

**MINUTES OF THE  
SENATE COMMITTEE ON REVENUE  
Seventy-sixth Session  
February 10, 2011**

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:08 p.m. on Thursday, February 10, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Sheila Leslie, Chair  
Senator Steven A. Horsford, Vice Chair  
Senator Michael A. Schneider  
Senator Moises (Mo) Denis  
Senator Mike McGinness  
Senator Elizabeth Halseth

**COMMITTEE MEMBERS ABSENT:**

Senator Joseph (Joe) Hardy (Excused)

**STAFF MEMBERS PRESENT:**

Russell Guindon, Principal Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Gayle Rankin, Committee Secretary

**OTHERS PRESENT:**

Dino DiCianno, Executive Director, Department of Taxation  
Mark A. Lipparelli, Chair, State Gaming Control Board  
Frank Streshley, Chief, Tax and License Division, State Gaming Control Board  
Carole Vilaro, President, Nevada Taxpayers Association

**CHAIR LESLIE:**

We have two presentations on our agenda today. The first one is an overview and discussion of taxes administered by the Department of Taxation.

DINO DICIANNO (Executive Director, Department of Taxation):

You should have a copy of the Department of Taxation Senate Revenue Presentation ([Exhibit C](#)) and our "Annual Report" ([Exhibit D](#)). You also received a large document called the "Local Financial Report" ([Exhibit E](#)) prepared by our Division of Assessment Standards. This will give you information on the counties and cities and provide you with information on revenue and expenditures. This is the annual budget review on those entities. You also received a document entitled "Nevada Property Tax, Elements and Application" ([Exhibit F](#)) I am not going to be speaking about these two documents; however, if you have questions about these documents after you have had an opportunity to review them, I would be happy to address questions through your staff or contact me directly.

Please refer to the organizational structure of the Department on [Exhibit C](#), page 3. My position is appointed by the Governor. I also answer to the Nevada Tax Commission, which establishes policy and directs me to implement it. The Commission deals with issues not addressed during session that come up.

We have four distinct divisions within the Department of Taxation.

The Administrative Services Division is responsible for providing centralized support for all administrative, financial and fiscal activities of the Department. Sections of that division include budget, tax distribution and statistics, revenue, accounting/processing and support services/mailroom.

The Information Technology Division is responsible for the operation, maintenance and ongoing enhancements to the Unified Tax System. This division also works on developing programs to assist us in administering taxes we oversee.

The Compliance Division is responsible for collection of taxes from delinquent accounts and for oversight and collection of sales and use taxes, Modified Business Tax, Business License Fee, insurance premium tax, Cigarette Tax, other tobacco tax, Liquor Tax, lodging tax, Live Entertainment Tax, Bank Excise Tax, estate tax, etc.

The Division of Assessment Standards does not directly collect revenue, but coordinates collection and administration of taxes under *Nevada Revised Statutes* in Title 32. This important division oversees the 17 county assessors

with respect to property tax. The division works directly with the Tax Commission to promulgate the regulations and does performance audits on the county assessors to make sure they are in compliance with the regulations adopted by the Commission and the statutes administering the property tax. The Centrally Assessed Property section within the Division of Assessment Standards values all of the utilities, airlines, railroads and mines. This section also reviews and certifies the Net Proceeds of Minerals Tax. The Local Government Budget section reviews the budgets of over 260 local governments to ensure what they do is correct and proper. This section staffs the Committee on Local Government Finance, which oversees the local governments and establishes regulations associated with the financial affairs of local governments.

In fiscal year (FY) 2010, the sales and use tax made up the majority of the revenues we administer, [Exhibit C](#), page 4. We administer approximately 17 different taxes and fees. We are still collecting outstanding debts on the Business License Fee, which we were charged with administering prior to last Session. This part of the tax structure is now with the Office of the Secretary of State. As for the distribution of those revenues for FY 2010, the State General Fund received 43 percent and local governments received 54.2 percent.

In FY 2010, revenue officer collections went down because we had two successful amnesty programs, [Exhibit C](#), page 5. We received \$71 million based on the amnesty. Most of the outstanding debt on the books was paid off based on those two amnesty programs. Last year, we requested permission to open a call center because the amount of taxpayer complaints was unacceptable. We have reduced complaints by more than 50 percent. We are now able to answer their questions when taxpayers call. If we can answer their questions and educate taxpayers, then they will report and pay accordingly. The same thing has occurred with our walk-in counter. Taxpayers do not have to drive to one of our district offices in the North or South. They can conduct business over the phone or go on their computer to our online tax system, register, pay and report electronically.

Page 6 of [Exhibit C](#) will show you what has happened to sales tax since FY 2000. We had double-digit growth periods in FY 2003 through mid-FY 2006. Then it began to drop. When we hit mid-FY 2007, it took a turn for the worse. For three fiscal years, we had almost double-digit negative growth in sales tax. Starting in FY 2011, we have had five positive growth periods, but even if we

were to maintain that level of positive growth, it will take at least eight years to get us back to where we were prior to the recession.

Next is the Consolidated Tax Distribution, starting on page 10 of [Exhibit C](#). The Consolidated Tax Distribution is a complicated and difficult formula to try to put in laymen's terms. The Consolidated Tax Distribution system was put in place in 1997. It deals with specific taxes: the Cigarette Tax, Intoxicating Liquor Tax, Governmental Services Tax, Real Property Transfer Tax, Basic City-County Relief Tax (BCCRT) and the Supplemental City-County Relief Tax (SCCRT). The BCCRT and the SCCRT are components of the sales tax. There are two different tiers to the monthly distribution on those taxes. The first-tier distribution is to the counties. The second-tier distribution is to the local governments located within those counties. It is not as simple as it appears, but it does work. You may hear some discussion during this Legislative Session as to the fairness or unfairness of the distribution of those revenues. Please keep in mind the pie is only so big. Once you cut a piece of the pie to give to one entity versus another, there is no way to hold that other entity harmless.

The "Annual Report" [Exhibit D](#) is a document we are required by statute to provide to the Governor regarding the agency operations such as agency revenues and expenditures. As you can see on the first page of [Exhibit D](#), we had positive growth between FY 2009 and FY 2010, although it was less than 1 percent. During normal periods, it is much higher. At one point, we were reaching the collection of nearly \$5 billion in fees and taxes through the Department of Taxation. The major one is sales and use tax, the next is the insurance premium tax and then the Modified Business Tax. Other taxes not as significant as those do contribute to the amount that goes into the General Fund.

CHAIR LESLIE:

We are going to group this Session's bills by the type of tax we are talking about. In the Governor's budget, there are several places where he is requiring the counties to pay for services that the State is supposed to provide. This question has come up several times in the Finance Committee. What if the county says "No, we will not pay for it." People have said off the record that we will take the counties' money before it is distributed. Is that possible?

MR. DICIANNO:

No provisions in the statute allow us to not distribute a certain amount of money owed to a local government. It is specifically in statute, and I have no authority to stop the distribution.

CHAIR LESLIE:

It would take a statute change to implement it.

SENATOR HALSETH:

I understand the State Board of Equalization was supposed to develop uniform rules for county assessors to value property many years ago but did not do that until March 2010. Have those new regulations been effective or are those still a problem?

MR. DICIANNO:

That has been done. The Nevada Tax Commission did promulgate regulations regarding the valuation of land and other issues associated with the Nevada Supreme Court case. The State Board of Equalization has also promulgated regulations to address those issues, and we have a bill for this Session to address some of the concerns with regard to appeals. The total number of property tax appeals is climbing; it is greater this year than it was last year. The difficulty for the State Board of Equalization right now is the timing. It does not have sufficient time to address all of those concerns, and we are going to ask for an extension of the date.

CHAIR LESLIE:

We will be having that bill on Tuesday, so you can read ahead.

SENATOR MCGINNESS:

The Net Proceeds of Minerals Tax, [Exhibit C](#), page 4 is 4 percent. It is the fifth-producing tax on this chart. Are the deductions mining companies make from their gross set in statute? Can individual counties alter that?

MR. DICIANNO:

No, they cannot. That is established in statute, and Tax Commission has adopted clarifying regulations.

SENATOR MCGINNESS:

Are mining companies audited on the same schedule?

MR. DICIANNO:

We are behind on audits for the mining companies regarding Net Proceeds. They are not on the same schedule. It is a highly specialized audit; it has completely different rules. We have two people who have the skills to do those audits. We have not done one in some time.

SENATOR MCGINNESS:

Are the deductions something the auditor would look at closely?

MR. DICIANNO:

Yes, absolutely.

CHAIR LESLIE:

Do you put the bigger companies on a different schedule than the smaller ones?

MR. DICIANNO:

Are you referring to the net proceeds for mining? No. There are only about 100 operators in this State.

CHAIR LESLIE:

Some are much bigger than others. What is the schedule?

MR. DICIANNO:

We try to do several of them a year. These are very detailed audits.

CHAIR LESLIE:

I understand they are difficult. How often would Newmont Mining Corporation be audited?

MR. DICIANNO:

Our normal auditing schedule is once every three years. Since we are behind, now it is once every five years.

SENATOR DENIS:

Could I get some clarification on that? Is there a plan to get caught up, or are you chronically behind because of the specialized nature?

MR. DICIANNO:

Part of the problem we have had is retirements. The individuals who had the knowledge base to do this type of audit are no longer with the Department. We do have staff within the Division of Assessment Standards who understand the net proceeds process, and we want to train our other auditors. I also had to reclassify ten auditors to staff the call center. In this budget cycle, I did not ask for any additional auditors; however, I have asked for additional revenue officers for the collection of revenue. I am still working on a plan.

SENATOR DENIS:

Do you have a deadline that you are working on?

MR. DICIANNO:

No, I do not have a deadline right now.

CHAIR LESLIE:

Do you have anything else you would like to talk to us about today?

MR. DICIANNO:

I am a voting member for the Streamlined Sales and Use Tax Agreement for the State of Nevada. There has been a lot of discussion of other states that have enacted Amazon.com-type legislation. I would caution against that sort of thing. I get asked if Amazon.com is paying sales tax since there is an Amazon distribution center in Nevada. Amazon does not because it does not qualify for nexus. Most of the distribution centers are established through what are referred to as affiliates. They are not retail centers and they are not directly tied to Amazon. Amazon, through contractual obligations, establishes these affiliates. States like Colorado, New York and North Carolina have enacted a law—referred to as the “affiliate law”—to force those affiliates to pay sales tax for purchases made by customers in that state. Amazon.com has abandoned these affiliate associations. By doing so, they have eliminated the nexus. That is a much better way to go. House of Representatives (H.R.) 5660, of the 111<sup>th</sup> Congress, known as the Main Street Fairness Act, could have leveled the playing field because Congress can change the nexus law for every state. Nevada alone is losing \$300 million to \$400 million each fiscal year. As a matter of convenience, it is much easier to go online to shop. As you saw during the last holiday season, most of the remote sellers or retailers offered free shipping. Not only do they not collect sales tax, there is no charge for shipping. That is quite an incentive for someone to shop online.

SENATOR SCHNEIDER:

Years ago, I had a bill that said we should tax all Internet shopping. A trusted third party could go to the zip code where the item is being mailed and tax it right then. Can we go after that this time, or is the federal government still blocking that?

MR. DICIANNO:

We are still blocked. A specific U.S. Supreme Court case would prohibit the state from taxing this type of retail sales. You have to establish physical presence in the State. The Streamlined Tax Agreement Board is trying to establish the concept of economic presence. If retailers have an economic presence, then they would be subject to the tax. Congress directed the states to simplify the way they conduct sales tax. That is what the Main Street Fairness Act was all about.

SENATOR SCHNEIDER:

My friend owns a camera shop in Las Vegas. He sells to professional photographers, and the University of Nevada, Las Vegas, buys from him. When you have a high-end camera and lens, you spend a lot of money for the merchandise. Why would someone buy camera accessories for \$10,000 and pay 8 percent in sales tax when that person can go online, buy it out of New York and pay \$25 shipping? It is a real disincentive to keep local businesses open.

CHAIR LESLIE:

Do we need a letter from the Committee if we decide to pursue the Streamlined Tax Agreement? What are the prospects of H.R. 5660 passing?

MR. DICIANNO:

That would be very helpful. Unless someone champions the Act, Congress is dealing with a lot of other issues now, and it is not the priority.

CHAIR LESLIE:

Please work with our staff to prepare a draft. We will bring it back to the Committee for discussion.

Our second presentation is an overview and discussion of taxes administered by the State Gaming Control Board. We have Chair Mark Lipparelli and Frank Streshley, Chief of the Tax and License Division.

MARK A. LIPPARELLI (Chairman, State Gaming Control Board):

If you have detailed questions, I may defer to Frank Streshley since he is our resident expert at the Gaming Control Board. I am going to present our Agency and Revenue Overview ([Exhibit G](#)).

CHAIR LESLIE:

Documents we are looking at today are available through the legislative Website on the Nevada Electronic Legislative Information System. Anyone listening at home or here in the building may bring up these same documents.

MR. LIPPARELLI:

Nevada is a two-tiered regulatory system, page 2 of [Exhibit G](#). The State Gaming Control Board is a taxing authority. Our activities are governed by our parent agency, the Gaming Commission. The mission of the Board, in addition to its fidelity and integrity responsibilities, also relates to ensuring the timely collection and accuracy of taxes of our various licensees. Page 5 of [Exhibit G](#), gives you some specific information regarding the distribution of our employees with respect to revenue. The Audit Division contains 96 individuals as well as our tax and license group which administers reviews of our smaller Group 2 locations. The Audit Division is primarily responsible for auditing our Group 1 locations. The Board has multiple divisions. Our executive offices and administration provide administrative and support services to our Board and commissions in the various departments.

The Audit Division is the auditing group for Group 1 licensees and compliance. Group 1 licensees must generate \$5.8 million of gross gaming revenue or greater per year. Our Enforcement Division conducts criminal and regulatory investigations, handles patron disputes, gathers information on criminal activities and makes recommendations on excluded persons. Our Investigations Division is a prelicensing and postlicensing group that handles all of the applications and prepares reports for consideration by the Board and Commission. In addition, we also monitor and investigate all the activities of our public companies. If you are familiar with the agency, you may have noticed I have merged Investigations with the Corporate Securities Division to try to create some flexibility with resources.

Mr. Streshley is responsible for the Tax and License Division. The Division collects and deposits all the gaming taxes, fees and penalties. In addition, the Tax and License Division performs audits of Group 2 locations. The Technology

Division is responsible for the examination of technology that is submitted to the Board for approval and distribution in the State. We also utilize resources from this Division to handle all Information Technology functions internally. In addition, this division can be included on investigations where the matter requires technology experience.

On Page 10 of [Exhibit G](#) is a chart on Board funding by source. Approximately 40 percent of Board operating expenses is funded through direct fees paid by licensees. This includes registration fees and investigative fees, gaming fees and a series of other fees paid by industry. The remainder would be funded through the General Fund appropriations. The primary difference between FY 2009, FY 2010 and FY 2011 was the result of a decision made by the prior Chair to increase the investigative fees as a way to generate \$4 million of extra direct fees paid by the industry. That accounts for the large jump between FY 2009 and FY 2011. That will continue, so it is reflected in the next two fiscal years as projected.

The next chart on page 11, [Exhibit G](#), shows regulatory capacity. Our capacity is driven by the number of people we have deployed in the field. We hit a high point of 462 in FY 2008. Since that time, we have been reducing head count. A large portion of the increase that got us to 462 was an agreed-upon increase in staffing for our Technology Division to keep pace with the increase in submissions. We are projecting to be at 418 full-time equivalent employees as a result of the pending reductions.

Tax collections on page 12, [Exhibit G](#), are generated throughout the State. A predominant amount of revenues, 85 percent, came from Clark County in FY 2010, approximately 7.5 percent from Washoe County and the remainder distributed among the other counties. As you can see, 89 percent of the revenues we administer come from two primary categories. Percentage fees, known as the revenue tax, are the largest portion of our collections. The second largest portion comes from the Live Entertainment Tax. The remainder includes the annual slot tax, which is the next largest contributor at 5.8 percent. The chart shows the relative contribution of the other areas we administer.

The primary collection areas are percentage fees. These are paid based on a tiered rate. The first \$50,000 of taxable gaming revenue at 3.5 percent rises to a maximum level of 6.75 percent for revenues in excess of \$134,000. These are paid on a monthly basis. The tax and submissions are due 24 days after the

close of the month. The Live Entertainment Tax is the second largest contribution in FY 2010. That number was \$108.2 million. This is a tax rate of 10 percent paid on food and beverage, merchandise and admission into casino entertainment venues with seating less than 7,500. In larger arenas, that rate declines to 5 percent. The 10 percent Live Entertainment Tax is also applied at smaller restricted locations, those with 15 or fewer slot machines that have a seating capacity of 200 seats or more.

The quarterly nonrestricted slot fees and the restricted slot fees, on page 13 of [Exhibit G](#), are \$20 for the nonrestricted locations per quarter. The restricted locations tax is based on the number of slot machines at the location. The difference between the nonrestricted and the restricted is the nonrestricted pay a fairly substantial revenue tax and the restricted do not pay a revenue tax.

The quarterly games tax for FY 2010 is \$6.7 million as shown on page 13, [Exhibit G](#). This is based on the number of games operating in the nonrestricted location. The advanced license fees are required to be paid in advance on a new license or a change of a license where people are prepaying a certain amount of tax to ensure that we have adequate protection against licensees going out of business and not paying their taxes.

Manufacturers and distributors pay an annual fee of \$1,000 and \$500, page 18 of [Exhibit G](#). The slot route operator pays an annual fee of \$500. Race wire licensees contributed \$15,000 in FY 2010. The pari-mutuel wagering tax is approximately \$4,200. Our annual slot tax has associated earmarking. The first \$5 million of the tax collected goes directly to the Capital Construction Fund for Higher Education and 20 percent of the tax by formula goes to the Special Capital Construction Fund for Higher Education. The remainder goes to the State Distributive School Account. The annual games fee is another payment based on the number of games a nonrestricted licensee is operating. Collections are earmarked and split equally among the counties.

CHAIR LESLIE:

There was a news release about an increase in gaming tax revenues for last month. Can you give us a brief overview of this?

MR. LIPPARELLI:

I will refer that to Mr. Streshley. He is close to these numbers and can give you a good sense of month-to-month revenue.

FRANK STRESHLEY (Chief, Tax and License Division, State Gaming Control Board):  
In the fall, we had two months of positive growth after several years of intermittent declines and increases. We can see spending is slowly coming back. The problem now is that prior to the October and September numbers, we were comparing against very weak months. We continue to see strong growth in the baccarat revenue. We still have a substantial amount of decline in spending with slots and games outside of baccarat. In the last four months, we had a couple of months with spending coming back. Specifically for December, 2010, we reported a decline of 2.4 percent, but it was a strong month a year ago. The Strip was up 5 percent.

CHAIR LESLIE:

That is helpful. Are we ahead of the Economic Forum forecast overall?

MR. STRESHLEY:

No, we are not. We are down approximately 3 percent or a \$10.9 million.

MR. LIPPARELLI:

We take informal polls each month when we have licensees come in before us. A year ago, there were a lot of distressed faces on the applicants when they gave us updates on their various operations. Some of the distress is gone from their faces, but there is a quizzical look—and they are wondering when the volume will be matched with spending levels. Licensees see booking windows extending, which is an important part of their room-rate yield. They will not be comfortable until they see spending levels they had hoped to see by now.

SENATOR SCHNEIDER:

When the baccarat revenue is up, do you know where the players are coming from? Are they from the United States or are they coming in from Asia?

MR. STRESHLEY:

The majority of the revenue is coming from the Pacific Rim countries.

CHAIR LESLIE:

Could you please address Internet gaming and where Nevada is going with that.

MR. LIPPARELLI:

There is a substantial amount of activity in the area of Internet gaming, particularly around Internet poker. The Internet poker business has exploded in

foreign jurisdictions. That has caught the attention of our licensees, and they are paying attention to the kind of foreign business that has emerged. There was a significant effort during the lame duck session of Congress to find a way to allow Internet poker legislation to be passed in the United States. That effort did not succeed. I understand there will continue to be an effort to that point. The downside of no federal legislation means that individual states will consider it. Stories have already been reported about New Jersey, Florida and several other states considering Internet poker.

Our agency does not have resources dedicated specifically to that effort. We are shoestringing our way and grabbing experts where we can find them. We participate in investigations of companies who have Internet in their backgrounds, so we can be educated about those applicants. More than one in the pipeline is coming toward us. Because of an expectation that we get educated, there is an effort by applicants to provide as much education as they can in their applications. With a possibility of continuing Internet gaming efforts in Nevada, we need to create a set of rules specifically for Internet poker.

CHAIR LESLIE:

The next item on our agenda is possible bill draft request (BDR) introductions. A committee bill we need to take up today is BDR 32-218 that makes various changes relating to biodiesel. Senator Schneider, this bill came to us from your interim study.

**BILL DRAFT REQUEST 32-218:** Makes various changes concerning the use and taxation of biodiesel. (Later introduced as [Senate Bill 146](#).)

SENATOR SCHNEIDER MOVED TO INTRODUCE BDR 32-218.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CAROLE VILARDO (President, Nevada Taxpayers Association):

I want to follow up on something Mr. DiCianno said relative to the Streamlined Act. The issue we are discussing has nothing to do with increasing taxes. This is a collection and remission issue. Up until 1969, which was the year of the

first U.S. Supreme Court decision, an out-of-state merchant had to collect and remit the tax to the State of Nevada. When the first U.S. Supreme Court decision came down, you had to have a physical nexus.

I have been on this issue since 1987. I have an affinity for it because when I came to this State, I opened a retail business. Congress had a bill that we supported called the Main Street Act. Tom Grady was head of Nevada League of Cities and Municipalities then. There was no Internet at that point; we were just trying to create a level playing field because of catalog and phone sales. We need to do something. The concern I have is that people are constantly referring to this as a tax increase. It is not. It is changing how the tax is collected and remitted. This applies more to individuals than businesses because businesses are audited. They pay the use tax. Average consumers do not realize if they buy an item and there is no Nevada sales tax on that purchase, they are supposed to go on the Department of Taxation Website, download the consumer use tax form and pay the tax. They are actually violating Nevada law.

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CHAIR LESLIE:

You explained it very well. Is there any other public comment? Seeing none, this meeting is adjourned at 2:28 p.m.

RESPECTFULLY SUBMITTED:

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Gayle Rankin,  
Committee Secretary

APPROVED BY:

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Senator Sheila Leslie, Chair

DATE: \_\_\_\_\_

| <u>EXHIBITS</u> |         |                    |  |
|-----------------|---------|--------------------|--|
| Bill            | Exhibit | Witness / Agency   | Description  |
|                 | A       |                    | Agenda   |
|                 | B       |                    | Attendance Roster  |
|                 | C       | Dino DiCianno      | Department of Taxation<br>Revenue Presentation                             |
|                 | D       | Dino DiCianno      | Department of Taxation<br>Annual Report                                    |
|                 | E       | Dino DiCianno      | Department of Taxation<br>Local Financial Report                           |
|                 | F       | Dino DiCianno      | Department of Taxation<br>Nevada Property Tax,<br>Elements and Application |
|                 | G       | Mark A. Lipparelli | State Gaming Control<br>Board Revenue Overview                             |