

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

**Seventy-Eighth Session
May 26, 2015**

The Committee on Taxation was called to order by Chairman Derek Armstrong at 1:50 p.m. on Tuesday, May 26, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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 Dina Neal
Assemblyman Erven T. Nelson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblywoman Marilyn K. Kirkpatrick (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senate District No. 17
Senator Moises (Mo) Denis, Senate District No. 2

Minutes ID: 1301



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance
C. Joseph Guild III, representing State Farm Insurance Companies and Altria Group Inc.
Lisa Foster, representing Allstate Corporation
Jesse A. Wadhams, representing Nevada Independent Insurance Agents, Nevada Association of Insurance and Financial Advisors, and Nevada State Association of Health Underwriters
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Deonne E. Contine, Executive Director, Department of Taxation
Christopher G. Nielsen, Deputy Chief of Staff, Office of the Governor
Jim R. Wells, C.P.A., Interim Chief, Budget Division, and Interim Director, Department of Administration
Michael Hackett, representing Nevada Tobacco Prevention Coalition
Tom McCoy, Nevada Director, Government Relations, American Cancer Society Cancer Action Network
Benjamin Schmauss, Nevada Government Relations Director, American Heart Association/American Stroke Association
Frankie Vigil, Executive Director, American Lung Association in Nevada, Reno
Joseph P. Iser, M.D., Dr.P.H., M.Sc., Chief Health Officer, Southern Nevada Health District
Cari Herington, Executive Director, Nevada Cancer Coalition
Victor Joecks, Executive Vice President, Nevada Policy Research Institute
Brian Reeder, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.
Samuel P. McMullen, representing Altria Group Inc.
Scott Anderson, Chief Deputy, Office of the Secretary of State
Peter Krueger, representing Nevada Petroleum Marketers and Convenience Store Association
Marcus Conklin, representing Reno/Sparks Indian Colony
Steve Hill, Executive Director, Office of Economic Development, Office of the Governor
Tyre Gray, representing Las Vegas Metro Chamber of Commerce

Chairman Armstrong:

[Roll was called and housekeeping items discussed.] On today's agenda we have three bills, Senate Bill 103 (1st Reprint), Senate Bill 483 (1st Reprint), and Senate Bill 507. I will open the hearing on S.B. 103 (R1).

Senate Bill 103 (1st Reprint): Exempts certain persons from the modified business tax on financial institutions. (BDR 32-42)

Senator James A. Settelmeyer, Senate District No. 17:

During the interim, I attended a meeting of the Nevada Tax Commission where they were going over some regulations. One regulation sought to indicate that people who sell insurance, or more specifically, if they hold the Series 6 and Series 63 licenses [www.finra.org/industry/qualification-exams], it automatically means their employer is a financial institution. It then moves their modified business tax (MBT) from their current level all the way up to 2 percent. The problem with doing that, simply put, is the idea that those who have a Series 6 and Series 63 license are individuals who have the ability to set up trust funds for children, things of that nature, with insurance; however, these individuals do not make enough money—the differential. Many of my constituents were under the threshold for the MBT and were not paying any; then magically they would owe \$2,500 by this one change in ruling from the Nevada Tax Commission.

We tried to testify against that. Unfortunately, it passed, so Mr. Compan and I went directly to the Legislative Counsel Bureau and put in this bill draft request; that is why it has a fairly low number. This was done in conjunction with Senator Denis, who also realized the problem with this regulation.

Could you imagine if someone who sells insurance and holds a Series 6 and Series 63 license shows up on my ranch and helps me work cattle, and now I owe MBT of 2 percent? That is how the law is written. I find that problematic. This seeks to address that concern.

I am willing to take questions before I turn it over to Mr. Compan.

Chairman Armstrong:

Are there any questions from the Committee? [There were none.]

Robert L. Compan, Manager, Government and Industry Affairs, Farmers Insurance:

I want to thank Senator Settelmeyer for realizing that this is an unintended tax. In 2003, Nevada added the excise tax to the MBT that substituted a 2 percent payroll tax on the entire payroll of a financial institution for a 1.17 percent general business payroll tax on payrolls exceeding \$85,000 per quarter. [Referred to testimony ([Exhibit C](#)).]

While this bill is aimed at banks and stockbrokers, the law broadly defines financial institutions to include a person who holds the Series 6 and Series 63 licenses, which some insurance agents obtain to sell life insurance or annuities. It was not until 2013 that we became aware of this because after the sunset taxes were extended, someone in the Department of Taxation noted that agents who were carrying the Series 6 and Series 63 licenses are deemed to be financial institutions and, therefore, should be subject to the MBT and charged 2 percent payroll tax. At that time, we began working with Gerald Gardner, who was the Governor's chief of staff at that time. While they were sympathetic to our plea, they said the only thing you could do to fix this would be to change the law. We also went to the Department of Taxation and had the same outcome. They said they understood it is an unintended consequence of the law. Therefore, we are going to have to change the law.

Among the questions the Office of the Governor asked us when we originally presented this was for examples of a large agent, a small agent, and a district manager who receive income from it ([Exhibit D](#)). In my first example, I have a very large agent. We only have about two agents with our company who have an annual payroll of about \$980,000. Under this example, with taxes under the general business tax, which is where they should be—the 1.17 percent payroll tax—they would pay \$7,488 for four quarters. Taxes under the financial institution tax, with the \$245,000 by the quarters, comes out to be \$19,600 per year, for an additional \$12,112 per year. During that year, this agent earns \$13,000 selling financial products, but his tax was \$12,112. In the example for the small agent, you will notice that the agent earned \$650 from the sale of financial services and his tax burden was \$1,320. In the example for the district manager, he earned about \$10,000 from the sale of financial service products and his tax was \$8,958.

Everyone agrees it was an unintended consequence of a law passed in 2003 and codified in 2005. It was not noted until 2013. We have been through a policy committee and the Senate Committee on Finance. Both were unanimously in support of this bill. We urge a yes vote, and I will be happy to answer any questions.

Assemblywoman Benitez-Thompson:

With the language about the primary business being at the 50 percent mark of the income from commissions derived from the sale, solicitation, or negotiation of insurance, how are we going to know that someone falls at or below that?

Robert Compan:

I would have to defer to the Department of Taxation to answer that question.

Right now, if they are carrying Series 6 and Series 63 licenses, they report what their income is to the Department of Taxation. I think they would be reporting what their income is derived from on the sale of financial services.

If you look on the second page of my submitted testimony ([Exhibit C](#)), you will see that last year, in 2014, Farmers paid out commissions of over \$40 million, of which \$399,489 was for selling financial service products, which is less than 1.5 percent. I think that it puts in a buffer zone, and I do not think many agents are really ever going to reach the 50th percentile.

Assemblywoman Benitez-Thompson:

Were those numbers for the state of Nevada?

Robert Compan:

Yes. I think the Department of Taxation would be able to answer that a lot better than I can, but there is enough buffer zone there that I do not think there are any agents in the state who will ever come close to hitting that threshold, to where they would have to pay the 2 percent payroll tax.

It is just a service that insurance companies offer so that if you go to your insurance agent, you can get a broader range. We like to have our agents sell financial services, so when you go to your insurance agent you can package everything—your car insurance, home insurance, a 401(k), savings accounts for your children's college funds, and things of that nature.

Assemblywoman Neal:

Under the financial business piece, how much in revenue were you paying? With the change, will you be going under the other type?

Robert Compan:

The agents will now fall under the standard MBT of 1.17 percent, I believe, for the first \$85,000 per quarter that they earn. They will operate as a regular small business operation in the state of Nevada.

Assemblywoman Neal:

The insurance rate depends upon certain securities licenses. How many fall under the category of the specific securities licenses that pay, and should pay, under the financial institution rate?

Robert Compan:

I do not know the total number. I can say for Farmers Insurance we have 86 agents of our 256 agents who are registered to carry and sell financial services. I believe the Department of Taxation has those numbers as to how many registered agents there are in the state who carry those licenses.

Assemblywoman Neal:

You said this was the prime opportunity for you to bring this legislation. How long has it been a problem that you felt you should not be paying a certain rate?

Senator Settelmeyer:

This came to light during the last interim, when the Nevada Tax Commission made this determination.

My insurance company, Country Financial, works for the Farm Bureau [Nevada Farm Bureau Federation] and it insures agriculturalists. In my discussions with them, they indicated that generally they try to have one person with the Series 6 and Series 63 licenses at every insurance agency, so a person has the ability to set up an annuity for their children or the heirs of their estate if they have a life insurance policy or something of that nature. They indicated to me they were simply going to drop that person from employment because they were too much of a liability. That is the problem that was created when all of a sudden they were below the threshold, because they were a small shop, a small insurance agency. By having this one person with the Series 6 and Series 63 licenses, they told them to drop their license or they would have to let them go because now, all of a sudden, they had \$34,000 more liability to the state of Nevada when that product was only bringing in \$600 to \$700 more income.

Robert Compan:

After the 2013 Legislative Session and after the sunset taxes were lifted and then re-extended is when our agents started to get notifications that they were being considered a financial institution. They had been since 2003, but the agents were not getting tax bills for it. They were still falling under the 1.75 percent until the Department of Taxation noticed that someone carried the Series 6 and Series 63 licenses, so was deemed by Nevada statute to be a financial institution.

I know State Farm has had some issues with it, back in 2011, and they addressed it at that time. It was not until 2013 that our agents started getting notifications, and that is when Senator Settlemeyer got involved.

Assemblywoman Neal:

In 2011 did you fix it with a piece of legislation?

Robert Compan:

I would defer to Mr. Guild, who represents State Farm, because they had issues with that. I know they tried to address it with the legislative body in 2011.

C. Joseph Guild III, representing State Farm Insurance Companies:

Jana Barr, a State Farm agent from Las Vegas, was first assessed this tax as a financial institution in 2010 or 2011. That is when this first emerged. It came to the Senator's attention last summer. To try to rectify that problem, because it was State Farm's position that their agent was not a financial institution subject to the imposition of the MBT at 2 percent, they went through an administrative law judge and appealed the decision of the Department of Taxation. The agent was represented by James Wadhams, and I was heavily involved in it as State Farm's registered lobbyist. Unfortunately, the conclusion of that situation was that the administrative law judge held that this agent was a financial institution subject to the tax.

Prior to the 2013 Legislative Session, Mr. Wadhams and I had conversations with Assemblywoman Bustamante Adams, after she was designated to be the Chair of the Assembly Committee on Taxation. At that time, we attempted to effect a legislative solution to the problem. Assemblywoman Kirkpatrick and Assemblywoman Bustamante Adams were sympathetic to the situation, but unfortunately there were a lot of things that happened in that session so we could not get a bill moving until the end of the session.

Then, as Mr. Compan said, Farmers Insurance Company brought this issue before the Nevada Tax Commission. Senator Settlemeyer, Mr. Compan, Mr. Wadhams, and I were at that Tax Commission meeting last summer. That is when the Tax Commission said this is a legislative issue.

Senator Settlemeyer:

I would like Senator Denis to add his observations.

Senator Moises (Mo) Denis, Senate District No. 2:

I also had a constituent in the same situation, and it does not make sense. The reason the bank thing was put into the law was for banks, not the issue of an individual selling financial products. I was pleased to be able to be part of

the team to bring this forward. As was pointed out, they actually pay more in tax than they make in commission, so this is something that definitely needs to be fixed.

Assemblywoman Benitez-Thompson:

If Farmers is paying out \$40 million in commissions in the state of Nevada, but the people who are licensed under the Series 6 and Series 63 licenses are only pulling in just shy of \$400,000 in commissions, I am not understanding who does this kind of work. My assumption would be that they have other types of licenses and that they are not just a standalone. Considering the 50 percent threshold of the 256 people that used to carry this kind of license, how many of those carry another type of license to sell insurance?

Robert Compan:

All of our agents are licensed to sell insurance. The \$40 million is property and casualty insurance. The only piece that is the Series 6 and Series 63 licenses is the piece that sells annuities, 401(k)s, retirement accounts, and things of that nature.

Assemblywoman Benitez-Thompson:

How was the 50 percent threshold derived? I thought these people would be working more in the property and casualty area rather than under the Series 6 and Series 63 licenses.

Senator Settlemeyer:

Some of the discussion of 50 percent we are also seeing in other discussions in the building. If your primary job monetarily is selling agriculture, even within the concept of a North American Industry Classification System (NAICS) code, it is the same thing that the federal government does. What do you primarily make your money from? That is what you primarily are.

There was discussion that if there are people who make the majority of their money selling these types of investments, they should be taxed accordingly; however, if that is not their primary function, then they should not. That was my interpretation when we took it to Legal with the original wording. I will allow Mr. Compan to fill in more.

Robert Compan:

Less than 2 percent of our agents' business is selling financial services. When we went to the Legislative Counsel Bureau and they started the drafting process, they figured that 50 percent was more in line, as far as bills of a similar nature falling into the category of different statutory languages in the state. That is where they came up with the 50 percent figure.

Assemblywoman Benitez-Thompson:

I suspect what we will hear from the Department of Taxation is that those agents who hold the Series 6 and Series 63 licenses are still earning income under other licenses and there is going to be a tax there. It is on this specific type of license where I am getting confused. If you told me there are 256 agents who carry these licenses and have no other license, then it is easy. I am confused about how the math is coming out.

Senator Settlemeyer:

I think the real issue that comes about is that these individuals have an exemption level under the MBT, as does everyone in that mid-category; however, when being considered as a financial institution there is no exemption level. So, if they make \$20 in salary, that gets multiplied by the 2 percent, versus at the 1.17 percent, there is an exemption of \$85,000 per quarter under the MBT. That is where they are falling into this. Calling these agents a financial institution means there is no exemption level.

Chairman Armstrong:

We worked with some of this in the construction of Assembly Bill 464. There are 1,301 financial institutions under the Department of Taxation currently. If you took those and put them under the plan in A.B. 464, where there is a \$200,000 exemption, or \$50,000 per quarter, over 900 of the 1,301 financial institutions would then become exempt from the MBT because they are small.

Assemblywoman Benitez-Thompson:

What I am trying to clarify for the record is that for these 256 who carry the Series 6 and Series 63 licenses, that is one licensing type, but with the other types of licenses they are still covered under the MBT in a different role. If they are carrying those other licenses and pulling in substantial commission from that, how do we figure out what that 50 percent mark is when most of their business is in the other license type?

Senator Settlemeyer:

I think it comes down to the Department of Taxation doing that, through their audits if necessary, or if they see a discrepancy or they know someone is a larger type.

I will use my business, agriculture, as an example. I sell cow hay. It would be easy to tell if I was selling horse hay. Horse hay is taxable and cow hay is not. How do they tell the difference? Generally, they know the individuals in

a community and they can look at the information. Occasionally, they will audit books randomly to determine if you are selling hay to a feed store, which would clearly mean you are selling horse hay; however, if you are selling your hay to the Harris Ranch feedlot, that tends to be more in the cattle realm.

I believe the Department of Taxation could easily answer that for you, but I believe it would fall under their current audit process.

Joseph Guild:

I failed to mention earlier that State Farm is in strong support of S.B. 103 (R1).

I think a little history could help to answer your questions. You have to think simply about this. An insurance agent is an insurance agent. That is their primary business. In 2005, the Legislature amended the statute to take out the words "primarily engaged in the business of." That then, under the MBT as to financial institutions, swept in insurance agents who happened to have the Series 6 and Series 63 licenses in addition to their license to sell insurance as an insurance broker in the state of Nevada. When they took out the words "primarily engaged in," the Department of Taxation started to interpret those agents as financial institutions, when probably 98 percent of their business is selling insurance. Once in a while, somebody buys an annuity under the Series 6 or Series 63 licenses and that puts them, in the eyes of the law without the words "primarily engaged," as a financial institution subject to the tax.

When you look at this bill in section 1, subsection 2, paragraphs (c) and (d), the amendment to the statute says, "A person who sells, solicits or negotiates insurance and whose business primarily consists of...." We are putting the equivalent two words back into the statute so it is clear that person is an insurance agent licensed to sell insurance in the state of Nevada, and not a financial institution.

State Farm has an equivalent number of agents in the state who have an insurance license, and some of them have the Series 6 and Series 63 licenses. What we are saying in this bill is that those people, even those with Series 6 and Series 63 licenses, who are primarily engaged in the sale of insurance, are not subject to the MBT as a financial institution.

Assemblyman Nelson:

Has anyone thought about making it so that income from noninsurance products would be taxed at the 2 percent level, and all of the insurance proceeds would stay at the 1.17 percent level?

Chairman Armstrong:

This is a tax on wages, not on sales.

Joseph Guild:

In 2003 and 2005, insurance agents were never intended to be considered financial institutions. Pawn shops and collection agencies were exempted as financial institutions in the 2005 amendment to the statute. If insurance agents were never intended to be financial institutions, then this corrects an unintended consequence that has occurred as a result of that.

Chairman Armstrong:

Are there any other questions from the Committee? Seeing none, we will move to testimony in support of S.B. 103 (R1).

Lisa Foster, representing Allstate Corporation:

Allstate first became aware of this problem in 2013 when agents began receiving communication from the state telling them they needed to pay this new tax rate. Some of these agents are small business people and for them it was a very substantial amount of money. They tried to work on the problem themselves by calling the corporate offices and their legislators. After working with the industry trying to figure out how to deal with this, and talking to the Department of Taxation and the Office of the Governor, we realized the only thing we could do is come here and ask for your consideration in changing this for those agents. I appreciate your time and hope you will give this your full thought.

Jesse A. Wadhams, representing Nevada Independent Insurance Agents, Nevada Association of Insurance and Financial Advisors, and Nevada State Association of Health Underwriters:

We are in support of this bill because we are essentially those small and independent agents who are by and large selling insurance products and then one or two annuities or individual retirement accounts. We would appreciate legislative clarification on this.

Bryan Wachter, Senior Vice President, Retail Association of Nevada:

We are in favor of the bill. We think it is important to differentiate who should and should not be captured. In terms of actual tax policy, I think this bill more than illustrates why it is problematic when you have different rates in the tax code for different definitions or for different companies. By ending the bifurcation and charging the same rate for everybody, this problem would be fixed as well.

Chairman Armstrong:

Would anyone else like to speak in support? Seeing no one, we will move to the opposition. Would anyone like to speak in opposition to S.B. 103 (R1)? Seeing no one, we will move to neutral. Is anyone neutral on S.B. 103 (R1)?

Deonne E. Contine, Executive Director, Department of Taxation:

This is a self-reporting tax, like every other tax. We discover if taxpayers are not doing it right through audit, or some other education program that we might have through the agency.

For a little more clarification, there has been a lot of talk about the Series 6 and Series 63 licenses, but you do not see that anywhere in the statute. When I was new to this, I wondered about it, so I would like to point you to section 1, subsection 1, paragraph (b), which is the definition of financial institutions. Series 6 and Series 63 licensees in the state of Nevada have to be licensed through the Securities Division of the Office of the Secretary of State, and that is under Chapter 90 of *Nevada Revised Statutes* (NRS). They may sell some annuities or other products under their NRS Chapter 90 license, but their main book of business comes from insurance products. They are not licensed as a financial institution. They are licensed as a general business under a different chapter.

Assemblywoman Benitez-Thompson:

For clarification, agents are being paid commissions on these products—and it is not very much, just under \$400,000 statewide—but I also hear they are losing money on them. I interpret that as they are making money off of them, but just not enough, because if commissions are still coming down then folks are still earning revenue on them.

Deonne Contine:

It is not what they are earning the money on. If you are deemed to be a financial institution, then you pay the financial institution's rate of 2 percent, and there is no exemption. According to the way the statute is written now, if you are licensed under NRS Chapter 90 you are a financial institution and there is no way to get out of the financial institution's rate. Conversely a person may have an NRS Chapter 90 license, and it is a small part of what they do, but they would be subject to the financial institutions' chapter and would have to pay 2 percent of all of their wages.

Assemblywoman Neal:

What revenue is going to be lost by the switch? Why were these people captured in the 2 percent in the first place in 2005?

I read the minutes of Senate Bill No. 8 of the 20th Special Session and the legislation from 2005, which gave some clarity as to what they meant or what the unintended consequences were.

The minutes describing Carole Vilardo's [Nevada Taxpayers Association] testimony in support in 2005 indicated that Senate Bill 391 of the 73rd Session "distinguished between companies that provided credit and companies that were excluded from the tax because the credit they extended was provided for their own goods and services," so when they captured the financial institution language, the 2 percent, they had a reason. I need you to help me understand this bill and language. What was discussed was that the words "primarily consist of" were deleted, and the deletion had unintended consequences and captured entities who did a nominal amount of business under financial institutions.

Who was originally intended to be captured in 2005, and did it have the meaning or definition because of the credit relationship they had, or was there something else?

Deonne Contine:

I do not know the intent of 2005, but I know what the statute says. The statute says that a financial institution is somebody who is licensed or registered pursuant to NRS Chapter 90.

What we have right now is we have some of these insurance agents who have another license that would not subject them to the financial institutions chapter. A small part of their business is selling under their NRS Chapter 90 license. They are pulled into the financial institutions chapter because the statute says a financial institution is somebody who is licensed or registered pursuant to NRS 90.310, NRS 90.330, NRS 90.453, and some others. What happens then is if you have one of those licenses, even if you are not primarily engaged in that business, you become a financial institution and you have to pay the 2 percent rate on all of your payroll.

What the folks here are trying to say is, "We sell insurance for the most part and we happen to have some people who have NRS Chapter 90 licenses. We do not believe we were intended to be included in the financial institutions chapter. This revision says that if we have more than 50 percent of what we do in our business related to our NRS Chapter 90 license, we agree that we are a financial institution, but to the extent that we do not, we are a general business and we will pay the 1.17 percent rate with the exemption."

Assemblywoman Neal:

When you read the language on page 3 and the definition, who is now captured under the umbrella of the language? How are you going to go through the process of dividing out who pays the 1.17 percent rate and what revenue you expect to be captured under the potential people in the two categories, under the definition?

Deonne Contine:

This is a self-reporting tax that we audit. We would figure it out through the audit process, which is the same way we do it now. I believe that these books are readily available because the taxpayers have already made this argument. They have come to us and said, "We are not primarily engaged in this business. We do not think we are supposed to be in this chapter, and here are our books that will show you how much we use our NRS Chapter 90 license. We do not really use our NRS Chapter 90 license but every once in a while. Our main book of business is this other product that we sell," so we already see that. We said, "We are sorry but the statute says you are a financial institution because you have a license under NRS Chapter 90. It does not say anything about how much you use it. We have to interpret that by the plain language of the law, that you are a financial institution, so you are subject to the 2 percent rate."

We had disputes with them and went through the entire process. It went to the Nevada Tax Commission and it said it was a legislative issue.

With respect to the revenue, we do have a fiscal note because based on the number of insurance companies with this particular business, we estimate a loss of about \$350,000 per year.

Chairman Armstrong:

Are there any other questions from the Committee? There were none. Would anyone else like to speak as neutral on S.B. 103 (R1)? Seeing no one, do you have any final comments, Senators?

Senator Settlemeyer:

In closing, I think a good example would be to imagine if you had 63 employees and a large support staff, and you are a small casino. Then you hired one employee who had Series 6 and Series 63 licenses. Now your entire MBT goes up to 2 percent. That is what has occurred in this scenario.

What I am seeking in this legislation is that a bank should be called a bank and an insurance agent should be called an insurance agent, based on what they primarily do. That is traditionally the federal government's test as well; the amount of money you earn in a particular field determines what you primarily do. This bill seeks to do just that.

Senator Denis:

When we work on legislation, sometimes we do not realize the unintended consequences. When we originally put this in place, the intent was never to make an insurance agent a bank. We are really just trying to fix that. They are not saying they do not want to pay taxes. They just want to pay what they think is fair. This bill will correct a wrong for some of our small businesses.

Chairman Armstrong:

I will close the hearing on S.B. 103 (R1). I will open up the hearing on Senate Bill 483 (1st Reprint).

Senate Bill 483 (1st Reprint): Revises provisions relating to governmental financial administration. (BDR 32-1182)

Christopher G. Nielsen, Deputy Chief of Staff, Office of the Governor:

I am here today to present Senate Bill 483 (1st Reprint). Parts of this bill include the sunset taxes that the Legislature put into place in 2009 that were subsequently extended in 2011 and 2013. We believe this continuation of the sunset revenue is necessary as the cost of doing business for government given the growing population and the role of other costs.

For example, the number of new kindergarten through Grade 12 (K-12) students since these sunset taxes were put into place is 21,000, and the projected total enrollment increase through 2017 is 33,000.

Other parts of this bill include changes in the modified business tax (MBT) and the cigarette taxes. I will now briefly walk you through the bill.

Sections 1 and 2 of the bill increase the MBT on mining companies to the rate of 2 percent, which is consistent with how the MBT currently works with financial institutions. I would like to add that, in yesterday's hearing on Assembly Bill 464, the Nevada Mining Association testified in support of the amendment, which included the 2 percent excise tax rate on mining companies. I would also like to point out that the bankers also supported the 2 percent rate.

Section 3 increases the wholesale cigarette tax from 40 mills to 90 mills per cigarette. This means that the tax rate on a pack of cigarettes would go from \$0.80 to \$1.80. By way of reference, the average state cigarette excise tax per pack is \$1.54 nationwide. This does not include the local government option taxes, which most states have on cigarettes. This is just a comparison of the state rate for cigarette excise taxes.

Section 5 is an administrative provision. It ensures that those with cigarette stamps purchased before July 1, 2015, but not affixed prior to that date, would be required to essentially repurchase stamps at the higher rate. This is to prevent companies from stockpiling stamps at the lower rate.

Section 6 of the bill addresses the so-called prepayment of the mining taxes that went into effect in 2009. This prepayment is the provision that has caused some of the revenue projections in the current biennium to be off due to this prepayment estimate mechanism currently in place. This section essentially keeps the prepayment system in place for fiscal year (FY) 2016, but eliminates it in FY 2017. Mining companies would still pay the tax for that year, but it would be paid after the calendar year is complete. This is a system that was used prior to 2009, and I believe the Mining Association supports this as well. Under existing law and absent any further action by the Legislature, the insurance deduction for the net proceeds of minerals tax (NPOM) will again be allowed to be taken in FY 2016. Section 9 of the bill will delay the deduction until FY 2017, and again this was all part of the sunset packages that began in 2009, and were subsequently extended in 2011 and 2013.

Sections 10, 12, 13, and 14 permanently extend the current MBT for nonfinancial businesses with a current rate of 1.17 percent. There has been a lot of discussion about the MBT rate recently, so this bill may need to be amended if this body so chooses, especially given other pieces of legislation.

Section 7 of the bill permanently extends the 0.35 percent increase in the local school support tax (LSST) component of the sales tax, so the sales tax rate as it exists today would remain the same. Section 7 also extends the reduction in the depreciation schedule allowed for vehicles with respect to the governmental services tax (GST) and continues to allocate that revenue to the State General Fund. This is a temporary extension for two years. Again, there was discussion on A.B. 464 yesterday about this issue, and there may be amendments needed to be made by this body depending what happens on other bills.

Section 14.5 is the services data collection language that Governor Sandoval mentioned in his State of the State Address. He believes that collecting sales tax data would help ensure this body next session can make some informed decisions about the feasibility of a services tax or other tax. He believes it will aid in that discussion and give valued information.

Jim R. Wells, C.P.A., Interim Chief, Budget Division, and Interim Director, Department of Administration:

I serve as the budget director and Director of the Department of Administration for Governor Brian Sandoval. I am going to go through the amounts that are associated with the bill, based on the Economic Forum's projected numbers. The bill in total would generate about \$996.1 million. Of that, \$377.2 million is the extension of the LSST, 0.35 percent. The other \$618.9 million are the various components that are in the State General Fund, starting with the NPOM that would generate approximately \$7.4 million per year, or \$14.8 million for the biennium. That is the modification you see in section 1. In section 3, the levy on cigarettes, the increase from 80 cents to \$1.80, would generate approximately \$96 million per year, or \$192 million for the biennium.

Section 6, on page 5, would generate approximately \$4.3 million over the biennium; again, that is the extension by one year of the prepayment, and the elimination of prepayment for the NPOM.

Section 7 has two components. The first is under subsection 4 and that is the elimination of the LSST sunset. That is the \$377.2 million that would go to the State Distributive School Account (DSA). Section 6, the deferral by two years of the GST into the General Fund, creates about \$63.5 million annually, or just over \$127 million for the biennium.

Section 10 makes the change to the MBT permanent, from the 0.63 percent to 1.17 percent. That generates about \$135 million to \$140 million over each of the two years of the biennium, for a total of \$277 million.

I would be happy to answer any questions.

Assemblyman Hickey:

In your calculation with respect to the cigarette tax, did you take into account that sales might possibly go down with the dramatic increase in the tax? If so, how did you calculate that?

Chris Nielsen:

Yes, there was a law-of-diminishing-returns calculation built into the revenue projections. In fact, we worked with your Fiscal Analysis Division staff in determining that amount. I do not know how that was calculated, but there was some sort of discount factor based on raising taxes and making cigarettes more expensive, resulting in a portion of the population that may choose not to smoke.

Chairman Armstrong:

I will have my Fiscal staff go over that.

Michael Nakamoto, Deputy Fiscal Analyst:

Mr. Nielson is correct in his answer to Assemblyman Hickey's question. Staff from the Fiscal Analysis Division worked with Mr. Wells and his staff to come up with a consensus estimate for the all of these taxes that are driven by the Economic Forum's May 1 forecasts.

With respect to the cigarette tax, the rule that we used for this was that a 10 percent increase in the price of cigarettes would actually reduce consumption by 4 percent. It was taken into account that the increase in the price would actually reduce demand by a certain percentage.

Assemblyman Nelson:

As part of that calculation did you consider the possibility of people going to California, or another state, to buy cigarettes?

Michael Nakamoto:

I do not know if that was explicitly included in that thought, but the rule that we used is that regardless of whether somebody chooses not to smoke, goes somewhere else to purchase cigarettes, or substitutes a product, our thought was that it really does not matter why they are not purchasing cigarettes anymore. We understand an increase of the price will cause certain people to not purchase cigarettes, regardless of the reason.

Assemblywoman Neal:

I would like more clarification on section 8. It says that this particular portion will deal with how you compute the proceeds for years 2016 and 2017. It is confusing for me because they did the advance payment to fill a hole, and then we realized we still had a hole and could not give the money back, so now the advance payment was extended. What happens once we have to really give it back? What are we doing with that provision of the bill? I am assuming it is speaking to how you do the offset, that the prepayment is no longer there, so now you have to figure how to come up with whatever the dollar amount is?

Chris Nielsen:

The Economic Forum projects the State General Fund revenues under existing law. When they did that, they assumed the prepayment would sunset; therefore, there would be no General Fund money for the NPOM coming in for 2016, but there would be money in 2017. This reverses that and eliminates the prepayment. The NPOM revenue stream would continue in 2016. We would not see that in FY 2017, but they would still pay it. It is a calendar year tax and we are dealing with fiscal years so they would actually still pay the tax for that year, but we would not realize it until FY 2018.

Assemblywoman Neal:

If it will not be realized until 2018 there is going to be a zero for one year, where there is nothing. What fills that hole? Is there some other revenue stream that is going to offset the zero in 2018?

Chris Nielsen:

There is not a particular dedicated revenue stream to fill that hole in FY 2017. As you know, the Economic Forum projected \$6.2 billion worth of General Fund revenues. That is just one component of the big picture, on the expense side, so the projections in *The Executive Budget*, we were conscious of the fact that we would not see any revenue in FY 2017. We believe it is good policy to get away from this prepayment system because that caused a large part of the hole coming into this biennium. We came into FY 2015 with a big hole, in part because of the drop in the mining tax. As a matter of policy, we think getting rid of the prepayment going forward gives much more certainty to your Fiscal staff, the budget office, and everybody about exactly what revenue streams we are looking at for future legislative sessions.

Assemblywoman Neal:

In section 7, subsection 4, for the LSST, you delete the expiration date. What does that mean?

Jim Wells:

In section 7, subsection 4, the strike-through eliminates the sunset provision for the additional 0.35 percent on the LSST and makes it permanent.

Chairman Armstrong:

Are there any other questions? Seeing none, we will go to testimony. Would anyone like to speak in support of S.B. 483 (R1)?

Michael Hackett, representing Nevada Tobacco Prevention Coalition:

I am joined today by representatives of some of our member coalitions who would also like to get on the record in support of S.B. 483 (R1). The area of

focus for us in this bill is the provision that would increase the cigarette tax by \$1, from \$0.80 to \$1.80 per pack. Our support is for the bill as a whole, because we understand that S.B. 483 (R1) is about more than just the cigarette tax increase. I would like to provide some context around the proposed cigarette tax increase.

As of January 1, 2015, the state of Nevada has the 35th highest tax in the country. As Mr. Nielsen stated, the national average is \$1.54 per pack. I provided a one-page document ([Exhibit E](#)) for the Committee that shows the current cigarette tax rate of the seven western states—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington—along with polling data from the Retail Association of Nevada. Three of the seven states, in addition to Nevada, have tax increases pending before their legislatures this year. There is broad support for the proposed tax increase across political parties and population groups, according to the Retail Association survey, especially among populations with higher than average smoking rates. As a tobacco prevention coalition, the public health impact of the \$1 increase is very important to us, as it will help to reduce cigarette use.

We also strongly believe that this bill provides an economic win-win for the state. This increase would generate an estimated \$192 million in revenue over the biennium. This is not an insignificant amount. The cost to treat diseases caused by smoking and tobacco use is significant. Reducing cigarette use by means of a higher tax would help to reduce these costs. A direct financial impact to the state and taxpayers is Medicaid, which spends approximately \$149 million annually to treat smoking- and tobacco-related diseases. Overall, the cost to treat diseases caused by tobacco use in Nevada is \$1.1 billion annually. Those are costs that are ultimately borne by Nevada businesses and citizens.

Senate Bill 483 (R1) is about much more than just a cigarette tax increase to our coalition, just as it is to the state. The individuals who represent our member organizations all work and live in Nevada. We care very much about our state. We want better education for our children and better health care for our families. We support this bill because it is an important piece in doing just that, by helping to fund the budget priorities identified by Governor Sandoval and this Legislature.

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

I have provided written testimony ([Exhibit F](#)) and a fact sheet ([Exhibit G](#)). I will go over how the American Cancer Society Cancer Action Network views the cigarette tax component of S.B. 483 (R1).

The short change in millage results in long benefit changes for Nevadans, which include the reduction in the number of current smokers; the important aspect of the reduction in the number of kids who will ever start smoking and become addicted to nicotine; the reduction in premature deaths of Nevadans from smoking caused diseases; and the reduction of health care costs. This is something I think quite often Nevadans are not aware of, that Medicaid savings to the state would be nearly \$150 million annually. That figure does not come close to talking about the over \$1 billion that is estimated in lost productivity to our workforce due to smoking. The other benefit is the increase in revenue to the state of nearly \$193 million during the upcoming biennium.

This bill's \$1-per-pack cigarette tax increase saves lives, while saving both public and private health care costs, and producing much needed revenue for essential programs and services for Nevadans. Therefore, I urge your support for the buck-a-pack increase.

Benjamin Schmauss, Nevada Government Relations Director, American Heart Association/American Stroke Association:

I am a parent of three children who attend public schools in the Clark County School District and I am a licensed educator in this state. I agree with the testimony of Mr. Hackett, and I believe this is a win-win-win. We can bring in revenue to fund education for our state, we can make it so children do not pick up the smoking habit, and we can help adults stop it. I appreciate the support and forward thinking that has been demonstrated by the leadership this session. As an advocate and father, I believe this tax will help us move forward in Nevada. I appreciate your support and look forward to working with you on this issue.

Frankie Vigil, Executive Director, American Lung Association in Nevada, Reno:

We are in full support of S.B. 483 (R1). We echo that it will raise the money that it needs to raise, while also decreasing the use of cigarettes. From our perspective, that is a huge win in the state of Nevada.

Assemblyman Hickey:

I am not at all unsympathetic to a call for a greater tax upon tobacco, especially given the needs of this session, and as it has been addressed by members here, what the monies would end up being used for. I struggle with the amount of the increase that is being asked.

One of the arguments against a proposal I brought earlier to this Committee about raising sales taxes was that it was thought widely to be a regressive tax. Those members of our society who can least afford to pay are more greatly affected by a tax like that, and I do not have the figures to back up what I am

saying, but I think that same comparison probably applies to most cigarette users these days, and it has to do with education and other things. It is a very high price to pay. The irony is somewhat that we are so reliant upon the taxation of tobacco for education and other things in this country that it is a bit of a catch-22. We continue to tax an industry that we most all agree is not good for health and well-being or for our bottom line, whether we are talking about Medicaid, other things you are very familiar with, or for just the health of our citizens. At the same time, while being reliant upon the revenue, we are relying upon those persons who increasingly cannot afford it, as maybe in some other areas of taxation in the state. Those are my concerns, as I have talked with you, Mr. Hackett. Those are some of my struggles with the size of this increase.

Michael Hackett:

As far as the taxation issue goes, obviously that is a decision for this Committee and the Legislature.

Regarding the impact on those who can least afford it, I believe Ms. Vigil has some survey results that show great support for this type of cigarette tax increase among smokers. I hope that may help push you over the edge, so to speak.

Frankie Vigil:

Studies have shown that tax increases are accepted by smokers and nonsmokers alike.

Chairman Armstrong:

Is there anyone else who would like to speak in support of S.B. 483 (R1)? Go ahead down in Las Vegas.

Joseph P. Iser, M.D., Dr.P.H., M.Sc., Chief Health Officer, Southern Nevada Health District:

I am here to speak in support of S.B. 483 (R1). I find myself at a disadvantage always following Mr. Hackett, as he says a lot of the things that are in my prepared testimony. I can underscore what he and others have said before me, that this will be a win-win-win for the state.

I am also in support of the other provisions of this bill, and in particular eliminating the sunset provisions so the Legislature does not have to address these issues session after session.

Putting some of these tax revenues into fully funding Medicaid would be very helpful for you and for us at the local level, in ensuring that people who have the need for health insurance and are on Medicaid can get fully funded for that.

Brian Wachter, Senior Vice President, Retail Association of Nevada:

We are in favor of the bill.

Cari Herington, Executive Director, Nevada Cancer Coalition:

We concur with the testimony provided today, and we support S.B. 483 (R1).

Chairman Armstrong:

Would anyone else like to speak in support of S.B. 483 (R1)? Seeing no one, we will move to those in opposition. Is anyone in opposition to S.B. 483 (R1)?

Victor Joecks, Executive Vice President, Nevada Policy Research Institute:

We are opposed to S.B. 483 (R1), which would be one of the largest tax increases in state history, even without the Governor's additional proposed tax hikes.

We believe that the sunset taxes should finally be allowed to sunset; we can create a line-by-line alternative budget that would allow that to happen. Even if the Legislature does not want to pursue that course of action, Nevada's existing tax structure continues to produce higher and higher tax revenues. If you look at what the Economic Forum projected in May, without the sunset taxes they projected \$5.3 billion in 2011, \$5.8 billion in 2013, and \$6.3 billion in 2015 before the tax abatements. Because of this revenue growth, I would like to bring forward a couple of amendments ([Exhibit H](#)).

First, the tax increases that are contained in S.B. 483 (R1) should sunset on June 30, 2017. Second, I would like to propose reducing the LSST increase from 0.35 percent to 0.3 percent. This would reduce the funds going to the DSA by just over \$50 million, but it would signal to Nevada taxpayers that lawmakers are willing to peel back these tax increases, as promised, as tax revenues continue to increase. That idea is certainly scalable, so the reduction could be as large or as small as the Committee wants.

Allowing some of the taxes to sunset is doable as we see with the ending of the prepayment of the NPOM, which I think is a good provision.

We have had a lot of discussion this session on tax policy, and I think one good part of A.B. 464 was that it brought financial institutions down to the rate of general businesses with the MBT. I think it is a poor tax policy to raise rates on a specific industry. I would like to propose another amendment to lower the

MBT rate for mining to the rate for general business. I would also like to propose that the Committee remove the exemption entirely while lowering the MBT rate to generate the desired amount of revenue. That is a more broad and fairer proposal.

I would like address the increase in the cigarette tax. As Assemblyman Hickey said, those with lower incomes are more likely to smoke. A 2008 Gallup Poll of 75,000 Americans showed that those making under \$36,000 a year are more than twice as likely to smoke as those making over \$90,000 a year. This is an extremely regressive tax.

Brian Reeder, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.:

We are opposed to this bill because of section 7, which is the deferral of the GST revenue to the State General Fund instead of the State Highway Fund for another two years. We also did the same thing in 2013.

We understand that it leaves a hole in the tentatively approved budget. We are not here to say that it is not difficult to do your job and find a way to fund the government, but we think there is a direct nexus between the GST revenue and road construction.

We would also say that there is a hole in the State Highway Fund. Just last February, the Department of Transportation released their pavement preservation report and said that there is a \$660 million backlog in maintenance projects that need to be done. That does not count the billions of dollars in capacity projects the state needs to build but cannot afford.

In 2009, when the Legislature decided to increase revenue by reducing vehicle depreciation, the state had an opportunity to invest in our road infrastructure at bargain prices. Sadly, we missed that opportunity. Since then, the hole in the State Highway Fund has continued to grow. Because there is no appetite to increase anything like a gas tax, which is the main source of revenue for the State Highway Fund, we think that hole will continue to grow in the future. Right now this is worth about \$65 million per year. Bonded, that could be about \$650 million in road construction. We would rather see that money go to the State Highway Fund, and that is why we are opposed to this bill.

Samuel P. McMullen, representing Altria Group Inc.:

I represent Altria, which is the parent company of Phillip Morris. I am here with Mr. Guild, who will follow me. My role today is to present some of the questions and a little bit of the reality that you do not hear when this is just turned into the idea that dollars on top of a cigarette pack are about no smoking.

If you will let me I am going to try to take you through a couple of points of reality that we at least look at and want you to consider. I say that because there was of course a hearing in the Senate, but really what we want to do is make sure that you people are focusing exactly on what is at issue here, and all parts of it.

It is difficult to be in a bill that has the sunset taxes in it. What we are specifically asking for, and I put an amendment in ([Exhibit I](#)) just to force the issue that we be taken out of this and put into our own bill, if that is what you want to do. Our preference would be that there is not any additional cigarette taxation this year.

The issue of youth smoking is one that Altria and Phillip Morris agreed to many years ago. We do not lobby on that issue. We do not lobby for anything relating to you smoking. We also gave up, in the Master Settlement Agreement (MSA), which I will talk about in the section on the dollar basis, our right to have anything to do with advertising or any of the other things that the nonsmoking advocates think is important for purposes of making sure that children are not enticed into smoking.

When you look at it, the things that they raise are very interesting because they pretty much have the field clear. Unfortunately, this is a dynamic that is physical, it is all sorts of things, but we are not out there promoting youth smoking, just for the record. They have basically the full field for all of the persuasive efforts or anything like that without any counter from us.

What I think is important about the MSA is that you have to understand that what we are doing here is putting more weight in the budget on cigarette taxation. There are some disputes about what it will or will not actually raise. The important point is that you need to understand that you are making a choice in a year when this is for balancing a budget. This is not about reducing smoking. You may think that is a second goal, and you are entitled to that, but what you are saying this year is that this is about balancing the budget in a way that is defensible, responsible, and sustainable. Consequently, that is a big question this year, not just because of the 10 percent or 4 percent, but there are some realities with cigarette sales.

One of the interesting realities is what is called a cross-border dynamic, and Mr. Guild will speak about that a little bit more. The most interesting cross-border dynamic we have is that we actually have smoke shops in other facilities, on reservation or off, that are run by Indian tribes. The tribes, years back, entered into an interstate compact where they would actually put the tax on and go to parity, although it is not always parity. They have the ability to play with the price and drive business across the state lines into their shops or into their reservation shops. That money, when it is taxed, goes to the tribe. Consequently, they have always appreciated it when the taxes are raised because it helps to fund the tribe.

What is interesting about that, and what you need to keep focused on is, when that sale moves across a border or into a tribal smoke shop, you will not get the tax revenue. It will go to an Indian tribe. It does not come to the state.

If this is about revenue, please understand what you are doing. You have to make sure you do not force things into cross-border activities, or others that Mr. Guild will talk about shortly.

The other thing I think is important for you to understand is that we are the big tobacco companies, and everyone has their own impression about tobacco companies. This issue is not about us. This issue is about constituents. If you look at the fiscal note, and you look at exactly what this is going to drive, you know this is a constituent-based tax. You are saying that you want to take \$100 million per year out of the pockets of your constituents. I think you need to focus on that.

We have done a lot this session to focus in on business taxes and other taxes that are a little bit reduced, or at least not as targeted at individuals, but this targets individuals in their personal habits and purchases. Whether that is right or wrong, I think you need to understand that, and actually they are very activated voters.

C. Joseph Guild III, representing Altria Group Inc.:

We are only discussing our opposition to sections 3, 4, and 5 of S.B. 483 (R1). Altria has no position on the rest of the bill. As stated by Mr. McMullen, this is a consumer tax. It is regressive and it impacts Nevadans who smoke. I am not here to talk about the health aspects of this, as this is the Assembly Committee on Taxation and we are only here to discuss the implications of a 125 percent increase in the tax on tobacco that your constituents will pay.

I am not sure I understood the fiscal analysis completely, but if I wrote in my notes correctly, they use the rule that a 10 percent increase in the tax reduces demand by 4 percent. In just rounding the numbers, that means there would be a greater than 40 percent decrease in demand, if I am reading that correctly.

Chairman Armstrong:

I think you are slightly off in the calculations. I will have my Fiscal staff clarify that.

Michael Nakamoto:

The analysis is a 10 percent increase in the price of a pack of cigarettes, not a 10 percent increase in the tax itself.

Joseph Guild:

It will still help me to make my point. Over the last 10 years, the use of cigarettes by Nevadans, cigarette sales, have averaged a decline of 3.7 percent per year. If you increase the tax by 125 percent, taking Mr. Nakamoto's analysis at its word, you are going to drive demand to the point where any estimate close to \$96 million per year would be off, and there is some empirical evidence to back up my statement.

The state and federal tax burden to adult cigarette consumers in Nevada in 2014 was \$301.8 million per year. If you increase that amount by the \$96 million projection, your consumers are going to pay \$400 million in taxes on cigarettes. That assumes no increase in any federal fees. This really unfairly burdens your constituency.

The National Conference of State Legislatures said this about cigarette taxes: "Cigarette taxes are not a stable source of revenue." To put a finer point on that, in the last ten years 33 states across the country have increased their cigarette taxes. Of those 33 states, only 4 met the projections that they thought they were going to meet.

I am not trying to cast a great deal of disparagement on the analysis of the Fiscal staff, as they do a great job, but I think that the estimates here are at least suspect, and can be considered speculative at best.

Not talking directly to some of the issues Mr. Hackett and others brought up about the health issues, but tobacco is a legal product in all of its forms in this state, as are cell phones, gasoline, and beer as examples. Sixteen percent of the cost of beer to Nevada consumers is in taxes. Currently 53.3 percent of the retail price of a pack of cigarettes is taxes. If you increase it by \$1, this would be a huge increase in the burden.

Mr. McMullen mentioned the cross-border effect, and if you go to the Indian nations in our state, it is in some cases just down the block from very populated areas. Using states as an example, if we went to \$1.80 in Nevada, we would be the highest among our border states except for Arizona. California is currently at 87 cents, 7 cents higher than the current rate in Nevada. It is true there is a bill in California, which if passed and signed by the governor, would increase the pack-of-cigarettes tax by \$2. That same issue has been brought before the voters of California three times in the last ten years, and all three times the voters have summarily rejected a cigarette tax increase. Whether the California legislature will increase taxes is, in my opinion, a very open question.

Assemblyman Hickey:

You mentioned that Nevada smokers would, in all likelihood, go to Indian smoke shops. Could you explain in detail what the difference in price Nevada is going to receive from their portion, and what will be lost comparatively when people do their shopping there as opposed to our other retail outlets?

Samuel McMullen:

I do not have the numbers in front of me, but I do not think it is about numbers; it is about customer inclination. If they are inclined to buy cigarettes at a store that charges the same tax theoretically, and even if they think they are paying the same price, they will probably be drawn over by cheaper prices. None of the tax on Indian shop cigarette sales goes to state coffers. It goes to tribal coffers. Every time you sell a pack of cigarettes in a smoke shop, the state loses the equivalent of the tax on tobacco for that pack. That is how simple it is to me. We have seen a lot of transition to those stores. If you raise the tax, the shops survive on that tax.

Assemblyman Hickey:

Could you provide me with the current percentage of cigarettes that are sold at Indian smoke shops? That might give us an idea of what could be lost.

Samuel McMullen:

We get that information secondarily from the Department of Taxation.

Chairman Armstrong:

We have someone who might be able to answer that question behind you.

Joseph Guild:

I could add a little that is ancillary to that question.

Chairman Armstrong:

I would prefer you met with Assemblyman Hickey offline, because we still have another bill to hear. Is there anyone else who would like to speak in opposition to S.B. 483 (R1)?

Scott Anderson, Chief Deputy, Office of the Secretary of State:

Section 14.5 of the bill has just come to our attention. It requires additional disclosures on state business licenses for a one-year period of time to ask for revenue information. We were unaware of this provision. We were not given any type of fiscal note request, nor does it show up in regard to any search in Chapter 76 of *Nevada Revised Statutes* (NRS).

I do not know if this has been discussed earlier or what the rationale was behind this, as I just walked in the door.

Chairman Armstrong:

I believe it was discussed to be a study for the collection of some services data.

Michael Nakamoto:

When this bill was heard in the Senate Committee on Revenue and Economic Development, the provisions in section 14.5 were added as an amendment. Pursuant to NRS Chapter 218D, the Fiscal Analysis Division is not required to obtain a fiscal note on an amendment unless we are specifically directed to. The agencies are free to submit an unsolicited fiscal note through the fiscal note system if they so choose.

Scott Anderson:

We will be doing so, because this will have a significant effect on our office. This will affect approximately 325,000 entities in the state. This will require us to change our forms, our online processes, and it could even affect our need for staffing for a one-year period for a study. I am much concerned that this was not brought to the attention of the Office of the Secretary of State at the time the amendment was proposed. It just so happened that I was monitoring this Committee because there was nothing else on our plate at this time and heard this, so I am quite surprised by this provision and the fact that we were not made aware of it.

Peter Krueger, representing Nevada Petroleum Marketers and Convenience Store Association:

Our association did not weigh in on the policy side on this question; however, our store members, local businesses, and Nevada businesses are very opposed to underage smoking and do everything humanly possible to prevent it.

On the fiscal side, for those of you who can remember when Ballot Questions 4 and 5 were on the [2006] ballot, which was the issue that changed and removed smoking and gaming, our members have restricted gaming in many of their convenience stores. They have tried to adjust, but the economic impact of that alone was extremely devastating to the economic viability of many convenience stores.

To add this tax as stated, on top of already very difficult circumstances in the economy and the return to economic soundness, is a blow that we believe we are not able to absorb. The issue really is what has been referred to as cross-border shopping, but I did not hear mention that a big concern for us is the Internet, as well as cross border. All you have to do is look in Boulder City. It is too easy to go across the border and shop in Arizona for many products. Fuel is cheaper and tobacco is cheaper, or very close to it, and would be cheaper should this pass.

On the policy side we are absolutely opposed, and our members are opposed, to underage smoking, but on the fiscal side, this is a hit that we believe the convenience store industry and other retailers cannot absorb.

Chairman Armstrong:

I am not sure whether Boulder City is a good example, because Arizona's tax is already \$2 per pack.

Peter Krueger:

My information was that they were under the \$1.80 amount, but I stand corrected if they are in fact at \$2 per pack.

Chairman Armstrong:

I may be incorrect on that. Is there anyone else who would like to speak in opposition to S.B. 483 (R1)?

Scott Anderson:

I just wanted to finish my thoughts from my previous comments. The way this is written we are opposed to section 14.5 in the bill. We are willing to work with staff, and any interested parties in relation to this, to see if there is something we can come up with, but we do not see this as a viable solution for a one-year study with the volumes we see in our office.

Chairman Armstrong:

This bill is brought on behalf of the Department of Administration, and the amendment was brought by the Office of the Governor. You can definitely work with staff on this.

Is there anyone else who is in opposition to S.B. 483 (R1)? Seeing no one, we will move to those in neutral. Would anyone like to speak as neutral on S.B. 483 (R1)?

Marcus Conklin, representing Reno/Sparks Indian Colony:

I had not intended to testify on this bill, but since the tribes were brought up several times in opposition testimony, I thought at least it might help the Committee if we came up in the neutral position to clarify some of the points.

What I heard from the testimony was an implication that the state would not see revenues from an increase in the mill rate on cigarettes. There is a longstanding compact between the state and the Reno/Sparks Indian Colony. We charge the same rate and we tax the same rate that the state does. The taxes that are collected on Colony land remain on Colony land. They provide for services like the health care center, education, afterschool programs, et cetera, the same types of services the state provides to its citizens under its tax provisions.

That does not impact the numbers that have been provided to you, from your Fiscal Analysis Division, because those are accounted for separately. If this were to raise \$80 million or \$100 million dollars as part of your budget, it already takes into account that there are other entities that sell cigarettes within the boundaries of the state of Nevada. It is not that all cigarette taxes go to tribes. That is not the case. It is only those that are sold on tribal land.

As far as the competition of cigarette sales, to the best of my knowledge, and if anyone on the Committee has questions I would be more than happy to provide an expert from the Colony to answer your questions, there is an obligation to meet the base cost price of cigarettes. It is not as if there is a severe undercutting of price that happens, at least not on our tribal lands. I wanted to be sure to clarify those points, so they did not skew the Committee one way or another.

Assemblywoman Neal:

I have a question in section 16. It treats wholesalers differently depending on dates. Is there unequal treatment of wholesalers depending on the stamp date? Does that section have any effect in relationship to the Colony? Are they in the business of wholesale?

Marcus Conklin:

I cannot definitively answer that question. I will get back to you. My belief is no, they are not in the wholesale business, they are in the retail business, but I cannot definitively confirm that to you without first talking to the folks on the Colony who could clarify that.

Chairman Armstrong:

Because it references the Department of Taxation, do you have an answer for that question, Ms. Contine? Assemblywoman Neal, will you please restate the question?

Assemblywoman Neal:

I was trying to find out if section 16 had any kind of relationship or nexus to the Colony. Is there any kind of wholesale activity going on? The way the provision reads, it says that after July 1, 2015, there is a differentiation in the treatment of a wholesaler depending on the date.

Deonne E. Contine, Executive Director, Department of Taxation:

I will speak generally to how the state interacts with the tribal governments. Most of the statutes provide that if a tribe has a type of ordinance that is similar to the ordinance that the state has, whether that be a sales tax or another tax, the tribe is a sovereign nation and they are entitled to collect those amounts.

I would suspect that if the rates are raised, then the tribes will raise the rates because that allows them to collect the amount for themselves. If they do not, the state is permitted to assess the difference. If for some reason the tribe does not mirror what the state does, the state may go in and assess the difference in the amounts.

I think the second issue that you are talking about is that under this provision, there is a piece that says if someone is holding stamps at the time of enactment of this law, that we can assess them for the difference. That is to prevent people from coming in and buying a lot of stamps before the rate goes up. We do not charge the tribes for stamps because they are the ones that are producing the stamps and getting the money for them. How that might work for them I am not exactly sure. Maybe Mr. Conklin can answer that question, but that is a little bit different issue that we do not regularly administer.

Marcus Conklin:

I just got confirmation that we are not a wholesaler. We do not engage in wholesale business.

Assemblywoman Neal:

If the tribe does not raise their rate, does the state assess them?

Deonne Contine:

As long as I have been the Director I have not seen a situation where the tribe had a different rate than the state.

Assemblywoman Neal:

So the regressivity would really come into play then on the Colony?

Deonne Contine:

I am saying that people can buy from the tribes but their rates are not going to be any different.

Assemblywoman Neal:

What I thought I heard in the arguments that were presented was that because the rate is a significant increase, the business that sells the product specifically will see a reduction in terms of activity and people interested in going to buy it. The store would not see the same kind of output. For the retailer who is dependent on the revenue, they will see a loss.

Deonne Contine:

That is an argument. I hear that too.

Chairman Armstrong:

Is there anyone else who would like to speak as neutral on S.B. 483 (R1)? Seeing no one, are there any final comments? [There were none.] I will close the hearing on S.B. 483 (R1). I will open the hearing on Senate Bill 507.

Senate Bill 507: Revises provisions relating to economic development.
(BDR 18-1204)

Steve Hill, Executive Director, Office of Economic Development, Office of the Governor:

I believe several of you have heard testimony regarding this bill in other hearings, particularly our budget closings. I will try to move through this quickly and then answer any questions you may have.

I think all of you are aware of the Catalyst Account that we currently have. I have testified to you that it is really the most effective economic development program that we have. You have seen presentations earlier that show that it

was critically important in helping to attract nearly 4,000 jobs to Nevada at an average cost of a little over \$2,600 per job in the last couple of years, so your support of that program has been appreciated and very effective.

The proposal in Senate Bill 507 is to create a transferrable tax credit program that functions, from an administrative standpoint, the same way that the film tax credit in Senate Bill No. 1 of the 28th Special Session really deals with transferrable tax credits, and from an analysis and approval perspective, similar to the current Catalyst Account.

It would provide an allocation of transferrable tax credits of \$500,000 in the first fiscal year of the next biennium, \$2 million in the second fiscal year of the next biennium, and \$5 million per year thereafter. It would limit our authority to grant transferrable tax credits to a period of five years. As a companion measure, we have also, through your work, eliminated the funding into the Catalyst Account through our budget closing last week. The ultimate effect in the next biennium would be that this program would reduce the cost of the catalyst programs by \$7.5 million.

That is a summary of the program. I am happy to answer any questions you or the Committee may have.

Assemblyman Hickey:

Because we are reducing actual support for the Catalyst Account in this budget, are you in effect replacing it with tax credits?

Steve Hill:

The Catalyst Account structure will remain in statute, but will not be funded during the next biennium. The Catalyst Account structure will be created, which is a transferrable tax credit program, that in the next biennium will have a reduced cost to the state.

Assemblyman Hickey:

But it will have an impact upon the State General Fund, not exactly dollar for dollar, as if we were funding the Catalyst Account as we did last biennium. By giving the credits, there will be an impact upon the General Fund, correct?

Steve Hill:

That is the case, and that has also been taken into consideration by the Economic Forum.

Assemblywoman Neal:

At the beginning of the bill, in the Catalyst Account before this, did you have a premium insurance tax, as in section 2, subsection 1, paragraph (c)?

Steve Hill:

Yes, we did.

Assemblywoman Benitez-Thompson:

Can you explain the thought behind a transferrable tax credit versus a traditional tax credit.

Steve Hill:

The reason for the transferability is simply to create as much value as possible for the company when they look to redeem that credit. There is a good chance that most companies will be able to use that to offset the taxes they directly owe. In the event that is not possible, that is the reason for the transferability.

Assemblywoman Benitez-Thompson:

When we use the transferrable tax credits, do those always get used, unlike if we did an abatement of some kind?

Transferrable tax credits have always been interesting to me because you are guaranteeing that at some point the money is going to come off the books even if the input has not been what we thought it would be on the front end. Then they would be sold to people like the insurance premium tax industry, from which we heard testimony earlier.

Those tax credits always go to well-established industries that tend to be healthy and do not necessarily generate economic development in the state because they are here and established. That is my concern with a transferrable tax credit. I wanted to give you a chance to put on record the cause, the thinking, and the plea as a public policy statement for why it is the best kind of credit as you see it.

Steve Hill:

I think predictability in this particular situation will be fairly high. The proposed bill outlines a cap and we will treat this program the same way that we treat the Catalyst Account, in that it will be performance based. At times there will be transferrable tax credits committed that are not then earned. The reason for the transferability is so that they are as liquid as possible, which makes them as close to a dollar-for-dollar value for the companies.

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. 507?

Tyre Gray, representing Las Vegas Metro Chamber of Commerce:

We are in support of this bill. We believe in recruiting new industry to Nevada.

Chairman Armstrong:

Is there anyone else to testify in support of S.B. 507? Seeing no one, we will move to opposition. Would anyone like to speak in opposition to S.B. 507?

Victor Joecks, Executive Vice President, Nevada Policy Research Institute:

We are opposed to S.B. 507. Transferrable tax credits are usually issued for an amount larger than a company's tax burden, which is why they need to be transferrable. When a company sells a tax credit, a business is receiving an indirect subsidy from the government. This is troubling on a couple of levels. First, government simply should not pick winners and losers in the economy. Providing an indirect subsidy amounts to forcing a business to pay higher taxes so its competitor can get a subsidy. Second, these transferrable tax credits create a hole in the state's budget. We have seen this with the \$150 million hole in the current state budget. Right now the Legislature is considering raising taxes on businesses and people in general to pay for previous handouts.

It is surprising to hear the Office of Economic Development, Office of the Governor (GOED) say that subsidies are the most effective economic development program we have, when yesterday GOED said that the largest tax increase in state history, including the creation of the gross receipts tax, would not harm economic development. I do not think those positions are consistent. Either businesses are interested in low taxes or they are not. It troubles me that we are going to end up in a position where we are considering tax increases on everybody, and then the favorite few get the handouts that reduce their tax burden. While I would encourage you to reject this bill, I would like to offer an amendment. The amendment would be to remove the word "transferrable" and make these just tax credits.

Chairman Armstrong:

Would anyone else like to speak in opposition to S.B. 507? Seeing no one, we will move to neutral. Would anyone like to speak as neutral on S.B. 507? Seeing no one, do you have any final words, Mr. Hill? [There were none.] I will close the hearing on S.B. 507. I will open it up for public comment. Is there any public comment? Seeing none, I will close public comment. The meeting is adjourned [at 3:55 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblyman Derek Armstrong, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Taxation

Date: May 26, 2015

Time of Meeting: 1:50 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 103 (R1)	C	Robert L. Compan, Farmers Insurance	Testimony
S.B. 103 (R1)	D	Robert L. Compan, Farmers Insurance	Agency Impact Sample
S.B. 483 (R1)	E	Michael Hackett, Nevada Tobacco Prevention Coalition	Cigarette Tax Rates Sheet
S.B. 483 (R1)	F	Tom McCoy, American Cancer Society Cancer Action Network	Testimony
S.B. 483 (R1)	G	Tom McCoy, American Cancer Society Cancer Action Network	Fact Sheet
S.B. 483 (R1)	H	Victor Joecks, Nevada Policy Research Institute	Proposed Amendments
S.B. 483 (R1)	I	Samuel P. McMullen, Altria Group Inc.	Proposed Amendment