

**MINUTES OF THE  
SENATE COMMITTEE ON REVENUE**

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

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:22 p.m. on Thursday, April 7, 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 Joseph (Joe) P. Hardy  
Senator Elizabeth Halseth

**STAFF MEMBERS PRESENT:**

Russell Guindon, Principal Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Brenda Erdoes, Legislative Counsel  
Gayle Rankin, Committee Secretary

**OTHERS PRESENT:**

Luke E. Martel, Research Analyst II, Fiscal Affairs, National Conference of State Legislatures  
Jeremy Aguero, Principal Analyst, Applied Analysis

**CHAIR LESLIE:**

We have two presentations on revenue actions used by other states to address budget and revenue problems, and options available for Nevada. The first one is from Luke Martel from the National Conference of State Legislatures.

LUKE E. MARTEL (Research Analyst II, Fiscal Affairs, National Conference of State Legislatures):

Before I discuss the revenue actions we have seen states take in response to the Great Recession, I am going to briefly present some information regarding the size of the budget gaps and the overall fiscal situation facing the states.

The information on the general fiscal landscape, ([Exhibit C](#)), page 2 comes from our *State Budget Update* reports. This report is published four times a year and is based on surveys we conduct of the legislative fiscal officers. This information comes from our November 2010 survey. We have finished conducting our last survey, and our next *State Budget Update* report will have some new numbers. The report will be out next week, April 14. All Legislators and staff have access to this report, and it is available on our Website. It will have updated budget gap figures.

The fiscal landscape is mixed. We are in a budget paradox now where we are seeing the improvement of state revenues, but states are still facing fiscal difficulties. This is because the higher revenues have been insufficient to cover the loss of the one-time funds the states have used over the past few years, in addition to escalating expenditures. This has caused most states to struggle with budget shortfalls. While revenues are improving, it is at a slow rate. The preliminary estimates for fiscal year (FY) 2012 and FY 2013 show that from the beginning of the Recession through FY 2013, states will have accumulatively closed budget gaps in excess of \$500 billion.

The next graph, page 3, [Exhibit C](#), comes from the Nelson A. Rockefeller Institute of Government in New York. It shows the dramatic drop in revenues the states faced in the Recession and more important, it shows the revenues are now ticking upward. The blue line indicates personal income tax changes. The red line indicates sales tax. These two revenue sources account for two-thirds of all state general funds, except for Nevada, which is a little different. Property tax is the top green line and traditionally lags behind other revenue sources due to how property valuations work.

The next graph, page 4, [Exhibit C](#), shows when states are expected to return to their peak revenue levels, and you can see it is going to be some time. California does not expect to return to prerecession levels until FY 2016. This is just one part of the picture. This does not take into account the expenditures which have grown since the Recession and will continue to grow in some areas.

CHAIR LESLIE:

I have a question on the page 4 slide. Where does Nevada fit into this?

MR. MARTEL:

I will have to look that up. I have my colleagues in Denver watching this presentation live on the Internet, and they can help me look up answers.

CHAIR LESLIE:

Okay. That is fine. I can wait.

MR. MARTEL:

Page 5, [Exhibit C](#), shows there are a number of revenue concerns facing the states. States have used one-time funds, namely American Recovery and Reinvestment Act (ARRA) funds, as well as state rainy day funds and transfers from other accounts in order to shore up their budget shortfalls. Many of these funds have been used up, and the ARRA funds are also coming to an end. The FY 2012 budget gaps facing the states are caused by the tapering off of these one-time sources, the sluggish revenue recovery and rising program costs.

Page 6, [Exhibit C](#), shows there is also a lot of spending pressure on the states. In terms of spending overruns, by last November, less than halfway into FY 2011, over half of the states reported being over budget in at least one area. Medicaid is the most common area for spending overruns. Nevada did not answer that question on the survey because it is unknown when your revenues will return to peak.

Page 7, [Exhibit C](#), shows the FY 2012 budget gaps as a percentage of general fund budgets. By looking at the gaps as a percentage of general fund budgets, it is easier to compare state to state. This totals \$82 billion as of November 2010. What is shocking about this map is 21 states are facing budget gaps greater than 10 percent of their general fund budgets. This also shows how broad these gaps are spread across the country. This map shows that no one area has been held immune from the recession or the budget gaps. Looking forward to FY 2013, as of November, there were still 13 states predicting budget gaps greater than 10 percent of their general fund revenues. A number of states had not forecasted that far out. Keep in mind these are moving numbers with the budget gaps.

Page 8, [Exhibit C](#), is a graph to give you an idea of the size of the budget gaps and how they compare to the last recession. As bad as the beginning of 2010 was, you can see on this graph the past recession pales in comparison to what states are facing today. The worst years in terms of fiscal challenges to the states tend to occur one to two years after the recession ends. Since the recession ended June 2009, states are now facing the worst of the fiscal challenges.

I want to explain the handouts you have so you know what they are and how they play a role in this presentation. Two of them are reports of *State Tax Actions 2009* ([Exhibit D](#)) and *2010* ([Exhibit E](#)). These reports contain information on all the revenue increases, taxes and fees that states have enacted during those years. The reports also show how much revenue was expected to be generated by each of those increases. This information comes from another survey we conduct each year of the legislative fiscal officers where we ask them to describe the revenue changes in their states.

On the next chart, page 9, [Exhibit C](#), you can see information on specific tax increases. If you want to know how much that increase is expected to generate in that state, you can find that information in the report appendices of *State Tax Actions*, [Exhibit D](#) and [Exhibit E](#). You can also look through these reports by state to see what any given state has done for revenues or by type of tax.

The next handout is our State Sales Tax Rates ([Exhibit F](#)) as well as information on which states levy a food tax. This comes from the Federation of Tax Administrators. This will help to answer questions that may come up during the presentation.

I also have a handout on State Tax Amnesty Programs ([Exhibit G](#)). Nevada enacted an amnesty program in 2009. This will show you when other states enacted amnesty programs.

We have prepared two charts on State Reliance on Major Tax Sources for 2009 ([Exhibit H](#)) and 2010 ([Exhibit I](#)). These charts were prepared from U.S. Census Bureau data. I included this because Nevada is uniquely situated in terms of your tax structure. You can see a direct comparison between other states and what other states rely on, such as in sales tax, for a percentage of your revenue.

On page 9, [Exhibit C](#), is Net State Tax Changes by Year of Enactment. This chart provides some historical perspective. In FY 2010, one-half of the states increased taxes by more than 1 percent. In FY 2011, 12 states increased taxes by more than 1 percent. In FY 2011, 37 states made no significant tax changes. In terms of the magnitude of the tax increases, which is indicated by the red line on this chart, the FY 1991 tax changes were significantly higher than 2009.

Page 10, [Exhibit C](#), is Net Tax Changes by Type of Tax enacted in 2009 and 2010. In 2010, it was a quiet year in terms of tax changes compared to 2009. When states adopted their initial FY 2010 budgets, lawmakers closed \$145 billion in budget gaps. Of that \$145 billion, tax actions accounted for 18 percent, or \$28.6 billion, of the solution. The remainder of the \$145 billion was closed by spending cuts, use of one-time funds and accounting changes. For FY 2011, tax actions were \$4 billion of the solution. States closed \$110 billion of budget gaps. In terms of how states closed their budget gaps for the current budget year during the last calendar year, \$4 billion is a small piece of \$110 billion.

Page 11, [Exhibit C](#), shows a Tax Actions Overview, depicting the broad trends we have seen over the past few years in terms of tax changes. In 2009, we saw many states turn to revenue measures to help close their budget gaps. The primary trend from 2009 was raising personal income taxes on high-income earners. The secondary trend was the examination of state tax credits and exemptions, and a number of states made changes to these to bring in additional revenue. Another trend from 2009 is we saw states use tax increases intended to be temporary and legislated with an expiration date. In 2010, we saw little action related to increasing revenues. If there was a trend, it would show continued interest in examining state tax credits and exemptions.

Page 12, [Exhibit C](#), is Total Net Revenue Increases. This shows how much revenue was generated in these four tax categories. The "other" category on this page includes compliance measures, tax amnesty programs and accounting maneuvers. In the *State Tax Actions 2009*, [Exhibit D](#), and 2010, [Exhibit E](#), accelerations are lumped in with "other." On this graph, I have broken them out to show you how much was generated from accelerations in FY 2009 and FY 2010. It was a significant amount in comparison to the overall tax increases.

Page 13, [Exhibit C](#), shows Personal Income Tax. The primary trend in FY 2009 was to increase the personal income tax on high-income earners. You can see information on states that have implemented personal income tax increases applicable to all income levels. Nevada does not have a personal income tax, so I am not going to go over pages 13, 14 and 15 of [Exhibit C](#). These are for your information, and you can go over them after the presentation.

Page 16, [Exhibit C](#), shows Sales Tax Changes. There are ways the states made changes to this tax over the past few years. Some states have raised the sales tax rate and some states have broadened the sales tax rate by removing exemptions or bringing additional products or services under the sales tax base.

Page 17, [Exhibit C](#), shows Sales Tax: Rate Increases. This contains information on all the state sales tax rate increases enacted from 2009 to present. A number of these increases are intended to be temporary and have expiration dates.

Pages 18 and 19, [Exhibit C](#), depict Sales Tax: Broadening the Base Exemptions Eliminated. These two pages have information on base-broadening by eliminating sales tax exemptions. No two states have the same mix of state sales tax exemptions. Over the past few years, we have seen a move toward broadening the sales tax base. States are looking at their existing exemptions, and some are bringing certain products and services into their sales tax base. In Massachusetts and Washington, some of these changes were enacted by the legislature but later repealed by voters. Colorado included cigarettes in the sales tax base, and we saw three states bring alcoholic beverages into the sales tax base. Some of the states included candy, four states included certain beverages and Illinois included personal grooming products in the sales tax base. Colorado had a minor change that brought to-go containers and condiments distributed in restaurants into the sales tax base. Colorado also included materials used in direct mail advertising and energy used in manufacturing. New York added clothing.

Pages 20 and 21, [Exhibit C](#), show Sales Tax: Broadening the Base. Over the past two years we have seen four states move to establish digital downloads and software as taxable. If you were on iTunes and downloaded a song, sales tax would be charged for the download. We have seen certain services included in the sales tax base. Some of these are limousine and black car service,

software maintenance and entertainment events by nonprofit organizations. In Maine, a major tax reform measure was enacted by the legislature and signed into law by Governor Paul LePage. It was later repealed by a people's veto of the voters. "Amazon taxes" try to force online retailers to collect state sales tax if they have contracts with affiliates in the state. Legislatures have enacted this in six states.

Page 22, [Exhibit C](#), is Sales Tax: Miscellaneous Changes. Some states have made changes to their vendor discounts. This is a discount on the amount of sales tax owed to the state given to the merchant to help with the administrative costs of compliance with the state sales tax. There are some examples of other administrative tax changes affecting state sales taxes.

Page 23, [Exhibit C](#), shows Miscellaneous Tax Changes: Cigarette Tax. In 2009, 14 states increased the per pack tax levied on cigarettes. The net revenue generated from this increase was just under \$2 billion. In 2010, we saw six states increase their per pack tax on cigarettes, generating an increase of close to \$600 million. These numbers are relevant as we turn to the next page.

Pages 24, 25 and 26, [Exhibit C](#), show the changes enacted to excise tax levied on alcohol. Five states increased alcohol taxes in 2009 to generate nearly \$200 million. Last year, Washington raised the tax on beer for three years, to generate about \$60 million. Oregon modified its heavy vehicle tax. The only state that has had increases in its per gallon gas tax over the past few years is Oregon, up 6 cents per gallon.

Two states changed the way severance taxes are levied. Maine and Washington implemented a new tax on soft drinks. These were both repealed by voters. Hawaii and Delaware reinstated the estate tax.

Three states, including Nevada, changed tourism taxes in 2009. Real estate transfer taxes have been modified in three states. Vermont expanded its property tax to include nonresidential property.

In Massachusetts, the satellite television tax was increased to bring the satellite tax closer to the state tax levied on cable television services. New Jersey and Tennessee increased their insurance premiums tax rate.

Page 27, [Exhibit C](#), shows Non-tax Revenue Changes. There are few other revenue sources available to states. Fees, payment accelerations, tax amnesty programs and other administrative changes are included. The other administrative changes relate to enhanced enforcement of existing tax structure.

Page 28, [Exhibit C](#), shows that fees continue to be looked at and acted upon by states to generate revenue. Motor vehicles, recreation activities and courts are the most common targets for these fee increases. I have included a few examples on this page, but there are many more examples of fee increases in the reports of *State Tax Actions*. If you are trying to get an idea of the various fees increased in other states, there are lists of fees that have been increased over the past few years. Fees have been a significant component of the overall revenue increases enacted over the past few years. In 2009, 22 states made fee changes amounting to over \$3 million. In 2010, 20 states made fee changes, bringing in about \$700 million.

Page 29, [Exhibit C](#), shows another option available to states without changing tax rates, and that is to accelerate tax payments. This is more of an administrative action as the underlying tax rates remain the same. These accelerations should be thought of as one-time revenues because you can accelerate once and you get the money, but it does not continue bringing in more money because you are only changing the tax due date. In New Mexico, instead of having 25 percent of the tax due each quarter, it is front-loaded and 30 percent of the tax owed is due in the first quarter. It helps with cash shortfalls, but this is one-time revenue.

Page 30, [Exhibit C](#), shows that since 2009, at least 20 states have enacted tax amnesty programs. There is more information on these amnesty programs on the handout I provided, [Exhibit G](#).

Page 31, [Exhibit C](#), shows more examples of administrative actions. These affect states' revenues and how they collect revenues. In Kentucky, the state reduced the amount of time available to claim abandoned property. Maine and several other states have added enforcement agents. Kentucky expedited protest resolutions, hoping if you had appeals go on a shorter period of time, some of those appeals would favor the state, and then the state would collect the revenues more quickly.



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Page 32, [Exhibit C](#), shows a map on restructuring government. Many states have created commissions or committees for restructuring. Many of these groups examine existing state tax structures. Georgia put out a tax study commission report in mid-January. This report was then translated into bill form, and the bill was introduced in the legislature. All the legislators in both chambers had to give an up or down vote with no amendments on the entire package. They wanted to see what this restructuring commission came up with and whether they should enact it. After seeing its acceptance, they would accept amendments. These reports are across the board in terms of what they recommend, how thorough they are, what was looked at and whether the recommendations were on the legislative or executive side.

The National Association of State Budget Officers put out a report that is available for free on the Association's home page. It is a 30-page report with summary points of these commissions. You can see what these commissions are recommending for every state.

SENATOR HARDY:  
The obvious question is, what should we do?

MR. MARTEL:  
As I am with a bipartisan organization, I am not in a position to recommend anything. I am here to present information on what other states have done.

CHAIR LESLIE:  
Your presentation was clear and interesting.

SENATOR HARDY:  
Did the Georgia legislature vote up or down?

MR. MARTEL:  
I do not know what happened.

CHAIR LESLIE:  
We will go to our second presentation with Jeremy Aguerro from Applied Analysis.

JEREMY AGUERO (Principal Analyst, Applied Analysis):

I have been asked to talk about revenue-generating alternatives for the State of Nevada. The worksheet I have given you is a summary ([Exhibit J](#)). I have not attempted to include everything. It is a selection of some of the alternatives being discussed. I would be happy to provide additional background.

I have not included exemptions to our existing taxes or removing exemptions from our existing taxes. I have not included redistribution of revenues between state and local governments, a lottery or new lines of business for the State. I know there is some discussion about this generating revenue. I have focused on the larger revenues to provide a frame of reference.

I have divided my worksheet into three general categories. The first is the extension of the tax sunsets, the second is a diversion of existing revenue sources and the third are new sources of General Fund revenue.

The first category in [Exhibit J](#) is on extending the sunset on temporary tax revenues. Many states have done this. Nevada had a number of temporary tax measures included in the 2009 Legislative Session and into the Twenty-sixth Special Session. Those include a mining claims fee and the mining tax prepayment. This means pay your taxes in advance and at some point, you will go back to the regular schedule and the payment will be lost for a period of time. The Modified Business Tax, which is the payroll tax, went from 0.63 percent to a two-tiered rate of 0.5 percent on all payroll of \$250,000 or less annually, or \$62,500 per quarter, to 1.17 percent on everything above that threshold. The Business License Fee is the per capita tax for every business of \$200 per enterprise. The incremental sales tax outside the General Fund, the Local School Support Tax (LSST), was increased by 0.35 percent. Those monies are deposited in the Distributive School Account (DSA) but are a direct offset in terms of the General Fund responsibility to make education programs whole. When the LSST goes up, your commitment to education can come down. The total for those revenue sources would generate approximately \$705 million over the coming biennium.

CHAIR LESLIE:

Are there any questions about the sunsets? We have a bill next week on revising the mining claims fee. Did you include that? This assumes the same legislation from the Twenty-sixth Special Session would continue.

MR. AGUERO:

Yes. This is based on law as it exists today.

CHAIR LESLIE:

We would not collect near that amount but the potential is still there. It has two payments, and most people have not paid. Are these projections? Is this your best guess of what this would bring in for FY 2012 and FY 2013?

MR. AGUERO:

Yes, that is correct.

CHAIR LESLIE:

Does it include additional revenue from the Net Proceeds of Minerals Tax? The price of gold is so high, are the mining companies paying additional net proceeds?

MR. AGUERO:

No. I did not try to handicap the price of gold in FY 2012 and FY 2013. I carried it forward from what it has been over the past few years. I will preface all of this with two statements:

1. Everything on this sheet is intended to be an order of magnitude estimate. Your staff has been wonderful in sharing information. We tried to refine some of the estimates, and I will talk more about that as we go along.
2. Everything on this sheet assumes the Department of Taxation can collect all the taxes. Existing law, order of magnitude estimates and timing is important.

I was asked to lay out some of the framework in terms of what the alternatives look like and how much they would generate.

CHAIR LESLIE:

If we extend the sunsets, it would generate approximately \$705 million?

MR. AGUERO:

Yes, that is correct.

SENATOR HARDY:

If the \$705 million is extended, what can we expect to receive in this biennium?

MR. AGUERO:

In terms of all the sunseting taxes? It is about \$660 million to \$670 million. Sales taxes are expected to do better over the upcoming biennium, so that will increase it. We expect increased stabilization in terms of the Modified Business Tax and not losing as much payroll as we did over the last couple of years. That is pretty close to where we are.

SENATOR HARDY:

I had in my mind a sales tax of about \$225 million in this biennium. Would we have an increase of \$50 million in sales tax?

MR. AGUERO:

That would be the overall sales tax. To answer your question, yes, that is close. I could pull them up if you would like me to.

The second category, [Exhibit J](#), is the diversion of existing revenues. We have used this strategy for the last several years in terms of trying to take money away from one account and use it for another account. This has been relatively successful and often times has allowed us to mitigate other cuts that have otherwise been required. The one talked about the most recently is the I.P. No. 1 of the 75th Session with the extension of the room tax, 3 percent not to exceed 13 percent. It is estimated it will generate \$225 million in the upcoming biennium. The decision here is whether that money continues to be deposited in the General Fund as over the last biennium or shifts over to fund or enhance education. That is about \$225 million. If you deposit it in the DSA, it does not change the math, it offsets your general fund obligation. If it is deposited in the General Fund, it could go to any program. The question is whether those monies are used to enhance education or to shore up existing services.

The third category, [Exhibit J](#), are new sources of revenue and how much they may generate for the State. The first on the list is the sales and use tax. The simplest way to think about the existing sales and use tax is to increase the tax itself. The original creation in 1955 of the sales tax—the LSST General Fund offset—with a referendum on it in 1956 means that affirmation by a vote of the people can only be changed by a vote of the people. The 2 percent sales tax cannot be changed without a vote of the people. We have created different taxes around the sales tax, including the LSST, the Basic City-County Relief Tax and the Supplemental City-County Relief Tax. In addition to the statewide

levies, a number of county option taxes also exist in the sales tax. This is why the sales tax varies between different counties throughout the State. If we had a statewide increase in the sales tax and increased the LSST so you could decrease your General Fund obligations, every 0.25 percent of 1 percent of increase would generate about \$95 million to \$100 million each year.

Other strategies that have been used are twofold. The first is reducing the collection allowance retailers get for collecting the sales tax on the State's behalf. This decline would drive that down to zero. The second one is to increase the State sales tax administrative fee. The State takes a cut for the service of collecting the sales tax, and 0.25 percent of 1 percent would generate about \$3 million every year. You could expand your sales tax to include services, but this is not possible in Nevada without a vote of the people. What you could do is create a companion levy that will target those things not subject to tax. Today, our sales tax is levied on about \$40 billion worth of sales activity that occurs within Nevada. Our aggregate economy is approximately \$130 billion in size. The other share of the economy, \$90 billion, is not subject to some form of taxation. There are taxes other than sales tax, but our sales tax is relatively narrow. If we look at all the services subject to taxes in different states, an average state taxes about 56 total services. The highest states are 160 to 180. Nevada taxes 18. Because our tax structure is narrow, it provides some flexibility in taxing services overall. With regard to the services I have laid out here, I have given you four scenarios, Tier 1, Tier 2, Tier 1 and 2, and Tier 1, 2 and 3 services.

There are 460 categories we classify by industry codes of all the transactions that occur in the State. The Tier 1 services are the services that other states tax. They are ones we have talked about expanding, including the State sales and use tax or creating a companion levy. The Tier 2 services get more complicated. They could be subject to sales tax, but are not favorable with the people, such as personal services or a haircut. People are opposed to the third category that includes health care services or community-based services. The fourth line item is the most important. After having reviewed sales taxes for some time, a reasonable target in terms of a sales tax on services base, or a transaction base, would be approximately \$20 billion. We have \$40 billion worth of retail sales we tax today. We could find \$20 billion that would be consistent with what other states do relative to taxing services in Nevada. Every 0.25 percent of 1 percent we would impose on the \$20 billion tax base would generate approximately \$50 million a year in revenue. With regard to this

tax, the devil is in the details. It is which services you select and how you treat services already subject to some form of tax. Liquor is rolled up into the sales tax. Liquor is already subject to a liquor tax. Cigarettes are subject to a cigarette tax. How you treat amusements would be important. The framework of those Tier 1 services generates about \$47 million a year. If we start to expand our thinking about all the services that could be subject to tax, it is somewhere between \$210 million and \$215 million a year.

CHAIR LESLIE:

Could you give us some examples of Tier 1 services?

SENATOR HARDY:

Do we tax 18 services in Nevada?

MR. AGUERO:

Yes.

SENATOR HARDY:

You probably have those at the tip of your tongue. I do not know what they are.

CHAIR LESLIE:

Could we have examples of those?

MR. AGUERO:

If I can start with the second question first, I will read through the services identified in Nevada as being subject to the tax. These services from which we collect tax are those the Federation of Tax Administrators classifies as a service. Tier 1 includes tuxedo rental, photocopying services, photofinishing and -printing, and sign construction and installation. Some of these are part service and part goods. Packaged or canned program software is considered a service and is subject to tax in the State. Auto service, except repairs, including paint and lubrication; automotive rust proofing and undercoating; and the admissions portion for our Live Entertainment Tax are included. Rental of films and tapes by theatres; rental of videotapes for home viewing; personal property leases and rental for short term such as tractors and construction machinery; automobile rental and leases; aircraft rental to individual pilots for a short term; and air craft rental to individual pilots for long term are subject to tax. I am not familiar with those categories, but they are included. Custom fabrication and service

contracts sold at the time of sale are included. Those are the major categories the Federation of Tax Administrators pulled out for Nevada.

We looked at this two ways. One way is to categorize the services I talked about. The second way is to carve out the services where 50 percent or more of the services were consumed by a business and viewed as being progressive as opposed to regressive. Many of them fall into the same categories, such as professional services, photographic services and labor associated with maintenance and repair.

Tier 2 included newspapers, transportation by rail or truck, construction-related labor and leases on commercial real estate.

CHAIR LESLIE:

This could be an endless discussion. What is the Live Entertainment Tax bringing in?

MR. AGUERO:

It is a two-tiered tax, 5 percent and 10 percent, depending on the size of the venue. The change in venue size is 7,500 seats. The tax also extends to merchandise and food at the venue. The Live Entertainment Tax generated \$120 million in FY 2010 and is forecast to generate \$122 million in FY 2011.

That is the framework on the sales tax on services. To summarize, our sales tax is narrow and the number of services out there are large. Defining which services to tax will be tricky.

The next category is gaming taxes, [Exhibit J](#). There are many gaming taxes, and I have selected several. The biggest of the gaming taxes is the percentage fees imposed on gross gaming win. I have shown those in two ways. The first one is a 0.25 percent increase in the three tiers. There are three tiers to the gaming tax. The top tier captures the most taxable gaming revenue. The third tier is set at \$134,000 in gaming revenue per month. If we increase all three tiers by 0.25 of 1 percent, it would generate approximately \$29 million a year. If we changed the top tier to 0.25 percent of 1 percent, it would generate slightly less than the other tiers because all the revenue is there. We could create a new tier to the gaming tax at \$500,000 per month to \$10 million per month. It becomes progressively less over time as you narrow the base to apply it. These are based

on estimates and the fact that further refinement from the State Gaming Control Board is necessary at a higher level.

The percentage fees are substantial, but we also tax gaming in other ways. We tax operators on a unit base, meaning how many slot machines and table games they have on the floor. The unit fees are based on quarterly or annual fees. For every \$1 you increase those taxes I have shown how much it will generate in [Exhibit J](#).

SENATOR HORSFORD:

I was monitoring the hearing in the Assembly Taxation Committee and was curious as to what deductions, if any, the gaming industry takes against its gross gaming revenue payments. Do gaming operators deduct that from their federal taxes, or are their deductions allowed in the state revenues they pay?

MR. AGUERO:

I do not know the answer to that question. I would have to research federal taxes. The gross gaming revenue paid to the State is allowed to adjust for bad debt. Some people think about it in different terms. We tax gross gaming win, which is different than the total. I want to make sure I am answering your question accurately. There is the idea all the money that goes into a slot machine less all the money that comes out of the slot machine equals what the operators are paying on the net. In terms of the reduction of the difference between those two, the only one I am aware of is the monies they did not collect.

SENATOR HORSFORD:

With the federal and state discussion on Internet gaming, how would the existing gaming tax structure allow companies that would be licensed and operate as Internet gaming companies to pay their taxes?

MR. AGUERO:

Levies are already in place under *Nevada Revised Statute* (NRS) 463.765. This chapter relates to the Internet gaming tax, initial licenses and annual fees imposed on nonrestricted gaming operators, manufacturers of interactive gaming systems and manufacturers of equipment associated with interactive gaming. They have a fee schedule imposed. If intrastate gaming activity were allowed, it would be subject to a tax similar to what we have in Nevada. That gross gaming win would be booked in Nevada and subject to the highest



marginal rate imposed on nonrestricted gaming activity. Operators would pay about 6.75 percent on intrastate play within the State. There has been discussion about allowing that activity to happen in the balance of the world where gaming activity would be legal and bringing that money to Nevada. The most recent analysis we did on that was approximately a 4 percent tax rate. Depending on how much of the \$5 billion worth of online activity coming into Nevada would be booked here, it would generate approximately \$35 million to \$67 million per year.

The Insurance Premium Tax is next on [Exhibit J](#). This is one of our most stable taxes in the General Fund. An increase of 0.25 percent of 1 percent would generate approximately \$16 million to \$18 million per year.

The next one is the hotel lodging tax, [Exhibit J](#). This is different from the room tax generated by I.P. No. 1 of the 75th Session. Those were narrowly focused in certain geographical areas and only for those where it does not exceed 13 percent; 3 percent not to exceed 13 percent. This is applying a hotel room tax to all hotel rooms statewide. An increase of 0.25 percent of 1 percent will generate approximately \$9 million to \$10 million per year.

The mining tax is the next on [Exhibit J](#). I have not included some of the ways that have been discussed because of constitutionality issues. If the deductions were reduced by a set percentage, such as 1 percent, reducing the total amount taken as a deduction generates about \$1 million per year.

CHAIR LESLIE:

Does it depend on which deduction you take? Did you average them all?

MR. AGUERO:

We looked at the aggregate amount of the deductions taken off the gross. If you limit that—and mining cannot take more than a certain percentage, whatever number you decided on—by reducing it to a hard threshold, every 1 percent would generate \$1 million. The different types of deductions can have all kinds of impacts.

CHAIR LESLIE:

It is significant. That is an interesting benchmark to go by. If we put it at 90 percent, then we would get approximately \$9 million.

MR. AGUERO:  
Something along those lines.

The next one is the Live Entertainment Tax. This is our amusement tax. It goes back to the old cabaret tax. If you increased that tax 0.25 percent of 1 percent, it would generate approximately \$3.9 million per year on the gaming side. On the nongaming side, it would generate approximately \$400,000.

The next category is general business taxes, [Exhibit J](#). There are a number of ways you can tax a business. You can tax a business based on its top line, referred to as a gross receipts tax. You can impose a tax on the bottom line or on the profit. That is considered a corporate income tax. There are ways you can find a way to tax some line item between the top line and the bottom line. In the State of Nevada we have the Modified Business Tax, which is specifically on the payroll line item. All these options have their strengths and weaknesses. You can tax a business based on its existence. If you have a business, you are charged a fee for having that business. It does not matter if you are big or small or have a lot of revenue or little revenue. There are many types of these taxes.

The first one is the Business License Fee. This is a tax on anybody who has an entity in Nevada. Every \$1 generated with this brings approximately \$300,000. This is a per capita tax.

The next one is the tax we have today, the Modified Business Tax on nonfinancial institutions. This is the largest revenue generator. An employer has its total amount of wages and salaries it pays and is allowed to deduct its employer-paid health care coverage. The net between those two is subject to a tax. The first \$250,000 at 0.5 percent and everything above that is at 1.17 percent. If the tax were increased 0.25 percent on all payroll, it would generate approximately \$84 million each year. I have listed a number of thresholds. In categories less than \$2 million per year, the deduction for the first \$250,000 exempts about 65 percent to 70 percent of businesses from the higher tier. While we exempt a high number of businesses, those businesses do not have a big share of payroll or employees. If we increase all payroll by 0.25 percent, we generate \$84 million a year. If we increase the tax on payroll above \$2 million, we drop to about \$44 million.

SENATOR HORSFORD:

The Modified Business Tax is a cost on a business regardless of its ability to pay. That is regressive as the sales tax is to low income people. Some types of businesses have a lot of payroll but little income, and then other businesses have a lot of income but little payroll. Addressing this on the amount of payroll businesses pay, another element is the ability to pay.

MR. AGUERO:

Senator Horsford makes a number of good points. Gross receipts tax has no bearing on a company's ability to pay. If you lose \$1 million, you still pay the Modified Business Tax; if you make \$1 million, you still pay the Modified Business Tax. Some of the other points that Senator Horsford makes are also valid. We have companies that are labor-intensive, capital-intensive, high margin, low volume. All these companies have different framework. The Modified Business Tax impacts each one of them differently and some ways disparately. If you are selling a service, you are taxed substantially higher than if you are selling a good. That is the reality of what we have created. There are other criticisms of the tax we have today. There is no perfect tax or perfect tax structure. The Modified Business Tax made more sense to us as a state when we had an unemployment rate of less than 5 percent as opposed to when we have an unemployment rate of 15 percent. This tax is a perverse incentive today, when we are trying to get 180,000 people back to work.

SENATOR HARDY:

One of the things I do not see on your list is what I would call an alternative minimum tax. If you were this much, you could do this or if you were that much you could that. Or you could choose which one you wanted if you were in the middle.

MR. AGUERO:

You are right. I was trying to talk about any number of those alternatives during the past several Sessions. I included one on the second page. Gross margin taxes allow businesses to deduct some things. The biggest criticisms to the gross receipts tax came from companies that had high volumes and low margins. For the same reason Senator Horsford just outlined, it could be something as low as 0.25 percent, but if you are working on a 1 percent margin, that is a big tax to your bottom line. I have put these gross margin taxes at 25 percent, 50 percent and 75 percent. I included one that has been discussed, the Texas margin model. I put one of those on as an option called

Nevada franchise tax. It is not the only one out there. Gross receipts taxes are modified in Ohio and Washington. Income taxes are modified in a number of ways. I have selected this one because it is a choose-your-own adventure tax.

I will explain how the Texas margin tax works. For gross revenue in excess of \$1 million, you can take three deductions. You can take a standard deduction of 30 percent. You are allowed to deduct your cost of goods sold. You are allowed to deduct your cost of labor. Texas recognizes that all businesses are not the same and allows businesses to modify their tax base to reflect the type of industry they are in. They are then subject to a tax of 0.5 percent on retail and wholesale and 1 percent on most other industries. There are shortcomings to that, and our economy looks a little different than the economy of Texas.

CHAIR LESLIE:

You have "yes" in the Baseline Rate Assumption column for Nevada franchise tax. What does that mean?

MR. AGUERO:

How much is Texas generating from this specific tax? How much does their economy look like our economy? How many consumers do they have? How many consumers do we have? Using that as a benchmark, what might we expect if we attempt to mirror that tax. There is more studying to be done, but I anticipated getting a question on something that falls between the gross receipts and net profits tax that would generate \$400 million a year.

SENATOR HORSFORD:

Would you view the franchise tax as a fair, equitable and less volatile tax than the Modified Business Tax? If so, please explain.

MR. AGUERO:

The entire idea behind the Texas franchise tax is to understand one size does not fit all from a tax policy standpoint. If you have the Modified Business Tax and the Texas franchise tax and you have a service-based company versus a capital-intensive company, under the existing Modified Business Tax, these two companies have very different tax burdens. If I have a lot of labor, I pay a much higher tax in Nevada. If I am selling goods, I pay a much lower tax in Nevada. In Texas, that is not the case. If I am selling goods, I can deduct my cost of goods sold. If I am selling labor, I can deduct my cost of compensation. The idea is to try to create an equal plan and make all businesses similarly situated under the

tax. To answer your question. Is it more stable? It is a little less stable than our payroll tax. It would depend on the time. When the economy goes and labor goes along with it and we have high unemployment, our Modified Business Tax can be unstable. The Texas franchise tax should be more stable, but it will depend on the mix of businesses. In reflecting the economy, the Texas franchise tax can be wildly superior to what we are doing today. If they generated the same amount of money from the payroll tax or the Texas franchise tax, the Texas franchise tax would be superior.

SENATOR HORSFORD:

I would like to see the net effect in a scenario of a small business, medium business and a large business. We should try to do everything we can to protect small businesses. We need to find what that means. Some businesses are small in the size of their labor, others are small in the income they make, and we need to evaluate that. We need to be fair and equitable to other industries that are not small. They need to pay the same amount regardless of the industry, so the rate is fair, equitable and, hopefully, low so it is not a disincentive. Is that something you can work with our staff to show us some samples of what a small business, a medium business and a large industry business would be under these general business taxes?

MR. AGUERO:

I would be more than happy to work with your fiscal staff and provide whatever information we can. We have built a few of those and would be happy to apply those models here.

CHAIR LESLIE:

We would appreciate that.

MR. AGUERO:

The next category is property taxes, [Exhibit J](#). There are a lot of different alternatives to the property tax. I have a few of them here. One of them is blank because we are continuing to work on it but do not have the estimates to where I feel comfortable. Every 1 cent per \$100 of value you increase the property tax would generate approximately \$8 million a year. If you eliminate the 3 percent and 8 percent property tax abatements, we estimate that would be \$24 million, dropping to \$12 million, then going to zero.

CHAIR LESLIE:

Why is that when property taxes are going down?

MR. AGUERO:

There are certain properties receiving some abatements. It may seem like a big number, but it is fractional and eroding quickly. That is our most recent estimate on how much everybody is losing from that abatement.

CHAIR LESLIE:

I am surprised it is that high.

MR. AGUERO:

After all the appeals get done, it may be a lot lower. The reason they still have some abatement is because their property dropped so much at the front end. The last one is eliminating the depreciation. This came up in past sessions and has been part of some discussion before. The State has something unique in terms of its property tax system, which is to lower property taxes to reflect depreciation of value by 1.5 percent every year until you get to a salvage value of 25 percent of the total. Eliminating that would be a substantial revenue generator but estimating it is a bear.

CHAIR LESLIE:

This is the one where people like myself pay almost nothing, and when I sell my house, the next person gets that depreciation.

MR. AGUERO:

Yes. The depreciation travels with the property.

Excise taxes are the next category, [Exhibit J](#). These are popular taxes to increase on liquor, cigarettes and other tobacco products. Beer and liquor products are taxed differently, depending on the alcohol volume. I put in a 1-cent increase in all liquor taxes and what it would generate in new revenue. I also put in a 1-cent cigarette tax and what it would generate in revenue. Beer and cigarettes are larger revenue generators. I increased other tobacco products at 0.25 percent that would generate approximately \$80,000 per year.

On the last category, other taxes/fees, [Exhibit J](#), I selected a few of the other taxes and fees that come up often in discussions and show the order of magnitude. Real Property Transfer Tax was popular when property values were

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taking off and bad when property values declined and nothing sold. This is the least stable tax today. If you raised this 0.25 percent, it would generate approximately \$41 million. The rate today is \$1.30 per every \$500 of value. The rate is low, but the base is very wide.

Bank Excise Tax funds the General Fund. There are 1,760 bank branches. If you increase this by \$1 it will generate \$1,760.

The Governmental Services Tax on car rentals is on this chart. If you raise that by 0.25 percent, it will generate approximately \$1.1 million. Tire tax is the last one. If this is increased by \$1, it will generate \$1.6 million.

That is my general overview of some of the options. I appreciate the opportunity to come before your Committee. I will be happy to answer any questions you have.

CHAIR LESLIE:

This is a helpful document and something we will want to keep handy.

SENATOR HORSFORD:

Where would the Ohio activity tax fall in this list?

MR. AGUERO:

It would be a gross receipts tax, although it has some margin elements to it. If we imagine it is a spectrum with net profits on one end and gross receipts on the other end, it would be closer to the gross receipts.

CHAIR LESLIE:

We need to move to our work session on Senate Bill (S.B.) 79. The description and amendments are in our binders.

**SENATE BILL 79**: Makes various changes relating to the Tobacco Master Settlement Agreement. (BDR 32-291)

JOE REEL (Deputy Fiscal Analyst):

In your binders are the work session documents and behind that are the four amendments to the bill. I will discuss those as I go through the summary. We heard S.B. 79 on March 31. It is a Revenue Committee bill on behalf of the Office of the Attorney General. Senate Bill 79 makes various changes to

Nevada's qualifying legislation to the tobacco Master Settlement Agreement (MSA). This is regarding the nonparticipating manufacturers and the wholesale dealers that sell products of a nonparticipating manufacturer. Within the bill, a wholesale dealer of cigarettes is liable for the escrow deposits required by the MSA if there is a shortfall in the escrow fund regarding cigarettes of a nonparticipating manufacturer that were stamped or distributed by a wholesale dealer. The wholesale dealer would have a claim against the nonparticipating manufacturer for any payments made on behalf of that manufacturer. A wholesale dealer may negotiate prepayment of the escrow deposit.

There is an amendment related to that item. A nonparticipating manufacturer may be required to post a bond approved by the Attorney General's Office for benefit of the State of Nevada in order to make escrow payments if it is necessary. Within the bill, the licenses of the wholesale dealer may be suspended or revoked under certain circumstances. A manufacturer and the brand families of a manufacturer may be denied listing in the Nevada Tobacco Directory or removed from the Directory based on certain conditions. The establishment of the Account for Tobacco Enforcement is to assist the Attorney General's Office in enforcing the provisions of the bill and the MSA. There is additional authorization to apply for any available grant, accept gifts, grants, appropriations or donations for deposit into that account. There is also an amendment regarding that item. I will not go through the testimony in support of the bill that was provided, but the Attorney General's Office testified in support of the bill at the hearing.

There was no opposition to the bill. Neutral testimony was presented by Alfredo Alonso from Reynolds American, Sam McMullen from Altria and former Senator Ernie Adler, representing the Reno-Sparks Indian Colony. In regard to the amendments, turn to the last two pages of the work session document, as well as the amendments following. The Committee heard testimony on three of the amendments and since that day, there has been a fourth amendment. I will go over each of the amendments briefly.

During the hearing, the amendments provided by the Attorney General's Office are as follows: Amendment 1 amends section 4. This deals with the type of information the Attorney General's Office can use in terms of determining if someone should be listed in the Nevada Tobacco Directory. Instead of checking whether a manufacturer is under investigation for committing certain crimes, the amendment requires the manufacturer actually be convicted of a crime.



Amendment 2 to section 2 would give a longer notice period of 90 days to cure an escrow deficiency by the nonparticipating manufacturer or the wholesale dealer.

The third amendment, presented by Mr. Alonso, amends section 4 and made the distinction between being a nonparticipating manufacturer as opposed to all manufacturers with regard to conditions of being denied listing on the directory.

Senator Adler provided the last amendment. The Attorney General's Office did work with Senator Adler on this particular amendment, and the Office is in support of it. There were concerns that a wholesaler's dealer would be required to make payment on behalf of a nonparticipating manufacturer if an escrow payment is not made. These provisions would make the wholesale dealer not liable for payments if the wholesaler did require a prepayment of the escrow deposit. Certain conditions have to be met in terms of verifying the prepayment was made. That would lessen the liability potential for a wholesaler. In section 6, there was concern that if the Attorney General's Office could receive grants or gifts, they should not be made by a tobacco manufacturer in order to maintain neutrality.

SENATOR HARDY:

The amendments do a lot of things to make it better. Did we take those violently neutral people and make them positive on this?

CHAIR LESLIE:

My understanding is everyone is happy and these are acceptable amendments to all the interested parties. Come forward if that is not the case.

SENATOR HARDY:

Thank you for all those heads shaking to confirm the amendments.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 79.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HALSETH VOTED NO.)

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CHAIR LESLIE:

Seeing no additional comment and no additional business before the Committee,  
this meeting is adjourned at 2:52 p.m.

RESPECTFULLY SUBMITTED:

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Gayle Rankin,  
Committee Secretary

APPROVED BY:

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Senator Sheila Leslie, Chair

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

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Luke E. Martel	State Revenue Changes
	D	Luke E. Martel	State Tax Actions 2009
	E	Luke E. Martel	State Tax Actions 2010
	F	Luke E. Martel	State Sales Tax Rates
	G	Luke E. Martel	State Tax Amnesty Programs
	H	Luke E. Martel	State Reliance on Major Tax Sources, 2009
	I	Luke E. Martel	State Reliance on Major Tax Sources, 2010
	J	Jeremy Aguero	Analysis of Nevada Revenue Alternatives
S.B. 79	K	Joe Reel	Work Session Document