to the tax. Those include:

- Legal services.
- Accounting, architectural, engineering, and related services.
- Specialized design services.
- Computer-related services, particularly the modification of software packages, installation, and those types of things.
- Management, scientific, and technical services.
- Environmental and other consulting activity.
- Business support services.
- Facility maintenance and support services.
- Sightseeing and transportation-related services, tour operations, and those types of things.

- Photographic services.
- Miscellaneous professional and scientific services.

These are the ones on my list, and I could go on and on and on, but those are the kinds of items included in tier 1. I am not here to suggest to you that these are the right or wrong services to include, or that a sales tax on services is a good or bad thing. That is not why I am here; but rather to outline for you what the framework looks like and what we included based on the discussions we have had.

Tier 2 services are items not included in many states, but those that would be possible. Things in tier 2 services include construction-related services. Today we tax the materials that go into the construction of a home, office building, or hotel casino, but we do not tax the services that go along with it—the labor that goes along with that. We do not tax things transported on trucks, by rail, or by air that come in and out of Nevada. It also includes things like newspapers, which are specifically exempted, but those types of periodicals would be included in tier 2.

In tier 3 are items I alluded to before such as health care services, rents on residential buildings, child day care services, community food banks, et cetera. The list we have includes roughly 436 categories. The Legislative Counsel Bureau (LCB) has been working on their analysis, and it is equally long if not longer, but those are the general categories included.

Assemblyman Goedhart:

The question Ms. Neal asked was what I was going to ask, but could you, at some point in time during the next couple of days, provide us with some of the backup for what items are included in those different tiers.

Jeremy Aguero:

Sure.

Chair Kirkpatrick:

Jeremy, if you will get that information to me, I will get it out to the Committee members.

Jeremy Aguero:

What I would like to do is finish the exercise we are going through with LCB. We will get a refined set of data in as many categories as we can, and then we will come back to the Committee. We appreciate all the help LCB has given us and the leeway to go back and forth.

Assemblyman Anderson:

Is taxing newspapers constitutional? Does any other state do that?

Jeremy Aguero:

You always have a First Amendment issue, but we specifically exempt periodicals such as newspapers from our sales tax. We can show you how many states tax those types of things and how many states do not.

Assemblyman Stewart:

Could you also provide us with a state-by-state list of how many entities each one taxes?

Jeremy Aguero:

Do you mean how many services are taxed in each state?

Assemblyman Stewart:

Yes.

Jeremy Aguero:

To the extent that would be helpful, I am happy to walk the Committee through any state.

Assemblyman Stewart:

I would just like a list.

Jeremy Aguero:

Yes, sir.

Assemblyman Livermore:

You spoke about not taxing materials for home construction, and you also separated materials from the labor it takes to build homes, but labor is already being taxed through the Modified Business Tax, is it not?

Jeremy Aguero:

Oh, sure, yes.

Assemblyman Livermore:

Would that be double taxation?

Jeremy Aguero:

You bring up an excellent point and one I should have mentioned as we were talking about the sales tax on services. This is where the revenue generated by this tax gets even more complicated from the standpoint that there are many

things we tax today not using our sales tax. For example, we tax amusements or entertainment activities. Many states have those types of things subject to their retail sales and use taxes, although we have the Live Entertainment Tax here in the State of Nevada.

We tax our hotel rooms, our room rates, at a certain level. With regard to the materials that go into the construction of a home, I want to be clear that those are subject to Nevada's retail Sales and Use Tax. All the wood, the nails, and all the things that go into the construction of a home, whether it is for rent or for sale, or any other type of construction, is subject to tax. That makes up about 17 percent to 18 percent of all of sales tax we have generated historically, so it is a relatively sizeable amount.

The question you asked concerns the labor that goes into construction of that home. Let us say it is another 50 percent of the cost. When I buy my home, the retail Sales and Use Tax is not applied to that, but the answer to your question is absolutely yes. The Modified Business Tax, and every other tax that goes into labor costs such as payroll taxes, are all built into the cost of my home. They are all included and taxed, and I am certainly charged for them.

Assemblyman Livermore:

When closing on the purchase on a home, the value of that product being bought would include the tax on materials. Potentially there would be a new tax on the services that constructed it. Then there would be another tax beyond that point that would not be part of the escrow but part of the contractor, subcontractors, and on and on who all pay the Modified Business Tax. It all eventually winds up being included in the cost of that property at the close of escrow.

Jeremy Aguero:

You are absolutely accurate.

Assemblyman Munford:

To what extent is food taxed in a grocery store? I know essential food for a household is not taxed, but what about the deli in a grocery store? Is that not an extra service? Someone is serving that food from the deli; are they subject to the tax or are they exempt?

Jeremy Aguero:

The general rule is that prepared foods are subject to the tax. If I go to a deli and pick up a pound of honey-baked ham, I do not believe I pay a tax. With regard to the prepared sandwich, I do not know the answer to that.

Chair Kirkpatrick:

I know this is an interesting topic because we have not really had much opportunity to discuss it, and I know you probably have a million questions, but I think someone from the Department of Taxation would be better able to handle questions like that. Jeremy, let us get back to your presentation, and we can discuss specifics another time.

Jeremy Aguero:

That is the idea concerning our sales tax on services. The line item on the bottom is the one that is most important. It shows a \$20 billion tax base generating about \$50 million every year, \$100 million over the biennium, just based on our preliminary analysis of how large our economy is and where we think there is an opportunity to expand our sales tax base. I believe that \$20 billion number is a pretty close range. There will be great debate, and reasonable minds will certainly differ with regard to what should be included in that \$20 billion base and what should be excluded from that base. For purposes of the analysis here, and for purposes of our discussion, I think that is probably a fair range to talk about in terms of what the potential revenue-generating yield would be of a sales tax on services.

The next line item is our gaming taxes, and I included all the gaming taxes out there. Those listed are the most substantial ones. The percentage fee on gross gaming wins is the most significant revenue generator in terms of the gaming tax. This is an industry-specific tax imposed solely on nonrestricted gaming licensees. The taxes that exist today have multiple tiers associated with them. The top tier is at 6.75 percent on all revenue over \$134,000 per month. That is on gross gaming revenue only. Of course the vast majority of gross gaming revenue is in excess of that threshold, so what this analysis does is look at a series of tiers and the revenue generated by them. A uniform increase in all the tiers, there are three of them, would generate 0.25 percent—about \$29 million every year. For every 0.25 percent we tick that rate up on all three tiers, that is what we can expect to get. If we increase the top tier, those above \$134,000 per month, the number drops slightly again—a reflection of the fact that well in excess of 90 to 95 percent of all the revenue falls in the top tier.

I looked at creating a series of additional tiers based on work we have done in the past using the most recent information from the State Gaming Control Board. What if we created a tier above \$500,000 a month in revenue or one going all the way to above \$10 million a month in revenue, and you can see from the chart how much the estimated yield on a per-year basis there would be under each one of those scenarios. While the gross gaming tax is the most significant of the taxes that are imposed upon gaming, it is by far not the only one. We also tax the games that are on the casino floors and slot

machines. The taxes that are shown below—the Non-Restricted Slot License Fee, the Restricted Slot License Fee, the state games license fee—annual and quarterly—are based on the total number of units on the floor at a given period. Some of those have been increasing and some have been decreasing, but you see about how much we could expect to generate for every \$1 imposed on them.

The Insurance Premium Tax is a substantial revenue generator for the State of Nevada, and has historically been among our most stable sources of revenue. A 0.25 percent increase in that tax gets us about \$16 million to \$17 million every year. The hotel lodging tax is different from the I.P. No. 1 of the 75th Session tax and is the statewide tax imposed on hotel rooms. Every 0.25 percent increase in that tax gets us between \$9.5 million and \$10 million every year.

With regard to the mining tax, many different options are listed on our master sheet. I am not going into all the changes to our *Constitution of the State of Nevada* that would be required, but the tax most commonly discussed is a reduction in the percentage allowed for expenses that mining is allowed to take from its gross proceeds to get its net proceeds upon which revenue is generated. For every 1 percentage point those expenses are reduced, we estimate we would generate about \$1 million additional in state revenue. That also operates under the assumption that the other portion of that mining tax would stay with the local governments as required by the *Nevada Constitution*.

Next on my list is the Live Entertainment Tax, a tax imposed on large and small gaming, and it is somewhere between a 5 percent and a 10 percent rate. It also expands to merchandise purchased during some of those events. If we increased the Live Entertainment Tax on gaming by 0.25 percent, it would generate almost \$4 million a year. For all nongaming enterprises that reach the seat threshold, we would get about \$400,000 each year.

The next category is much more general in nature and includes general business taxes overall. There was discussion at the outset regarding our state's Modified Business Tax. There are many ways to tax a business, but there are going to be variations on a very few number of things. You could tax business based on its gross receipts, which is the top line of revenue a business has. There are good things about that and there are bad things about that, and I am happy to talk through any of those. Washington, for example, has what is called its business and occupation tax, which is a gross receipts tax. The State of Ohio has a gross receipts variance tax. The second way a business is going to be taxed is based on its net income. That takes all of a business's gross revenue and deducts all of its expenses. At the end of the day we will have

some profit, and that profit, generally speaking, is going to be subject to some type of tax. Many states across the United States have some form of tax on business profits.

Assemblyman Livermore:

Here is the problem with a gross receipts tax. When you tax the broad-based volume of a business it adds another cost to the huge assortment of expenses that the employer has. Generally speaking if you are a franchise owner, which at one time I was, there was a gross tax on revenue, which made the franchiser a major partner in my bottom line. In some businesses with single-digit profit margins, the gross receipts tax—although only a fraction at the top—is a very severe element at the bottom. Hypothetically if you had a 1 percent gross receipts tax, it could equate to 20 percent of the profit of that business. I understand how you generally look at the small number at the top, but not all businesses are equal or the same. You must recognize the severity of what that percent taken off the top is and what it means to that very small fraction of profit left that some businesses have.

Jeremy Aguero:

You are absolutely right. There are a number of problems with a gross receipts tax. The one you point out is probably the largest problem because it does not distinguish between different types of enterprises. The one that comes to my mind most often is petroleum distribution. They have an incredibly small profit margin but a huge volume of business. That means a fractional tax at the top end is going to be a relatively significant share of the profit, and could wipe it out altogether. Other businesses that fall into that category include grocery stores which are, generally speaking, high-volume, low-profit-margin businesses. You are absolutely right. Other problems with a gross receipts tax include pyramiding. I pay a tax when I buy something from the manufacturer; I pay it again when it is sold at retail. For that reason, the tendency is to try to keep those rates as low as possible and make the base as wide as possible and you still generate a substantial amount of revenue, respecting the fact that the problems we have discussed here today, and others, are ones that states with a gross receipts levy deal with all the time.

The discussion of a gross receipts tax is an interesting way to bridge our discussion to the third element of how you would tax business and that is something that is not a gross tax, because of the problems with that tax, and not a net tax because of the problems there. From a gross standpoint, you are correct. It totally ignores profitability. Nevada has gross receipts levies—the largest of which is on our gaming industry, which they are required to pay irrespective of profitability. That has also made it a remarkably robust and, during most of our history, relatively stable source of revenue for Nevada

overall. Unlike the gaming tax, the net profits tax tends to be more cyclical in nature. It respects the fact that when a business is not making any money, it is not going to pay any money to the state. That is certainly something that is seen as being beneficial, but on the other side, it is going to ebb and flow as the profitability of businesses moves with the business cycle overall.

Assemblyman Livermore:

Generally, businesses prosper on greater volume—the higher the volume, the greater the profitability at the bottom end. During recessionary times volume declines, but in most cases a business's fixed costs do not go away. Fixed costs erode the bottom line. In this case, the gross receipts tax could be a fixed cost.

Jeremy Aguero:

You are absolutely right. It would be a fixed cost. That is how you would start to think about it. Of course, there is going to be a variable element because it is going to depend on your revenue system, but from a businessman's standpoint, certainly that is how he is going to think about it.

There are all types of businesses. We could point to low volume-incredibly high margin businesses. There are those that are capital-intensive; there are those that are labor-intensive, and this is the problem. Again to quote Carole Vilardo, "There is no perfect tax, there is no perfect tax system," because economies and businesses are different. So taxing the top line has problems and taxing the bottom line has problems. What other states have done, and what our state has done in some ways, is look for something in the middle to tax, such as an expenditure line item such as payroll, which we do as part of our Modified Business Tax. The good part about payroll is that it is representative of the demand for services. Payroll generally means people; people generally mean demand for services. The bad part is that it relates to payroll. We have a 14 to 15 percent unemployment rate, so putting a tax on labor does not look as good as it did when the unemployment rate was at 4 percent.

There are also hybrid types of levies. These are levies that do not take the gross, do not use the net, but use something in between. We typically refer to those as margin taxes. States have different variations on margin taxes, and one is the Texas franchise tax. The Texas franchise tax does not apply to anyone whose gross revenue is less than \$1 million, which is the vast majority of businesses both in Texas, in the State of Nevada, and almost anywhere else in the country. After that, to resolve some of the inherent problems with the gross receipts tax and the inequity that occurs with it, they get to choose the alternative that leads to what their tax burden is. That is to say, from their gross receipts they get to deduct 30 percent right off the bat. They reduce

their gross receipts by 30 percent, and the tax is based on that reduced figure. Or they can reduce their gross receipts by the cost of goods sold, and for a grocery store or petroleum distributor, the cost of goods sold is the largest expense they have. Or the business can deduct its labor costs, so for a labor-intensive business that might be selling a service as opposed to selling goods, it would also have the ability to deduct their largest expense from the tax. The tax is applied at a rate of between 0.5 percent and 1 percent on the taxable margin. Now, I have oversimplified that tax a bit in my discussion of it, but in trying to explain taxing business, it is either at the top line, the bottom line, or it is at some line item in between, or the tax will be based solely on the number of businesses that do exist. A fee will be imposed on all businesses.

I will walk through some of the estimates we have provided here in terms of how much revenue these will generate. In terms of the Business License Fee—a tax based on anyone with a business entity in the State of Nevada, for every \$1 we impose, we generate \$300,000. Every 0.25 percent of Modified Business Tax, our tax on payroll, gets us about \$84,000. There are a series of tiers: payroll of between \$250,000 and \$500,000, and payroll of less than \$250,000, because these are the questions that commonly come up in this regard.

With regard to gross receipts tax, my next line item, I have given you the gross receipts tax—0.25 percent imposed on all transactions in the State of Nevada. That would generate about \$300 million every year. There are a series of exemptions to that tax: the first \$250,000, the first \$500,000, the first \$1 million, the first \$2 million, et cetera. That means the yield will be progressively less over time. You will be taxing fewer businesses or less of the revenue from those businesses.

I added a gross margin tax, which is essentially making a general assumption that people get to take some type of standard deduction. We will not be taxing based on the gross, we are not going to tax only the profit, it would be something in between and would range from 25 percent, 50 percent, and 75 percent. These are order-of-magnitude numbers to give you an idea how much it would generate for every 0.25 percent if we did something along these lines.

Then I have shown you the Nevada franchise tax, something akin to the Texas margin tax model. It would generate about \$400 million a year based on what that tax is. That tax has a higher rate and would be somewhere between 0.5 percent for retailers and wholesalers and 1 percent for other businesses.

Chair Kirkpatrick:

Policy-wise, we need to figure out how to do things better. We have seen the structure change and how products come and go. The way people do business has changed. We have seen how other states are struggling with the same problems. It is not necessarily inconceivable to put in new tax structures and phase out others that did not work for our state. What I am not hearing about are other states, for instance Missouri. Someone testified to us in the Assembly Commerce and Labor Committee that they have 17 different taxes while Nevada has a relatively small number. Other states that have this franchise tax, this may replace a tax Nevada does not have or could have.

Jeremy Aguero:

Sure. One other thing I should mention that is very important to your Department of Taxation is that I have given you all these estimates assuming that the Department of Taxation can wave a magic wand and start collecting revenue. Certainly, that is not the case. It is going to take time to get these things geared up. The other thing I should mention is that I am not here to suggest to you that any of these are yielding new revenue for you. You could phase out the sales tax and bring in the services tax if you wanted in order to make the tax system a little more progressive than it is, or take away some of the regressive elements of the tax system. You could take away the Modified Business Tax and replace it with some wholesale tax. Going to Mr. Livermore's question, we know that the Modified Business Tax has a disparate impact on companies that are labor-intensive versus ones that are capital-intensive. We know that and have for a very long time. There is no reason why any one of these taxes could not be tax neutral, which is to say it would not generate one more dollar than it did last year, but that dollar would be generated in a different way.

Chair Kirkpatrick:

You bring up a good point. Because of the mechanics involved for the Department of Taxation, these changes take time. You would not want to cut one tax off today and hope that the projections for the new tax would be met. There does need to be some kind of bridge in between.

This presentation has been helpful, but I am looking forward to hearing what other states have done because this is really one of the first times in many years that Nevada has had this challenge. We have been very fortunate for years. I want to note to the Committee that there could be an opportunity to look at the way the state does business and possibly move in a different direction. Times are changing; we have younger faces here in the Legislature as people are terming out. We have a newer staff because people are retiring.

You have brought up some good points concerning what other states are doing and how Nevada could move in different directions.

Jeremy Aguero:

I do not want to leave any ambiguity with regard to any of the presentations I made previously. I continue to believe, and respectfully submit to this group, that our tax system reflects our economy in 1950 and 1960. Our economy has moved away from those years a bit, and that has created new challenges and will continue to create challenges into the future. I do not want any of my responses here to divert from the testimony I provided to you a couple of weeks back.

One additional major source of revenue is property tax. That tax has been the picture of stability within our tax system for a very, very long time, but certainly has not been over the past ten years. The increase that led to the 3 and 8 percent tax caps and the abatements we have, followed by the collapse of our residential and commercial markets and declines in property values have put us on a roller coaster few, if any, expected. Today, we are left with our property tax, and it remains an option relative to what can be done. Of course, there are legislative and constitutional caps per \$100 of value on property, but there is room for the Legislature to increase property taxes if it so wants, or to use them as an offset as we discussed before. Increasing the property tax would generate roughly \$8 million per year for every one additional penny per \$100 of value imposed. There has also been some discussion of eliminating the 3 and 8 percent property tax abatements. We estimate those at about \$24 million a year, dropping down to about \$12 million. This variable source of revenue will expire because we are rapidly eating through those abatements.

I also had a line item on my matrix for eliminating depreciation, which we are working on because the question has come up from time to time. The State of Nevada is somewhat unique. When your property gets assessed, there is a 1.5 percent reduction for depreciation from the value of the property until it reaches a total salvaged value of 25 percent. At that point it is capped. There has been some discussion about modifying that, and we are still working on it, so I do not have a dollar value for it.

Assemblyman Anderson:

Is it realistic for Nevada to continue with the sort of structure we have? There is no stability, and our tax structure looks like no other state's. No other state has a tax structure like ours, yet we expect that we will be able to compete. I do not think that is realistic.

Jeremy Aguero:

I do think we are going to be able to compete. We have done a lot of things right relative to our tax structure. I would not suggest modifying it in a manner that would get rid of the strong elements we have historically had. You are right with regard to the nature of our economy. Our fiscal system does not look like any other state's fiscal system. Our economy also does not look like any other state's economy. Our fiscal system has attempted, over time, to reflect that.

Going to the question you asked of me—whether or not this tax system is going to lead to this continual roller coaster we have had where revenues come in high one year and we spend to the peak of those revenues. Then revenues go down the next year, and we are forced to look at revenue enhancements in order to stabilize a level of spending some argue is beneath where we need to be. The answer to that question is absolutely yes. The fiscal structure we have, given the economy we have, is destined for continued cycles of ups and downs and of surpluses and deficits.

Chair Kirkpatrick:

You mentioned the property tax. That is just the state's portion, correct?

Jeremy Aguero:

Yes.

Chair Kirkpatrick:

And then the local government gets its portion.

Jeremy Aguero:

That is correct.

Excise taxes are next on the list ([Exhibit D](#)). Those include taxes on liquor, beer, and alcohol by volume based on a percentage of the alcohol content. Each one of those I have shown as being increased by one penny in terms of how much it would generate in new revenue. The cigarette tax tends to be very popular in tax debates. Every one penny increase gets us about \$900,000 in new revenue based on the total number of packages being sold every year. Increased revenue from other tobacco products of course would be much smaller—0.25 percent gets us about \$80,000 a year.

I also included a few of the other taxes and fees, because they are part of the General Fund revenue that gets spoken about. These are shown in order of magnitude. One is the Real Property Transfer Tax. This was very popular for a while when property values were increasing dramatically, but it

has also proven itself to be arguably among the least stable taxes known to man. A 0.25 percent tax on that would generate about \$41 million, but the transfer of value is a substantial large base. I believe the tax rate today is \$1.30 for every \$500 of value, so the percentage remains very low, and that would be a significant increase. On the opposite view is the bank branch excise tax. About 1,700 bank branches are subject to that tax, so every \$1 increase generates \$1,700. This tax has a very low base and a very low rate, so any rate would have to be substantial to generate much revenue. The Governmental Services Tax is imposed on rental cars, and gets spoken about quite often. Then there is the tire tax. That is my overview on ways we can generate some additional revenue, or alternative revenue sources, in the State of Nevada.

Chair Kirkpatrick:

From my perspective as Chair, I wanted to be sure the Committee heard what other ideas were out there and what other things had been discussed. These are things that could change in the future—next week or next year. Going forward, we need to determine what is best for our state. I do not think we can take any one tax from any other state, institute it in our state, and get rid of some tax. We have to think about Nevada, how Nevada does business, and tailor whatever we do toward that. If there are no other questions, we appreciate you speaking with us again.

[The meeting recessed at 9:23 a.m.]

[The meeting resumed at 9:30 a.m.]

Chair Kirkpatrick:

Good morning, and welcome to Nevada and the Assembly Taxation Committee.

Luke Martel, Research Analyst II, Fiscal Affairs, National Conference of State Legislatures, Denver, Colorado:

Thank you very much for inviting the National Conference of State Legislatures (NCSL) to testify before you today. Before I discuss the specific revenue actions we have seen states enact over the past couple of years in response to the Great Recession, I would like to provide a brief overview of the general fiscal situation facing the states as well as the size of the budget gaps ([Exhibit E](#)). Then I will discuss the revenue increases implemented. The information on the general state fiscal situation comes from our State Budget Update reports. We conducted a survey in November 2010, and this information comes from our December 2010 State Budget Update report.

We survey legislative fiscal officers in all 50 states at least four times a year. Our next report, which will have updated budget-gap figures, will be available on April 14, 2011. Please keep in mind that the size of budget gaps is a constantly moving target for the states. The state fiscal landscape is mixed. We are in a budget paradox in which we are seeing the improvement of state revenues, but states are still continuing to face fiscal difficulties. This is because the higher revenues, so far, have been insufficient to cover the loss of one-time funds states have used over the past couple of years to balance their budgets. This is coupled with escalating expenditures, causing most states to grapple with significant budget gaps. Further, while revenues are improving, they are improving at a slow rate.

Including the preliminary estimates for FY 2012 and FY 2013, the combination of revenue shortfalls and spending overruns has generated a cumulative budget gap of more than \$500 billion for the states since the beginning of the Great Recession. That is a large figure. The Year-Over-Year Percent Real Change in Major Taxes graph (page 3 of [Exhibit E](#)) comes from the Rockefeller Institute of Government in New York. This graph shows the dramatic drop in revenues states faced in the recession. More importantly, at the end, you can see that revenues are now ticking back upward. The blue line represents personal income tax changes year over year; the red line represents sales tax, and these two sources account for two-thirds of all state general funds. Property tax is the top green line, and property tax collections generally lag behind other sources due to the way property valuations work. The point of this graph is to show you that it will be awhile before revenues return to prerecession levels. In case you are wondering what state does not predict a return to prerecession level until FY 2016, it is your neighbor, California. Please keep in mind that this is just one part of the picture. Looking at a return to peak revenue collections does not take into account expenditures, which have grown since the recession and will continue to grow in some areas.

There are a number of revenue concerns facing the states. Over the past few years, states have used one-time funds—mainly American Recovery and Reinvestment Act (ARRA) funds—as well as state rainy day funds and transfers from other funds to shore up state budgets. The FY 2012 budget gaps facing the states are caused in part by the tapering off of these one-time funds as well as sluggish revenue recovery and rising program costs.

As I am sure you are aware, there is a lot of spending pressure on the states. In terms of spending overruns, by last November, less than halfway through FY 2011, half of the states have reported being over budget in at least one area. Medicaid is the area in which most states commonly reported spending overruns.

Here is the slide everyone loves to see—this shows budget gaps as a percentage of general fund budget (page 7 of [Exhibit E](#)). This is for FY 2012, and as of November 2010, it totaled \$82 billion. We will have an updated figure available next week. What is shocking about this map is that 21 states are facing budget gaps greater than 10 percent of their general fund budgets. It is also interesting to note how broadly these gaps are spread across the states. No one area of the nation has been held immune from these fiscal difficulties. We are updating this information and looking forward to FY 2013. As of November, there were still 13 states predicting budget gaps greater than 10 percent of their general fund budgets. There were also a number of states that had not forecasted this far out as of last November.

I have included this slide (page 8 of [Exhibit E](#)) to give you an idea of the size of the budget gaps states have faced over the past few years and that states will continue to face. As bad as the beginning of the decade was, this chart shows that those budget gaps pale in comparison to what states have faced for the past couple of years and are facing today. The worst years, in terms of fiscal challenges, tend to come one to two years after the end of a recession. Since the recession ended in FY 2010, June 2009, states are now facing the worst of these fiscal challenges.

Now we are going to move to taxes. I have distributed two reports, *State Tax Actions 2009* ([Exhibit F](#)) and *State Tax Actions 2010* ([Exhibit G](#)). State Tax Actions is NCSL's annual report on all the taxes and fees the states raised in the previous year. It is a comprehensive report that is compiled from a 50-state survey of legislative fiscal officers across the states. The information on the rest of the slides comes from these reports. I will be mentioning a number of different tax changes states have implemented, and the precise revenue figures on what they expect to generate from those changes are available in these reports, so if you are interested in seeing how much one state's cigarette tax increase generated, it is all in here. It is sorted in the indices in the back, so you can look at the information by state to see all the revenue, tax, and fee changes enacted state-by-state, or you can look at it by type of tax.

I have also provided you with a handout from the Federation of Tax Administrators on state sales tax rates and food and drug exemptions ([Exhibit H](#)), which notes the states that implement a food tax. I also brought two handouts on state reliance on major tax sources from 2009 and 2010 ([Exhibit I](#)). We recently prepared these from U.S. Census Bureau data. I thought these would be important to you because, as you are aware, Nevada's tax structure is unique compared to many other states and this will give you an idea of other states that might be similarly situated, or that rely on a certain

category of tax in a similar way. Finally, I have a handout on state tax amnesty programs ([Exhibit J](#)). You recently had such a program, but there is information on many other states' programs. It has been one of the common ways in which states have been looking for revenues over the past couple of years.

Net Tax Changes by Year of Enactment (page 9 of [Exhibit E](#)): this chart provides some historical perspective. To put things into perspective, in FY 2010, half the states increased taxes by more than 1 percent. In FY 2011, 12 states increased taxes by more than 1 percent. For FY 2011, the tax change was enacted in calendar year 2010 and 37 states made no significant tax policy changes. In terms of the magnitude of tax increases, the 1991 changes, as indicated by the red line on this graph, were greater than what we have seen in this recession.

Here is a look at the tax changes enacted by type of tax for both 2009 and 2010 (page 10 of [Exhibit E](#)). The year 2010, as you can see at \$4 billion, was a relatively quiet year in terms of state tax changes, especially when compared to 2009. When states adopted their initial FY 2010 budgets, lawmakers closed \$145 billion in budget gaps. Tax actions accounted for about 18 percent of budget-gap-closing solutions. The rest of the budget gaps were closed through spending cuts and other changes in terms of fund transfers and accounting changes. For FY 2011, as I mentioned, tax actions were \$4 billion of the solution. States collectively closed \$110 billion in budget gaps, so in calendar year 2010, taxes were a relatively small part of the solution for the current year's budgets.

I would like to share with you the broad trends we have seen the past couple of years. In 2009, we saw many states turn to revenue measures to help close their budget gaps. The primary trend was to raise personal income taxes on high income earners. The secondary trend was states reexamining their tax credits and exemptions, and a number of states made changes to these to bring in more revenues. In 2010, we saw relatively little action in terms of tax changes, so it is hard to say that there was any broad trend. If there was a trend, it was the continued examination of tax credits and exemptions and looking at broadening the tax base in certain ways.

This slide (page 12 of [Exhibit E](#)) shows the total net revenue increase from four different sources states received in 2009 and 2010. The primary trend in 2009 was increasing the personal income tax on high earners. If you are wondering where this "Other: \$834 million" comes from, it includes things such as tax compliance measures, tax amnesty programs, and accounting maneuvers. Keep in mind that the way we have broken out the state tax actions report,

accelerations are lumped in with the other category, but on this slide I wanted to break it out so you could see accelerations versus the other maneuvers.

Now I have three slides on personal income tax, but I am aware that Nevada does not have a personal income tax, so the information is here if you want to learn what states have done to change this personal income tax over the past few years.

Let us now discuss a tax more applicable here in Nevada—the sales tax. There are two basic ways states have made sales tax changes over the past few years. Some states have raised the sales tax rate while others have looked to broaden the base by removing exemptions. This slide (page 17 of [Exhibit E](#)) contains all the information on state sales tax rate increases enacted from 2009 through the present. As you can see, a number of the sales tax rate increases are not permanent. They are intended to be temporary in nature and have expiration dates when they were enacted into law.

In terms of how states have broadened their base and what exemptions have been eliminated, there are several slides on this. Keep in mind that no two states have the same mix of state sales tax exemptions. We have seen a move toward broadening the base in examining existing exemptions and looking to add new categories into the sales tax base. These are some examples: Colorado added cigarettes, three states added alcoholic beverages to their sales tax base, and a couple of states added candy. Certain beverages have been targeted in four states. Illinois added personal grooming products back into their sales tax base. Colorado had a relatively minor change adding to-go containers and condiments under its sales tax base. New York added clothing to its sales tax base, and Colorado added energy used in manufacturing to their sales tax base. There were a couple of changes in Washington State and Massachusetts that were repealed by the voters.

Over the past two years, we have seen four states move to establish digital downloads as taxable. We have also seen a few instances where certain services have been brought into the sales tax base. New York added limousine and black car service into the sales tax base; Tennessee added software maintenance; and in Vermont, sales taxes are collected for performances for most nonprofits but there is an exception for small nonprofits. The Maine Legislature tried to implement a major tax reform, and their tax reform included taxing a number of services and entertainment. The services were mainly focused on tourism, but this reform was later repealed by the voters.

I am sure you have heard about the so-called Amazon taxes. These taxes try to force retailers to collect sales taxes if they have contracts with affiliates in the

state. If any of the online retailer's websites has a link to a local retailer's website, those people would be affiliates. There appears to be continued interest in this area, as a number of states have passed laws creating nexus for Internet retailers. This is definitely one area to watch for future developments in the states.

We have a few miscellaneous changes related to sales tax. Changing how vendor discounts work has occurred in five states over the last few years. This is a discount on the amount of sales tax owed to the state. The rationale behind this discount is that it is given to merchants to cover administrative costs such as programming cash registers, training employees, documenting sales-tax-exempt sales, responding to audits, et cetera. At the bottom of the slide (page 22 of [Exhibit E](#)) are a couple of other administrative tax changes affecting state sales taxes.

Here is another graph (page 23 of [Exhibit E](#)). The blue was the cigarette excise tax per pack as of January 1, 2009. The red was the tax increase enacted in states in 2009. There were 14 states that increased the per-pack cigarette tax in 2009. In 2010, six states increased the per-pack cigarette tax. In 2009, this net tobacco tax increase generated just under \$2 billion collectively for the states. In 2010, the net tobacco tax increase was about \$600 million.

Here are some of the other tax changes we have seen in the states (page 24 of [Exhibit E](#)). In terms of alcohol, in 2009, five states increased their alcohol taxes to generate just under \$200 million. That is a much lower figure in comparison to the amount generated from the cigarette tax increases. In 2010, Washington raised its beer tax to generate about \$60 million, so we really have not seen alcohol tax increases be enacted the same way other categories have been enacted over the past few years.

In terms of motor vehicle and fuel taxes, this does not include fees such as vehicle registration. Oregon is the only state we have seen raise its per-gallon gas tax since the Great Recession began. There were a couple of other changes relating to motor vehicle and fuel taxes, and we have seen two states change how their severance taxes are collected.

Beverage taxes were enacted in Maine and Washington but those taxes were repealed by the voters in both states. We saw Hawaii and Delaware reinstate their state estate taxes, but Delaware's has an expiration date on it. We have also seen a few tourism-related taxes, including Nevada in 2009. Three states have made changes to their real estate transfer taxes. We saw Vermont expand its statewide property tax to include nonresidential property, and Massachusetts increased its satellite television tax. The motivation there was to try to get the

satellite television tax to be more in line with how cable television was taxed. New Jersey and Tennessee both increased their insurance premium tax rate.

Besides taxes, there are a few other revenue sources available to states. These include fees, payment accelerations, tax amnesty programs, and other administrative changes generally relating to enhanced enforcement. Fees continue to be looked at and acted upon by legislatures across the nation to generate revenue. The common targets are motor vehicles, recreation activities, and courts. All this information is in the State Tax Actions reports I gave you. You can go to the fee section if you are looking for all the areas the states have increased fees in over the past few years, and there are long lists of changes in this report. In 2009, 22 states made fee changes bringing in about \$3.35 billion. In 2010, 20 states made fee changes bringing in about \$700 million, but these are estimates. Colorado increased fees on motor vehicle registrations in 2009 which brought in about \$200 million. Florida increased vehicle license fees, and Ohio raised court costs. As I said, all kinds of fees have been changed and those are documented in detail in these reports. Fees have been a significant component of the overall revenue increases enacted over the past few years.

Accelerations are another option available to states to increase revenue without changes to tax rates—accelerate the payments. This is more of an administrative action, as the underlying tax rates remain the same with tax payment accelerations.

As I mentioned earlier, a number of states have enacted tax amnesty programs over the past number of years as outlined in the handout I provided for you ([Exhibit J](#)). There are also other nontax revenue administrative changes, and these are generally increased enforcement. Kentucky reduced the time available to claim abandoned property; Maine added enforcement agents; New York has improved compliance through audits; and Vermont added enforcement personnel.

Many states have created special commissions or committees to examine government spending or tax structures. The National Association of State Budget Officers (NASBO), an executive organization, has prepared a report that contains summaries of the findings of these commissions. There is a link to that report available on NASBO's homepage.

At this time I would be happy to take questions from the Committee.

Chair Kirkpatrick:
Thank you.

Assemblywoman Benitez-Thompson:

Regarding the states that created commissions and committees to report on government spending or tax structure, how do other states react to those reports? Is there a percentage of recommendations they act upon?

Luke Martel:

I do not know the percentage of recommendations they act upon, and the way the reports of these commissions are received are all across the board. For instance, Georgia had a tax study commission. The recommendations from the commission were put into a bill. The bill was introduced; amendments were not allowed, and the members had to do an up-or-down vote on it first before they could make any amendments to it. In other states, the reports by the various commissions have not produced a lot of change. Some of the reports by these commissions went into much more depth than others; some came from the legislature, and some from the executive branch. The NASBO report lists most of the commissions, and provides five or six bulleted points that are the take-away value from each of them.

Assemblyman Stewart:

Was there a common thread on the tax policies of the 12 states with no budget gaps?

Luke Martel:

I am not sure that there was a common thread among their tax policies. Arkansas and North Dakota do not have budget gaps, and have weathered the recession better than other states due to severance tax income from natural gas drilling. Other states do not report budget gaps because of the way we asked the question. Whether or not a state has a budget gap can be a political issue. Some people claim there is no budget gap; it is just because the revenues this year do not match last year's revenue.

Assemblyman Stewart:

I heard that most of the states with no budget gap were the energy-producing states.

Luke Martel:

That is definitely true with Arkansas, North Dakota, and Wyoming.

Assemblyman Stewart:

But not with Texas and Louisiana?

Luke Martel:

They still are facing budget gaps at the moment.

Assemblyman Ellison:

There has been a lot of discussion during the last few weeks about Internet sales tax. If you purchase something online, some states collect an Internet sales tax and some do not.

Luke Martel:

Are you talking about taxes on downloads such as software music?

Chair Kirkpatrick:

Mr. Ellison, I think that is a Streamlined Sales and Use Tax Agreement issue. We can get you some information from our staff.

Luke Martel:

We also have information on the Streamlined Sales and Use Tax Agreement. It is exceedingly complex in all its workings and where it stands with the states, but we would be happy to provide you with more information on it.

Chair Kirkpatrick:

I believe we will see a bill on this coming from the Senate.

Assemblyman Ellison:

I think it is important that we get the information no matter where it comes from.

Luke Martel:

We have a specialist in our Washington, D.C., office who handles that, and I will be happy to get you more information on the Streamlined Sales Tax and where it stands among the states.

Assemblywoman Neal:

You mentioned Arkansas, Mississippi, and Alabama as having no budget gaps or forecasting no budget gaps. Arkansas has a very conservative government. Where do they rank in education and health and human services funding?

Luke Martel:

I do not have that information in front of me, but we will be happy to get the education and health and human services rankings for the southern states.

Assemblyman Livermore:

What is not shown is the population for these states. If you were to base the deficit on the percentage of general fund gaps per population, how would that equate? We know that California has a population of 28 to 30 million and that

Nevada has a population of 3 million. Is there a value to knowing a state's population?

Luke Martel:

I am not sure we have looked at that. I am also not sure that there is a strong correlation between population size and percentage of the budget gap.

Assemblyman Livermore:

In order to close that gap, you are going to have to acquire the resources from the population, so how much would an individual or family of four owe?

Luke Martel:

I see what you are saying; if we were to break down the budget gap per person within a state. That is an interesting thought.

Chair Kirkpatrick:

Are there any other questions?

Luke Martel:

Some of the other states not indicating they have budget gaps may be related to when we conducted this survey and where they fall within their session or within the budget cycle. This can really just be a matter of timing, and I would encourage you to look for our April 14 State Budget Update report that comes out next week. It is available for free to all of you because you are legislators.

Chair Kirkpatrick:

Reviewing the states that accelerated payments, are those permanent accelerations or temporary? In Nevada, if we continue to do that, how do we go back? There would be a gap. Arizona sold some public property to get one-shot money, but is now having a hard time paying the rent on those buildings.

Luke Martel:

I am not aware of any plans to change these back. You are correct. They do create difficulties. If you push your June 30 payroll to July 1, it helps you that one time, but then you have to keep doing that every year or you have to make up lost revenue. I believe most of these states wanted the accelerated payments to be temporary; whether they now have plans to change them is unknown. Think of these as one-time fixes. They cannot be done over and over. If you frontload your tax payments to the first quarter, you receive less in tax revenue in a later quarter. If you want to fix it and equal it out, there will be an impact on the first quarter in another fiscal year.

Chair Kirkpatrick:

I just want to point that out. We can ask people to pay ahead, but eventually we will have an empty trough.

There has been a huge drop in the personal income tax revenue in a number of states. I realize most states have a personal income tax, but Nevada is used to only working with property and sales taxes. It would be interesting to hear what other states are doing when the bulk of their revenue comes from something that has taken such a huge fall.

Luke Martel:

States are cutting. We are seeing major budget cuts across the states; and here in Nevada as well. Rainy day funds are being depleted; states are looking to accounts with surpluses and sweeping those amounts into their general funds. States are looking at everything in terms of fixing this problem. The amount of income tax revenue is ticking up, so that is a positive.

Chair Kirkpatrick:

We need some positive news. Some of these other states have 16 different taxes while Nevada has a short pool to work from. It appears some of these states are still seeing increases in revenue. Is there a mass exodus? Are you seeing trends concerning people migrating in one direction or the other? I see a lot of people from the East moving west.

Luke Martel:

I am not aware of any trends or of people leaving because of tax changes. I am only aware of the same trends from the Census Bureau in terms of people moving to the South and to the West.

Chair Kirkpatrick:

I do not see any real changes in structure. Do the other states believe their tax structures are fine and that their revenues are just down? Is Nevada one of the few states needing to revisit how it does business? Nevada's revenue for many years was based on tourism. We probably have felt this recession more because we counted on discretionary income from visitors more than other states do. We count on everyone else to come to Nevada to spend their money. I am surprised to see Texas have such a large deficit because Texas's economy has been mentioned frequently this session, but apparently they are in no better shape than we are. Are other states making changes to their tax structures based on the economy in general, or are they just increasing fees for the cost of doing business?

Luke Martel:

It is probably a little bit of everything. Washington, like Nevada, has no personal income tax. Oregon has no sales tax, so there are some other states that have heavier reliance on a limited number of tax categories, similar to Nevada, that are facing budget deficits. Also keep in mind that many states went into the recession with structural budget gaps, and these have only been exacerbated by the recession and the decline in revenues combined with still-increasing costs. As the economy tanked, certain services were in more demand, putting even more pressure on costs.

I am not aware of any massive structural changes. Maine attempted to do a pretty large tax overhaul, and it was repealed by the voters even though it was a revenue-neutral one. It was a matter of changing where the taxes were, but it was repealed. Georgia is looking at it, but I have not looked into the current status of that one. These are the tax changes we have seen. We have not seen grand structural changes.

Chair Kirkpatrick:

So there are some states, at least in the Midwest, that rely on certain things. Texas relies on oil—a mineral. Are those states that use their minerals, and of course in Nevada we have a couple of different options, more stable? Arkansas and Pennsylvania have natural gas resources, are they more stable because that is revenue they can focus on?

Luke Martel:

Those revenues are volatile as the prices of natural gas and oil change. A large percentage of Alaska's budget comes from their severance tax on oil extraction. I do not know the per-barrel amount, but there is break-even figure. If the price of oil is below that price, they have a budget gap. If oil is above it, they have a surplus. That can be volatile as well, and that does not necessarily track the recession. There are proposals to change the tax structures in Connecticut, Rhode Island, and Vermont, so that would be an area to watch for major structural changes over the next few years.

Chair Kirkpatrick:

That is interesting, because Connecticut has one of the best tax expenditure reports for the last five years, and I would bet that they have seen some information if they are ready to make changes.

Luke Martel:

There are natural gas producing states without a severance tax, such as Pennsylvania. Every state is unique. The tax structure in every state is a little different, and the tax base is a little different. That is in part why I provided the

"State Reliance on Major Tax Source" charts so you can see how Nevada is situated in comparison to others.

Assemblyman Livermore:

Could you go to slide 6 please (page 6 of [Exhibit E](#))? We have been talking about taxes and that many states are looking at how to enhance revenue, but you have given no reference to spending concerns and how states are handling those. You do mention that more states enacted significant retirement legislation in 2010 than in any other year in memory.

Luke Martel:

I included the "Revenue Concerns" (page 5 of [Exhibit E](#)) and "Spending Concerns" (page 6 of [Exhibit E](#)) slides at the conclusion of my introduction when I was giving you an idea of the overall state fiscal picture being faced by states right now. These are from our state budget update presentation. The revenue concern slide is very different from anything we have given recently.

Assemblyman Livermore:

I would be interested to know how many states implemented any of the items connected with the revenue concerns slide, such as education, tuition, and revenue enhancements from within particular segments of their economies.

Luke Martel:

Tuition increases are mentioned in the fee section of the State Tax Action reports and you can see where higher education tuition has been increased. There are cuts, but because this is a taxation committee, I was not going to talk about cuts today, but we have tons of information on cuts, too.

Chair Kirkpatrick:

Thank you, Mr. Martel. We appreciate you coming. Are there any other questions from the Committee? [There were none.] I think this has been most helpful. The NCSL has always been a nonpartisan group that gathers information on different ideas for different states. It allows us to compare ourselves to other states, so we do appreciate you coming and giving us plenty of information. It is nice to hear that Nevada is not the only state facing such terrible challenges this legislative session.

Luke Martel:

Thank you, Madam Chair, and thank you for inviting NCSL. If you are interested in more information on spending cuts, we have an entire project in this area—it is called the "State Measure to Balance Budgets Project." It is available on our website and is in a searchable database, so you can look at the cuts enacted in the states by category or by state from FY 2009 through the

present. One of NCSL's services includes answering information requests, so feel free to contact NCSL not only on budget and tax topics, but on anything. If you have questions about what is happening in the 50 states on any given topic, or about what legislation is being introduced on a topic, please contact us. We will research your topic and get it to you. Think of us as an extension of your staff.

Chair Kirkpatrick:

Thank you, and please leave your business cards with our secretaries.

We will open up the hearing on Assembly Bill 428.

Assembly Bill 428: Revises formula for determining tax on net proceeds of minerals extracted. (BDR 32-883)

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

Assembly Bill 428 revises the amount of deductions a mining operation may take when calculating its net proceeds ([Exhibit K](#)). We need funding for education. The Governor says the worst thing he could do in a recession is raise taxes. That may be true in some cases, but not for gold mining. The price of gold is countercyclical. When the economy goes down, the price of gold goes up. This is one of the taxes that brings stability to our tax system. Let us also remember, for every \$1 cut in government spending, \$2 is taken out of the state economy.

I am proposing rejection of the extremism of the last 30 years. I am proposing moderation. I am proposing a middle course, a middle course where the mining industry pays its fair share for being part of our state. Something you will hear is that the mining industry does not want to be singled out. The mining industry was the only industry around when our state was founded. The mining industry wrote the *Nevada Constitution*. The mining industry put itself into the *Constitution*. It has had about 130 years to get itself out of the *Constitution*, but has not chosen to do so.

I would like to introduce Mr. Hugh Jackson in Las Vegas. Mr. Jackson is a freelance writer who has written several articles about the Net Proceeds of Minerals Tax and mining's deductions over the years. He will give a presentation, and then I will walk the Committee through the bill.

Hugh Jackson, Private Citizen, Las Vegas, Nevada:

I have done some freelance research and writing on Nevada mining taxation in the past. I sent some charts to the Committee by email for distribution, and will be referring to them on occasion ([Exhibit L](#)).

Most mines paid at least some net proceeds taxes. From 2000 to 2009, which is the latest information I have that is mine-specific because the 2010 numbers have not yet been released by the Department of Taxation, a total of \$36 billion worth of gold was produced in Nevada. More than \$27.5 billion was written off as deductions, so the industry paid taxes on the \$8.5 billion left over. Of course, the ensuing mining tax revenue has been so small it is typically treated as little more than a footnote in Economic Forum state revenue forecasts. However, a lot of mines did not pay any tax. A total of 269 mines reported to the state that their mines had produced gold about 40 percent of the time over those ten years. One hundred eleven times, a mine that reported producing gold also reported that its costs of doing business were so high that after taking all the tax deductions allowable under Nevada law, the mines had no net proceeds left over. In other words, at 40 percent of Nevada's gold mines over those ten years, Nevada's mining tax collected no revenue at all, not a dime. Before the first five years of the decade, more than half the mines in the state paid no mining taxes whatsoever. Sometimes production at these tax-free mines is relatively small—maybe \$15 million of gold at one mine or \$40 million at another. Sometimes production at tax-free mines was most impressive. In 2005, Newmont Mining Corporation's Carlin Trend reported producing more than \$620 million in gold. Only one mine in Nevada produced more that year. Newmont did not pay a cent of mining taxes on production at that mine.

The chart also shows that generally as the price of gold has increased, the amount of totally tax-free production has gone down, but there was still \$110 million that went totally untaxed in 2009 when the price of gold had reached lofty heights. As recently as 2008 after the price of gold had been rising rapidly for a couple of years, Newmont's Phoenix Project produced nearly \$225 million worth of gold and paid no mining tax at all.

Mining lobbyists frequently take great pains to assure the public that the Net Proceeds on Minerals Tax, as it is known in the *Constitution*, is actually just a property tax. And in fact, they often compare it to the property tax paid by homeowners and business owners. I do not have statistics concerning what percentage of Nevada homeowners and business owners paid no property taxes at all over the last decade.

If you cross-reference the information the Department of Taxation presented to the Nevada Tax Commission last month with new proceeds reports from prior years, it reveals that some of these mines that paid no taxes at all on gold production were audited. Auditing is prudent, but the deductions themselves are the bigger problem. And while these examples are obviously the most egregious symptoms of a net proceeds tax that is clearly inadequate and

ineffective, they also indicate the comprehensive problem that plagues the entire mining tax system in Nevada. If the intention of tax policy is to be fair, equitable, efficient, and in the best interests of the state and its people, thanks to the liberal deductions that are afforded the industry, the net proceeds tax has to be considered a failure.

What would happen if mining's tax burden was increased? Nobody wants to hurt the economy even more, and mining is very important to the State of Nevada, but we should not forget that Nevada is also very, very important to mining. Gold accounts for nearly 90 percent of the value of all Nevada mineral production, and two companies—Barrick Gold Corporation of North America and Newmont—account for more than 90 percent of that gold production. Nevada's importance to both companies is not greater than that of any other state; Nevada's importance to both companies is greater than it is in any other single nation in the world. The second chart I have given you shows gold production in ounces and proven and provable gold reserves. It shows that both Barrick and Newmont produced more gold in 2010 in Nevada than in any other nation in the world. This information, by the way, is taken from corporate annual reports. In fact, Barrick produced more gold in the State of Nevada than it produced on any other continent. The chart also shows that both companies have more gold reserves in the State of Nevada than in any other nation.

It is true that both companies are spending billions of dollars to develop new mines in the Dominican Republic, Ghana, South America, and elsewhere, but given the quality and quantity of Nevada mineral resources, along with costs that tend to be lower in Nevada than corporate-wide averages, Nevada promises to retain its singularly pivotal importance to both corporations well into the foreseeable future—new multi-billion dollar developments elsewhere notwithstanding. Simply no place on earth is more important to both of these companies than Nevada, and no place on earth is as important to the financial performance currently being enjoyed by both of these companies.

My last chart is titled "Record Financial Performance in 2010." I am not highlighting these numbers to show that the industry is doing wonderfully, so "Boy, let's go get them." That is not the point. The point is that these numbers are massive. Their combined net income is larger than the budget proposed by the Governor for the State of Nevada—not sales, net income. More than \$1.1 billion in dividends was paid to shareholders and investors around the world in 2010, and the companies are sitting on a combined \$8 billion in cash. Given constitutional constraints, the Legislature is necessarily limited to taking only modest measures with respect to mining tax revenue—such as the legislation this Committee is considering this morning. The idea that an increase in mining's already small tax obligation would prompt

Barrick and Newmont to scale back production, exploration, or project development in what is to both companies simply the most important place in the world seems highly unlikely and may even defy logic.

Barrick and Newmont's record-setting financial performance is driven by market forces—specifically, of course, the highest gold prices in the history of western civilization. The influence that the market wields over corporate financial performance absolutely dwarfs the relative insignificance of Nevada's mining tax. When the corporations make determinations about the size and scope of operations in what, for both companies is the most important place in the world—Nevada, those decisions will be overwhelmingly driven by market influences, not by a partial reduction in the amount of generous deductions they are allowed to take against a tax that is negligible to begin with.

The argument made by the Governor and others that increasing mining's tax burden will cost jobs is at the very most speculative—an assumption perhaps resting primarily on philosophy, but thus far unencumbered by documentable facts. Companies are not going to pull out of Nevada because a tax increase might, for instance, reduce their cash reserves from \$8 billion to \$7.9 billion or because instead of getting \$1.1 billion in dividends, shareholders might only get \$1 billion. Increasing the industry's Nevada tax burden is not going to significantly alter production and investment decisions—not when Nevada is likely more crucial to their financial performance than any other place in the world.

If you increase mining's tax burden, are you taking money out of Nevada's economy? That is money that, more than likely, would never, ever see the State of Nevada. That is money that, more than likely, is going to go to corporate net income balance sheets in Denver or Toronto or Salt Lake City, to pay dividends to shareholders throughout the world, to finance projects in Africa, South America, and the Caribbean, or to puff up corporate cash reserves. Companies are going to spend and invest in Nevada what they are going to spend and invest in Nevada, based predominantly on market forces that are orders of magnitude more important than Nevada's relatively trifling and dysfunctional net proceeds tax. Fundamentals suggest that if mining's tax burden is increased, money is not going to be taken out of the State of Nevada. On the contrary, money would be brought to Nevada; money that otherwise would have gone somewhere else.

Any negative impact of increased taxation on mining is speculative at best. If the Legislature adopts the budget proposed by the Governor, hundreds of people, particularly in Nevada's higher education system, will definitely lose their jobs. Those job losses are not speculative; they are fact. Throwing all

those people out of work will definitely hurt the economy. Everyone knows this legislation is not going to fix Nevada's budget problems or prevent all those layoffs, particularly given mining's uniquely sheltered protection in the *Nevada Constitution*. There is only so much the Legislature can do, but for the sake of real jobs that exist now and that are currently targeted for elimination, and to prevent inflicting even more harm on Nevada's economy by throwing more people out of work, the Legislature should do what it can, and getting more money out of mining—even if it is just a little—would be a start.

Chair Kirkpatrick:

Thank you, Mr. Jackson. Does anyone have any questions?

Assemblyman Ellison:

You keep mentioning gold. How many types of mines are in the State of Nevada? We should talk about gypsum, tungsten, copper, and silver—all these other mines that are not making the profits you are mentioning on microscopic gold. What is your profession? What do you do?

Hugh Jackson:

I do not know exactly how many mines are in the state. I know that nearly 90 percent of the mineral production in the state comes from gold. With respect to the other minerals, there is some tiering in the current tax structure. The less production that occurs at a mine, the percentage is lower; the higher the production, the percentage ultimately maxes-out at 5 percent. I am not sure if the Legislature can tinker with that and more directly address the concerns you have about some of those other minerals you have. I suspect they can. I also believe, unless I am mistaken, that there is specific language with respect to geothermal production that singles it out in some specific way. There appears to be some kind of precedent for trying to address the concerns you mentioned.

I am a citizen of Nevada, a freelance writer; I worked in journalism for years and covered the minerals industry in Wyoming. That is what first got me interested in this subject when I moved to Nevada in 1997. I have worked for newspapers in Nevada; I currently write a column for one of the alternative newspapers here in Nevada. I have a blog, a website, and have done consulting with public interest organizations over the years. I used to be employed with Public Citizen—the Washington, D.C.-based consumer affairs organization, and currently I am a part-time instructor at the College of Southern Nevada.

Assemblyman Ellison:

Can you tell me what it takes to produce an ounce of gold in the State of Nevada?

Hugh Jackson:

According to Barrick's annual report, in 2010—and Nevada is almost all their North American production—it costs \$489 an ounce.

Assemblyman Ellison:

What about the costs for infrastructure? Barrick is expanding, are they not? Did they not just purchase the Cortez mine?

Hugh Jackson:

Do you mean do I know the amount they are spending on those?

Assemblyman Ellison:

That is correct. I am talking about the infrastructure.

Hugh Jackson:

I do not know the specific amount they are spending.

Chair Kirkpatrick:

That is a better question for the company to answer.

Assemblywoman Bustamante Adams:

In your research of the mining industry, did any of that research include tours of the mines, and if so, which ones?

Hugh Jackson:

No, I have not been to a mine in several years. The last time was in Wyoming.

Chair Kirkpatrick:

We will continue with Ms. Pierce's presentation.

Assemblywoman Pierce:

Assembly Bill 428 makes two specific changes related to imposition of the Net Proceeds of Minerals Tax. The bill revises the amount of deductions that a mining operation may take when calculating its net proceeds. It also extends the requirement for mines to make tax payments based on estimated net proceeds from June 30, 2011, until June 30, 2013. That was discussed earlier when we mentioned mining paying an estimate forward.

Section 1 of A.B. 428 revises the method by which persons subject to the Net Proceeds of Minerals Tax calculate their net proceeds. Under current law, in order to determine net proceeds, mines are allowed to deduct from their gross proceeds 100 percent of their actual costs related to extraction, transportation, refining, marketing, maintenance, repairs, depreciation, and other costs specified in the law. The provisions of section 1 reduce the percentage of these allowable expenses that may be deducted from 100 percent to 40 percent. Because local governments also receive a share of the net proceeds revenue, cities, counties, school districts, and other local governments that receive a share of the net proceeds revenue, would also receive more revenue from this change.

Sections 2, 3, 4, and 5 of this bill make changes to various laws from the 25th Special Session of 2008 and the 2009 Legislative Session to extend provisions requiring estimated payment of the Net Proceeds of Minerals Tax for another two fiscal years. For fiscal years (FY) 2009, 2010, and 2011, mines have been required to pay their net proceeds tax each year based on the estimated net proceeds for that mine during the same calendar year. By extending the sunset of these sections from June 30, 2011, to June 30, 2013, the requirement to pay based on the estimated net proceeds will continue in fiscal years 2012 and 2013. After these provisions expire on June 30, 2013, mines will be required to pay their taxes based on their actual net proceeds from the prior calendar year, beginning in FY 2014. The extension of the sunset by another two years will result in no net proceeds of minerals collections in FY 2014, except for any payments received from the true-up activity compared to estimated calendar year 2013 net proceeds reported in FY 2013. In FY 2015, normal revenue collection of this tax will resume based on actual net proceeds reported in calendar year 2014. That is what Madam Chair was speaking about earlier. When you are paying forward, you get to a year when you stop doing that, so there is a year with no payment being made, and then you go back to the way it was before. That year would be 2014.

Section 6 of the bill contains language that allows the Department of Taxation to collect true-up payments from mines in FY 2014 based on their actual reported net proceeds for calendar year 2013. This language will ensure that the Department is able to collect any remaining taxes owed from calendar year 2013 activity, if the estimated payments made for calendar year 2013 during FY 2013 do not reflect the actual net proceeds for the mine.

Section 7 contains the effective dates for the bill. The reduction of allowable deductions from 100 percent to 40 percent in section 1 becomes effective on July 1, 2011, and the other sections extending the sunset for the advance payment of net proceeds become effective upon passage and approval.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Goedhart:

If we went with your proposal, what would that have done to mining tax collections in the current year?

Assemblywoman Pierce:

Are you talking about amount of revenue?

Assemblyman Goedhart:

Yes, the tax collected on mining. How much would that have changed the amount of money that went into the Nevada treasury?

Assemblywoman Pierce:

I do not have figures for the current year; I have the Fiscal Division's projections for this bill. Maybe Mr. Nakamoto could tell you.

Michael Nakamoto, Deputy Fiscal Analyst:

Based on information that the Fiscal Analysis Division has received from the Department of Taxation, we estimate that if the provisions of this bill were enacted, it would result in an approximate revenue increase to the state General Fund of about 135 percent. I can go back and make calculations based on what our current projections are for net proceeds revenue for this particular year. For example, if we are forecasting \$60 million in Net Proceeds of Minerals revenue to the state General Fund, the tax would generate another \$81 million, so that would bring total net proceeds to around \$141 million.

Assemblyman Stewart:

This would apply to all minerals including geothermal as water? Would that be considered a mineral, too?

Assemblywoman Pierce:

There is a geothermal part of this legislation, but Mr. Nakamoto will address that.

Michael Nakamoto:

The way I have read this bill, the provisions that apply here would apply to all operations that are subject to the Net Proceeds of Minerals Tax, which would include geothermal. I can double check with the Legal Division to find out whether there are any provisions that would otherwise contradict that.

Assemblyman Stewart:

Ms. Pierce, how did you arrive at the 40 percent figure? Did you compare us to any other state?

Assemblywoman Pierce:

I did not compare it to anyone else. As far as I know, our net proceeds tax is different from how other states deal with mining. Forty percent seemed to be a reasonable amount to me.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Ellison:

Would you explain section 1, beginning at line 11?

Chair Kirkpatrick:

Mr. Ellison, are you referring to the deductions?

Assemblyman Ellison:

That is correct.

Assemblywoman Pierce:

Under current law, in order to determine net proceeds, mines are allowed to deduct 100 percent of their actual costs from their net proceeds for the deductible items I named. The section starting on page 11 indicates 40 percent of the amount, so instead of deducting 100 percent, they can deduct 40 percent.

Assemblyman Ellison:

Are you aware of the costs of mining infrastructure, what it takes to build these mines? They just purchased a mine the other day for \$2 billion, and that was just the cost to obtain the property. There is a lot of investment needed to get this ore out of the ground. Ten years ago when the price for minerals went in the dump, we ended up closing full departments in Elko County. The price of gold goes up and down, and no matter what happens, the mining company still has to pay for these investments—and these are long-term operations.

Assemblywoman Pierce:

Other businesses also have to make investments.

Assemblyman Ellison:

That is correct, but do other businesses pay the amount of sales taxes that mining does in the State of Nevada?

Assemblywoman Pierce:

I think it is probably comparable. This is a large list of deductions. It is true that the Net Proceeds of Minerals Tax does not apply to other industries, but that is the way the *Nevada Constitution* was written, and the mining industry wrote the *Nevada Constitution*. They have chosen not to change it for over 100 years.

Chair Kirkpatrick:

This is an issue we can agree to disagree about. What Ms. Pierce is noting is that mines can now deduct 100 percent of their fire insurance, maintenance and repairs, marketing, and delivery of their product and how that could be changed to only deducting 40 percent. Mr. Ellison, I completely understand where you are coming from, too. Because mining is not as important in my district in southern Nevada, I am continually questioned by other businesses about why mining can deduct 100 percent of their marketing when a Starbucks does not get to deduct theirs. In order to have a good discussion, you need to know the perspective from a southern Nevada legislator. In northern Nevada, mining is what keeps your community going.

Assemblyman Ellison:

There are 17 counties in the State of Nevada. Every county, in one form or another, has mining. Some mines are closing because they cannot make it with all the environmental restrictions, et cetera. Right now, gold is at a peak; next year, it might not be. Ten years ago, we were in a mining depression. The mines still maintained a workforce when they did not have to. Even though the counties all across the state had to lay off employees, the mines kept a workforce going.

Can you tell me what type of tax the Net Proceeds of Minerals Tax is? Is it an ad valorem; is it a property tax? What is it?

Assemblywoman Pierce:

I am not an expert on taxes, so I am going to have to ask Mr. Nakamoto to answer that question. I am here with a tax proposal because I am concerned that if we enact the Governor's Budget, we will do damage to this state that we will not be able to correct for a minimum of a decade.

Chair Kirkpatrick:

We are here to debate the merits of the bill and *Nevada Revised Statutes* (NRS) 362.120 where the deductions are listed. We need to come together; we need to have conversations and debates about possible solutions. The public deserves to be represented. You, Mr. Ellison, are representing your part of the

state, and Ms. Pierce is representing hers, so we need to be respectful of each other's opinions.

Assemblyman Ellison:

I agree with you, but I also agree that Nevada right now has a workforce that is growing because of minerals. We have one of the largest-growing workforces, not only in Elko and Eureka Counties, but in all of rural Nevada. These are high paying jobs that are helping our economy, and I do not want to see that hurt.

Chair Kirkpatrick:

That is why there are a number of mining representatives here today to defend their positions.

Assemblywoman Neal:

Ms. Pierce, in trying to remove these deductions, do you look at what the Internal Revenue Service (IRS) already offers to mining as deductions, because I did. I found it interesting. The IRS tax code allows mining to deduct the cost of mine improvements and equipment. They are allowed to deduct the cost for installation and housing, and they are allowed to deduct deferred expenses—which can include mining exploration and development. There are more deductions, but under ordinary business expenses, they are allowed to deduct development costs paid or incurred during the tax year when they are developing a mine. When I examined what was happening and whether there was a double exemption that was occurring—the state was trying to help save the business, but your tax return can list more than ten deductions to help that same business. One deduction that can be taken is called "percentage depletion." A mine can deduct up to a 50 percent depreciation from the natural deposit and that is the business's depletion. When I saw that, how much are they really losing? Maybe mining would be better to discuss the deductions it actually takes as an industry and as a business.

Assemblywoman Pierce:

That is something you should ask the industry.

Assemblyman Anderson:

Ms. Pierce, do you know what other states do with their mining operations?

Assemblywoman Pierce:

I think some of the people speaking after me will have that information.

Chair Kirkpatrick:

We will now hear from other people who are in support of the bill, and then we will hear from those in opposition. The Committee seems to want specific

information. Your bill limits the deductions to 40 percent. The other part of your bill has the mines continuing to pay taxes forward.

Assemblywoman Pierce:

Yes, move the sunset forward. Thank you, Madam Chair, and thank you, Committee.

Chair Kirkpatrick:

Anyone who would like to testify in support of A.B. 428, please come forward. I am requesting both sides respect each other's opinions. If you could speak specifically to sections 1 and 2 of the bill, that would be most helpful.

Michael Ginsburg, Southern Nevada Director, Progressive Leadership Alliance of Nevada:

No doubt this bill will encounter some really intense lobbying by the industry and others. It is time to end the sweetheart tax breaks and the stranglehold the mining industry has on the state. Assembly Bill 428 is a step forward to ensuring some accountability and tax fairness.

We have heard from lobbyists that removing deduction allowances or increasing mining taxes might cause the industry to leave the state. To most of us, this seems absurd. As you know, Nevada has 80 percent of the country's gold and a minerals tax that is lowest in the nation and nearly anywhere in the world. Minerals taxes and royalties in other states and countries have not deterred Nevada's two largest mining companies from operating in places where they pay these higher taxes, so it is farcical to think they will leave Nevada by limiting their deductions and bringing them more in line with the taxes and fees paid by other businesses and Nevada families.

Mining will tell you that they already pay a property tax that is higher than other property owners in the state, but the real difference is that those other property owners do not have billions of dollars in nonrenewable resources under their homes, and most of them fortunate enough to have a job cannot afford to take time off to be here this morning to express their outrage. Certainly, if they could be here, they would not be able to deduct the cost of doing so from their property tax. Nevada's businesses and other property owners also do not get to deduct advertising, company meetings, bonuses and cash awards, leases and rentals, sales and use tax, selling expenses, severance packages, travel, management fees, et cetera. For a good comparison, the gaming industry is responsible—either directly or indirectly—for the overwhelming majority of tax revenue and jobs in the state. When gaming pays \$1 billion to the state during a time when they are losing money, where is the outcry and how is that fair? The gaming industry currently pays upwards of 6.75 percent on their gross

gaming revenue in addition to license fees, quarterly fees on games, slot fees, gaming penalties, gaming/live entertainment tax upwards of 10 percent, and a 10 percent tax on food, refreshments, and merchandise. This is to say nothing of the payroll taxes, sales taxes, room taxes, property taxes, and myriad other fees and revenue contributions that the industry pays, even when it is losing money.

A majority of the people in this state, when polled, think gaming can actually afford to pay more, and maybe they can. But before we ask them for a penny more, we must tell mining that they will start paying their fair share. No other business gets to take these deductions, not even at a time when they are suffering. Again, other businesses in the state, unlike many of the top mining companies, actually use generally accepted accounting principles when reporting their profits to shareholders and to the public. All we are seeking is for the mining industry, with its billions in annual profits, to pay just a fraction of what the gaming industry pays so that Nevada is not forced to cancel education programs, entire departments, or even shutter some institutions of higher learning, force our children into already-crowded classrooms, or leave the elderly, the poor, and the sick without any safety net out in the streets to fend for themselves. The people of Nevada recognize a system of loopholes through ever-expanding deductions as the sham that it is and call for it to end, so we ask for your support in passing this bill.

Chair Kirkpatrick:

Can you submit your testimony so we can post it on the Nevada Electronic Legislative Information System (NELIS) so everyone can see? [Mr. Ginsburg agreed.] In order to avoid repetition, keep in mind that we can get more testimony on the record if people will mention different points.

Brian Fadie, representing ProgressNow Nevada:

I would like to quickly bring attention to a report by the Associated Press that was released Tuesday. The report noted that in 2009, the Nevada mining industry grossed \$5.5 billion from selling our minerals. Of this, \$48 million went to the state's General Fund, creating a tax rate of less than 1 percent. This is not paying a fair share. Assembly Bill 428 can play a small part in rectifying this situation. As Assemblywoman Pierce said earlier, this bill only tries to end an extreme situation and enact moderation.

Chair Kirkpatrick:

Are there any questions? [There were none.]

Craig Stevens, representing Nevada State Education Association:

The Nevada State Education Association (NSEA) fully supports A.B. 428. The Net Proceeds of Minerals Tax is a critical revenue source for our school districts, especially those in the rural areas. For every dollar that is deducted by a mining operation, another dollar evaporates which could go toward more textbooks, more technology for the classroom, and attracting and retaining the best educators in our schools.

I would like to add one point: passing A.B. 428 would benefit this legislative body almost as much as it would benefit our schools. The more net proceeds are paid as local revenue, the more the state General Fund is off the hook in making up the shortfalls for their deductions. Simply put, every cent deducted by mining increases the load and responsibility of the public to replace what mining is unfairly putting back into its pockets. That is the way the Distributive School Account (DSA) works.

Assemblyman Ellison:

Do you know what mining donates and puts into the school system? Do you know what the mining companies do for Great Basin College and the southern colleges in the state?

Craig Stevens:

I do not have those numbers.

Assemblyman Ellison:

So you are not familiar with Great Basin College and what mining donates to that college?

Craig Stevens:

No.

Chair Kirkpatrick:

I think donations and the way schools are funded with mining dollars differ throughout the state.

Kyle Davis, representing Nevada Conservation League:

In our state, we do not adequately fund environmental protection or environmental programs. Only a small amount of General Fund dollars go to the Nevada Department of Wildlife, which is a resource belonging to all citizens of Nevada. The funding for our state parks has been cut by 60 percent in the last three years. This bill, obviously, would increase revenue to the state. We think increasing revenue to the state is an important part of any solution we come to that would protect some of these programs that are important to the citizens of

Nevada, and, from our perspective, the environment of the state. We certainly support this bill as an avenue to address the state's fiscal health, and look forward to working with the Committee to craft a solution to protect some of the important programs the citizens of this state rely on.

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

A recurring theme we have heard continuously since the beginning of this session, and actually before the session began, was that there was going to be a need for shared sacrifice by all parties when it came to resolving the fiscal problems the state has. As a representative of working people, I have not heard a whole lot spoken about the "sharing" portion for industry. I have heard a lot about what is being asked of the state's employees and of working families within the state. At the same time, we believe everyone should be stepping up and offering, if anything, a temporary solution to the problems we are currently experiencing.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Alfonso Ayala III, Private Citizen, Henderson, Nevada:

I am also a graduate student at the University of Nevada, Las Vegas. I am here because other students and I have realized that Nevada's antiquated tax system does not allow for the growth of our state, especially when we look at all the cuts being made to higher education. Understandably, this one bill will not fix the entire tax system, it is incredibly flawed, but it could at least act as a much needed lifeline against the ever-crippling cuts being made to higher education.

Echoing Michael Ginsburg's comments, it has become apparent to me that southern Nevada industries have been unfairly taxed compared with mining. I am not trying to create a north versus south battle, but it is really hard for me, as a resident of southern Nevada, to hear so often that gaming and all these industries in southern Nevada should be taxed when we turn a blind eye to the fact that mining is not paying anything because of the deductions it takes.

Right now we need leadership that is willing to do what is unpopular in order to secure the future of our state. When asked by Jon Ralston on *Face to Face* if the mining deductions were appropriate, Governor Sandoval simply said, "Well, it is the law." You are charged with being able to change the law, and you can decide whether it is appropriate or not. If you can say it is appropriate for an industry that makes as much money as mining does, to be allowed all the deductions it is allowed while businesses like gaming need to pay their fair

share, I think the voters deserve a thorough explanation from you. I do not see how you can find that fair or equitable.

It is never a good time to raise taxes, but it is always a good time to invest in our future. When the Nevada System of Higher Education is facing cuts at the levels being proposed, when the Clark County School District is being cut, yet we have an industry that can bring money into our economy to make sure these cuts are not as dire as needed, as citizens, we are stuck wondering why you are not doing that as assemblymen or as senators. A lot of students will be watching and looking at the decisions you make.

Chair Kirkpatrick:

Mr. Ayala, remember I said you must be respectful. The members of this Committee are working from 12 to 16 hours a day to address the needs of this state. I find it very disrespectful that you would think we are not doing otherwise. Please refrain from accusing us and telling us what we are not doing. You may finish your comments, but they must be respectful.

Alfonso Ayala:

I apologize. I did not mean to disrespect you. We all know you are working incredibly hard; I did not mean to suggest that you are not. I am simply saying that, as a voting constituent, I will be looking at the way votes pan out. I would like votes to go along with things that support me and other residents in southern Nevada.

Janet Carter, Optometrist, North Las Vegas, Nevada:

I am speaking in favor of A.B. 428 as a business person who does business in an area that is truly hurting. Something like 70 percent of the people I see in my practice every day are under the age of 18. Not only are they struggling with the economy; their families are struggling to find jobs. Many do not have jobs. The unemployment rate where I live must be 30 to 40 percent. The high school graduation rate in my practice's ZIP code is about 30 percent. The kids I see need support. Mining has a duty to the people of Nevada. They do benefit from our resources and they do have a duty to give back, and that is why I support this bill.

Chair Kirkpatrick:

Thank you, Ms. Carter and thank you for your comments. Is there anyone else who would like to testify in support?

P. Michael Murphy, representing Clark County:

We echo some of the other comments that have been made. At the same time, I would also like to thank Assemblywoman Pierce for bringing this bill forward.

I think Clark County would be remiss if we did not think that this is an issue that needs to be looked at, considering the financial straits we are in, and a conversation that needs to take place.

Jan Gilbert, representing Progressive Leadership Alliance of Nevada:

I want to raise two issues. If you look at the booklet provided earlier today, the Net Proceeds of Minerals Tax does not show up on the revenue chart. It is so small it does not even register on the pie chart. I know they pay sales tax, I know they pay the Modified Business Tax and they pay property tax, but that concerns me.

Although the \$81 million that would be added by this bill may not seem like a lot, it will affect our communities. There will be an additional \$81 million going to rural Nevada because it is about a 50/50 split, so Elko and Eureka will see an increase in their tax revenue too by passage of this bill. Also, if I were from southern Nevada, I would look at the population of the rural communities and the amount of money they are getting. Eureka County is the biggest place for gold mining; there are 1,900 people who live in that county. That is the newest figure. They get millions of dollars; that seems inequitable to me, and I am not from southern Nevada where most Nevadans live. I think we need to look not only at this bill, but at changing the *Constitution of the State of Nevada*, because that is in the *Constitution*. I would also urge you to look at the regulations of deductions, because you have it in statute, and then there is an elaborate list in the regulations that allows them to deduct a great number of things that you could change right now.

Cynthia Ryan, Private Citizen, Reno, Nevada:

I would like to respond to Assemblyman Ellison's comment concerning how much mining donates to education around the state. Of course they do. They would be crazy not to, because that is a well-known public relations tactic you can pull out of the hat during hearings like this.

A few years ago, I was prominently involved in searching for a missing multimillionaire aviator in the rugged wilderness of Nevada. After it was all said and done, a lot of us involved wondered if we had been given the whole story. Today, I am joining thousands of Nevadans searching for a little justice for multibillion dollar foreign mining corporations that are removing nonrenewable resources at record rates and at historic profits and apparently paying almost nothing to the state in return. Looking at how much mining pays to other states, such as Wyoming, I wonder if we have been getting the whole story from mining here.

During the good times when tourists were streaming into Nevada and the housing boom was in full swing, Nevada was just fine, apparently, being treated like a third world country by foreign mining concerns happy to ask for a modest 5 percent fee. Even Peru has talked about raising royalties beyond its current 1 to 3 percent, and Chile has already introduced amendments to increase mining royalties from 5 percent to 14 percent.

You might feel some sympathy for mining, but according to Mining Watch Canada, they will continue to go and effectively loot other countries, like the Democratic Republic of the Congo, for example, where I have some ties. Canada's Barrick Gold Corporation is the world's largest producer of gold, and in a 2005 Human Rights Watch report entitled *The Curse of Gold*, Barrick Gold and other mining companies were accused of making mining agreements in 2002 with two eastern Democratic Republic of Congo militias that had control of the mines. Both militias were in the midst of murdering hundreds of innocent civilians. In return for the gold mines, these same militias were given housing, trucks, and more. Incredibly, as highlighted by independent journalist and Congo expert . . .

Chair Kirkpatrick:

I am trying to have a fair hearing. If there is something you would like to submit as testimony, we can do that. I am trying to stick to testimony concerning section 1, the mining deductions, and section 2, the sunset.

Cynthia Ryan:

I am trying to say that mining, wherever they operate, is not always there looking out for the little people, and for this type of action, we in Nevada are willing to give them concessions and deductions? That hardly seems reasonable. Are these the kind of people we want to encourage and foster economic relationships with here in Nevada? Mining companies have been implicated in four times as many violations of corporate responsibility as mining companies from other countries. They have found an excellent home here in Nevada. They can treat Nevada like a third world country and yet there is only one Carlin Trend. It is unique in all the world. Mining has looked worldwide for other analogies and found none, and yet we sit here and continue to wring our hands and scrap our education system at the altar of mining. I would rather we support A.B. 428 and act like the world leader we profess to be. Since we are all in a belt-tightening mode, let us agree to say that mining should also tighten their belts and pay their fair share.

Chair Kirkpatrick:

Going forward, please direct your comments to the bill. If you have additional testimony or stories, they can be posted on our website, which will ensure our Committee members get it.

Elvira Diaz, Private Citizen, Reno, Nevada:

When people came to Mexico, they exchanged . . .

Chair Kirkpatrick:

Can you comment on the deductions in section 1 of the bill? A lot of people want to testify on both sides of this bill.

Elvira Diaz:

I would like the mining companies to support the economy of Nevada and to support education. I have two children, one in elementary school and one in the university. I would not want to have one child well educated and my little child only go part-time to kindergarten. This is a wonderful opportunity for the mines to support the economy. Our minerals cannot be replaced, so thank you for investing in Nevada, but this is your opportunity to share with us.

Chair Kirkpatrick:

Thank you; you can submit your testimony as well.

Jerry Purdy, Private Citizen, Nevada:

I am a retired engineer and a 50-year resident of Nevada who was born in Wyoming. I grew up with mining. The point I want to make is that this is not like weeds that keep growing in your yard every year. We have a fixed amount of mineral resources. It is a testimony to the massiveness of Nevada's mineral resources that after 150 years we can still be sitting here talking about this sort of thing.

I came out of Markleeville, California, where I worked in a silver mine. The thing that stuck in all our minds was that these mines live on past us in the form of great, massive holes after the minerals are gone. All you have to look at is a monster hole. If you got out to Yerington, you will see a tragic Superfund site. We are going to be stuck to clean those sites up, yet we are meeting here today wondering if we ought to try to get a bit more mineral taxes out of mining. I urge you to go ahead with A.B. 428 and benefit our kids.

Texas has one of the finest university systems in the world and the money they get off their oil revenues and other things finances their school system. The people who belong to the university health care system get free health care, and we here in Nevada do not get a darn thing. In Alaska, each resident

gets a check for a couple of thousand dollars, and here we are, last in the nation in schools. We understand where we are last in and how sad our state is as far as providing services to our citizens. I urge passage of Ms. Pierce's bill.

Chair Kirkpatrick:

Thank you, Mr. Purdy. I know you have additional comments that you can submit to the secretary and we will get them on the website. Can you tell me whether these same deductions were allowed in Wyoming? I really want to get back to the bill.

Jerry Purdy:

Wyoming is an awful lot like Nevada. It is a small state. They allow deductions. Our university is about the same size and stature as the one in Reno, but they have never gotten any great benefit from the amount of oil and resources such as the Teapot Dome. There is no real difference, because we never taxed like we should.

Vishnu Subramanian, representing Association of Federal, State, County, and Municipal Employees Local 4041:

We are in support of reducing mining deductions by 60 percent for companies that extract minerals from our state. We are in full support of A.B. 428 for all the reasons you have heard today. Fewer deductions mean more equitable shares paid by the mining companies to fund critical services in our state.

Chair Kirkpatrick:

Is there anyone else in northern Nevada who wants to testify in support of A.B. 428? We will now go to southern Nevada.

Aimee Riley, Private Citizen, Las Vegas, Nevada:

I am a student at the College of Southern Nevada (CSN) and Vice President of the CSN Capitol Club—our political organization. We are very much in support of this bill. This would be an investment toward more equitable funding for our state. We are particularly concerned about the state of our education system and the proposed cuts on the table. This is not the right direction.

I am also a single mother; I have a 13-year-old son who is in the Clark County School District. He struggles every day just to have the school supplies he needs. We are sharing the sacrifice. I would like mining to share the sacrifice as well. I support this bill very strongly.

Erin Neff, representing ProgressNow Nevada:

I would like to call attention to section 1 of the bill and all the deductions listed. This is an industry that has done everything possible to avoid paying its fair

share in Nevada. The amount of deductions added in recent years as the cost of gold has gone up is unbelievable to us. ProgressNow Nevada has roughly 23,000 members in the state. We are puzzled by these deductions. The 60 percent is beyond fair. We could find support among our membership to take that to 90 percent.

Chair Kirkpatrick:

Is there anyone else who would like to testify in support of A.B. 428? [There was no response.] Is there anyone who is neutral on the bill? [There was no response.] Will those in opposition, please come forward.

Tim Crowley, President, Nevada Mining Association:

I want to begin my testimony by making it clear that the Nevada Mining Association is not here to oppose new taxes. Our position on taxation is consistent. Mining would support new broad-based taxes should the Legislature and the Governor determine that they are necessary to balance the budget. We maintain this position, which was established in 1989, during the 2003 Legislative Session when we supported the Modified Business Tax, in 2009 when we supported the temporary increase in sales and payroll taxes, and we maintain it today.

When you talk about mining in Nevada, it is not about a handful of faceless corporations. The thousands of men and women who work in our industry are proud Nevadans, such as myself. They pay the same taxes all businesses pay, send their children to Nevada schools, and want the same quality of life. The industry values education and hires a highly educated workforce consisting of biologists, chemists, engineers, heavy equipment operators, geologists, mechanics, metallurgists, et cetera. Like you, these Nevadans are concerned about the fiscal health of the state in which we live. Nonetheless, singling out mining or any particular industry to pay more taxes is not a comprehensive solution to our state's fiscal issues.

Madam Chair, we oppose A.B. 428 for two primary reasons: It artificially inflates the value of our property in order to generate more revenue, a change no property tax payer would accept. Two, it further exacerbates the structural revenue issues that have been identified in many tax studies over the years. Increasing taxes on mining makes Nevada's structural tax problems worse.

Let me address the first reason in a little bit more detail. The Net Proceeds of Minerals Tax is a property tax on the minerals in the ground. It is not a tax on mining company income. As you know, the state does not have income taxes. It is not a tax on the products we ultimately manufacture like gold bullion, wallboard, or geothermal energy. Instead, the Net Proceeds of Minerals Tax is a

property tax on the minerals in the ground. Because of the speculative nature of the value of minerals in the ground, the tax is applied only if the mineral is extracted, and it is based on a calculation that simply takes the ultimate sales price and subtracts the cost to extract it from the ground. The result is what a willing buyer would pay a willing seller for that mineral while it is still in the ground. Once the established value of that mineral is determined, there are no deductions taken from that value.

I have handed you copies of my testimony, and I will also post it on NELIS for you along with an additional handout that further explains the Net Proceeds of Minerals Tax ([Exhibit M](#)). How to determine the value of the minerals in the ground is not easy. The Net Proceeds of Minerals Tax was developed as a mechanism to pinpoint the value of the resource. Assessed value of these minerals is determined by extracting the minerals, processing them, taking them to market, then subtracting or deducting those costs from the products. What is left is the true assessed value when it was originally in the ground. Again, these deductions only include costs necessary to get the minerals from the ground into a sellable product. The deductions specifically do not include company meetings, lobbying, testifying before this Committee, legal expenses, lodging, conferences, and moving expenses. Many of the deductions mentioned earlier are not allowable. The value of the minerals in the ground is directly tied to the value of the end products. As the commodity value of bullion—gold in the bar—increases, so does the value of the microscopic gold found in Nevada's land. Consequently, Net Proceeds of Minerals Tax contributions have increased five-fold over the past ten years. I have also furnished you with a chart showing this increase ([Exhibit M](#)).

Contrast the way our minerals are valued with other property. In the case of a commercial building, its value is determined by examining what it would cost to build it, less depreciation, sales values of comparable buildings, and the capitalization of income generated at that building. This process would not be effective for the minerals business. It is complete speculation what one willing buyer would pay a willing seller for minerals and for geothermal heat in the ground because the extent of the minerals, the cost to extract them and their commercial value are speculative and subject to world circumstances, including the value of the dollar.

Conversely, waiting until the yield from the ultimate sale of the products produced from these resources, whether it is bullion, wallboard, or renewable energy, and backing into the property value of the mineral that went into those products is the accurate appraisal method.

Let me switch to my second reason: it narrows the tax base. In addition to artificially inflating the value of our minerals, A.B. 428 narrows the tax base. Mining's opposition to single-industry taxes comes directly from several of the tax studies conducted in the past—the ones Jeremy Aguero referred to in previous hearings—done in 1960, in 1988, in 2002, and so on. Some would argue that mining supports this view to protect it from further taxation. That argument is not valid. Currently, mining pays all Nevada business taxes in addition to the Net Proceeds of Minerals Tax and would participate in future business taxes. What the studies have commonly revealed is that Nevada puts too many eggs in too few baskets. There are four industries that pay industry-specific taxes in addition to conventional business taxes: gaming, mining, banking, and insurance. One of the primary reasons the state has experienced a fiscal downturn currently is because gaming revenues, on which we depend highly, have done the unthinkable and declined. Fortunately, at the same time mining taxes have increased significantly, primarily due to the precipitous increase in gold value; however, mining represents only 3 percent of the state's gross domestic product (GDP). It is actually 5.5 percent of the state's GDP if you include the supply chain. Consequently, mining's increase in tax contributions cannot possibly offset gaming's losses. An industry that is only the twelfth-largest economic sector cannot make up for the losses from the number one industry in the state. I have also included an attachment that shows where we stand in GDP ([Exhibit N](#)).

Nevertheless, the mining industry's tax payment increases are still significant and noteworthy. In 2008, mining paid \$92 million in Net Proceeds of Minerals Taxes; in 2009 it paid \$98 million; in 2010 it paid \$125 million; and in 2011, we expect Net Proceeds of Minerals Tax contributions to exceed \$140 million. That is a very conservative number, and I would not doubt if it reaches \$160 million. These taxes are in addition to the \$100 million mining pays in other business taxes.

Further, putting a disproportionate share on mining—the classic boom and bust industry—contradicts all advice given by the previous studies. It is for these reasons we opposed both single-industry taxation and placing a greater, disproportionate reliance on mining. As it stands now, mining pays more per employee than any other Nevada industry. The industry pays more than \$18,500 per employee, which is more than three times the Nevada average of only \$5,500 per employee.

We oppose A.B. 428 because it would gut the assessment mechanism for our minerals and replace it with the state's first industry-specific income tax. Moreover, it would exacerbate the structural problems that exist in our revenue structure—an overreliance on just a few industries—industries that have proven

to be cyclical. Nevada mining is proud to participate in helping the state solve its fiscal issues. We have participated in budget deficit solutions in 2003, 2008, 2009, and last year during the 26th Special Session. We are putting Nevadans to work during record unemployment, and we are providing family-sustaining wages which help our employees to be more independent from many of the state's services. These wages are spent in Nevada and create additional economic benefit, and, most importantly, we are building for the future by investing billions in new projects. I have also included an attachment that shows many of the expansions and new mines coming online ([Exhibit O](#)).

Assemblyman Munford:

When you first extract that ore from the ground, that is basically what is being taxed. The property tax is based on the location of the mine and that dirt being removed. Then there is a process of many steps the dirt takes to reach gold bars that can be sold on the market. There are a lot of steps to reach that end product, correct?

Tim Crowley:

You have stated it very well. We are being taxed on the dirt in the ground that we are extracting. That dirt includes the minerals we are bringing to market. Pinpointing the value of that dirt and those minerals included in that dirt is complicated. The Net Proceeds of Minerals Tax is a mechanism for pinpointing that.

Assemblyman Munford:

There could be a lot of different minerals in that dirt—not only gold, but there might be silver, copper, and other minerals. Is that correct?

Tim Crowley:

Yes, sir, that is correct. What we initially produce are "doré" bars which include all the metals we have extracted from the mine, and they can include silver, gold, and copper in some cases.

Assemblyman Ellison:

The future of Nevada's mining is so important. Can you tell us about the tungsten in Humboldt County and the molybdenum mine that is coming on board in Eureka? Also, there was a statement about the big holes being left in the ground earlier. I do not think a lot of people realize that you have to put millions of dollars into preparing for the closure of these mines, the reclamation of these mines. Millions of dollars must be put aside in preparation for mine closures.

Tim Crowley:

We have included material in your packet ([Exhibit O](#)) that talks about many of the expansions. It is not comprehensive, but hits the high points concerning what mines are online and what existing mines are expanding. You have mentioned two mines that are exceptionally bullish to talk about because they are so important to our high standard of living. One is a lithium mine in Humboldt County. You may have been reading about it in the press. It is quite possibly one of the world's largest lithium deposits. Lithium currently is mined primarily in China, and it is used for battery technology. It also has some pharmaceutical applications, but the market is booming in the energy storage area, and Nevada is in a position to be a world leader in that field.

In Eureka County, General Moly is developing a molybdenum mine that has a proven reserve of about 44 years. It should come online in the next 12 months. Molybdenum is a steel fortifier. It helps reduce corrosion in steel, and the market for it is vast—everything from all the stainless steel you use in your daily life to windmill technology which is relying on it to build structures that can withstand high torque pressures.

Regarding reclamation, we have made incredible improvements in our reclamation programs over the past several decades, and the State of Nevada should be quite proud of its reclamation program. One key element to that program of returning the land to as pristine a state as possible is that you have to pay for that closure in advance. Before a mine can close, it has to submit a cash bond for closing that mine so that the cash is there and available to the State of Nevada to close that mine should an unforeseeable problem occur to that company. Right now, there is over \$1 billion in that cash bond.

Assemblywoman Neal:

In your introduction, you characterized Ms. Pierce's bill as a tax, but it actually is removing the deductions so that the 5 percent tax levied is more real. In your presentation, you mentioned my comment about housing and I want to clarify that. I received information from IRS Publications 551 and 535 that mining could deduct the cost of mine improvements and equipment and the costs for installation plus housing. The reason those items could be deducted was because those items are required to be maintained as part of the normal output of the mine. That was how the cost of housing was included because you can only take the deduction if the housing is being used to maintain the mine during the normal output from that mine.

The *Nevada Constitution*, in Article 10, Section 5, Subsection 1, reads "No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost." That made me curious. Once the identity of the

mineral is lost and it is turned into a product, are there any other investments associated with that now-existing product you receive revenue from?

Tim Crowley:

Regarding to your two questions, the first one pertained to the IRS code versus the Net Proceeds of Minerals Tax code. Those are two very distinct taxes. We pay federal income tax just as any business would, and in that case, the deductions include all day-to-day expenses—every expense incurred to do business are deductions. The Net Proceeds of Minerals Tax is a property tax, not an income tax, and we can only take the deductions that provide value and help pinpoint the value of that mineral in the ground.

As an example, if I were to sell an ounce of gold to you, would you buy it for \$1,450 today? You might say yes, because that is the trading value of it today. If I continue saying, "Wait a minute, that ounce of gold is microscopic and 1,000 feet under the ground," would you buy it? Perhaps, but you would not buy it until you calculated what it costs to extract it, process that dirt so you have an ounce of gold, and get it to a market where it can be exchanged. If those costs are less than \$1,450, you might agree to buy that ounce of gold from me, but you may only agree to give me X amount—the true value of the ounce of gold when it was in the ground. The deductions have a purpose in this case. They pinpoint the value of that ounce of gold in the ground. It applies to all minerals we extract in the state.

Chair Kirkpatrick:

Mr. Crowley, I do not want to speak for Ms. Neal, but the point she is trying to make is do you take 100 percent of these deductions on the state level and then deduct them at the federal level?

Tim Crowley:

I am going to guess, but yes, I believe those are costs of doing business and all the taxes we pay in Nevada are deductible from our federal income taxes.

Chair Kirkpatrick:

Could you start over with the question you had about the *Nevada Constitution*?

Assemblywoman Neal:

I looked at the report you gave in the Senate. It listed the deductions and laid out details of your expenditures. I started checking those off based on what are legitimate IRS deductions.

Chair Kirkpatrick:

Ms. Neal, what you have is from the Department of Taxation and not their list.

Assemblywoman Neal:

I do not know who created this list, but it was presented during discussion on the Net Proceeds of Minerals Tax in the Senate.

Tim Crowley:

I am familiar with the chart.

Assemblywoman Neal:

That is why I began to examine deductions allowed by the IRS and how this would hurt you if the deductions were removed or minimized. If the bill goes forward and the 40 percent was actually applied to you, I was trying to determine how it would hurt you. You are already able to reduce the costs on one end, because of the costs of doing business. Then the state is affording you some flexibility. I wanted a true examination of what you are actually paying out. How much profit is actually being realized by the industry?

Tim Crowley:

I have to go back to my opening comments in my testimony today—we are not opposed to taxation. What we are opposed to is taxing an industry disproportionately in addition to how we have been taxed. We would participate in a broad-based business tax solution that this legislative body comes up with. Those taxes would also be deductible on our federal income tax return.

Assemblywoman Neal:

Going back to the constitutional question, if the identity is lost, then the product is marketable in another form. Have you diversified? Do you have any investments in other types of companies that may be selling some streamlined form of the product you extracted from the earth?

Tim Crowley:

The simple answer is yes, but the easier way to look at that question is not by looking at the gold industry. We need to look at an industrial-minerals industry, for example gypsum. A gypsum miner mines that mineral and ultimately turns it into wallboard. At that point, that company becomes a wallboard manufacturer and vendor of wallboard. The first point of sale is where the deductions end. That is the value you take to back the deductions from. Everything beyond that point is essentially a different business venture.

Assemblyman Anderson:

I am concerned with every type of tax. Is it fair to the state as a whole or not? I understand any one industry not wanting to be singled out, but it should not just be one industry. Whether this bill passes or not, it is not going to

completely fill the entire deficit, but I am concerned about fairness. What do other jurisdictions take? When you are doing business in other states or countries, what does the mining industry pay, and do they allow deductions as Nevada does?

Tim Crowley:

The simplest way to show you what is occurring in other states is to look at a study we conducted last year. It takes the financials of a hypothetical mine and places it in different states around the West and measures its tax obligations if that same mine were located in Wyoming, or Arizona, or Alaska. If you compare mining-specific taxes with mining-specific taxes, Nevada comes out low. But if you factor in the entire tax obligation of those states, we rise to the top, and I will submit that study to this Committee. It is posted on our website as well.

Chair Kirkpatrick:

There are still five people signed up to testify. Is there anything new or different you want to contribute, otherwise I would like you to start answering some additional questions.

James Wadhams, representing Newmont Mining Company:

As a lawyer, I was going to discuss the text of this bill rather than the larger context we have been hearing about. I will try to be brief, but a couple of points will respond to some of the questions and the content of the bill itself.

It is important to make a distinction, however uncomfortable it might be, but it is a distinction this Committee can certainly understand—concerning the different forms of taxation. Your two major witnesses earlier—Jeremy Aguero and Luke Martel from the National Conference of State Legislatures (NCSL)—talked about different kinds of taxes. It is going to be important to make the distinction between the property tax obligation and an income tax obligation. Assemblywoman Neal's question was concerned with the federal income tax. If the state had an income tax, that would be an obligation of the mining companies as well; however, Nevada does not. The Net Proceeds of Minerals Tax, as Mr. Crowley has explained, is a property tax. The effect of A.B. 428 is to change the method of determining the taxable value of that dirt. In the simplest sense, when you reduce the deductions by 60 percent, you artificially increase the value beyond what someone would pay. To use Mr. Crowley's example, if he offered Assemblywoman Neal a pile of dirt and assured her there was an ounce of gold in it, she is going to calculate what it is going to cost to get that gold out of that pile of dirt so she can sell that ounce of gold and make a ring out of it for \$1,450. That is why those deductions appear; it is not an income tax, it is simply the method any person would use to

ascertain what it would cost to get the gold out of that dirt and turn it into a ring. It is a property tax. If you change those deductions, if you reduce them, it suggests that property is more valuable than a willing buyer would pay a willing seller. Or, as the Supreme Court of Nevada has said, what a creditor would take from a debtor for the value of that property.

In discussing this particular tax, the Nevada Supreme Court has said that it is evident that when the ore is taken out of the mine it is not worth what it will yield. If the mineral will only yield \$20 per ton and it costs \$20 to haul it to the mill and have it worked, it is really worth nothing. Those are the words of the Nevada Supreme Court and I would be happy to give staff the citation to that case. That statement has been repeated several times. The problem is not whether we can pay more or whether we are profitable, it really is a question is what form that tax should take if this Committee decides to do it.

Assemblywoman Benitez-Thompson:

As I look through the deductions, I am trying to get a feel for mining deductions as compared with those for a retail business. What are royalties, and how are they defined for the mining industry? Mr. Crowley mentioned royalties paid to claim holders which are taxable to the recipient. Could you speak a little more about what those royalties are and how those deductions are made?

James Wadhams:

Under the current system, after the 26th Special Session, we required the mining companies to pay the tax not only that they owe, but to pay the tax the royalty holders ultimately owed. Prior to that prepayment mechanism, the royalty holders filed with the state Department of Taxation and paid the tax directly to the state on the amount of money they received from the royalty. The royalty is a payment that the operator or leaseholder of a property pays to the landlord. If you add the two together—the royalty paid to, say Mr. Smith, and the tax paid by Mr. Jones—that would be a complete tax on the entire ore. Under our current system, the mining companies pay it on behalf of the royalty holders and get it back from them. Absent that, the Department of Taxation sends a bill to both the mine operator and to the royalty holder.

Assemblywoman Flores:

The bulk of the argument against this bill is that it is industry-specific. Most people would agree that a broad-based tax is generally good tax policy and industry-specific is not. You also say you are not opposed to paying taxes, so has your industry taken a position on what an acceptable level of taxes would be? You apparently think a 60 percent deduction is too much, so what level of deduction is okay with you? What would make this bill okay with you if it were coupled with a broad-based solution?

Tim Crowley:

One of our key points of opposition to this bill is if you were take any percentage away from the deductions that are allowed, you would artificially inflate the value of our property. In the example I gave to Ms. Neal, if you were to remove 60 percent or 10 percent of those costs that she would have to incur to make that ounce of gold that is microscopic in the ground into a bar, the value of that ounce of gold in the ground has just been inflated. Its value is inaccurate and she could not possibly make a fair transaction at that point. So there is a legal argument against it in addition to our argument that we do not believe we should be singled out in any fashion.

Assemblywoman Flores:

I think you said that no deduction would be appropriate and therefore that nothing in this bill would be appropriate. Have you taken a position in terms of what you believe is your fair share? You have said you are not opposed to paying taxes so have you taken a position on how much, what percentage, or what type of tax you can pay?

Tim Crowley:

We have and we are reluctant to say it into the microphone. I was here working for the gaming industry in 2003 when mining and gaming formed an alliance and supported the gross receipts tax. We were able to support that tax, but it did not pass. We were able to support the unified business tax which came out of those negotiations, but it did not pass. We ultimately supported the Modified Business Tax. That is one example of broad-based taxes we backed in the past.

Assemblyman Livermore:

Mr. Crowley, what is mining's Nevada payroll? What is the average hourly salary paid by mining, and what are the mining industry's employment numbers in Nevada?

Tim Crowley:

I will have to look up the answer to question number 1, but in answer to question number 2, on average, mine employees who work directly for the mines make \$80,000 plus very good benefits a year. These are family-sustaining wages, and they apply to 12,000 Nevadans in the state who work directly for the mines. There are an additional 38,000 people who work in the supply chain for the mining industry.

Chair Kirkpatrick:

I want to ask specifically about the deductions, because I understand the deduction for extraction. You truly are taking a risk trying to find the right spot

to get your minerals. I understand the deduction for transportation, because that is a huge cost that must be factored in. You must move your product once you get it. Transportation costs have tripled in the last year and a half for the industry I work in—whether by rail or by truck. I understand the deduction for reduction and refining so you can get down to the product you want. I struggle with deductions for marketing and delivery of the product. I do not get to write off my marketing expenses. It is my job to go out and sell my product, so I struggle with deducting marketing expenses. What specifically are you deducting as a marketing expense? This Committee needs a little more detail. Marketing in my opinion involves going out and selling your product. Volunteer groups and PTAs do not get to deduct marketing expenses.

I am not sure what the difference would be between delivering a product and the transportation expense. Could you specifically tell me the difference? I am also wondering about deductions for maintenance and repair. Does maintenance have to do with the rigs you use or maintenance of the mines? I think both sides have spent a lot of time today defending why one side should pay more or one side should not, but I do not think we discussed in depth what these deductions mean. What are they? I also struggle with the deduction for fire insurance. Local government is the first to complain that they must provide fire services to a lot of these mines. If they have to provide fire services to geothermal mining, because you are all taxed the same way, why are you deducting it if local governments are saying they must pay for fire services?

I understand depreciation, because we get depreciation on our property taxes on our homes. Concerning royalties, I think there needs to be more discussion on specifically what is being deducted. I know we have spent two hours on this issue, but for me, that is the crux of the discussion here today.

Concerning section 2 and having your industry pay taxes forward, I am a little bit nervous about that. At some time we are going to get caught in a situation, and I may not be sitting here, but a lot of you on this Committee might be. You will have to figure out what to do when we are \$107 million short because it has already been paid. If we are going to ask you to pay it forward all the time, we need to make that policy decision. I do not agree with removing the sunset for another two years either; in or out, pay more or not. I want to hear about these specific deductions. This is *Nevada Revised Statutes* 362.120, the most important piece concerning how the net proceeds tax works. Let us talk about it.

Tim Crowley:

It is important to remember that what we are being taxed on is the value of those minerals in the ground. I would like to go back to the example I gave to

Assemblywoman Neal. If I am going to sell her one ounce of gold, she has to calculate the costs to get that ounce of gold.

Chair Kirkpatrick:

I understand that part. I want to know what marketing and delivery of the product are. I want to get to the crux of the discussion.

Tim Crowley:

Marketing and transportation are written side by side in that sentence because they are essentially synonymous. Marketing refers to getting the minerals to market. They do not include, and we cannot take deductions for, my public relations efforts such as the "Mining, It Works For Nevada" slogan on bumper stickers.

Chair Kirkpatrick:

So is marketing playing the commodities market?

Tim Crowley:

It is to the first point of sale and that is it. Beyond that, where the mineral goes, and where the product goes from there, is a different calculation not included as a marketing cost. If Assemblywoman Neal had said that she wanted to buy that ounce of gold, she cannot get that without paying the claim holder a royalty. She cannot get that ounce of gold without buying insurance, posting a bond, and doing all those things.

Chair Kirkpatrick:

If there are specific definitions used by the Nevada Tax Commission, that would be helpful, because they are not clear in the statute. We say this all the time, when we put words in statute, people assume it means one thing or another. I understand that you have to buy fire insurance, but in my business, I have to buy fire insurance, too to be certain my product is protected until I can sell it. If the definition is something different, we should be discussing it.

Assemblywoman Benitez-Thompson:

Referring again to your testimony in the Senate last week when you were talking about deductions for producing a sellable product you advertise, I guess I am still confused about how you define marketing.

Tim Crowley:

I appreciate you bringing that question up, because there has been a lot of confusion caused by the chart produced by the state. It is accurate information, but please note that some items in the list have asterisks by them. The items

with asterisks by them are specifically not deductible and they have been discussed.

Chair Kirkpatrick:

But advertising does not have an asterisk.

Assemblywoman Benitez-Thompson:

I am being sincere in trying to understand this.

Tim Crowley:

We do not take a deduction for the advertising I do—the banner ads I prepare. We only deduct the items that are essential in getting that ounce from a microscopic piece to a gold bar. If it does not pass that litmus test, it is not deductible.

Assemblyman Goedhart:

The existing Net Proceeds of Minerals Tax is currently the law of the land, but if we arbitrarily disallow a percentage of allowable deductions, we have, in effect, deviated from a net proceeds tax. This would arbitrarily change the value of materials in the ground without regard to the value placed on them by current commodity markets. In my mind, this raises constitutional questions.

James Wadhams:

I will use a different example. Let us say I have a used car sitting in southern California and Mr. Goedhart is interested in buying it. There is no question about the value, because we looked at < www.edmunds.com > and saw that it was worth \$1,500. I say, "You owe me \$1,500, will you take that car?" He is going to scratch his head and say that he has to go to southern California to get it, which will either cost a tank of gas or an airline ticket. If I only allow him 40 percent of that against my debt, he is not going to take that to satisfy his debt. That is what this bill does. It artificially increases the value of that car beyond what it would be worth to him to get it. It is the same example Mr. Crowley gave, in another way, to Assemblywoman Neal.

Under the property tax in the *Nevada Constitution* that protects all of us, it is that phrase called "just valuation." The *Constitution*, passed by the people, protects all of us from having our houses valued at \$200 a square foot when they are only worth \$67 a square foot. That is the same concept that is buried in this bill—we will jack up the value of houses to get more property taxes from people. At some point, you must ask what that car is really worth to someone who is going to buy it and get it from southern California.

Assemblyman Ellison:

Let us look at the purchase of Fronteer Gold Inc. It was a property between Wendover and Wells, Nevada, which was purchased by investment from outside Nevada at about \$2 billion. What is it going to cost to get that first ounce of gold out of the ground?

James Wadhams:

I would hate to give you a hypothetical, but it will takes years to get to it, and then it will cost tens of millions of dollars because the facilities must be built to extract it, to refine it, to reduce it, to transport it. There will be millions and millions of dollars spent before the first ounce is returned.

By the way, it is important to note that the statute we live under today does not allow those deductions to build up. The statute today only allows deductions for the costs actually occurring in the year the mineral is extracted and sold as a commercial product. Those companies will be investing tens of millions of dollars that will have no property tax value to them.

Assemblyman Ellison:

Could you comment on the deduction for fire protection?

James Wadhams:

Part of the example of fire insurance is the example I gave Mr. Goedhart. If he decides that he is not going to go to southern California to get that car, he is going to hire someone to get it. That person is going to quote him a price that will build in all that person's cost. That person would be a broker, and what would that broker include? So the concept behind this is if I contract with someone to do this, the statute and the regulations require that it be commercially reasonable. You cannot just go jack up that fee and get a bigger deduction. It has to be an open-market deal, but that person who is going to go get the car is going to build in a piece of the wear and tear on his tires, a piece for his time, a piece for his car insurance, so fire insurance is part of the expense of the extractive operation. If it burns down, it must be rebuilt.

Chair Kirkpatrick:

My Committee has been here since 8 a.m. this morning, so I told them they could get lunch.

Assemblyman Anderson:

I want to follow up on what "net proceeds" mean. I take net proceeds as written to mean this is how much it cost me to do it and this is how much I made from it. When I see the phrase "net proceeds of minerals" I am

wondering how much it cost to produce that mineral and how much am I getting for it. Are not these deductions above and beyond that?

James Wadhams:

There could be two taxes; in fact there are. There is a federal tax that will tax my income, and then there is the state tax that taxes the value of the property. I am going to be paying two taxes in this transaction. There has been discussion in prior sessions that I should pay three taxes—there should be a state income tax as well.

I have an article from the *Las Vegas Sun* about the change in the value of property, and it is about our major commercial property holders in southern Nevada—from the Focus Commercial Group to the Focus Property Group to the casinos, to the utilities—and it talks about \$12.5 billion being lost. How did that happen? The buildings are still standing. It is because the income-generating capacity of those activities has been reduced, so property values can rise and fall depending on the economic activity. It does not make the property taxes on our businesses an income tax because we use income to calculate them. Neither does that make the property tax on the mineral an income tax because there are deductions and expenses in order to arrive at that value.

Tim Crowley:

There is a distinction between your daily cash costs and the deductions that are allowed to calculate the value of your minerals. The cash costs are the day-to-day costs and include turning the lights on and paying payroll. Some of those cash costs may not be deductible. It is just items that get a business through its day and do not include any amortized debt incurred building the facility. They do not include any costs incurred to build future facilities or for closure. They are day-to-day costs and are distinct from the costs it takes to calculate the essential function of getting that ounce of gold from the ground to the first point of sale.

Assemblyman Anderson:

I understand that there are all kinds of costs related to business. We all understand that, but when I read the *Constitution* it says, "net proceeds of minerals." Is infrastructure a mineral? It costs a certain amount per ounce to extract a mineral, and then the producer receives a certain amount for that mineral. The infrastructure is above and beyond that standard, is it not?

Tim Crowley:

Much of that infrastructure is an essential component of getting that mineral into the market. If that infrastructure did not exist, that ounce of gold would be

valueless. Without building that infrastructure, Assemblywoman Neal would not pay anything for that ounce of gold in the ground. It would be valueless; but if it required that she build facilities to get it, she would build them and incur those costs, providing value to that mineral. That is how it becomes valuable.

Assemblywoman Benitez-Thompson:

If you can build a widget and you can build it better than anyone else, I want you to make money off it. If you can pull a widget out of the ground and make money off it, great. What we are debating here is how liberal some of these deductions and write-offs are. It is hard to make the argument that a lot of what you must do to get a mineral out of the ground and get it to market is unique to your industry. That is an argument that can be applied to almost every industry. If you are a farmer and you put a seed in the ground, it takes a great deal of time and investment to turn that seed into corn and get it to market. If you deal in plastics, you take a polymer and add a lot of time and money and marketing dollars, traveling, business, selling expenses, severance packages and consulting fees. I just have trouble understanding how a lot of these are unique to your industry in terms of getting your product from a raw substance to something that can be sold and bought by a consumer, and that is the conversation I am most interested in having.

Tim Crowley:

We are valuing the mineral in the ground. Other businesses also pay property taxes, albeit they pay those taxes at the county maximum of no more than 3.64 percent and not at 5 percent. They also go through an appraisal to figure out what the value of their property is. That appraisal method might give credit to the infrastructure they built because it generates revenue. If you were to build a 7-Eleven store on a corner, but it generates no income, it is going to be appraised and valued at less than a 7-Eleven store that is built on the Las Vegas Strip. The efforts that went into that and the location actually have an impact on the value. If you compare that to a mineral, you could not take a conventional appraiser and say that we know there is value under the ground and ask him to estimate what that value is without figuring out what the value will ultimately yield and what the costs are in between.

James Wadhams:

I would like to follow up on Ms. Benitez-Thompson's question because it gets to the crux of the problem. We are not talking about income; we are trying to figure out how much that property is worth. When this whole system was started, they were talking about financing the state using the property tax. The same kinds of questions you are asking today were asked in the constitutional conventions in 1863 and 1864—how do we figure out how much this is worth? Is it what the investors are paying those people in the Comstock to invest in

that property? Is it what we just guess it is? Is it \$1 a foot? They debated this for weeks and weeks and came to the conclusion it is worth what it ends up being worth, because the county assessor cannot go stand on Mr. Crowley's ranch, say, "We hear there is gold underneath this ground and we are going to tax you \$1 million." No property owner is going to agree to that. He is going to ask how that figure was arrived at. If you do not use this method, the question will be how else do we do it? Do we guess?

Your Chair has been saying that we should look at the deductions. Is that really how someone would arrive at this conclusion? I realize you have to dig the hole, and then you are going to have to rent a truck, build a big mill and crush the ore. It is a big effort. I thought about bringing a stage prop: I thought about bringing my one-quarter ounce gold ring and the equivalent amount of rock to get to that amount of gold. It would be bigger than this room. That is literally the question—how much does it cost to get this amount of gold out of ten tons of rock. It is going to cost a lot of money, so what is it worth to the county, to the taxpayer, to the state? It is not worth \$1450; it is worth something less than that. Maybe we need to take the time to go through each of these deductions and analyze them and say, "Okay, digging a hole is good." Advertising: I do not know a mining company that advertises because they are not selling diamond rings, they are just selling the resource to a refiner.

Chair Kirkpatrick:

Maybe we need to take make it very clear that it does not mean advertising. If your industry is not advertising, maybe that is the easiest way to do this, and that is why I want to get back to discussing the deductions.

From a southern Nevada perspective, they do not understand mining. There is one gypsum mine in southern Nevada that most people know about, period. I used to tell my constituents that if gaming gets a cough, the entire state is going to get a cold, and we have seen that happen. So from my perspective and to educate my constituents who hear and see that mining can deduct their computers, advertising, accounting, we have to be able to figure out what the difference is between their small business struggling to keep their doors open right now and this business. Maybe the wording is wrong. Do other states give 100 percent deductions at the same time? Is there anything different? In 1988 when this was talked about, were all these deductions in place? I would be curious as to how they have been used. I do not remember seeing that in the *Constitution* in 1988. I want to get back to that because that is the crux of this bill. I think we have had a great education about mining for all the people who are new, but this is only the first of many questions you should have as you go forward. If you are going to write policy, you should take the time to learn and see the mines for yourselves. For myself, I want to get back to the meaning of

the deductions and how long they have been in place. Is there a different wording we need?

James Wadhams:

If your recommendation is to have the Department of Taxation walk through the statute and the regulations, while I think some confusion has been created by their chart, I can assure you, because I have been in these discussions, they take a very narrow view of what these deductions are. That does not suggest that the Committee might not take a narrower view, but it may provide you with the additional education you are looking for.

Chair Kirkpatrick:

We do not have the time for that. I want you to explain the specific deductions to me. I know what extraction means. I know what transportation and reduction mean, but I have trouble with marketing, maintenance, and insurance. Those are the three I have trouble with.

Jim Crowley:

Joining us at the witness table is Curtis Cadwell who is in the accounting department of Barrick Gold Corporation of North America.

Chair Kirkpatrick:

Before you start, at some time during your presentation, I would like to know how to contact your corporate offices in Nevada.

Curtis J. Cadwell, Regional Controller, Barrick Gold Corporation of North America, Inc.:

Marketing is an extremely minimal part of our business. It is less than 1 percent of our total cost. There is no advertising. Back in the 1800s, the mine, the process facility, and the ultimate place where you ended up with your saleable product were not typically in the same location. Marketing would have involved finding someone to ship the product to who could get a saleable product, so they had to contact different refineries and smelters. The company would mine the ore, reduce it to a certain amount—concentrate it—and then market that concentrate. In today's gold mining world, we basically get down to a doré bar. The corporate office generally does all the selling, so there are no marketing or selling costs. The only cost we have is the shipping. There are no refiners in Nevada. They are in Utah, Europe, and Africa, so that involves airfare for about 100 tons a year. We mine hundreds of millions of tons of ore to get 100 tons of gold doré bars that are shipped off-site, so total marketing, refining, and freight expense for Barrick totals \$3 million to \$5 million a year out of a total of \$2 billion in costs.

Chair Kirkpatrick:

Tell us about transportation, marketing, and delivery of products. I sell food to the food service industry, so I understand commodities. At the same time, I have my own expenses involved in getting my product from market, which is Europe, to the end user, the hotel. How is that consistent with the marketing and delivery of a product? By no means am I stupid concerning how a business works, but I am having a hard time understanding marketing and delivering a product, so you need to use a different word. To me, marketing means selling my products.

Curtis Cadwell:

There is no marketing expense for us in effect. The costs are refining and freight, and the freight expense is 30 cents or 40 cents an ounce. Most gold is cleared globally in London, so we typically pay 30 cents or 40 cents an ounce to get our gold to London where it ultimately clears, and we sell it to trading banks. Refiners take it to Italy, the Far East, and Middle East, where there is a lot more gold consumption than there is in the states.

Chair Kirkpatrick:

Cheese is sold on a rail car. There is one big market for cheese and we watch it weekly. When it gets to market, people start bidding on it. You buy the product, buy that one rail car, and then you can set the tone for what everyone else will pay for it. I believe that is how your industry works as well, because it is a commodity and you have to get it to your market, and then you need to find those additional buyers before you actually make your profit, correct?

Curtis Cadwell:

There is a spot gold market. If we have 500,000 ounces to sell, we find a counterparty. It is pretty straightforward. Gold is a little bit different in that there is a standard form of delivery in gold. They call it a "4-9s" bar—that means the bar is 0.9999 percent gold. Most gold in the world is traded in that form, so there is no differentiation. Once you have a 4-9s bar, it is good anywhere.

Chair Kirkpatrick:

Because the company you work for does not necessarily use the marketing deduction, there may be other industry representatives that do. Mr. Wadhams, does Newmont take that deduction?

James Wadhams:

I do not believe Newmont uses any deduction for advertising whatsoever.

Chair Kirkpatrick:

I just want to get a clear definition of what marketing and delivery of product mean because that is the definition used within NRS 360.120. I want to be clear on the industry's definition of those terms. If we have to address this through the Tax Commission to clear it up, I am okay with that. It may be that future legislators will decide to define these terms

Curtis Cadwell:

Gold and silver are very specific. When you get into copper, there may be a marketing cost. We ran a mine in Canada that smelted product and the concentrate came out with gold, silver, copper, and lots of other base metals. There was actually a marketing group in Vancouver that had to deal with smelters in Japan and northern Canada to get that product sold. When you are talking specifically about a gold mine that might have some silver and they produce a doré bar, the costs of marketing, freight, refining, et cetera, are less than \$1 an ounce—a very small number.

Assemblyman Munford:

You said you extract 100 tons of dirt from your mines?

Curtis Cadwell:

I will give you an example of one of the mines. The Goldstrike property, the biggest mine Barrick has in northern Nevada, mines 130 to 140 million tons of material in a year.

Assemblyman Munford:

How deep are you down?

Curtis Cadwell:

We are down 1,200 to 1,300 feet into the ground in an open pit. We only process 8 million or 9 million tons of that 130 million tons. Out of that entire process comes about 100 tons of gold and silver.

Assemblyman Munford:

Do you put it on a truck?

Curtis Cadwell:

Armored carrier.

Assemblyman Munford:

It goes to your processing plants and you say there are none in Nevada?

Curtis Cadwell:

There are some smaller ones that deal in a more unrefined product, but the only refineries that deal with a product of the kind we generally mine here are in Utah, Canada, Australia, and in Europe. There is only a handful scattered throughout the world.

Assemblyman Munford:

And the finished bar is handled by the banks that sell it for you, is that correct?

Curtis Cadwell:

Yes.

Assemblyman Munford:

These are banks all over the world that you have contacts with?

Curtis Cadwell:

Correct. To get really technical, Barrick sells all our gold to our banking group in the Barbados, so ours is really straightforward. We ship it, and today's spot price is \$1,450 an ounce, so that is the sales proceeds, and they deal with it after that. Our part in Nevada is simplified to a large degree.

Assemblywoman Flores:

I want to make a quick point with regard to the deduction we have been talking about. I found a report from the Department of Taxation the Chair sent out earlier. It gives a breakdown on marketing costs by the industry for 2009. Marketing expense was about \$20 million for 2009; that is a significant number.

Curtis Cadwell:

For the entire industry?

Assemblywoman Flores:

For the entire industry, the expense for gold was \$13.3 million. That is a significant number.

Chair Kirkpatrick:

Let us go to the next deduction—maintenance and repairs.

Curtis Cadwell:

That is the cost of labor, pieces, parts, and anything required to maintain the haulage fleet. We run 300-ton trucks, large electric shovels, and the process facilities. The process facilities cost hundreds of millions of dollars. You are grinding hard rock into what is basically a talcum-powder consistency, so there

is a lot of wear and tear on that equipment. When you are grinding those rocks, you get wear parts throughout that process facility that need to be replaced fairly regularly every three months, six months, or even on a monthly basis. The haul trucks run in a very dirty environment, sometimes in the mud and snow, and those pieces of equipment are running 24 hours a day, 7 days a week, 365 days a year, so they require quite a bit of maintenance. The expense for maintenance and repair is the cost of the labor and parts to keep the fleets rolling and to keep the process facilities running so we can continue to produce gold.

Chair Kirkpatrick:

I have seen your equipment, and it is huge. I am sure you have to buy those pieces of equipment fairly often, especially if you are very busy, is that correct?

Curtis Cadwell:

Typically, the equipment—the open pit mining gear—lasts about ten years. The process facilities can last the entire life of the mine.

Chair Kirkpatrick:

In the State of Nevada, do you get a sales tax exemption for those equipment purchases?

Curtis Cadwell:

We do not.

Chair Kirkpatrick:

Is the depreciation on the equipment as well as on the maintenance and the repairs? Do you license them?

Curtis Cadwell:

The depreciation for the mining equipment is ten years by statute. If we paid \$3 million for a haul truck, we deduct \$300,000 a year for that truck. The maintenance and repairs are expensed as incurred. It is fairly routine, and over time it is fairly constant, so it is fairly representative from period to period and matches up fairly well on a useful-life basis.

Chair Kirkpatrick:

If equipment is not maintained, are those deductions going to be higher? Is that ever factored into it? I think that is important. I drive a nine-year-old car because my husband is the boss, and I take very good care of it because I know I am not going to get a new one until it has been ten years. What is the protocol within the mining companies? If I got to deduct everything on my car, I could have some fun.

Curtis Cadwell:

That is not how we do it. There is a very rigid preventative maintenance schedule. Most of these pieces of equipment are inspected and cleaned up every 250 hours. The biggest reason is that if you do not maintain the equipment, you are going to lose productivity. If we cannot process 100,000 tons of ore through a mill, for example, we are going to lose out on 15,000 ounces of gold. So the expense of deferring maintenance is going to lose us so much revenue that we cannot afford to be flippant about maintenance; we must be on top of it.

Chair Kirkpatrick:

Hypothetically, what would be a typical amount spent on maintenance and repairs in a year? It probably differs depending on how busy you are or how small you are.

Curtis Cadwell:

It is going to depend on the size of the fleet. Some of our mines have 10 small haul trucks, other sites have 40 large ones. The way I have looked at it in the past is, over a four-, five-, or six-year period, you are going to spend almost as much in maintenance on a piece of equipment as you did for the original cost of that piece of equipment. If you have a piece of equipment that lives for 12 years, over that 12-year period, you might spend twice as much as you paid for it on maintenance. Twelve years equates to running it 100,000 hours. Unlike the car you drive that might be driven an average of an hour a day, these things are meant to run 20 to 22 hours a day, so they require a lot of maintenance.

Chair Kirkpatrick:

That more than likely employs about three people I am pretty sure.

Assemblyman Munford:

How much equipment do you lease?

Curtis Cadwell:

We have leased in the past, but everything we have now, for the most part, is 100 percent owned. Because of the way the statute is written for the Net Proceeds of Minerals Tax, we remove the leasing cost and amortize the equipment over its life. We treat it like a capital lease in effect, as though we bought it, to be consistent with statute.

Chair Kirkpatrick:

What is so different about the fire insurance you are deducting? I must have fire insurance on my house if I want to replace it if it burns down; I must have flood insurance. Why is your fire insurance any different from mine?

Curtis Cadwell:

I struggle with that one myself. It is just written into the statute. We pay liability insurance, but in general at a large site we spend \$10 million or \$12 million for insurance and how we come up with the fire insurance part of it, which is basically what we consider property insurance, it is just insurance against loss due to fire. The environment in these places is very hot. The shovels catch on fire. The plants have very hot material running through them so they occasionally will have fires. We usually go back to the insurance carrier and ask what percentage of our total insurance is for property damage, which is basically fire insurance, and come up with that number.

Like the marketing and refining numbers, it tends to be very small. Ms. Flores mentioned \$33 million, but I always speak in relative terms. When the total deductions are \$4 billion, \$33 million is less than 1 percent. Fire insurance may be in that same realm; it is not going to be big and it is mainly the property insurance.

Chair Kirkpatrick:

What is it going to take to get your corporate headquarters here? My constituents could swallow this more easily if they knew the corporate headquarters were here. I would bet that you have to decide what the best interests of your company are because you handle the money. I want to hear that Nevada is on the map for a possible move in the future.

Curtis Cadwell:

There are huge tax implications for a corporate office to move out of its home jurisdiction. They have talked about moving to the United States but it is a \$1 billion tax issue. It would cost an inordinate amount of money to relocate a corporate headquarters.

Chair Kirkpatrick:

We are pretty good about letting you phase-in in our state.

Tim Crowley:

I would like to point out that Barrick Gold Corporation does employ over 4,000 Nevadans in the State of Nevada. They have a regional headquarters in Salt Lake City that employs another 200, so the vast majority of their U.S. employees are in Nevada.

Chair Kirkpatrick:

Thank you. I would like to add that it is important you follow up with the rest of our Committee members as we continue with this session.

Tim Crowley:

Madam Chair, I would like to introduce Kelvin Buchanan who is with a company called Isabella/Pearl, a smaller development company. He came prepared with some remarks. In the interest of time, we will submit those.

Kelvin Buchanan, President, HB Engineering Group, Reno; and Project Manager, Isabella/Pearl Mining LLC, Mineral County, Nevada:

The Isabella/Pearl project is an advanced gold mining project located in Mineral County and is presently in the permit review stage. The Stillwater Field Office of the Bureau of Land Management (BLM) presented the details of the project to the Mineral County Board of Commissioners on March 4, 2011. The BLM has made this presentation available to the public on their website and has begun a 30-day review and request for public input. Any comments received will assist the BLM during project planning and in complying with the National Environmental Policy Act. Isabella/Pearl is a private company. They have been a client of my company for eight years. In addition to my services, they have employed drilling firms from Elko and Yerington, and several engineering, geology, and metallurgical firms from the Reno and Sparks area. My firm is responsible for the client's accounting, and we can state that during the last eight years, 90 percent to 95 percent of all expenses are for individuals and corporations domiciled in Nevada. The remaining expenses are federal.

Isabella/Pearl, as a private company, will need to go to the capital markets to raise money to put this property into production. They cannot use equity financing like a publicly traded company. The markets like to know what the rules are. Under the present rules, this project will be profitable and will create 125 to 150 high-paying jobs in Mineral County. Mineral County has about 3,000 people, and Jerrie Tipton, a Mineral County Commissioner, tells me that Mineral County is currently suffering from a 30 percent unemployment rate.

The Net Proceeds of Mines Tax is presently 5 percent. Under A.B. 428, the definition of net proceeds would change to become a hybrid of net proceeds and gross proceeds. Elimination of most costs relating to the extraction of minerals at the mine site would likely doom the Isabella/Pearl mining project. Mineral County would lose a source of revenue, the present employment of firms in Nevada would cease, and the project would be put on hold until the issue of A.B. 428 was resolved. This project was drilled in 1987 and 1988, so it has been put on hold for a long time.

Chair Kirkpatrick:

Ms. Pierce, do you have any last comments?

Assemblywoman Pierce:

Mr. Goedhart suggested that any adjustment in deductions would be unconstitutional. The truth is that most of these deductions are less than 25 years old. These deductions were not there when the *Constitution* was written; they were not there for a very long time after the *Constitution* was written. I did look at a way to craft this legislation so that essentially these deductions would become meaningless and no longer be available. If Mr. Goedhart would like to explore that with me in terms of amending this legislation so we do not have to worry about whether any of these deductions are useful or should be included, I would be very happy to explore that.

Chair Kirkpatrick:

Thank you, Ms. Pierce. We will now close the hearing on A.B. 428. Is there any public comment? [There was none.] Seeing that, we are adjourned [at 1:03 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Recording Secretary

RESPECTFULLY SUBMITTED:

Terry Horgan
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: April 7, 2011

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 392	C	Assemblyman McArthur	Bill Explanation
	D	Jeremy Aguero	"Analysis of Nevada Revenue Alternatives" Matrix
	E	Luke Martel	PowerPoint Titled "State Revenue Changes"
	F	Luke Martel	<i>State Tax Actions 2009</i>
	G	Luke Martel	<i>State Tax Actions 2010</i>
	H	Luke Martel	"State Sales Tax Rates and Food & Drug Exemptions"
	I	Luke Martel	"State Reliance on Major Tax Sources," 2009 and 2010
	J	Luke Martel	"State Tax Amnesty Programs, November 22, 1982—Present"
A.B. 428	K	Assemblywoman Pierce	Bill Explanation
A.B. 428	L	Hugh Jackson	"Mining Gold Tax-free, 2000-2009"
A.B. 428	M	Tim Crowley	Written Testimony
A.B. 428	N	Tim Crowley	"Gross Domestic Product by State—Nevada 2009"
A.B. 428	O	Tim Crowley	Projected Employment Growth Chart