

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

**Seventy-Eighth Session
February 10, 2015**

The Committee on Taxation was called to order by Chairman Derek Armstrong at 1:33 p.m. on Tuesday, February 10, 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: 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:

None



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:

Deonne E. Contine, Executive Director, Department of Taxation
Blake A. Doerr, Chief Deputy Executive Director, Executive Division,
Department of Taxation
Terry Rubald, Deputy Executive Director, Local Government Services,
Department of Taxation
Paulina T. Oliver, Deputy Executive Director, Compliance, Department of
Taxation
Yolanda T. King, Chief Financial Officer, Department of Finance, Clark
County
Carole Vilardo, President, Nevada Taxpayers Association
John Griffin, representing Amazon.com
Ray Bacon, representing the Nevada Manufacturers Association
Mary Lau, representing the Retail Association of Nevada
Bryan Bedera, representing Amplify Relations
Laura Freed, Deputy Administrator of Regulatory and Planning Services,
Division of Public and Behavioral Health, Department of Health and
Human Services
Kiera Sears, representing Black Rock Nutraceuticals, LLC

Chairman Armstrong:

[Roll was taken.] We will be having a joint meeting at 3:30 p.m. next Thursday, February 19, 2015, with the Senate Committee on Revenue and Economic Development to go over Senate Bill 93. First up on the agenda today is Ms. Contine with the Department of Taxation.

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

I have been asked to give a presentation that includes a brief overview of what we do at the Department of Taxation ([Exhibit C](#)), and then a high-level overview of all the taxes the Department of Taxation collects and distributes.

With me today are my colleagues. To my left is Blake Doerr. He is the Chief Deputy Director. To my right is Terry Rubald. She is the Deputy Director of the Local Government Services Division. In southern Nevada is

Paulina Oliver. She is the Deputy of the Compliance Division. Each of them will give a presentation today, within my presentation.

The Department of Taxation administers the collection and distribution of nearly \$5 billion annually in state and local government revenue from several different types of taxes that I will be discussing today. The Department is responsible for providing a fair, efficient, and effective administration of the tax programs of the state. The Nevada Tax Commission (NTC), which is an eight-member board appointed by the Governor, is the head of the Department by statute. Those members include people from various parts of the business community, as provided in statute, such as the utility business and mining. The Governor also appoints the executive director of the Department.

The NTC adjudicates cases when the Department has a dispute with a taxpayer, an audit or collection issue, or any other issue. They also adopt our regulations and can review the decisions of the Department of their own accord.

The Department of Taxation has 336 full-time equivalent positions in four offices statewide. There are 188 in Carson City, 31 in Reno, 66 in Las Vegas, and 44 in Henderson. We have seven auditors who work and live outside of Nevada; they audit out-of-state businesses.

The Department is organized into divisions. The Executive Division, which is my immediate office, includes deputies, the hearing officers who preside over evidentiary hearings when there is a dispute with a taxpayer, and a small staff that assists in audit billings and compliance matters.

The Compliance Division is where the audit staff is located. This past fiscal year (FY) the audit staff conducted 2,200 audits, which totaled a net collection of about \$22 million. The Compliance Division is also where the revenue staff is located. They collect the money that is due the state. Over \$50 million was collected last year in delinquent taxes. Tax examiners and other staff are also located in the Compliance Division. They conduct training and seminars throughout the state.

The Local Government Services Division assesses property that crosses county lines. We call this the centrally assessed section. They appraise and audit mines and mining property, and provide guidance and oversight to county assessors, treasurers, and recorders. They review and provide guidance to local governments on budgeting issues.

Last is the Information Technology Division. They oversee the unified tax system, which includes all of our servers, databases, and networks. They also

make programming changes. There is a group of programmers that make changes to our internal tax collection system.

The Department also serves as staff to various boards and commissions, including the State Board of Equalization, which hears appeals from the county boards on property tax disputes; the Committee on Local Government Finance; the Mining Oversight and Accountability Commission; the Appraiser's Certification Board; and the Nevada Tax Commission.

The next slide is just a high-level organization structure. This shows the executive areas that I talked about earlier.

The Department collects and distributes sales and use taxes, modified business tax, the bank branch tax, insurance premium tax, lodging tax, tire tax, short-term lessor fees, liquor tax, cigarette and other tobacco products tax, medical marijuana excise tax, live entertainment tax, net proceeds of minerals tax, property tax on centrally assessed properties, and the real property transfer tax. We will touch on each of these as we go forward.

The next slide is just a visual representation of the tax revenues we collect and the distributions. As you can see, 74 percent of the amount the Department collects is sales and use tax, followed by the modified business tax at 8 percent, and 5 percent in insurance premium tax. Our distributions are 56 percent to local governments and 38 percent to the State General Fund. Those two are the highest distributions we have.

On the next slide you will see the components of the sales and use tax rates. I know there are a lot of new Committee members this session, and there really are a lot of different parts that go into this. You all received a copy of the Department's "Annual Report, Fiscal 2013 - 2014" ([Exhibit D](#)), which will show you the collections for the last, I think, six years. Page 7 of ([Exhibit C](#)) is just a summary of that information.

First of all, in *Nevada Revised Statutes* (NRS) Chapter 372, the tax rate is 2 percent, and that is the state sales tax amount. I am just going to tell you about the collections in the presentation from FY 2014, but you can go back and see historically what the collections have been.

In FY 2014 the Department collected and distributed approximately \$900 million to the State General Fund, and that was in the 2 percent rate from NRS Chapter 372. The 2.6 percent tax rate is in NRS Chapter 374, which is the Local School Support Tax. The Department distributed \$1.1 billion to the school districts in FY 2014, and \$114 million was distributed to the

State Distributive School Account. The Department also distributed \$9 million in General Fund commission, and that is the portion that goes to the General Fund.

The Basic City-County Relief Tax (BCCRT) and the Supplemental City-County Relief Tax (SCCRT) are in NRS Chapter 377. For those, the Department distributed \$230 million to local counties. The General Fund commission amount was \$4 million for the BCCRT. For the SCCRT we distributed \$800 million to local governments, and \$14 million to the General Fund.

At the bottom of page 7 are the option taxes. There is a series of option taxes, and they are listed starting on page 15 of the Annual Report ([Exhibit D](#)). There are a couple of pages and I refer you to them for a full listing of all the option taxes.

The option taxes are the taxes that local jurisdictions enact or approve for various functions, such as flood control, infrastructure, or open space. In FY 2014 the Department distributed approximately \$500 million to local governments for the option taxes.

Page 8 is the modified business tax (MBT). The MBT is in NRS Chapter 363A and NRS Chapter 363B. The financial institutions' rate of 2 percent of all wages is in NRS Chapter 363A. In NRS 363A.050, subsection 1, paragraphs (a) through (s), define the financial institutions. If a business is in that list, they are considered a financial institution, and are subject to the 2 percent rate. The general business rate is in NRS Chapter 363B. The rate for general businesses is 1.17 percent of all wages that exceed \$85,000 per calendar quarter. I should mention the taxpayer is permitted to deduct from their total wages the amounts they pay in health care for their employees. I forgot to put that on the slide. In FY 2014 the Department collected \$400 million in MBT for the General Fund.

Assemblyman Hickey:

In looking at the rather stable level of revenues since 2009 with regard to the MBT—and I think that reflects what are now called the extension of taxes, the so-called sunsets—they have been fairly stable during that time. Would you choose to comment on why that is the case?

Deonne Contine:

There are a couple of theories. Businesses are employing more people and are paying more in wages. One thing I would note about the statistics over time is that the current rate has been the rate with the \$85,000 tier for the last biennium. Prior to that, the tier was \$62,500 per quarter. If you look back

over time, even with the additional exemption or additional amounts to the tiered rate, we would still have increased collections.

Next is the bank excise tax on page 9. This tax is also in NRS Chapter 363A, the financial institutions chapter. It is imposed on each bank at the rate of \$1,750 for each branch office maintained by the bank in this state in excess of one branch. So banks that have more than one branch pay this bank excise tax. This tax generated about \$2.8 million in General Fund revenue in the last fiscal year.

Assemblywoman Neal:

Going back to the Annual Report, on page 39 ([Exhibit D](#)), pertaining to the MBT, it says 50 percent of the tax paid by an entity that was directly recruited or assisted in locating to Nevada by a qualifying economic development agency is distributed back to that agency for a period of ten years. How much is that? Can I get a breakdown of what that is?

Deonne Contine:

Those comments in the Annual Report have to do with various abatements. We can get you some information on the abatements on those amounts.

Page 10 ([Exhibit C](#)) of the presentation is the insurance premium tax, which is in NRS Chapter 680B. The insurance premium tax is 3.5 percent of premiums written in Nevada. There are several credits toward premium tax liability. First there is an assessment that industrial insurers pay to the Division of Industrial Relations. The insurer is entitled to a credit toward their premium tax liability, equal to that assessment they pay. The home office tax credit is a credit that a home office, or regional home offices, receives for locating and operating the business in Nevada. It is 50 percent of their premium tax liability, up to the full value of their ad valorem taxes, but it does not exceed 80 percent of their liability. This is the current credit. It was amended in 1983, during the 14th Special Session, and it will only be in existence for another year; then it will phase out after five years.

Assemblyman Hickey:

You may have already answered my question. Is it correct that the home office tax credit being phased out had no impact, at least not immediately, on the economic forecast—in the Economic Forum's numbers this time—because it is not impacting them during this next biennium?

Deonne Contine:

It lasts through 2016.

Chairman Armstrong:

I would like my fiscal staff to clarify this a little more for Assemblyman Hickey.

Michael Nakamoto, Deputy Fiscal Analyst:

At its meeting on December 3, 2014, the Economic Forum's forecast for the insurance premium tax took into account the impact of Assembly Bill No. 3 of the 28th Special Session. The forecast was increased by approximately \$12.5 million in FY 2016 because of the January 1, 2016, effective date for this change to the home office credit. The forecast was then increased by \$25 million in FY 2017 because of the full 12-month effect of these provisions.

Deonne Contine:

Next is the new markets tax credit. This is a credit for investment in community development block grants. Insurers essentially purchase credits and those funds are used by development agencies to invest in community development.

Last is the Nevada Insurance Guaranty Association (NIGA). There are two funds in Nevada that insurers pay into to ensure that if an insurance company becomes insolvent, there are some funds to pay claims, so they get a credit when they make that payment to NIGA. They get a credit toward their premium tax liability of 20 percent per year for five years after they have made the payment.

Notwithstanding all of those credits, the insurance premium tax generated about \$250 million in General Fund revenue last fiscal year.

There is a series of small taxes we administer. The transient lodging tax on page 11 is 2 percent of the gross receipts in counties with a population in excess of 700,000, and 1 percent in the other counties. In FY 2014 approximately \$19 million was distributed by the Department of Taxation to the Department of Tourism and Cultural Affairs, and about \$141 million was distributed by the Department to the State Distributive School Account.

The tire fee is a fee per new tire. We all pay this when we buy tires. Ninety-five percent of that fee is remitted to the Department of Taxation, and the retailers keep 5 percent. The collections for FY 2014 were about \$1.7 million and are distributed to various health and environmental accounts.

The short-term lessor fee is an additional fee that is paid when you rent a car or some other vehicle. This fee is 10 percent statewide, with an additional 2 percent for Washoe and Clark Counties. It is distributed to the General Fund,

and in FY 2014 was approximately \$46 million, with approximately \$9 million to Washoe and Clark Counties.

Mr. Doerr will now walk you through the liquor and cigarettes and other tobacco product taxes.

**Blake A. Doerr, Chief Deputy Executive Director, Executive Division,
Department of Taxation:**

The liquor tax is a tax that is imposed on transfers of liquor to wholesalers, where the liquor is then destined for the stream of commerce in Nevada. The liquor tax is a graduated tax, based on the volume and the proof of the liquor. So the higher the proof, the higher the per gallon rate of tax. As you can see on page 12, the rates go from \$3.60 per gallon down to \$.16 per gallon. There are also license fees associated with these, and these have been listed. The fees vary between \$50 and \$500 for the license. The retail liquor stores are really regulated by the local governments, and the liquor tax is separate from any sales and use tax that might be imposed, or live entertainment tax that might be imposed, on the liquor at the time of sale and consumption in the state. There are also fines that are charged. The fines and license fees make up less than 1 percent of all the liquor taxes that are collected.

Page 13 shows the amount we have collected per fiscal year, which is right around \$40 million, edging up to about \$50 million. Although there has been some growth, it has not been significant in the past six fiscal years.

Page 14 shows how the liquor tax is distributed. Ms. Contine touched briefly on what we call the Consolidated Tax Distribution (CTX), which is how taxes are distributed to the counties. This chart gives you a breakdown by county of how the money we collected in the last fiscal year was distributed and what each county received. The State General Fund received about \$41 million. The Tax on Liquor Program Account accounts for about 2.69 percent of the collection, and this goes to the state Department of Health and Human Services, to fund alcohol-related programs. The Alcoholic Beverage Awareness Program Account, for fines, is made up of two smaller funds, for victims of domestic violence and community juvenile justice programs.

On page 15, cigarettes are taxed differently than other tobacco products (OTP). Cigarettes are taxed at 40 mills per cigarette, which amounts to about \$.80 per pack. Other tobacco products, on the other hand, are taxed in a fashion similar to liquor, where the volume of tobacco that is transferred to wholesalers is taxed.

Assemblyman Hambrick:

When you say other tobacco products, does this include the new electronic cigarettes?

Blake Doerr:

Actually that is not included in here, although there is a bill to include electronic cigarettes [Senate Bill 79]. I will just point out that with cigarettes and OTP, the statute calls for products that contain tobacco, whereas electronic cigarettes are typically nicotine derivatives and do not contain tobacco.

Other tobacco products such as chewing tobacco and, I believe, roll-your-own cigarettes make up the bulk of those products. It bears mentioning that the structure of the taxes is different, with one being on stamps that are affixed to the packages of cigarettes, whereas the OTP is handled by a volume of tobacco as it goes through intermediate transfers at the wholesale level.

Page 16 shows the collections from cigarettes and OTP revenue. You will notice a slight downward trend. I have not done any analysis on that, and I do not know if it is because of smoking cessation or people transferring from tobacco cigarettes or OTP to electronic cigarettes, but it is the trend nonetheless. The bottom of the page shows you a breakdown of stamp revenue, OTP, and the license fees we collect. It results in around \$100 million per year.

Chairman Armstrong:

Regarding the cigarette and OTP tax revenue, the slide shows all of the revenue for the state. That goes to both local and to the state?

Blake Doerr:

Cigarette and OTP tax distribution is next, which is the CTX distribution. This shows what each county's portion was for the last fiscal year. Page 17 shows that \$10 million of that was transferred to the counties. The State General Fund ended up with \$78 million. The administrative fees number is what is paid back to the Department as an offset from General Fund operating revenue, so the Department is not getting \$500,000 in addition to what it might receive in its budget. It is being used to offset that, and it really covers the cost of our employees who do it and the cost for procuring the stamps.

Unless there are any questions I will hand it back to Ms. Contine.

Deonne Contine:

I brought a sheet of statistics about the modified business tax (MBT). I would like to share a few numbers for taxable wages and health care over the last few years.

For FY 2014 approximately \$39 billion in gross wages were reported, and about \$3.1 million in health care deductions. Taxable wages were close to \$36 billion. Then you apply the tax rate to that. This gives you an idea of where the gross wages, deductions, and taxable wages are over the last three years, notwithstanding the changes in the tier rate. You get an idea that gross wages have gone up, health care deductions have gone up, and taxable wages have gone up over the last three years.

Chairman Armstrong:

Did you make copies of these statistics for everyone? I do not see the sheet you are referencing.

Deonne Contine:

No. I thought there might be a question about it so I brought some additional statistics. I can make copies for the Committee.

Assemblyman Hickey:

Along those lines, the state discovered recently that some of its projections about Medicaid expenses, in lieu of the Affordable Care Act (ACA), were less than we expected. Have you considered, if the ACA continues to be implemented, that there may be more health care deductions, and therefore that may have an impact upon revenues generated by the MBT?

Deonne Contine:

I have not really thought about the actual financial impact. I believe your staff that makes projections to the Economic Forum and the staff in my office have thought about the ACA with respect to potential health care deductions or the insurance premium taxes, but I do not have any additional information on how Medicaid might have affected it at this point.

Assemblyman Nelson:

You mentioned the electronic cigarettes, or the vapor cigarettes. You also mentioned there is a bill coming up. Do you have any idea how big a market that is? Have you looked into this at all?

Deonne Contine:

We have not looked into it significantly. We have been working a little bit with your staff to try to come up with some thoughts and ideas about the amounts, but we do not have a lot of data right now. We can identify certain taxpayers who might be involved in selling electronic cigarettes, and look at their taxable sales, but this is hard. Sometimes the electronic cigarettes will be sold at a liquor store, or at places that have other things that they are selling, so it is hard to narrow down the actual places that are selling these products. This has been a bit of an exercise, and we are still wrapping our heads around it to see what we can come up with.

Assemblyman Nelson:

I noticed on page 5 of the presentation, at the bottom of your list, is the real property transfer tax. I know there are a number of exemptions to that tax; for example, a transfer into or out of a trust. Have there been any discussions about tightening up the various exemptions to that tax, and would it make a big difference financially?

**Terry Rubald, Deputy Executive Director, Local Government Services,
Department of Taxation:**

Yes, there has certainly been an awareness that the "to or from a trust" is the largest exemption, and I will be talking about that during my presentation; however, I am not aware of anything that has been proposed to change that.

Deonne Contine:

That is all Mr. Doerr and I have to present. If there are no further questions for us, I will switch places with Ms. Rubald. She will walk you through property tax, real property transfer tax, and net proceeds of minerals tax.

Terry Rubald:

Before I get started I want to make sure the Committee has the handout called "Nevada Property Tax: Elements and Application" ([Exhibit E](#)). I am going to first talk about the net proceeds of minerals tax, but I wanted to make sure you had the document, because I will be referring to it. Before we get to that point I would like to talk about net proceeds of minerals tax.

For a little bit of background, this particular slide on page 1 happens to come from the Division of Minerals ([Exhibit F](#)). It shows you the dominance of gold as compared to the other types of minerals that have been produced. Gold has been the dominant mineral since about 1980.

The slide on page 2 shows what the formula is for calculation of the net proceeds of minerals tax. You start with a mining operation's gross yield.

The gross yield is most often reported in terms of the number of units produced times the unit price. For instance, the current price of gold is running about \$1,260 per ounce. If a mine produced 100 ounces, the gross yield would be about \$126,000. We then subtract certain allowable deductions to get the net proceeds, and we multiply the net proceeds times a tax rate not to exceed 5 percent. That 5 percent is a limitation that is imposed in the *Nevada Constitution*, Article 10, Section 5.

The actual tax varies, depending on a number of criteria found on page 3. One of the major criteria is the net to gross ratio. We have a sliding scale of taxes. You can see that it ranges from \$2 per hundred to \$5 per hundred, or you can call it 2 percent or 5 percent. It depends on what the net to gross ratio is. Let me give you an example. If you had a mine that was producing \$1 million in gross yield, and it had deductions of \$950,000, you would have a net of \$50,000. You would compare the \$50,000 to the \$1 million and you would find that the net to gross ratio would be about 5 percent. So because that is less than 10 you would select \$2 as the rate of tax to be applied, and you would apply that to the net, \$50,000, times the \$2 per hundred, giving you a tax of about \$1,000. Now if you had another mine that produced \$1 million of gross yield and the net was \$600,000, then the net to gross ratio would be 60 percent, which of course is more than 50, so you would select the \$5 per hundred. You would apply that to the net, which is \$600,000, and so the tax in that case would be \$30,000. You can see the net to gross ratio does have quite an effect on what the total taxes are.

Page 4 shows the exceptions to that sliding scale that we just saw. If the mine produces net proceeds of \$4 million or more, it automatically goes to 5 percent. The tax rate on royalties is also automatically 5 percent, no matter what the amount. For geothermal mines their tax rate can be no higher than the combined property tax rate for the district where the mine is located. For instance, in Churchill County, where there are many geothermal properties, the typical rate would be \$2.80 per hundred of net proceeds, because that is Churchill County's property tax, the overlapping tax rate. The combined property tax rate of the local jurisdiction, if it is greater than 2 percent, is also the minimum rate. So remember that our sliding scale (page 3) was from 2 to 5 percent, but if the overlapping tax rate is greater than 2 percent, that becomes the minimum. So in Humboldt County, where the overlapping tax rate is \$2.20, that is the minimum. In Eureka County, which has a total tax rate of about \$1.78, 2 percent on that sliding scale is as low as you can go. It does get complicated.

Assemblywoman Neal:

I know it is based on the net proceeds, but is it mine specific? When we talk about if it is \$4 million and over, 5 percent is attached. Is that mine specific or company specific? Does the mine itself produce \$4 million?

Terry Rubald:

Yes. What happens is the net proceeds is considered to be a type of property tax, so geography plays a part. What the statute calls for is each geographically separate extractive operation. For instance, you might have a corporation that has several pits, and if they are geographically separate extractive operations, each one would be compared to the \$4 million to determine whether they go to the maximum tax rate or not. Now, there are some mines with several pits located right together, and they are considered to be one mine.

Assemblywoman Neal:

So the pit, or a combination of pits, represents one?

Terry Rubald:

If there is a mining operations plan that calls for several pits to access the gold trend, that might be one geographically separate extractive operation, but if the pits were several miles apart and perhaps there was intervening property, those would be separate mines.

On the next slide (page 5) you can see how the net to gross ratio fluctuates over time. For instance, in 2011 and 2012 the net to gross ratio was hovering at about 46 percent when gold prices hit an all-time high of around \$1,800 per ounce. In 2013, the net to gross ratio went down about 10 percent. That was the year we had a gross yield of about \$8.8 billion and net proceeds of about \$3.2 billion. That generated an overall net to gross ratio of 36 percent. When the price fell so precipitously in 2014—you can see it took a real dive—the ratio went down to about 24 percent, and that was because the price of gold had fallen so precipitously, down to \$1,140 per ounce.

The net to gross ratio does vary by mine, and by type of industry. I wanted to go through this calculation on page 6 and try to simplify it for you. If we started with a gross yield of \$1 million and they took deductions that resulted in a net proceeds of \$400,000, then according to that sliding scale, it would be based on the net to gross ratio of 40 percent. So in this example we are using net proceeds of \$400,000. When you multiply that times the tax rate of 4 percent, the total taxes due are \$16,000. It depends on what this overall property tax rate is as to what the distribution is going to be, because in that 3.66 percent rate everything except \$.17, which goes to the state debt, goes to the county. So of that 4 percent, the vast majority, about 88 percent, goes to

the county; about 5 percent goes to the state debt; and the balance goes to the State General Fund, and you still end up with the \$16,000. Now if you took that same scenario for geothermal you cannot go to the 4 percent rate, because they are maxed out at the county's overlapping tax rate of 3.66 percent. The maximum that could be charged is \$14,640. The county distribution is approximately the same as in minerals, at \$13,960, and \$680 for state debt, but nothing goes to the State General Fund. Royalties are at the maximum tax rate of 5 percent. In this example it would produce \$3,750 in revenue, of which about 70 percent goes to the county, a little bit goes to the state debt, and the rest goes to the State General Fund.

Assemblywoman Neal:

What happens when a mine does not produce what it typically would have produced, because when our economy is good, mining is not? The relationship is opposite. Is there a trigger where they get to keep the money, and it does not go to the General Fund, because they are at such a low rate that they need it for the county?

Terry Rubald:

No. It depends on the comparison to the county's tax rate. They do not get to keep anything. Even if they had an off year and their net to gross ratio was not at the maximum anymore—and it was something less on that sliding scale of tax rates—at that point you would compare whatever they ended up with on that sliding scale to the county's tax rate. It is a very intricate interplay between that sliding scale and what the comparison is to the overall property tax rate of the county.

In the case on page 7, although I have Roop listed here, what we are actually talking about is Eureka County. It has a low rate, and again net proceeds ends up at \$400,000. It still produces \$16,000 of revenue, but the distribution is entirely different than the example on page 6. In this case about 45 percent goes to the county, about 5 percent goes to the state debt, and all the rest goes to the State General Fund. The tax amount is still the same to the taxpayer. You can see again it is slightly different for the geothermal. In this case, if there were a geothermal operation in this county, the net proceeds revenue would be down quite a bit, because it could not be more than that overlapping combined tax rate, and there would be nothing for the State General Fund. Royalties are approximately the same.

This slide on page 8, shows the relative comparison of each industry on the net to gross ratio rank of the industry. Oil is the number-one industry in terms of having a great net to gross ratio. That is a very profitable industry. Gold comes

in fourth at about 38.52 percent, after oil, iron ore, and perlite. By comparison, geothermal has a net to gross ratio industrywide of about 9.32 percent.

The slide on page 9 comes from the "2013 - 2014 Net Proceeds of Minerals Bulletin" [available from the Department of Taxation]. It is unfortunate that oil represents only about one-half of a percent of the total net proceeds in the state, even though it has a great net to gross ratio. As I mentioned before, gold really is the driver in the state. It is about 95 percent of the total actual net proceeds, and again their net to gross ratio is about 38 percent.

Page 10 shows that most of the net proceeds is produced in Lander, Humboldt, and Eureka Counties, with a small amount in the other counties.

The next slide shows the distribution of the tax between the counties and the state. It has been pretty even over time. For instance, in 2013 the split was about 52 percent of the total to the counties and about 48 percent to the state. This year we are estimating that the split is going to be about 50-50.

Assemblyman Nelson:

So on the split that goes to the counties, does it primarily go to the county from which it was mined?

Terry Rubald:

That is correct. It is because net proceeds, as of now, is a property tax, so it is based on location.

Assemblyman Nelson:

So Lander County is getting quite a bit of its income from mining?

Terry Rubald:

Yes, it is the location of the most profitable gold mine in the state.

Page 12 is just a backup to the graph on the previous page, and again this material comes from the "2013 - 2014 Net Proceeds of Minerals Bulletin." You can see for 2014 we are estimating a total net proceeds tax of about \$78.8 million, of which about \$39 million went to the counties, \$2.7 million to the state debt, and about \$36.6 million to the State General Fund. The \$78.8 million was based on net proceeds of \$1.6 billion.

Assemblywoman Neal:

I want to go back to a point that you made. You showed the example that oil has a greater net to gross ratio. Would that mean, in order for us to capture the most revenue, we should only group the things that give us the most net at the

end, because then it would be oil and the other things that have a higher end? When you use the gross, you can have something that has a high gross, but you are not going to get anything because of how it is treated. Correct? It is like a reverse relationship.

Terry Rubald:

The system was designed back in the 1800s to deal with mines that just could not be as profitable as others for a whole host of reasons. The only thing I could suggest, regarding that sliding scale of 2 percent to 5 percent, is if you wanted to capture mines at a higher rate, you would have to change the net to gross ratio you were using.

I threw in the slide on page 13 to show the timeline for reporting and payment of taxes. Everything above the line is the basic reporting and timing that occurs. Everything below the line has to do with the prepayment system. Everything in purple is for the 2014 production year, and everything in blue is for the 2015 calendar year.

I will talk about the information above the line first. The first thing that happens will be on February 16. Taxpayers will report their final 2014 production. Between February and April the Department will go through the reports and come up with a certified value on April 20. We then send the certified value and the bill, and the taxpayers have until May 10 to pay their net proceeds taxes. That is the basic plan.

Back in 2008, we superimposed a prepayment system on this. So back on March 1, 2014, the companies estimated what their production would be for 2014, and they prepaid based on that estimate. They then had opportunities quarterly to update that estimate, and their final payment for their fourth quarter estimate will be on February 28. They do not have to report anything during these quarters if there has been no change from the first report of March 1. On March 1, 2015, they will estimate again for the 2015 production year.

When we send out the certified value in April the Department takes note of what they paid last March, and every subsequent quarter. We then subtract that amount from what they owe, and that amount is due on May 10. The amount should be very small because they will have paid at least 90 percent in prepayments.

Assemblyman Kirner:

The Governor's recommendation is to bring it back to the way it used to be, which would be essentially your timeline?

Terry Rubald:

The top line, that is correct.

Assemblyman Kirner:

Could you talk to what the impact of that would be, making that shift in 2016?

Terry Rubald:

There is going to be a hole, because in 2015 they will have paid 90 percent of what they owe for production year 2015. So, when 2016 rolls around, they will have already paid. No matter which year the implementation—going back to the basic reporting scheme—happens in, there will be one year where there will be very little in revenue.

Chairman Armstrong:

In the interest of time, I would like to skip the property tax portion of your presentation ([Exhibit G](#)) and ([Exhibit H](#)). We can hear that on another day. Are there any questions from the Committee?

Assemblyman Trowbridge:

How do some of these timelines impact the distribution of funds to the counties and the cities, because they have budget preparations for submittal deadlines that could be impacted by these if there are any delays?

Terry Rubald:

Yes, there are timelines that require us to redistribute those monies to the counties, I believe within about 30 days.

Assemblyman Trowbridge:

Are there specific dates?

Terry Rubald:

Yes, there are.

Assemblyman Trowbridge:

Do those dates complicate things for the cities and counties to submit their budgets in a timely fashion?

Terry Rubald:

No. Monies that we receive by May 10 will be distributed within a few weeks after that date. Because of the prepayment system, they recognize those revenues in the year in which they receive them. Even though the production year will be 2015, they will be making their FY 2015 prepayments in March. Any subsequent payments they make will go to FY 2016.

Chairman Armstrong:

With that we will close the presentation from the Department of Taxation. Ms. Contine, do you have anything else to add?

Deonne Contine:

No. Thank you.

Chairman Armstrong:

We will move on to the next item on the agenda. I will open the hearing on Assembly Bill 57.

Assembly Bill 57: Revises provisions governing the taxation of purchases of direct mail. (BDR 32-306)

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

I am here to present Assembly Bill 57, which is the Department of Taxation's bill on the Streamlined Sales and Use Tax Agreement. I am going to give a short summary about Streamlined, how we got here, and why we need this bill.

Around 2000 a group formed to try to find some solutions to the ruling in the U.S. Supreme Court case *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), which basically said that a state may not require a seller to collect and remit sales tax if the seller did not have a physical presence in the state.

The result of this group's work was the Streamlined Sales and Use Tax Agreement. The purpose of the Agreement was to modernize the sales and use tax administration, and to lessen the burden of compliance. What they were trying to create were systems that could cross state lines, where if a seller was in one state, they would know the results in other states, so they would not have to follow 50 different states' sales and use tax administration laws.

They were, and still are, working to encourage Congress to pass some type of "marketplace fairness," which essentially would be the requirement to collect and remit on out-of-state sales. The states are obviously still advocating on this.

Today, 24 states have adopted the Streamlined Sales and Use Tax Agreement, including the State of Nevada in 2003, through its enactment of NRS Chapter 360B. Nevada has collected some revenue as a result of being part of the Agreement. In the last year we collected about \$10 million in what we call Streamlined payments. These were payments from sellers who might otherwise have been able to argue that they do not have a physical presence in

the state, but because they are supportive of the Streamlined concept, they collect from in-state purchasers and remit those amounts to the Department.

Moving on to the need for this bill, by being part of the Agreement, every year the state has to go through an annual compliance review, to make sure we are not doing anything in conflict with the Agreement, or in conflict with the rules that have been agreed to by the [Streamlined Sales Tax] Governing Board in the states.

In 2013 it was discovered that there was some inconsistency in NRS 360B.281, with respect to in-state and out-of-state sellers of direct mail. The way the Agreement's governing board read our statute is that it created one rule for in-state sellers and one rule for out-of-state sellers. Assembly Bill 57 essentially clarifies that, whether you are located in or out of Nevada, if you take a resale certificate or you take a direct payment permit that is part of the Streamlined concept, you are relieved of the requirement to collect and remit sales tax.

We were asked by the governing board to bring A.B. 57 forward, and it is consistent with how we would treat the taxpayer in the state. In their reading they believed it was not completely clear, so we are cleaning it up to resolve any inconsistency that might be perceived, and to be in compliance with the Streamlined Sales and Use Tax Agreement.

I will answer any questions.

Chairman Armstrong:

In looking at this it seems like we are changing the burden from the seller collecting the taxes and putting it on the purchaser. Is the collection effort different? Are you going to see fewer people self-reporting when they are purchasing items?

Deonne Contine:

If someone was selling in Nevada and they took a resale certificate, or some other indication that the person was purchasing it for resale, we would always relieve that taxpayer of the requirement to collect and remit. In these cases it could be for reasons of resale, or some other way they are going to sell in an exempt manner, but it is just to clarify that we are going to treat these types of retailers in the same manner we would treat other retailers in Nevada.

Paulina Oliver is the individual who has been working closely with the Streamlined group and attends the meetings. She may have more to offer.

Paulina T. Oliver, Deputy Executive Director, Compliance, Department of Taxation:

I do not have anything else to add, except for the fact that we have been judged as in compliance with the agreement in 2014, basically because we told them we were going to sponsor a bill to correct this language.

Chairman Armstrong:

What would you expect to happen if we were not compliant with the Streamlined Sales and Use Tax Agreement?

Paulina Oliver:

Basically we would be found out of compliance, and there are sanctions that are given to states when they are found out of compliance. They have not agreed on the type of sanctions. It is still something they are working on, so I cannot tell you exactly what would happen.

Assemblyman Nelson:

I know this is not the Assembly Committee on Ways and Means, but your fiscal note said no impact; however, the one from Clark County said a likely reduction of 95 percent of that which was previously collected. It seems to me that this is a wide disparity, with you saying there is not going to be any impact and Clark County worried about it.

Deonne Contine:

I will look into why that is, but I am not sure.

Assemblyman Nelson:

Am I reading that wrong?

Chairman Armstrong:

Is there anyone in the audience, either in the north or south, from Clark County who could respond to this?

Paulina Oliver:

That does surprise me because I spoke to Clark County about this. The wording in this bill is basically using the same laws or principles that we would with a regular sales and use tax resale certificate. In other words, the resale certificate would apply whether the business is in or out of Nevada, so I am surprised on that fiscal note. I really do not have an explanation for it.

Yolanda T. King, Chief Financial Officer, Department of Finance, Clark County:

We also asked, because this now becomes self-reporting, about the possibility of a reduction in the revenues. That is the reasoning, the rationale, for our

fiscal note. It really is the self-reporting and what that looks like. It does appear, based on how it is written, that there could be a possibility of a reduction in the sales tax.

Chairman Armstrong:

Could you provide the information on how you came up with 95 percent?

Yolanda King:

Yes, I will look into it.

Chairman Armstrong:

Can I ask that you work with the Department of Taxation to come up with those numbers?

Yolanda King:

Absolutely. The main reason we are here today is that we wanted to understand what the rationale and the reason for the bill was, and to try to understand how it would work with regard to the self-reporting. We are also trying to understand the purpose and the reason for the bill.

Assemblyman Trowbridge:

We are talking about retail sales. If I go into a brick-and-mortar store, I pay a percent that is sales tax. If I buy something over the Internet, sometimes I pay sales tax and sometimes I do not. Is this going to make it so that people who buy online are going to be paying the same amount as people who go into a brick-and-mortar store?

Deonne Contine:

In the U.S. Supreme Court decision mentioned at the beginning of my presentation, if a seller does not have a physical presence in the state, the state cannot require that seller to collect and remit sales tax. The case was long before the Internet. It had to do with catalog purchases and items that were purchased in a state, by a consumer, that were sent into the state by a seller who did not have any physical presence in a state.

Basically, since that time, states have been unable to require sellers to collect and remit sales tax. States require people to pay use tax. If they purchase something for use in a specific state, I think that is the self-reporting issue that the county is talking about. However, what we are talking about here is a little different. If you go to a retail establishment and you have a resale certificate, or you make some other type of documentation that you give to the retailer, that you are going to resell, you do not have to pay tax at that time.

What this is really dealing with is if somebody goes to a retailer and says I am purchasing this for resale, or I am issuing you my direct pay permit, and therefore you do not have to collect and remit tax. There are reasons why somebody might do that. They might be going to resell the material. They might be going to use it in an otherwise exempt way, but the reason that you would not be required to forward the tax to the seller in an online transaction is that seller is not required to collect and remit that tax in our state. The liability would then fall to the use tax liability.

Assemblywoman Neal:

I had a question on section 1, page 2, lines 34 through 38 of the bill. I was comparing the language here with Senate Bill No. 34 of the 76th Session. It had that same exact language about if the seller, in the absence of bad faith, is relieved of all obligations. I am trying to get a sense of the purpose of this strikeout and the relationship to the 2011 bill. The language dealt with the direct mail and new requirements, and how the sourcing of those transactions was going to be dealt with. I am just trying to connect legislative history, and get an understanding of what we are doing.

Deonne Contine:

If you look through the language it is basically striking out the language that treats the two different situations differently. In the first situation, a seller located in the state had one rule, and in the next section the rule was different for a seller located out of state. It is basically just to say it does not matter where you are located; the rule is the same.

That was really the problem that the Streamlined Sales Tax Governing Board had with how they read the language of the statute, that it seemed to have two different rules for an in-state retailer and an out-of-state retailer. They just wanted it clarified to say Nevada has the same rule, consistent with the Streamlined Sales and Use Tax Agreement, and there is one rule for all taxpayers.

In almost every session we have an Agreement cleanup bill. For some reason they had not noticed this before, so this was brought to us. Based on our assurances that we are going to do something about it, they find us in compliance. Some years we do not have any issues, or they are very minor issues.

Assemblywoman Benitez-Thompson:

Through this process, I know there has been work done incrementally, with the burden now being on the purchaser to be the one to declare and remit the tax. Will there be one standardized form, or is there a standardized form that the Department of Taxation puts out? Will each individual direct mail vendor have a form by which the person can do the calculation of tax and submit it?

Deonne Contine:

I am going to call on Paulina Oliver to answer this question, as she is a former auditor. She can tell you in application how we would deal with this, and any other resale situations, when we are auditing a taxpayer.

To answer the specific question, the return is the same. The taxpayer would list their taxable sales and then their exempt sales. It is the same statewide.

Paulina Oliver:

We have a standard resale certificate. It is not mandatory as long as we have documentation that states some of the same things, such as who the seller is, who the buyer is, the date, and what it is for. As long as that information is on the document, we will accept it.

This bill is actually talking about three different types of documents. One is what we would consider the regular resale certificate—and they call it a certificate or a written statement—in a form approved by the Department. That is basically your resale certificate.

Next is a direct pay permit, where a taxpayer has requested permission from the Department to report. Instead of having the taxes collected by the seller or a vendor, they would report it themselves.

The third type of document is a list of where this direct mail is going to be mailed. For example, if the direct mail is picked up by the purchaser in this state, then it gets reported just like use tax. If they provide us a list of places where the direct mail will be mailed directly from the vendor to out of state, the seller would not have to collect any Nevada tax because the purchaser never received the item in their hands here in Nevada. It was sent directly out of state.

So it does not change how it is reported. It clarifies just like a resale certificate. It does not matter if you are in state or out of state; that resale certificate should be accepted by the seller. That relieves them of the duty of collecting the tax.

Assemblyman Nelson:

Sorry to bring this point up again, but as I look at the comment of the fiscal notes from Lyon, Washoe, and White Pine Counties, they are all saying that this could have a really big impact. One says, "I do not believe many, if any, individuals actually comply with the current law. I expect the change would be in the hundreds of thousands of dollars." When you report back to us, could you address these comments, if it is not an Assembly Committee on Ways and Means issue?

Deonne Contine:

I will.

Chairman Armstrong:

I will close for questions and open for testimony on A.B. 57. First I will take people who are in support of A.B. 57.

Carole Vilardo, President, Nevada Taxpayers Association:

I am speaking in support of the bill. We have had a number of these bills which for our purposes we consider housekeeping. One of the things that I want to make very clear is that this is not a tax issue. This is a collection issue when you are addressing Streamlined Sales and Use Tax.

Ever since the first Supreme Court decision, that law on our books has required the consumer of the item, who receives the item without tax, to pay the use tax. Now can you imagine the Department of Taxation going out and trying to audit approximately 3 million individuals, knocking on your door and asking if you have collected taxes. Have you purchased anything on the Internet and have you paid the consumer use tax for it—filed that form and paid the tax? Obviously that is not going to happen.

The hope is that by making these clarifications, at some point Congress is going to enact either the Main Street Fairness Act or comparable legislation, which changes the definition of "nexus," so we do not have to worry about individuals not reporting the tax. What we will have is a collection system that is national, however we get there.

I first testified on a Main Street bill we had—it was Assemblyman Tom Grady's bill—and as Ms. Contine said, it was for mail and phone. It was in 1989.

This is an ongoing issue, and the state, especially as you change the way business is done and how we as consumers shop, has to keep up with it if you want to keep your revenue at some semblance of stability.

I absolutely urge you to pass the bill out of Committee. I will answer any questions. [There were none.]

John Griffin, representing Amazon.com:

These cleanup bills come up every session. Amazon is in support of the Streamlined Sales and Use Tax and any efforts Nevada makes to keep compliant. There are a number of things happening at the federal level. To those who do not know, Amazon has an agreement with the Governor and the Department of Taxation to voluntarily collect sales tax. Efforts at the federal level may apply to others in the online industry, to the extent that federal legislation does pass. Nevada being in compliance with the Streamlined Sales and Use Tax just puts our state in a better position to collect any revenue coming from the federal law as quickly as possible.

Ray Bacon, representing the Nevada Manufacturers Association:

I support what the prior two witnesses stated; however, I would like to add one little twist. In the manufacturing sector, in many cases parts are shipped across a state line and the sales tax is applied at the final purchase level. For years there has been confusion on the whole sales tax issue. The manufacturing sector was deeply involved in the entire Streamlined system and its creation. Part of it is to get the confusion squared away and to be consistent. We support the bill, and have for a decade or two.

Mary Lau, representing the Retail Association of Nevada:

We fully support this bill. We worked very hard in getting the system started. We worked with Carole Vilardo and also with Congress on this. This is part of cleanup language, and we have to stay consistent with the governing body or Nevada will lose its place in line for the project. I would be happy to answer any questions. [There were none.]

Chairman Armstrong:

Is there anyone else in support of A.B. 57? [There was no one.] Is there anyone in support of A.B. 57 down south? Seeing none, I will move to the neutral position for A.B. 57. Seeing none here, or down south, we will move on to those who are against A.B. 57.

Bryan Bedera, representing Amplify Relations:

Our business does about one-half million dollars a year in direct mail sales, primarily to political candidates. We are opposed to only section 1 of this bill, as it relates to advertising sales for direct mail. Our feeling is that the sale takes place where the customer and the advertising agency are. If we are both sitting in Reno, and engaging in a sale, it is not taking place where the direct mail is being delivered to the recipient. We believe it makes much more sense to tax

the product at the location where the sale is taking place instead of where the product is being delivered, specifically on advertising materials.

Assemblywoman Diaz:

This question is for Ms. Contine. On the streamlinedsalestax.org website, the definition of direct mail says that it does not include multiple items of printed material delivered to a single address. I want to know if we are using direct mail as they are using direct mail. It would then be my understanding that the scenario that was just posed would not be subjected to the tax.

Deonne Contine:

Yes, we are a Streamlined Sales and Use Tax Agreement state, so we use the definitions as it provides. The provisions in NRS Chapter 360B help to clarify that.

Chairman Armstrong:

So in section 1, subsection 6 on page 4, those are the same definitions that are in the Streamlined Sales and Use Tax Agreement for advertising and promotional direct mail, direct mail, and other direct mail?

Deonne Contine:

Yes.

Chairman Armstrong:

Thank you. Are there any others to speak in opposition to A.B. 57? Seeing no one up north, or down south, I will close the hearing on A.B. 57 and will move on to Assembly Bill 70.

Assembly Bill 70: Provides for the administration and enforcement of excise taxes on medical marijuana. (BDR 32-322)

Chairman Armstrong:

Ms. Contine, could you give us a brief background as to how this bill came about at the end of last session, and what we are trying to accomplish.

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

Yes, thank you. This is the Department of Taxation's bill regarding the administrative procedures related to medical marijuana. As some of you may know, at the end of the 77th Session a 2 percent excise tax was added to the bill on medical marijuana that was being heard in the Assembly Judiciary Committee [Senate Bill No. 374 of the 77th Session]. The Department was not at the table at that point, so we did not get the opportunity to discuss some provisions we would like in the bill, with respect to the procedures and

processes we use in collecting and auditing taxes. That is what prompted this bill.

Although I have gotten press calls on this bill, it is just a cleanup bill. It is really for our purposes as to how we administer taxes, and to make it consistent with other chapters that we administer. I will go through each chapter and give a slight overview of what we want to do in this.

The first few sections are the definition sections. Sections 5, 6, 7, 8, and 9 are definitions that are consistent with the statutory provisions that were a result of the bill from last session.

Section 10 essentially applies some of the payment, collection, administrative, and enforcement provisions in NRS Chapter 360, which is our general chapter in tax administration. So if a chapter within Title 32 is silent with respect to some administrative processes, like interest or there is no statute of limitations or other issues that might not be included in a specific chapter, we would look to NRS Chapter 360 for the payment, collection, administration, and enforcement of the tax.

Section 11 has to do with the records that the taxpayers must maintain if they were to be audited by the Department, and the duration they must be maintained.

Section 12 basically states the Department can review your files and we can essentially conduct an audit. If you keep your documents outside of Nevada and we have to go to a different state and review those documents, we can ask you to pay for it.

Section 13 is a general refund provision. If a taxpayer overpays an amount, either erroneously or illegally, or it was illegally collected, or it was illegally computed, the taxpayer has a right to request that we give the money back to them.

Section 14 is the time limitation on a refund request. Again these are generally consistent across tax types in Title 32. It says you cannot ask for a credit or a refund of an overpayment unless you have made that request within three years of the date the tax was due.

Section 15 allows for interest on your overpayment.

Section 16 sets forth a timeline within which the Department must deny the request, and also provides for appeal to the Nevada Tax Commission if the taxpayer feels that their request was denied erroneously.

Subsection 3 of section 16 states that the Nevada Tax Commission is the final review for purposes of judicial review.

Section 17 states you would have the right to appeal to district court if you did not like the decision.

Section 18 basically just allows an offset if the taxpayer gets a judgment. We are allowed to offset any amounts that might be due from that taxpayer.

Section 19 prohibits the taxpayer from filing some type of an injunction lawsuit to prevent the collection of the tax.

Section 20 essentially makes it a misdemeanor for a taxpayer to "cook the books"—to try to give us fake books.

There is one other provision that I did want to mention in the bill. In section 23, subsection 5, this provision was added in the original legislation, and it basically requires the Department to regularly review the rate of tax of the excise tax on the medical marijuana, and make recommendations to all of you on the rate, to determine if it benefits the residents of the state.

We do not have staff that performs this. We do not have an economist. This is not traditionally something the Department of Taxation does with respect to the taxes, so we are asking for that language to be removed.

That is all I have on the bill. If there are any questions I would be happy to answer them.

Assemblyman Trowbridge:

I would like to go back to that section you were just mentioning, section 23. Liquor has rates ranging from \$.16 for a gallon of beer to \$3.60 for a gallon of higher potency alcohol, over 22 percent, which is considerably more. Perhaps the technology is not there yet, as well as your staff not being there yet, but at that point in time would they start to differentiate and sell graded marijuana based upon its Tetrahydrocannabinol (THC) content? I think it would be beneficial if this language were reinserted, with a gradient scale that increases the rate with the potency of the drug, like we do for alcohol, sometime in the future.

Chairman Armstrong:

I am not sure if that is a question for Ms. Contine, or if that is a question for us as legislators to determine that intent later.

Assemblyman Trowbridge:

Someone has to propose the bill. It could come from staff.

Chairman Armstrong:

Are there any other questions?

Assemblyman Nelson:

In section 6 it says the excise tax on medical marijuana means any of the excise taxes imposed by NRS 372A.075. In looking at NRS 372A.075, it looks like there is only one excise tax. Is that correct, or is it parceled up into the various stages of production and sale?

Deonne Contine:

Yes. I think that the intent of the legislation from the 77th Session was that the excise tax, the 2 percent, would apply to all levels of sales within the distribution. There was also a bill in the 77th Session that said the retail sale would also be subject to sales tax. At each level of sale there would be the 2 percent.

Assemblyman Nelson:

Is the sales tax on top of the excise tax?

Deonne Contine:

At the retail level.

Assemblyman Nelson:

So it contemplates the value of the excise tax and taxes the excise tax also?

Deonne Contine:

Yes.

Assemblywoman Benitez-Thompson:

I wanted you to talk a little more on sections 17, 18, and 19, all of the sections talking about how firm and final the decisions by the Department of Taxation are, and what has been happening in other places in the country to necessitate these specific sections.

Deonne Contine:

You are asking about section 17.

Assemblywoman Benitez-Thompson:

Section 17 is specific to the section on judicial review. On the next page, section 19 goes into injunctions, writs, mandates, and other legal proceedings and lawsuits that cannot happen, and why.

Deonne Contine:

These are provisions that are mirrored in our other chapters, especially sales and use tax. Unless you are the person who is required to pay the tax, you are not entitled to a refund. Section 17 just basically says that unless you pay the tax you cannot maintain a claim for the refund.

In section 18, if a taxpayer does maintain a claim or gets a judgment, that allows the Department to offset any amounts the taxpayer may owe the Department. For example, if we did an audit, and the taxpayer disputed a portion or all of the audit and then wins, if the taxpayer is deficient or has not paid their taxes in some other way, the Department can actually take that money and apply it to whatever liability they have outstanding.

Section 19 basically says if you do not like the fact that you have to pay the tax, you do not have the ability to enjoin us from collecting the tax, because our job is to collect the tax. Then your remedy is to use the administrative process and go to the Nevada Tax Commission, go to court, go as far up the chain as you want. You do not have the right to sue us and enjoin us from collecting the tax. That is fairly common. I do not know what is happening with respect to medical marijuana in other places, or the tax on it, but with respect to our own tax administration, this is something that is fairly common across the board with the taxes we administer.

Chairman Armstrong:

At this time I will close the questions and open it for testimony. Those in support of A.B. 70, if you would like to come up.

**Laura Freed, Deputy Administrator of Regulatory and Planning Services,
Division of Public and Behavioral Health, Department of Health and
Human Services:**

To my left is Steve Gilbert, the program manager for both medical marijuana establishment programs and the medical marijuana patient registry program.

We are here today to support the Department of Taxation's ability to facilitate collecting the excise tax, because the medical marijuana program lives on

25 percent of the total excise tax proceeds, as well as the fee revenue we get, and that supports our budget.

I wanted to bring to the Committee's attention the fact that the bill, as introduced, might create some inconsonance between NRS Chapter 372A and NRS Chapter 453A, the medical marijuana statutes. Section 9 of the bill does not specifically define a multi-establishment facility, whereas NRS 453A.116, subsection 5 specifically provides that one of the definitions of a medical marijuana establishment is a business that has registered with the Division and paid the requisite fees to act as more than one of the types of businesses listed in subsections 2, 3, and 4. Subsections 2, 3, and 4 refer to cultivators, producers, and dispensaries. [Continued to read from prepared testimony ([Exhibit I](#))].

The Department of Behavioral Health brings this up so that the Department of Taxation will not face a situation where a multi-establishment facility owner could claim that the facility should not pay excise taxes because that type of establishment is not specifically defined in NRS Chapter 372A. We have spoken with the Department of Taxation, and they have indicated that they would be amenable to clarification if it is determined to be legally advisable.

If the Committee is amenable we would offer the following language, as a friendly amendment. In section 9 of the bill, add a subsection 4 that adds "multi-establishment facility" to the definition of "taxpayer"; and, add a new section that states, "'Multi-establishment facility' has the meaning ascribed to it in NRS 453A.116(5)."

Chairman Armstrong:

I would ask that you get together with Ms. Contine, the Department of Taxation, our fiscal staff, and our legal counsel so we can solve this problem.

Kiera Sears, representing Black Rock Nutraceuticals, LLC:

We are a Nevada-based company that received a provisional license to operate as a medical marijuana production facility in the City of Reno. We are here today to show our support for A.B. 70. We believe the excise tax imposed on the medical marijuana industry is important, as well as the use of these funds towards education in Nevada. I would like to state for the record that we support the use of this tax for the creation of a medical marijuana control board as well.

We firmly support section 11 of this bill as a means for properly documenting and tracking the taxes due for each medical marijuana establishment.

It is our goal as a participant in this industry to create and maintain conservative legislation moving forward, so that Nevada may one day become a leader for the rest of the country, and the action we take here in this session may serve as a template for both future states and the federal government, so they may feel confident in following it.

I would also like to note that we support Ms. Freed's proposed amendment for the additional language, to include the definition of "multi-establishment facilities" ([Exhibit J](#)).

Chairman Armstrong:

Is there anyone else in support? Seeing no one up north, or down south, we will move to those who are neutral in regard to A.B. 70. Seeing no one in the north, or the south, I will move on to those in opposition to A.B. 70. Seeing no one in the north, or the south, I will now close the hearing on A.B. 70.

That was the last item on our agenda. At this point I will open up the floor for public comment. Seeing none in the north, or in the south, we are adjourned [at 3:18 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblyman Derek Armstrong, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: February 10, 2015

Time of Meeting: 1:33 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Deonne E. Contine, Department of Taxation	Presentation
	D	Deonne E. Contine, Department of Taxation	Annual Report
	E	Terry Rubald, Department of Taxation	Nevada Property Tax: Elements and Applications
	F	Terry Rubald, Department of Taxation	Net Proceeds of Minerals Tax Presentation
	G	Department of Taxation	Property Tax Presentation
	H	Department of Taxation	Real Property Transfer Tax Presentation
A.B. 70	I	Laura Freed, Department of Health and Human Services	Prepared testimony and amendment
A.B. 70	J	Kiera Sears, Black Rock Nutraceuticals, LLC	Prepared testimony