

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

**Seventy-Eighth Session
May 7, 2015**

The Committee on Taxation was called to order by Chairman Derek Armstrong at 1:38 p.m. on Thursday, May 7, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Derek Armstrong, Chairman
Assemblyman Randy Kirner, Vice Chairman
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Irene Bustamante Adams
Assemblywoman Olivia Diaz
Assemblywoman Jill Dickman
Assemblyman John Hambrick
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senate District No. 19

Minutes ID: 1090



STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Bryan Fernley, Committee Counsel
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dawn Lietz, C.P.M., Deputy Administrator, Motor Carrier Division,
Department of Motor Vehicles
Alex Tanchek, representing Nevada Cattlemen's Association
Josh Hicks, Tax Attorney, Brownstein Hyatt Farber Schreck
Michael D. Hillerby, representing Nevada Optometric Association
Jeanette K. Belz, representing Nevada Academy of Ophthalmology

Chairman Armstrong:

[Roll was called and housekeeping items discussed.] On the agenda today we have a work session for Senate Bill 170 (1st Reprint), and we are hearing Senate Bill 155 (1st Reprint) and Senate Bill 334 (1st Reprint). We will do the work session on S.B. 170 (R1) first.

Senate Bill 170 (1st Reprint): Provides for a partial abatement of certain taxes for new or expanding data centers and related businesses in this State. (BDR 32-765)

Michael Nakamoto, Deputy Fiscal Analyst:

The work session bill today is Senate Bill 170 (1st Reprint). The members should have copies of the work session document in their binders ([Exhibit C](#)). The work session document should also be available on Nevada Electronic Legislative Information System (NELIS).

Senate Bill 170 (1st Reprint) was heard in this Committee on April 14 and was sponsored by Senator Roberson. The bill provides for the Office of Economic Development, Office of the Governor (GOED), to grant a partial abatement of personal property taxes or sales and use taxes for up to 20 years for qualified new and existing data centers and any colocated businesses within a qualified data center, if the data center and the colocated businesses meet certain requirements as set forth in the bill.

Under the bill, in the first reprint, the amount of the property tax abatement is limited to 75 percent of the personal property taxes imposed on the property located at the data center. The amount of the sales and use tax abatement is equal to all sales and use taxes imposed in a political subdivision, except for the state 2 percent rate that was imposed by the Sales and Use Tax Act of 1955.

The work session document lists the eligibility requirements for the data center seeking the abatement for up to 10 years, and then for up to 20 years. I am not going to go through all of those.

The bill also removes provisions from existing abatements provided for data centers that are located in certain economic development areas pursuant to *Nevada Revised Statutes* (NRS) 274.310, NRS 274.320, and NRS 274.330. These provisions were originally approved by the Legislature pursuant to Assembly Bill No. 1 of the 27th Special Session.

There are two amendments attached to the work session document that I will go through (pages 4 and 5, [Exhibit C](#)). The first is from Mark Fiorentino, on behalf of Cobalt Data Centers. This particular amendment would reduce the minimum requirements for applicants seeking the partial abatements for up to 10 years. It would do so by reducing the number of required employees from 25 employees to 10 employees and by reducing the cumulative capital investment that would be required from \$50 million to \$25 million over the period of the abatement.

The second amendment was submitted by Mr. Hill from GOED. This amendment would specify that for any abatements approved by GOED relating to data centers for fiscal year (FY) 2016, the amount of the abatement would require the data center or the colocated business to pay a sales tax rate of 4.6 percent; that would be the state 2 percent rate plus the 2.6 percent local school support tax rate (LSST), or whatever the applicable LSST rate is at the time, depending on what the Legislature chooses to do during the 2015 Session. For 2017, all sales taxes would be abated, except for the state 2 percent rate.

It is my understanding that Assemblywoman Kirkpatrick will have additional amendments that she will be discussing, but with respect to those two amendments or the bill, I will be happy to answer any questions.

Chairman Armstrong:

I will turn it over to Assemblywoman Kirkpatrick to offer her amendment.

Assemblywoman Kirkpatrick:

I did want to make some clarifications. I think there are some holes within the abatement and I want to ensure that we are promoting Nevada employees having the job, that the construction work gets done in the specific county, that the project is being done by Nevada workers, and that people have a business license.

My theme is to ensure when we bring these industries or we encourage them to expand, that there is a real return on our investment. I believe that did not happen the first time the bill was printed.

I incorporated some of the other ones, because I think this should not be just for one big company. This should apply to everybody, and it should allow for the smaller companies to come in.

On page 3, line 32, section 1, subsection 2, paragraph (d), subparagraph (1), I want to change the employees from 25 to 10.

On line 33, in the same subparagraph, I want to ensure that is changed from 25 to 10, and I also want to include the word "Nevada" before employees, because in the data world I want to ensure they are not virtual employees. I want to make sure they are not folks that come in and out as independent contractors, but that they are truly a Nevada employee.

On line 41 of page 3, I want to change the investment for the smaller folks from \$50 million to \$25 million.

On page 4, line 18, I want to add the word "Nevada" before employees to specify that the employees must be Nevada employees. I believe there is a way to track them, and that piece I pulled from the Tesla bill [Senate Bill No. 1 of the 28th Special Session] would specify what the companies would be required to have on hand.

On page 3, line 42, and page 4, line 28, I want to restructure the sentences. I want to make sure it is site- and county-specific because we cannot have people going across the state, to different locations, and taking all the taxes along the way. I want to ensure that we restructure those sentences so they say it must be in a "county in this State," so it is definite as to where those assets are, and so people are not moving and counting \$1 in Clark County, \$5 in Storey County, \$10 in Elko County, and collecting all those taxes along the way. They have to make an initial investment that folks can see. I believe people like to be able to see their assets, so that is why that is there.

On page 7, line 33, currently within the bill it does not require all of the colocators to have a business license, and I believe they should have a business license. They are actually doing business in our state. They are locating, and this goes back to the return on our investment. We are investing in companies, so they need to invest back.

On page 11, line 31, section 6, subsection 2, paragraph (b), adding language specifically "notwithstanding any other provisions of the bill, that the Office of Economic Development not approve the abatement of taxes imposed by NRS Chapter 374," and that is something that has been a hill to die on for me policy-wise within the state. I believe, when we are in a session where we are trying to fund dollars, that we cannot give up our current LSST. That is going to have to wait for the next year.

On page 11, line 41, section 6, subsection 3, paragraph (c), currently within the bill it has a reference to a federal statute that is wide open on what is considered personal property for that exemption. I do not have the exact language so I would ask the indulgence of the Committee to let me continue to work on it with Legal. Currently, what the language says in the federal statute is anything is open and they do not have to pay property tax, sales tax, or any of that. I believe that needs to be very tight. This is meant for the data components of the building, and not meant for everything else.

Going back to the "Nevada employee," when we did the bill that helped bring Tesla [S.B. No. 1 of the 28th Special Session], we required that person and the colocators to have proof on file that they were Nevada residents, Nevada employees, and Nevada workers, so I wanted to incorporate that language. It says to ensure that they are Nevada residents, we want a copy of the current and valid driver's license of each employee, or a current and valid identification card. If the employee is a registered owner of one or more motor vehicles in Nevada, we want a copy of the current motor vehicle registration of at least one of those vehicles. We want proof that the employee is employed full-time and scheduled to work for an average minimum of 30 hours per week, and proof that the employee is offered coverage under a plan of health insurance provided by his or her employer. Those are things we talk about for a new Nevada. That is a standard we set, and I believe we have to continue that standard.

Also, within the language there was nothing that talked about the construction of these projects. These projects are supposed to be expanding and we want to see what they are building. To be consistent with the language that I, at least, have pushed for since 2007, I want to ensure at least 50 percent of the employees are Nevada residents, and that there is satisfactory proof on how that works and we have that information.

I think this tightens it up and ensures we have a return on our investment. This will require them to give all of the receipts to the county treasurer. The GOED director will ask for them so we can fill out the tax expenditure report, and truly measure it. I think it has been helpful. We set a good standard in place on the types of reports. I am happy to report today that 76 percent of the construction jobs for Tesla were Nevada residents. In order for me to support abatements in this building anymore, we are going to have to have a higher standard for folks.

Chairman Armstrong:

I have a couple of comments. The conceptual amendment proposed by Assemblywoman Kirkpatrick incorporates the other two amendments, so they are included in her conceptual amendment. If the bill passes here today, we need to clear up the definition for page 11, line 41, section 6, subsection 3(c), as related to equipment before it goes to the floor. Are there any other questions from the Committee?

Assemblyman Trowbridge:

In regard to your comment about "Nevada employees," does that address the employees that would be there after the facility becomes operational, or address employees involved in any construction?

Assemblywoman Kirkpatrick:

It includes both.

Chairman Armstrong:

I think that there are two parts to that. We need some clarification, because the construction is 50 percent Nevada employees, and then once it is established it is either 10 employees who are Nevada employees, or for the 20-year abatement it is 50 employees that are Nevada employees.

Assemblywoman Kirkpatrick:

Correct.

Chairman Armstrong:

Are there any other questions from the Committee? Seeing none, at this time I will entertain a motion to amend and do pass, with Assemblywoman Kirkpatrick's conceptual amendment.

ASSEMBLYMAN TROWBRIDGE MOVED TO AMEND AND DO PASS SENATE BILL 170 (1ST REPRINT).

ASSEMBLYWOMAN BUSTAMANTE ADAMS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

The floor statement will be assigned to Assemblywoman Kirkpatrick.

I will close the work session on S.B. 170 (R1) and open the hearing on Senate Bill 155 (1st Reprint).

Senate Bill 155 (1st Reprint): Revises provisions relating to farm vehicles and implements of husbandry. (BDR 32-707)

Senator Pete Goicoechea, Senate District No. 19:

This is noteworthy today. Some of the more veteran members of this Committee know that typically when I come to the table with a farm plate bill I do not have the Department of Motor Vehicles (DMV) with me, so I am going to tell you this is real progress.

This is kind of an extensive bill. I will walk through it as quickly and simply as I can. The first portion of the bill allows for an 80 percent rebate on the fuel taxes if the fuel is, in fact, purchased in bulk. It cannot be put into a vehicle or unit; it has to be purchased in bulk, which is 50 gallons or more of special fuel not placed directly into a tank.

Under existing law you can get 80 percent of your gas taxes back if you are defined as an agricultural producer, so what this does is it extends the 80 percent to special fuels as well. You have to apply to the Department for a permit, and after that you would have to submit your bills for the special fuels or gas, and you could get 80 percent of the gas tax back on those.

The rationale for that is, technically, in the agricultural sector we have what we call red fuel or dyed fuel, which is untaxed. So the thoughts on this are, if we simplified the mechanism to get at least a portion of that fuel tax back, then we would not have the issue of red fuel, clear fuel, or who is running dyed fuel. The bottom line is, it would be a little more expensive to run white fuel in all of your implements, but then you would not be running the risk of getting caught running dyed fuel, red fuel, or off-road fuel. We think this is good and I will let DMV testify to their portion of the support on this.

Next we move into the implements of husbandry, and to me this is the real meat of the bill. It allows for a farm plate for any vehicle that is designed to be operated at a speed of 25 miles per hour or more, travels incidentally on the highway, and is an implement of husbandry. We go on to define in the bill exactly what implements of husbandry are. There are some exemptions that would apply to water trucks or feed trucks, even though they might be designed to be registered; if their sole operation and duty is to provide either water or feed for livestock, then they would have a special designation. The license plate will cost \$100 for a lifetime. Originally it started at \$20 per year.

If you have an implement of husbandry, in the law it says it is capable of 25 miles per hour or more, but the intent is you could put a farm plate even on a tractor that was not capable of doing 25 miles per hour or more just so you had the protection. The next piece of this bill requires that the unit be covered with liability insurance; your farm liability policy would cover you. It is not specific to a vehicle, like vehicle insurance, but you would have to have \$300,000 in liability coverage.

The concern today is that, especially in rural Nevada and northern Nevada, we have a number of them—farm implements, tractors, bailers, feed wagons, whatever—that do travel incidentally up and down the highway, across a highway, and in some instances they might even go three or four miles. My liability insurance carrier tells me if it is not registered, then it is a little bit gray as to whether it is covered by my liability insurance because they are unregistered.

This is a mechanism that would allow people in those circumstances to be registered with this farm implement plate. Again, it could have white or red fuel in it because it is a farm implement, but in the first piece of the bill we are trying to get everybody to run white fuel. That would give you at least 20 percent tax revenue—an additional 20 percent that you do not capture under red fuel. As we walk through the bill it refers to all the vehicles.

The other side of it is if the vehicle, such as a swather, which is self-propelled and might incidentally travel down a highway, if it is not capable of 25 miles per hour, under this law you do not have to get a farm implement plate for it. Instead you can get a slow-moving vehicle placard but, unfortunately, that is not really full-blown coverage.

I brought this bill in the hope that we could get a lot of the agriculture sector out there that are incidentally traveling on or across county roads, or state roads where there is public traffic, and if they have this farm implement tag, it shows they have liability coverage and, therefore, are not automatically at fault if there

is an accident that occurs. The way I read the current language, if you have a tractor and you are going down the road and it is not registered, it becomes very iffy. I will stand for any questions.

Chairman Armstrong:

Are there any questions from the Committee members? Seeing none, would you like DMV to testify first?

Senator Goicoechea:

Yes.

Chairman Armstrong:

We will move to those who want to testify in support.

Dawn Lietz, C.P.M., Deputy Administrator, Motor Carrier Division, Department of Motor Vehicles:

Senate Bill 155 (1st Reprint) proposes to allow a bona fide farmer or rancher to receive a refund on 80 percent of the taxes paid by that farmer or rancher on bulk fuel—and the taxes paid are the Nevada state taxes—without providing records to the Department. We are actually going to grandfather in those that we have already deemed bona fide farmers on the gasoline side, so the only ones that will have to apply for the special fuel one are farmers that are only using special fuels. There should not be too many new farmers coming in like that.

This bill does not preclude farmers or ranchers from maintaining records to support interstate operations, or other state and federal requirements for record keeping when applicable, such as their license under the International Fuel Tax Agreement (IFTA) or for the Internal Revenue Service (IRS) for tax purposes.

Senate Bill 155 (1st Reprint) also revises the definition of "implements of husbandry," and requires any implement of husbandry operated on the public highways of this state to display either the farm vehicle plate or a slow-moving vehicle placard.

The bill was amended in the Senate to expand the definition in section 6 of "implement of husbandry" to include a farm vehicle that is used exclusively by a farmer or rancher for agricultural purposes on a farm or ranch. That is primarily for water trucks, feed trucks, or a vehicle that would normally be deemed a farm vehicle but is being used exclusively for an agricultural purpose and, therefore, is not running on the highway. That type of vehicle would be deemed an implement of husbandry, but it does not open it up for all farm

vehicles. It is specific to that exclusion. Also in section 6, a farm vehicle does not qualify as an implement of husbandry if it is used for any other purpose and it is on the public highway.

Section 5 was also revised to remove the initial fee of \$20.50, with a \$10 annual renewal for the farm plate, to a nontransferable one-time fee of \$100 plus the plate fees. Section 5 also requires the Department to suspend or revoke a farm plate if the person to whom it is issued fails to maintain liability insurance as required, and it removes all references to decals as they will no longer be necessary on a permanent plate.

I will quickly run through each section of the bill to highlight the remaining changes.

Currently bona fide farmers and ranchers are eligible to receive 80 percent of the motor fuel gasoline tax paid on their bulk purchases without providing records. Section 1 will allow a new provision in Chapter 366 of *Nevada Revised Statutes* (NRS) to grant that same provision to farmers and ranchers that are using bulk special fuel.

Section 2, subsection 4, of the bill amends NRS 366.203, removing the term and definition of "farm equipment" and replacing it with "implement of husbandry."

Section 3, subsection 2, amends NRS 482.036 by removing the condition of "his or her own" for the purposes of transporting livestock, agricultural products, or other machinery or supplies to or from a farm or ranch. Subsection 3 also adds the words "motor carrier" to the restriction, so in this section a farmer who is transporting livestock for another farmer can still do that, but under the previous provisions they were not allowed to do it unless it was their own livestock.

Section 4, subsection 1, amends NRS 482.210 by removing the qualifier "temporarily drawn, moved or otherwise propelled upon the highways" from the term "implements of husbandry."

Section 5, subsection 1, amends NRS 482.276 by placing conditions on the agricultural user who operates or tows an implement of husbandry designed to operate at a speed of 25 miles per hour, or who operates an implement of husbandry on a highway with a posted speed limit greater than 35 miles per hour, or to transport a nonmotorized implement of husbandry, they must obtain that permanent farm plate before they can do that. The plate will signify to law enforcement that the implement of husbandry has the required liability

insurance of \$300,000 or more. Subsection 4 also requires any motorized implement of husbandry designed to operate at a speed of 25 miles per hour or less, which is being operated on a highway, to display a farm license plate or a reflective placard for a slow-moving vehicle. That slow-moving vehicle placard has to be approved for use by the U.S. Department of Transportation.

Section 5, subsection 5, requires any nonmotorized implement of husbandry transported on the highway to be transported by a properly registered motor vehicle or properly identified as an implement of husbandry. Subsection 6 designates the placement, visibility, and reflectivity of the placard. Subsection 7 clarifies the implement of husbandry is not required to obtain a smog check. Subsection 8 refers to NRS 484D.020 for the meaning of implement of husbandry.

Section 6 revises the definition in NRS 484D.020 of implement of husbandry to clarify the design of a vehicle which qualifies as an implement of husbandry. Subsection 2 identifies the type of vehicle the term implement of husbandry includes. Subsection 3 identifies the type of vehicles and equipment the term implement of husbandry does not include.

Sections 7 and 8 amend Chapter 484D of NRS to remove references to farm tractor and every self-propelled unit of farm equipment, and refer to all qualifying equipment as an implement of husbandry. Section 9 amends NRS 706.071 to match the language in NRS 482.036.

I would be happy to answer any questions you may have.

Assemblywoman Neal:

I just wanted to know the history behind not keeping the records, in relationship to the fuel.

Dawn Lietz:

You do need to maintain the records. They do not have to provide us with records; they just have to tell us how many gallons they purchased in bulk to get their refund. They still have to maintain records for their total purchases, their miles traveled, et cetera, for other programs such as IFTA and the IRS.

Assemblywoman Neal:

But you do not have to physically see it yourself?

Dawn Lietz:

They just have to tell us, just like they do with the gasoline, how many gallons they bought in bulk. We use the supplier records to verify the purchases, so if they buy 100 gallons once a month, we can go back to the supplier they purchased the fuel from and confirm those deliveries were made, so they do not have to provide us with those records.

Assemblywoman Neal:

What I did not hear on the record was the public purpose of the exemption for now including special fuels. What is the public purpose of exemption for the special fuels?

Dawn Lietz:

Currently there is a lot of debate on whether or not farm vehicles are allowed to use dyed fuel on the highways. The IRS is pretty clear that if the vehicle is a farm vehicle, a highway rated vehicle, you cannot use dyed fuel on the highway, but some of the farmers have been doing that. This takes that away, so they do not purchase the red dyed fuel anymore. They are going to purchase the clear fuel.

Assemblywoman Kirkpatrick:

I was given a red dye fuel bill my very first session so I understand where you are coming from. I think it does make sense now, since we have all of the tracking in place, but back then we did not have the tracking with the suppliers. I think this has been a longstanding argument, because sometimes a farmer has to get to the other side of the highway, as their farm might be divided by that highway. You could get a ticket because you had red fuel, and you were just trying to get to the other side of the road.

I am glad we are finally cleaning this up and having it make sense, because we spend more time administratively than we should to make it work.

Senator Goicoechea:

Yes, we spent a lot of time on it. This is truly an effort. I believe by making it a little more flexible and not having to track it will be easier. It is extremely difficult to track if you are running a tractor or a farm implement, because then all of a sudden it becomes gallons per hour, not miles per gallon.

I think most of the operators will, in fact, just run white fuel, get their 80 percent back, and call it good. As Assemblywoman Kirkpatrick said, technically under the existing law today, if you pull a tractor out on the highway and have to go down that road even one-quarter of a mile, you are supposed to

drain the tanks and change filters. If you are having to do that three times a day, you are not going to do it. The bottom line is I think it is a good step forward and I hope I have your support.

Chairman Armstrong:

Would anyone else like to speak in support of S.B. 155 (R1)?

Alex Tanchek, representing Nevada Cattlemen's Association:

The Nevada Cattlemen's Association wants to be on record as being in support of S.B. 155 (R1).

Chairman Armstrong:

Would anyone else like to speak in support of S.B. 155 (R1)? Seeing no one, we will move to those in opposition. Would anyone like to speak in opposition to S.B. 155 (R1)? Seeing no one, we will move to neutral. Would anyone like to speak as neutral on S.B. 155 (R1)? Seeing no one, do you have any closing remarks?

Senator Goicoechea:

No.

Chairman Armstrong:

I will close the hearing on S.B. 155 (R1) and open the hearing on Senate Bill 334 (1st Reprint).

Senate Bill 334 (1st Reprint): Proposes to exempt sales of certain durable medical equipment, mobility-enhancing equipment, hearing aids, hearing aid accessories, and ophthalmic or ocular devices or appliances from sales and use taxes and analogous taxes. (BDR 32-262)

Josh Hicks, Tax Attorney, Brownstein Hyatt Farber Schreck:

I am here at the request of Senator Roberson to present this bill. I testified in support in the other house. Senator Roberson could not make it today and asked if I would brief your Committee.

I am not appearing today on behalf of any client, other than my own practice as a tax lawyer practicing state and local tax. I saw this bill and thought it was a good one. I supported it and still do.

To walk you through it, this is a bill that pertains to a variety of medical equipment and how they are treated under sales and use tax law. It creates an actual ballot question and creates language that is contingent upon the passage of that, to exempt certain types of devices from sales and use tax.

The reason that has to happen is that *Nevada Revised Statutes* (NRS) Chapter 372 can only be substantively amended by a vote of the people, so that is why you see this in the form of a ballot question. Chapter 374 of NRS can actually be changed without a vote of the people, but in this case the changes of that section would be the same as in Chapter 372 of NRS. They are contingent upon the passage of the ballot question.

The types of equipment that this would apply to are in sections 2 through 9, pertaining to what is called durable medical equipment and mobility-enhancing equipment. That covers a variety of devices. The most common devices are wheelchairs, crutches, hospital beds, and those kinds of things; but it also covers things along the lines of oxygen and respiratory delivery devices, oxygen tanks, and oxygen concentrators. I know from personal experience that in the Department of Taxation's perspective, those types of devices are considered durable medical equipment.

I should also say that in this case, the only types of devices that will be covered are those that are prescribed for the patient. The exemption would also cover the tax on hearing aids, hearing aid accessories, and ophthalmic and ocular devices that are with a prescription of a physician.

This bill does have a limited shelf life. If the voters pass it in November 2016, it would go into effect on January 1, 2017. It would remain in place until December 31, 2026.

Just to give you some examples of how this is done in other states, I did put a document onto the Nevada Electronic Legislative Information System (NELIS) that you should have. It is a comparison of streamlined sales and use tax states ([Exhibit D](#)). There are 24 states, of which Nevada is one, that participate in the streamlined sales and use tax agreement, and I listed a variety of categories. These are categories that streamlined sales and use tax uses. They are not necessarily the exact categories in every state.

As you can see, some of these have in-home and out-of-home distinctions, which Nevada does not have, but at least it gives you an idea of how these types of devices are treated in Nevada, as compared with other states. You can also see that Nevada really taxes everything right now, and is in a distinct minority in several cases on this. I think this bill would help bring some of that into line, and that is the reason why I am supporting it.

I would also say that in the context of my tax practice I have encountered multiple occasions where taxpayers have issues. I think it is very fair to say that the current rules in Nevada law, about how durable medical equipment and

mobility-enhancing equipment in particular are taxed, are unclear and, in fact, actually contradictory in some regulations.

You will see people getting stuck in that, and they end up getting audited and having to deal with all that. I think this bill will go a long way toward clearing some of that up as well, and I support it for that reason.

That is my presentation of the bill. I am happy to answer any questions.

Assemblywoman Kirkpatrick:

I understand the streamlined sales tax portion of it. I just worry about two things. One, we have a lot of things on the ballot this time, and so what happens if only one-third of the people vote for it and it does not pass? We have been down that road before, in 2007, where we tried to do streamlined stuff and it did not pass on the ballot, so then we were kind of stuck. Two, what do you think the sales tax implications are, the potential loss? I go back to saying we are in a situation where we are looking for steady revenue, and this is a growing economic sector that we have within our state. How much do you think that applies to everybody?

Josh Hicks:

With respect to your first question, I am not really sure what the ramifications would be. I guess if it failed spectacularly at the ballot it would probably be a pretty clear signal from taxpayers that they do not want to have these exemptions in place. We would just maintain the existing place where we are, which is in the minority position, at least with respect to some of the items, compared to other states that are in the streamlined sales and use tax compact.

With respect to the fiscal impact, I did see that the Department of Taxation put a fiscal note on this, and it appears they put it for the whole ten years. If you look at the effective date of this, maybe it is a little bit less, but the biggest part of that is certainly in the ophthalmic and ocular piece. If you look at what they put for fiscal year 2017, it was \$4,787,134. If you look at what they put for hearing aids, it was \$541,103, and for durable medical equipment it was about \$931,714.

As I testified earlier, in my opinion, the Department is actually collecting on some types of durable medical equipment that I do not think they should be. I would say that number should be seen in that light, but despite that, those are numbers that would have to be taken into account if it were to pass.

It is contingent upon passage by the voters, but I think it is something that as the session goes along and the whole revenue package is looked at, certainly those numbers would have to be looked at because it does create a potential revenue shortfall in sales tax.

Assemblywoman Kirkpatrick:

I think we need an orchard of money trees with the way this session is going.

Assemblyman Kirner:

My questions were very much along that line. It seems like every other bill somebody wants a tax break. I do not know what the overall impact of this is, and to Assemblywoman Kirkpatrick's point, at some point in order to move forward on a bill like this we need to know what the fiscal impact would be. I know it is not your responsibility, but it is a pertinent part of the bill.

Assemblyman Nelson:

My question is basically along the same lines. You know what we are going through right now. We have at least two competing tax plans, and another proposal. We are getting lots of pressure. We are trying to search for every dollar we can to fund education. What is the rationale for this?

Josh Hicks:

From my perspective, I think the rationale is a couple of things: consistency and clarity for taxpayers. As I mentioned, I think a lot of people get caught up and confused, particularly with the term durable medical equipment, if they have a multistate type operation, because they will be used to not paying those in other states, including California, which is not a streamlined sales tax state but exempts many of these items. To me there is a very big benefit to taxpayers who do not have to fight these kinds of audits and go through all of that, and that is important.

I think with respect to some of these items, in my experience many of them are items that are used by people who are either very young or older. That group is typically who the patients are. Many of them are retirees. Many of them have insurance that oftentimes just provides a flat reimbursement rate. It does not cover taxes, so that means it is on that patient to deal with it. The Department has even taken the position that for certain programs under Medicare, some of these items are not tax exempt. For example, if you have Medicare Advantage and you purchase one of these types of items, you are going to have to pay the tax on it, pursuant to the Department. There is certainly the fiscal impact, but I would urge the Committee to balance it and look at some of the impacts the taxpayers are paying on this as well.

Assemblyman Hickey:

The discussion with regard to sales taxes in Nevada frequently asks whether or not they are regressive, and in the case of Nevada, we are not as regressive as many states because we have exempted food and groceries and prescription drugs. This sort of follows along that line, so I would agree in that sense it makes our sales taxes less regressive.

In your opinion are there other areas that we currently tax that make our sales taxes more regressive along these lines of medical uses, that the elderly or others need, that might be contemplated? I realize that is beyond the scope of this bill, but I just thought I would ask your opinion, because we have had that discussion in this Committee about taxes.

Josh Hicks:

In my experience the durable medical equipment category has been kind of a catchall for the Department of Taxation. Despite that, there are a variety of other types of devices I think a lot of people deal with, like the oxygen devices and respiratory devices for people who have very serious health conditions that those help address.

I think those are the types of items that would be appropriately treated as tax exempt, not only for consistency with other states, but because of the regressivity of it, and because of the patients who typically use them, either younger patients or older patients—many retirees on fixed incomes. So I think it is consistent with that. With respect to other areas of the tax code, I am not sure I can get into that right on the record, but I would be happy to think about it some more and get back to you.

Assemblywoman Neal:

This applies to local governments, and then the portion of the LSST that would be taken. Can you talk more about the indirect effects in other chapters? One of the statutes that it applies to is the financial emergency statute, so let us say I am the tax department, I set up a plan for financial emergency, and I want to use the LSST in order to try to make a local government whole. According to the fiscal note it is significant—over \$3 million when you look at the aggregate amount. What would be the effect of not being able to capture that revenue because you have made it exempt?

One of the other statutes that it also speaks to is the repair and improvement of school facilities, and we collect LSST for those purposes as well.

I heard your argument about the regressiveness, the need, and the use by certain folks, but if we need those dollars for other real public purposes that are severe right now, how do you balance that?

Josh Hicks:

I would say the whole sales and use tax chapter is a balancing act. It has a variety of exemptions in it, each of which has some kind of fiscal impact. If you look at it in the light of the exemption, it creates a lack of dollars. Then there is certainly an impact on the school piece, or anything else that is actually used for bonding, but those are made based on projections that are available at the time, so they would not take into account exemptions. I guess to some extent maybe it would lower that ability of the revenues out there, but it would just depend on what it actually was. The LSST is only part of this. It is 2.6 percent of the sales tax rate, so it is not the entire amount. If you look at the fiscal note, you need to knock it down a little bit to see what the LSST piece would be because, as I understand it, in the fiscal note it is the whole tax rate.

Assemblywoman Neal:

When we sit in this Committee, we look at legislation that comes through as a whole. We just heard the school improvement repair bill for Washoe County [Senate Bill 411 (1st Reprint)]. So, when you look at an exemption bill that takes money out of the pot, you also have to consider the goals that someone else is trying to meet for their systemic issues and whether they are going to be met. Although as you just stated, it is small portion, you need to reduce that amount, but it is still a needed amount. I wonder if this is the right time for you to try to bring this type of legislation, because for me, no.

Josh Hicks:

I think any exemption any time is a balancing act. An exemption takes money away from the revenue pot, but it also makes life a little bit easier on the person who got the exemption. That is the balance that has to be struck, and that is what this legislative body is here to do.

Assemblywoman Diaz:

I might just be missing the language, but I see that everything is spelled out for the part of the bill that refers to hearing aids and accessories, but I did not see anything that spelled out what would be included for ophthalmic or ocular devices, or appliances prescribed by a physician or an optometrist. I want to know what we are looking at. Is it contact lenses? Is it glasses? Is it when they are working on eye surgery? I want more clarification on that.

Josh Hicks:

I noticed that, too, going through the bill. In my opinion, what that includes is going to be corrective eyeglasses and contact lenses. I am not sure what goes on beyond that. Whatever the standard definition is of those devices, or perhaps the Department of Taxation—as with any device, any term that is not defined in statute—would have the ability to define that further in regulation.

Chairman Armstrong:

Are there any other questions from the Committee? Seeing none, we will move to testimony. Would anyone like to speak in support of S.B. 334 (R1)?

Michael D. Hillerby, representing Nevada Optometric Association:

We are here in support of the bill. While we did not bring it, when we saw it had been introduced, we were happy to add our support.

The collection and remittance of the sales and use tax on ophthalmic devices can be somewhat complicated. Some dealers that sell to optometrists and ophthalmologists and their practices collect that and remit it for you; others do not. For our optometrists, most of whom are small business people, it is a bit of a headache trying to figure out whether you owe sales and use tax on something you bought from a wholesaler. You have to find out from them whether or not it was charged, and what you owe the Department of Taxation. We have occasionally had some optometrists audited and then they have to figure out with the Department of Taxation what they owe and do not owe. This has been a bit of a concern.

Anything we can do to reduce the cost of health care to patients we believe is a good idea. This is a cost that ultimately has to be borne to some extent by the patients as well as the optometrists, for the sales and use tax. We support it and think it would be appropriate to give the voters an opportunity to weigh in on this.

Jeanette K. Belz, representing Nevada Academy of Ophthalmology:

In checking, most ophthalmologists actually do not dispense eyeglasses out of their offices; however, this is good for their patients.

If you look at other exemptions; for example, the one for medicines, we talk about dispensed by prescription. That is very similar to what a pair of eyeglasses is. We cannot just go buy the glasses we need off the shelf, other than readers. You have to get a prescription. It has to be made for you and dispensed.

Like Mr. Hillerby's association, our organization did not request this, but once they saw it they thought it was good for patients.

Chairman Armstrong:

Would anyone else like to speak in support of S.B. 334 (R1)? Seeing no one, we will move to those in opposition. Would anyone like to speak in opposition to S.B. 334 (R1)? Seeing no one, we will move to neutral. Would anyone like to speak as neutral on S.B. 334 (R1)? Seeing no one, do you have any last comments, Mr. Hicks?

Josh Hicks:

No.

Chairman Armstrong:

I will close the hearing on S.B. 334 (R1) and will open the hearing for public comment. Would anyone like to speak in public comment? Seeing no one, I will close public comment. Before we adjourn I want to remind everyone what is going to happen next week. We are hearing Senate Bill 252 (1st Reprint) next Tuesday. It will not be an eight-hour hearing. Next Thursday I am giving Assemblyman Wheeler and Ron Knecht, State Controller, the opportunity to go over their revenue proposal. We are adjourned [at 2:31 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblyman Derek Armstrong, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Taxation

Date: May 7, 2015

Time of Meeting: 1:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 170 (R1)	C	Michael Nakamoto, Fiscal Analysis Division	Work Session Document
S.B. 334 (R1)	D	Josh Hicks, Brownstein Hyatt Farber Schreck	Comparison of Streamlined Sales and Use Tax States