

**MINUTES OF THE JOINT MEETING  
OF THE  
ASSEMBLY COMMITTEE ON WAYS AND MEANS  
AND THE  
SENATE COMMITTEE ON FINANCE**

**Seventy-Eighth Session  
May 21, 2015**

The joint meeting of the Assembly Committee on Ways and Means and the Senate Committee on Finance was called to order by Chair Paul Anderson at 3:16 p.m. on Thursday, May 21, 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](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**ASSEMBLY COMMITTEE MEMBERS PRESENT:**

Assemblyman Paul Anderson, Chair  
Assemblyman John Hambrick, Vice Chair  
Assemblyman Derek Armstrong  
Assemblywoman Teresa Benitez-Thompson  
Assemblywoman Irene Bustamante Adams  
Assemblywoman Maggie Carlton  
Assemblywoman Jill Dickman  
Assemblyman Chris Edwards  
Assemblyman Pat Hickey  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman James Oscarson  
Assemblyman Michael C. Sprinkle  
Assemblywoman Heidi Swank  
Assemblywoman Robin L. Titus



**SENATE COMMITTEE MEMBERS PRESENT:**

Senator Ben Kieckhefer, Chair  
Senator Michael Roberson, Vice Chair  
Senator Pete Goicoechea  
Senator Mark A. Lipparelli  
Senator David R. Parks  
Senator Debbie Smith  
Senator Joyce Woodhouse

**COMMITTEE MEMBERS EXCUSED:**

Assemblyman Randy Kirner

**STAFF MEMBERS PRESENT:**

Cindy Jones, Assembly Fiscal Analyst  
Mark Krmpotic, Senate Fiscal Analyst  
Stephanie Day, Principal Deputy Fiscal Analyst  
Russell Guindon, Principal Deputy Fiscal Analyst  
Alex Haartz, Principal Deputy Fiscal Analyst  
Michael Nakamoto, Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Anne Bowen, Committee Secretary  
Cynthia Wyett, Committee Assistant

Chair Anderson stated the meeting was being held to discuss the Governor's proposed Nevada Revenue Plan and opened with a call for public comment. Hearing none, Chair Anderson closed public comment.

Michael J. Willden, Chief of Staff, Office of the Governor, stated he would provide an overview of the history of the Nevada Revenue Plan ([Exhibit C](#)) and some initial thoughts on the proposed amendment ([Exhibit D](#)) to Assembly Bill (A.B.) 464. He said because he was speaking to the finance committees, much of the information would be familiar to the members, but he believed it was important for the public to hear.

Mr. Willden said the Governor submitted a \$7.3 billion proposal for spending, which was a significant increase from the previous biennium. The Governor's focus had been and continued to be on education reform, improvements to the education system, and accountability. According to Mr. Willden, much of the

proposed new revenue was linked to education reforms. He said he had testified many times about the situation in fiscal year (FY) 2015 and the inability to meet the 5 percent ending fund balance that the state should have. That inability was largely because of three things: gaming revenue had not performed as was originally forecast; mining revenue had also underperformed; and school enrollment increases created a supplemental need for funding in education.

Mr. Willden noted that the Budget Division, Department of Administration, was taking some extraordinary actions to shore up the ending fund balance for FY 2015. The Legislature would be processing "sweeps bills" where all the "change in the cushions" would be collected. One of the many funds being swept was the Fund to Stabilize Operations of State Government (rainy day fund), which had received \$28 million several years ago. At this point, Mr. Willden projected that the 5 percent ending fund balance would not be met.

Mr. Willden said he always considered the revenue legs of the stool, and there were three of them. The Economic Forum met in December and May, and in rough numbers, the Economic Forum's projections were that the state would receive approximately \$6.3 billion from the tax base. There had been a great deal of discussion about not having abatements or credits on the books, but that had been taken care of through the Economic Forum process. Mr. Willden believed there was approximately \$80 million a year in credits from the revenue stream, as identified by the Economic Forum.

The second leg of the stool was sunsets. Mr. Willden said sunsets had been extended for two biennia, and the Governor had proposed extending the sunsets again, which accounted for approximately \$550 million for the State General Fund.

According to Mr. Willden, the final leg of the stool concerned finding enough revenue to support education initiatives and the budget as a whole. The Governor's original proposal included four revenue sources. One was the revised business license fee, which Mr. Willden reminded the Committees had been heard as Senate Bill (S.B.) 252 (1st Reprint). A second revenue source was an increase in the modified business tax for mining to the 2 percent level. Also discussed were a slot tax increase and a cigarette tax increase of \$1.20 per pack. All of those revenues combined, as proposed by the Governor, would have generated about \$570 million in the next biennium.

Mr. Willden said there had been a lot of change and discussion in those areas and, for instance, a different cigarette tax had been proposed. The slot tax had

no traction and was still uncertain. The tax discussion, in Mr. Willden's opinion, had been one of the more healthy discussions on revenue, and he believed the Governor's staff had tried to listen and devise the best and most improved plan. He believed that the plan was broad-based in nature, had stability, would grow with the economy, be fair, was a fundamental restructuring, and did not solely rely on existing types of revenue. Finally, Mr. Willden said that he believed there was a need to capture revenue from out-of-state national corporations that did significant business in Nevada but did not contribute to the tax economy, while using many of the state's resources.

Mr. Willden said he believed there had been a fairly robust and transparent discussion on S.B. 252 (R1), the original A.B. 464, and S.B. 378, Senator Spearman's plan. He believed that the budgets were generally closed subject to whatever additional decisions that might be made by the Committees, at approximately \$7.2 billion. Originally, the Governor proposed \$7.3 billion, and the finance committees had worked diligently over the past 100-plus days and made some reductions to the budget. Mr. Willden was appreciative of the careful review of the budget.

Mr. Willden said he wanted to remind everyone that there had been substantial discussion regarding cost-of-living adjustments (COLAs); the medical school at the University of Nevada, Las Vegas (UNLV); bridge funding for community colleges and the Desert Research Institute; and concerns about the rainy day fund.

Mr. Willden stated that the Governor still believed that Nevada needed a stable revenue source. He said that stability not only meant stability for state government, but also for businesses.

Mr. Willden commented that many participants in the process had been around for some time and knew that the first year of a biennium cost less than the second year, which reinforced the belief that a tax plan was needed that grew with the economy, was stable, and provided resources for the future.

Mr. Willden referred to page 1 of [Exhibit C](#), "Nevada Revenue Plan," where there were three pillars of the Nevada Revenue Plan. He said the first pillar was the business license fee (BLF), which had been discussed many times in many of the proposals that had been heard by the finance committees and the Committee on Taxation. The BLF was currently \$200, and the proposal was to change it to \$500 for corporations and \$300 for noncorporate businesses. He said the BLF was expected to generate about \$46 million per year.

The second pillar of the plan was the modified business tax (MBT). The proposal in the plan was to tax nonfinancial, nonmining businesses at 1.475 percent. Mr. Willden said that percentage was different from the 1.56 percent originally requested in A.B. 464. The Governor was also proposing to lower the exemption from \$340,000 per year, or \$85,000 a quarter, to \$200,000 per year, or \$50,000 a quarter, which could broaden the base of payers by 5,000 to 6,000 businesses. Mr. Willden said the plan would allow the employer-paid healthcare deduction, and if businesses paid the commerce tax, it would entitle them to take a 50 percent credit against the MBT. Mr. Willden said the modified business tax on an ongoing basis was estimated to garner approximately \$94 million per year in new revenue.

According to Mr. Willden, the commerce tax, the third pillar, was an annual levy paid at the end of the year. At the end of each fiscal year, businesses would have 45 days after the close of the fiscal year to pay the commerce tax, and businesses with revenue under \$3.5 million would pay no tax. Businesses with over \$3.5 million in revenue would pay a tax based on the revenue over the \$3.5 million amount. Mr. Willden said the basic process was to use the business's gross revenue, subtract \$3.5 million, arrive at the net revenue, and multiply it by the tax rate based on NAICS [North American Industry Classification System] code. Mr. Willden believed there were probably around 10,000 businesses that would be paying the commerce tax, and it would pick up out-of-state payers, with possibly 25 percent of payers being out-of-state payers.

In section 68 of the proposed amendment 7519 to A.B. 464, ([Exhibit D](#)) the MBT buy-down was explained. Mr. Willden said the concept was that should the MBT and the commerce tax overperform by more than 4 percent, the overage would be used to "buy down" the MBT rate.

The last thing Mr. Willden wanted to discuss was the governmental services tax (GST) component in section 71 of the proposed amendment to A.B. 464. The GST currently generated \$63 million to \$64 million per year that went into the State General Fund. The Legislature, in 2009, changed the depreciation schedule for the GST by slowing the depreciation schedule for vehicles, allowing the GST to generate more money. That revenue stream was diverted, and \$63 million was applied to the State General Fund. This bill proposed that the GST depreciation schedule would be changed to go back to the pre-2009 depreciation schedule, which would eliminate the \$63 million revenue stream to the General Fund and would result in taxpayers paying less GST. Mr. Willden stated that estimates indicated that changing the vehicle

depreciation schedule would save payers an average of \$42 annually in rural counties and \$52 to \$53 a year in Clark and Washoe Counties.

Mr. Willden introduced Jeremy Aguero to provide a detailed review of the proposed amendment to A.B. 464 ([Exhibit D](#)).

Jeremy Aguero, Principal Analyst, Applied Analysis, thanked the Committees for the opportunity to talk about the Nevada Revenue Plan. Mr. Aguero said he would not spend a lot of time reviewing the individual aspects of the proposed plan, because Mr. Willden had done an excellent job. He believed he could provide was insight into the structure of the plan and then offer some answers to some common questions.

Mr. Aguero said he had been asked by the Office of the Governor to look at what had been included in the various plans that had come before the Legislature, review the testimony that had been offered regarding the plans, and attempt to develop a plan that used the best aspects of each previous plan to formulate the state's revenue plan. The current plan, like the three plans that came before, generated approximately the same amount of money. Mr. Aguero said what was important was the question of tax incidence and the ability to broaden the tax base, which was one of the foundational elements that was asked of him. He said the tax system should look like the Nevada economy in every aspect, and while there was no perfect tax, good tax policy looked at the broadest possible base and the lowest possible rate. Mr. Aguero said the Governor was attempting to achieve that broader base.

According to Mr. Aguero, the first element of the plan was the business license fee, which was the original building block of the Governor's plan. That tax was chosen because after going through all of the various taxes, the business license fee was the broadest of the taxes available in Nevada. It currently applied to more than 330,000 business entities in Nevada, and they all paid it at a flat rate. Mr. Aguero said there were reasons not to like the business license tax and reasons to like it, but the fact that this tax was the broadest source of revenue, from a business tax standpoint, could not be ignored.

There had been several different alternatives, but most of the plans that had come before the Legislature had included the business license fee in some way or another. Mr. Aguero said the revenue yield from the business license plan had been reduced, and there was concern over a reduction in the number of businesses that would file. After some research, such as the last time the fee was increased and the decline during the economic downturn, Mr. Aguero had

embraced that revenue source largely because of its broad base, and he also tried to accept the fact that there might be some business loss even though the state was going to grow.

The second element was the modified business tax (MBT). Mr. Aguero said that today, the MBT was by every measure the single largest general business revenue source for the state and was relatively stable. The MBT had worked in the past, the shortcomings associated with the tax were known, and it was based on payroll.

Mr. Aguero said there were changes to the MBT in the proposed tax plan. The new plan increased the rate, and while the rate was not as high as originally proposed, it increased from 1.175 percent to 1.475 percent and generated a fairly substantial amount of revenue. Mr. Aguero noted that when adding up all of the revenues being talked about today, the state's business tax revenue would increase from about \$430 million to about \$750 to \$760 million. Of that \$760 million, \$500 million-plus, or 68 percent of the state's general business tax, would be sourced to the modified business tax.

The plan offered by Senator Spearman eliminated the MBT altogether. Mr. Aguero said the idea was to increase the MBT to provide a stable piece, but over time, if the revenue yields came in over expectations, to start to moderate the two pieces in the hope that someday Nevada would have a business tax that more equitably reflected the totality of its economy.

Included from the Assembly Republicans' plan was the reduction in the standard exemption from a maximum of \$340,000 per year to a maximum of \$200,000 per year. The reduction in the standard exemption would increase the number of taxpayers between 5,000 and 6,000, depending upon how it was estimated. Mr. Aguero admitted that the difference between 330,000 businesses subject to the business license fee and the payroll tax [MBT], which currently was being paid by about 12,300 business entities, made 5,000 to 6,000 entities seem like a very small number. However, he believed it took a step in the right direction toward broadening Nevada's tax base and providing a greater opportunity for more businesses to pay the payroll tax that was in place today. Mr. Aguero estimated the exemption change would increase the number of taxpayers by approximately 40 percent to 45 percent.

Mr. Aguero said there was some discussion about eliminating the healthcare deduction, but it had been added back in for purposes of the Nevada Revenue Plan being discussed today. The business license fee broadened the tax base

by generating additional revenue, and the modified business tax, as discussed, broadened the tax base by bringing in more taxpayers.

Mr. Aguero stated that the third component of the Nevada Revenue Plan was the commerce tax, which played an important role, but the number of taxpayers captured by the commerce tax would not be that large. Estimates were that roughly 10,000 businesses would actually pay the tax. While that number seemed relatively small, it was known that roughly 50 percent to 60 percent of all revenue came from about 1 percent of all taxpayers, and at the top end of the spectrum were large businesses. The commerce tax had some unique elements because it was a tax based on Nevada revenue. It contained the broadest base of any tax and had the ability to capture businesses that operated in Nevada, but were not based here, that had a small jobs presence.

Mr. Aguero said the one thing he had heard over and over was the need to protect small businesses, because Nevada's growth was going to come from small businesses. The commerce tax essentially answered the need to create some threshold upon which companies paid based on revenue.

According to Mr. Aguero, the vast majority of Nevada businesses were small, and many were micro businesses with no employees. In the context of the 330,000 entities that paid the business license fee, only the largest of them would be captured by the commerce tax, but being able to capture multistate, often multinational, companies that had a presence in Nevada was important.

Mr. Aguero said those companies might not have many employees, but some of them were doing millions, if not billions, of dollars of business inside Nevada. He referred to Fortune 500 companies that operated in Nevada, which were the largest companies in the United States, such as ExxonMobil, General Mills, General Motors, Ford Motor Company, General Electric, Hewlett-Packard, International Business Machines (IBM), Archer Daniels Midland, Proctor & Gamble, Dow Chemical Company, Pfizer, Intel Corporation, Johnson Controls, Goldman Sachs Group, Oracle Corporation, American Express Company, Tyson Foods, Philip Morris, Dell, DIRECTV, Alcoa, MasterCard, Medtronic, Xerox Corporation, and Nestle—to name more than a few.

Mr. Aguero said he believed that many Fortune 500 companies and others had a much larger economic footprint in Nevada than they had an employment footprint. Those companies were benefiting from Nevada's economy by moving their goods over Nevada's roads. They had contracts with our major companies and our governments and escaped taxation because the state had chosen to tax



businesses solely on the basis of whether they had employees located here. He said that Nevada, unlike almost every other state that imposed taxes on businesses, was disadvantaging Nevada businesses to the benefit of those enterprises that chose to house their employees elsewhere.

Mr. Aguero said the last component was a tax credit. Any business that paid the commerce tax had the ability to take 50 percent of that tax as a credit against the modified business tax to offset some of its Nevada business tax liability.

While Mr. Aguero said he would be happy to talk about the tax credit more extensively, he thought it was an important component of developing overall equity. At the end of the day, even if 100 percent of the available tax credit was used by businesses paying payroll tax in Nevada, the payroll tax remained \$500 million-plus in comparison to the new commerce tax that would generate about \$121 million. Mr. Aguero said the total tax credit would be a little over \$60 million per year through the interaction of those two taxes.

Mr. Aguero said one of the frequent comments he received was that the commerce tax was simply the education initiative reborn: it was a different skin on the exact same tax. Many believed that while it had been given a different name, it was the same tax that lost by a devastating margin in November 2014. Mr. Aguero maintained that there were many ways to look at a tax, but the commerce tax currently being proposed was different from the Question 3 tax in almost every way that mattered.

First, he said, the rates were substantially different. The margin tax in Question 3 was a tax at 2 percent of margin. Mr. Aguero said the 2 percent was substantial enough by most estimates to generate somewhere between \$750 million and \$850 million a year. For the taxes that were proposed in [Exhibit D](#), the rates ranged somewhere between 0.059 percent and 0.331 percent, small fractions of that 2 percent rate.

Mr. Aguero indicated the tax bases were also different, which he would talk about later. What was probably most germane was not only that the rates were different and the calculations were different, but the tax yield was also different. Mr. Aguero said that had Question 3 passed, it would have taken Nevada from roughly the middle of the pack for business taxes nationally to arguably the fourth or the fifth highest business tax state in the United States. Comparatively, \$250 million a year had a much lower effect on overall business taxation than \$850 million a year.

The tax bases were also different, and Mr. Aguero believed that was important. Under the education initiative, a business would take its total Nevada revenue and subtract one of three things: its cost of goods sold, its cost of labor, or a standard exemption. That figure would result in a taxable margin upon which a 2 percent rate would be applied.

Under the plan being discussed, the taxpayer would take its total Nevada revenue and apply the rates found on page 9 of [Exhibit C](#). Mr. Aguero said he had heard a lot about the complexity of the proposed system, but the majority of taxpayers would have to know only two things: what industry they were in and how much revenue they generated in Nevada.

In addition, a lesson had been learned over the last couple of years, because there had been an opportunity to talk to various states around the country and ascertain how those states applied business taxes. Mr. Aguero said Texas, for example, struggled with businesses trying to define the cost of goods sold and the cost of labor. Many of the lawsuits that Texas had to deal with were largely around the definition of cost of labor. The proposed Nevada Revenue Plan and the commerce tax removed that problem.

There were different definitions of taxable revenue. Mr. Aguero said the definition of revenue in Nevada was fairly straightforward: if something was sold in Nevada, it was Nevada revenue.

Mr. Aguero referred to Question 3, the education initiative, and compared it to the proposed Nevada Revenue Plan. Question 3 did not consider pass-through revenue. He said taxing pass-through revenue meant a general contractor performing a job worth \$100 million who hired subcontractors and paid those subcontractors \$90 million would be subject to the tax on the same income as the subcontractors. The way Nevada revenue was calculated under the proposed Nevada Revenue Plan was different from the way it had been calculated under the proposed education initiative.

Perhaps most importantly, the education initiative was taking the definition of revenue as applied in Texas and attempting to adopt that, in part, to Nevada. Mr. Aguero said that had not been done with the Nevada Revenue Plan. He said the proposed plan adopted the definition used by the state of Ohio with some modifications, but nonetheless one that would work better for Nevada.

Mr. Aguero said there had been a lot of talk about fiscal cliffs. For instance, in Question 3, any business making \$999,000 would pay nothing, but if that business made \$1 over \$1 million, 100 percent of its revenue would be subject to the tax. Mr. Aguero said that scenario was a fiscal cliff. There had been talk in the Governor's original business license fee (BLF) proposal about potential mini cliffs, but by increasing the exemption to \$3.5 million and making that a standard exemption, the fiscal cliff was eliminated, and the rates were applied to revenue in excess of \$3.5 million.

Mr. Aguero maintained that in every meaningful way, what was being proposed was different from Question 3—whether it was the tax incidence, the tax rates, the revenue generation, or the tax base. He said while there would be those who argued that total revenue made it the same tax, they would be looking at one element, which was incorrect.

The second comment that Mr. Aguero often received was that the commerce tax, or the revenue tax plan, was complicated and difficult. He said he heard things like, "we are going to have to create a mini Internal Revenue Service."

First and foremost, to calculate the business license fee, a business would have to know that it was doing business in Nevada as either a corporation or not a corporation. He said to pay the payroll tax, a company would have to know how much its payroll was, net of any employer-paid healthcare coverage costs, and then multiply the tax rate and net payroll together. For most businesses to pay the commerce tax, they would have to know how much their Nevada revenue was and apply the rate from the commerce tax rate schedule.

For businesses that were multinational or had many different moving parts, Mr. Aguero agreed it would be more complicated, but the complications that were built into the definitions of pass-through revenue for things like contractors and subcontractors were because some businesses were more complex, and that had to be dealt with.

Mr. Aguero heard that businesses were going to have difficulty determining what category they would be in, but the definitions of the categories were relatively clear, and to the extent that a business could not be classified, there was an unclassified catch-all category. Businesses assigned a NAICS code, based on what they reported to the Department of Employment, Training and Rehabilitation (DETR), as well as in reports they made to the federal government, would use those definitions. Mr. Aguero said it was not a mystery and it was not difficult. He admitted there were some businesses that had their

interests in many things, and many of them had separate entities and some had a single entity, and they would pay based on where their Nevada revenue was generated.

There was also a concern that compliance costs would be substantial, but it was Mr. Aguero's understanding that the number of Department of Taxation employees added would be roughly 23.

Mr. Aguero said the third comment he often received was regarding the commerce tax rate schedule: there were too many rates, and it would be easier if all rates were blended and a single rate was used. Mr. Aguero said he agreed it would be simpler and easier, but the problem was that the trade-off would be simplicity for equity. The reason that the rates were different was because industries were different, and the Nevada Revenue Plan had tried to adjust the rates to reflect that. He said, as a policy decision, there certainly could have been a single rate, but high-volume, low-margin businesses would be substantially affected by that alternative. The decision was made early on to use multiple rates to attempt to reflect that business within different industries could be segmented, and the 26 categories that were listed [page 9, [Exhibit C](#)] were being used with that intent.

The fourth issue that Mr. Aguero heard often was that there was no way to predict the amount of money that would be received, and the state was being put at risk by installing an unknown revenue source. He remarked that would be true with any new revenue source, and it did not matter whether it was a sales tax on services, a net corporate income tax, or almost anything else. Unfortunately, there were more unknowns in Nevada's potential revenue base than knowns. Mr. Aguero maintained there were risks associated with projecting any revenue, and while the best efforts were used to predict revenue yield, the state had a job to do, and if revenue came in over expectations or under expectations, there would be real implications for the state. To deal with those implications, the payroll tax and the modified business tax were increased to get more yield from the known revenue base. After that was done, a credit from the commerce tax was allowed against the payroll tax. Mr. Aguero said if he was wrong and the commerce tax came in at exactly zero and there was no credit to take against the payroll tax, steps had been taken to insulate the state.

He further explained that the insulation was not perfect, but an approximately \$60 million credit overall provided some of that. It also allowed, over time, to continue to look for some balance between the existing tax on payroll and the broader tax on all businesses.

According to Mr. Aguero, if the revenue yield came in over expectations or if the state imported more items or if additional taxpayers were found and \$50 million more was generated, there was concern that would lead to increased spending at the state level. He said this concern was voiced often, and the way to handle it was that at the end of each biennium, it would be determined whether the revenue yield was more than 104 percent of projection and if it was, the state would move toward the goal of creating equity between the existing payroll tax and the proposed commerce tax over time. This plan insulated the state from some of the risk and provided assurance to the taxpayer that revenues coming in over expectation would not instantly result in incremental spending.

Mr. Aguero said the final comment he heard regularly was about the primary purpose behind the Nevada Revenue Plan, which was to expand the base. If most of the tax plans that had been advanced were going to generate \$250 million, the question was which plan was going to tax businesses that had more Nevada employees versus those that were just selling more things in Nevada. The ability to capture businesses that had few, or no employees, but had nexus with the state, was critical to the Nevada Revenue Plan.

Mr. Aguero used Ford Motor Company as an example. Ford Motor Company was number 8 on the Fortune 500 list of companies and reported \$146 billion in annual sales and \$7.2 billion in annual profit. By every measure Ford was a massively large company, which sold its cars in every state in the United States and shipped its cars via truck to Nevada and sold them to dealers that ultimately sold those automobiles to Nevada residents. But, if a local car manufacturer sold the exact same number of cars in Nevada at the exact same prices to persons in Nevada, the company that chose to manufacture its automobiles in Nevada would pay more Nevada taxes than the company that shipped those autos in, even though they were selling the same amount of cars to the same number of people located in Nevada.

There were other companies, such as medical equipment manufacturers and pharmaceutical companies, that sold hundreds of millions of dollars of equipment and drugs to hospitals and doctors in Nevada. Mr. Aguero said his point was not that these companies were all located out of state, but that the relationship between what they sold and their ability to take advantage of Nevada's economy was completely disconnected from the number of employees located here. Considering the amount of pharmaceuticals that were sold, the amount of automobiles that were sold, the number of credit card transactions, and subscriptions for everything from cell phones to cable technology, the state

needed to realize how many goods and how much technology were sourced elsewhere and purchased here. The idea was to capture at least some of that as part of the Nevada Revenue Plan.

Mr. Aguero said the last piece of the plan concerned the somewhat small business. He had talked about Fortune 500 companies, but wanted to think about the Nevada Revenue Plan for something like a seafood supplier. There were some seafood suppliers that actually had their distribution facilities located in the state, and they had warehousing facilities and a sales force located here. Other seafood suppliers were located in California and shipped their goods directly to the buyer in Nevada with their sales force flying in and out when needed. Mr. Aguero questioned whether those two businesses were equal relative to competition or to the taxes that they paid. Even if the Nevada-based business had its employees here and was paying \$5,000 in payroll tax, it would be materially different from the company that merely shipped its goods in, brought its sales people in, had one or two workers located in Nevada, and viewed it as a territory and not a place to do business.

The Governor requested a plan that built upon the revenue plans that had been provided, broadened the tax base to provide increased equity, and borrowed the good ideas to make a better tax plan for Nevada. Mr. Aguero said all of the plans generated roughly the same amount of money, so the question was largely one of tax incidence. He submitted to the Committees that the Nevada Revenue Plan accomplished the task of trying to balance the plans that had been provided, while at the same time increasing the stability, equity, and performance of Nevada's tax system.

Christopher G. Nielsen, Deputy Chief of Staff, Office of the Governor, said he would be brief, because Mr. Aguero and Mr. Willden had covered quite a bit of the Nevada Revenue Plan.

Mr. Nielsen said he would touch on some of the mechanics in certain sections of the commerce tax piece. At the highest level, most entities that registered with the Office of the Secretary of State would be subject to, but not necessarily pay, the commerce tax, except for certain exempted entities, such as nonprofits, most notably 501(c)(3)s, which would include the Elks clubs and the chambers of commerce.

One additional business that would be exempt would be under section 4, subsection 2(m) of proposed Amendment 7519 to Assembly Bill (A.B.) 464 (Exhibit D). Mr. Nielsen said the language was provided by Joshua C. Miller, Chief Executive Officer, KeyState Companies. KeyState Companies provided improved language to ensure that certain entities would be exempt: persons with certain activities relating to intangible investments such as stocks, bonds, notes, patents, trademarks, or management of those investments.

Mr. Nielsen commented on the North American Industry Classification System (NAICS) code, which was a national business classification system that he believed every state used. He had been able to identify with 100 percent certainty what category a business would be in by calling the Department of Taxation or knowing what a business did.

Mr. Nielsen said Mr. Aguero had touched on two terms of art: the first being "gross revenue" defined in section 8 of Exhibit D, which was defined as the total amount realized by a business entity from engaging in a business in the state without the deduction of cost of goods sold or other expenses occurred that contributed to the production of gross income, including the fair market value of any property and services received and any debt transferred or forgiven as consideration.

The other term of art was Nevada gross revenue, which was defined to include only revenue derived and "situated" to Nevada. Mr. Nielsen said this term was found in section 9 and section 22 of Exhibit D. For example, goods shipped out of state would not be situated in Nevada and, therefore, would not be considered Nevada revenue and would not be taxable. On the other side, gross rents from property located in Nevada would be included in the Nevada revenue category. Section 22, subsection 1(e), stated that gross revenue from the sales of transportation services would be situated to the state if both the origin and destination point of the transportation were located in Nevada.

Mr. Nielsen mentioned there were some revenue exclusions, which could be found in section 21 of Exhibit D. Examples included municipal bond and income revenue, revenue associated with the payment of the gross gaming tax, revenue associated with the payment of the insurance premium tax, revenue associated with the payment of the net proceeds from minerals tax, and revenue associated with the payment of liquor taxes. Section 21 also provided a 100 percent revenue exclusion for revenue received by healthcare providers or physicians from Medicare or Medicaid programs, and a 50 percent deduction of the Medicare and Medicaid revenue for hospitals. Other exclusions included bad

debts, receipt of certain insurance proceeds, receipt of certain litigation payments, and the repayment of the principal of a loan.

According to Mr. Nielsen, the last exclusion was the so-called pass-through revenue. He emphasized that the intent of the pass-through revenue was to prevent double counting of revenue.

Mr. Nielsen said a couple of noteworthy sections included the taxable year, which was defined in section 12 of [Exhibit D](#) to be the state's fiscal year, or July 1 to June 30. To be clear, the commerce tax would begin in this amendment on July 1, 2015, but the first return would not be due until August 15, 2016.

Second, if an entity consisted of multiple business lines, the NAICS code category and rate were driven by which line of business generated the most revenue. This reference was found in section 15 of [Exhibit D](#).

Regarding the fiscal note, Mr. Aguero had stated there would be 11 additional employees hired at the Department of Taxation and Mr. Willden had corrected him and said there would be 23 new hires. Mr. Nielsen said both were right and both were wrong. At this point, the estimated fiscal effect would be 11 new employees in fiscal year (FY) 2016 and 12 new employees in FY 2017, for a total of 23 new employees in the upcoming biennium. In contrast, for Question 3, the education initiative, he believed the Department estimated the need for 87 new employees.

Mr. Willden noted that on page 17 of [Exhibit C](#), Mr. Aguero had talked about the mix of the sources of revenue in general business taxes today, and the pie chart showed that roughly 85 percent of general business taxes came out of the modified business tax and 14 percent came from the business license fee. He said page 16 showed what the Nevada Revenue Plan proposed in new revenues. The plan brought in a new component, the commerce tax, and then added in the increased modified business tax, because the plan was going from one tax rate to a higher tax rate, and the business license fee also generated additional income. Page 18 of [Exhibit C](#) showed the final mix, assuming that [A.B. 464](#) passed with the amendment. The modified business tax share of the revenue mix would decrease from 85 percent to about 68 percent, the commerce tax share would be roughly 16 percent, and the business license fee share would be 15.6 percent.



Mr. Willden ended the presentation by thanking Chair Anderson and Assemblyman Armstrong, who had worked on A.B. 464, and said he appreciated the opportunity to present the proposed amendment.

Assemblyman Sprinkle asked how the \$3.5 million figure had been determined as the cut-off point for the commerce tax.

Mr. Aguero replied that the brief answer to the question was for the amount to have the lowest effect possible on small businesses. In doing the revenue analysis, the standard exemption started at \$500,000 and increased from there before it eventually balanced relative to the rates and the exemption amount. The \$3.5 million exemption applied to the vast majority of small businesses in Nevada and tended to be on the upper end of that threshold. Mr. Aguero said that was the rate that provided the maximum protection for small businesses, while providing the revenue that was needed.

Assemblyman Sprinkle recalled some of the conversations during the interim when a \$1 million threshold was being considered, and he wondered about the increase, but he said Mr. Aguero's answer was clear.

Assemblyman Sprinkle's second question concerned the different business examples and the different percentage rates. He asked how those specific rates had been determined and whether a business had avenues available to petition, appeal, or argue if it did not agree with the assigned category.

Mr. Aguero explained that originally the Governor's Office had begun by looking at places like Texas, Washington, and Ohio to take the best of each state's plan. One of the things that was attractive in the way Texas applied its tax was that it was partially tied to the gross receipts level, making it more stable but a little less equitable, and it was not all the way at the net income level, putting the tax somewhere between gross revenue and net income. Mr. Aguero pointed out that the tax was a margin tax no matter how it was carved. Texas had gone through the exercise over many years of trying to determine how that should be balanced, and that state had come to the idea of excluding the cost of goods sold, excluding the cost of labor, or allowing a 30 percent standard exemption. Originally that seemed attractive for Nevada because it allowed the taxpayers to do the work, but it was more difficult for some taxpayers to identify the exact the cost of goods sold, and it would have increased the administrative burden.

Through data provided by the Texas Comptroller of Public Accounts, Nevada was able to look at industry-level information about how much each industry had in gross revenue and how much each industry had in cost of goods sold. The Governor's staff determined not to have a single tax rate, because of the disparities among industries. To identify the middle ground between using a uniform rate and applying Texas-style deductions was to consider the construction industry in Texas and look at whether the businesses subtracted out the cost of goods sold, the cost of labor, or a 30 percent standard exemption. This method identified how much tax was generated from that industry sector and allowed staff to calculate what the effective rate would have to be without those deductions. The same calculations were performed for manufacturing, healthcare services, and each of those other industries to get a margin-adjusted rate. Mr. Aguero admitted the plan was not perfect, but it was better than having a single rate. Some industries that had the lower rates, such as wholesale, retail, and utilities, had lower rates because they had higher volumes and lower margins and the equity between the rates was increased by using those calculations.

Mr. Aguero stated that the nice part for the majority of businesses was that the Department of Employment, Training and Rehabilitation (DETR) website had an employer database for every business in Nevada. That database listed a six-digit NAICS code that showed how the business was classified.

Mr. Aguero referred to Assemblyman Sprinkle's question about category misidentification if, for instance, the business was a retailer that had been identified as a wholesaler. When first filing, the taxpayer would have the ability to elect its business category. Mr. Aguero said the Department of Taxation and others could then ensure [through the DETR database] that a business was not rate shopping, because there had been some concern about a business claiming it was in a category with a lower rate when it was not. He said that if business revenue was coming from another category, the business should rightly be reclassified, but if it was not, it would be a tax avoidance strategy that would be violating Nevada statutes. Mr. Aguero summarized that businesses had the ability to elect a category at the beginning and could petition the Department of Taxation to change the category in the event of business changes or placement in an incorrect category.

Assemblyman Armstrong said he had quite a few questions and referred to page 8 of [Exhibit C](#) first, because he believed the page was incorrect, unless he was misunderstanding something. It had been presented that with the commerce tax, a business would be able to apply for the MBT credit starting the

second year. He further stated that in the first year, the tax grossed about \$121 million and in the second year it would gross about \$60.7 million because the credit went into effect. Assemblyman Armstrong asked whether that was reflected on page 8 or whether it had changed.

Mr. Aguero replied that it had not changed: what appeared on page 8 was merely a stabilization, but there was a timing issue. He hoped to answer the question as clearly as possible: the taxpayer would continue to pay the payroll tax just as it was paid today on a quarterly basis, and then the taxpayer would pay the commerce tax at the end of the fiscal year. The timing issue appeared because that credit would not be available to the taxpayer until the second year.

Assemblyman Armstrong said he had several more questions, because the Committees were not briefed on several sections in the bill. He referred to the governmental services tax (GST) portion in section 71 of [Exhibit D](#) that was being changed, which was the revenue from the vehicle depreciation schedule for the General Fund that sunset in 2017 and was supposed to go back to the State Highway Fund. He said with that policy decision, money would not be going into the Highway Fund, which was about \$63 million a year that could be bonded out and would produce somewhere around \$700 million in bonding capacity. Assemblyman Armstrong asked what the reasoning was to remove the GST vehicle depreciation that could have been used to bond more road projects.

Mr. Willden said Assemblyman Armstrong was correct: the GST was in section 71 of [Exhibit D](#). If the MBT and the commerce tax overperformed by more than 4 percent, the MBT would be bought down and that piece would be tracked against the overall revenue to the state. Mr. Willden said if there was overperformance in the overall revenue stream, the GST revenues from the depreciation changes would go away, but if the revenue marks were not met, the GST revenues did not go away.

Assemblyman Armstrong said that tied into another question regarding buying down the MBT: if the commerce tax overperformed, as was seen in the last biennium when the net proceeds of minerals tax tanked and left a huge hole, why would the state buy down the MBT.

Mr. Aguero said there was a choice to consider all revenues in the General Fund and then use those to trigger a buy-down, or to choose the business taxes and use those to trigger a buy-down. There had been extensive discussions among this team and with legislative staff relative to making that work. The reason the

business taxes were chosen was because if revenues came in over expectations, the modified business tax would be reduced.

Assemblyman Armstrong questioned section 21, subsection 1(e), of the proposed amendment ([Exhibit D](#)) and the reasoning for the exemption for the proceeds from the sale of liquor or malt beverages subject to the liquor tax.

Mr. Aguero stated there had been a conversation about the policy associated with section 21, subsection 1(e), but he could only address the discussion that went on with the Governor's staff. There was concern regarding the levels of taxation that currently existed on liquor and the risk of creating quadruple or almost quintuple taxation. The concern was that liquor was currently taxed at wholesale and was also subject to the tax at retail. He explained that if he went out to dinner and purchased a beer, it was subject not only to the tax that was paid on malt liquor, but also to the tax that was paid on retail sales at the time he consumed the beer. Additionally, if Mr. Aguero happened to have that meal in a location that had a piano playing, for example, the live entertainment tax might also apply. A patron at the restaurant would pay the liquor tax, the sales tax, and the live entertainment tax, creating approximately a 16 percent or 17 percent tax on the beer.

Mr. Aguero said there was concern that the state would be adding another element to liquor and potentially even two elements. For example, an entity that sold Grey Goose vodka that was shipped into Nevada and the company that was selling it in Nevada would both be required to pay on the same Nevada receipts. He said that was one particular industry that the Governor's Office expressed concern about relative to the number of tiers of taxation.

Assemblyman Armstrong said his next question concerned the administration of the tax plan and the employment of 23 persons at a cost of approximately \$4 million over the biennium.

Mr. Nielsen replied that the current amendment ([Exhibit D](#)) estimated \$4.4 million total: \$2.3 million in FY 2016 and \$2.1 million in FY 2017. Included in the \$4.4 million was a one-shot information technology programming cost of \$1.5 million.

Assemblyman Armstrong commented that in future biennia, administration would cost about \$4 million per year, and this tax was projected to net approximately \$60 million per year.

Mr. Nielsen stated that the commerce tax was projected to generate a little over \$120 million per year.

Assemblyman Armstrong acknowledged that Mr. Nielsen was correct. He said that when A.B. 464 was originally heard, there were concerns that he did not think had been addressed under this plan. One problem was the Medicaid providers: if the MBT was increased, the cost could not be offset, because providers received funding based on Medicaid reimbursements. Assemblyman Armstrong was also concerned about pyramiding under this plan.

Mr. Aguero said that as with any other tax, there were going to be some elements of pyramiding associated with it. A tax at one level would be built into the price and passed on, whether it was payroll tax, sales tax, or property tax. The commerce tax was going to be part of that, and the Governor had tried to ensure that a number of potential areas had been eliminated where the most egregious pyramiding could happen.

Assemblyman Armstrong observed that there had been much talk this session about broadening the base, and he believed the Committees needed to look at what this body had done over this session about the base. He said that if the GST was decreased, the base was being narrowed because it was a consumer tax. It was Assemblyman Armstrong's understanding that even if the "Uber bill" [allowing transportation network companies to operate in Nevada] passed, it would expand the base more than this plan would, because it would include 10,000 to 15,000 more drivers that would pay the business license fee. In addition, the cigarette tax was a broad-based consumer tax. The MBT exclusion amount had been reduced, and if the mining and financial institutions were taxed at 2 percent, the base would be increased by more than 6,000 businesses. Assemblyman Armstrong believed that was the way to broaden the tax base, and he thought the bigger picture of what this session had been about was being missed.

Assemblyman Hickey referred to the commerce tax and the multiple rates and asked whether it invited companies to come back every session and remake the equity argument that their category or classification was not fair and request to be reclassified. He wondered whether that would be a problem in the future.

Mr. Aguero said it was assumed that would happen, and for any tax, it was inevitable that there would be a desire to change it over time.

Mr. Willden commented that section 20, subsection 3, of [Exhibit D](#) dealt with the change of the codes. The section was designed based on a business's NAICS code, and that code could not be changed without application to the Department of Taxation. The Department would probably review other databases and determine whether it was appropriate to change the NAICS code.

Assemblywoman Kirkpatrick said she did not see where abatements were addressed, because currently abatements were given on the MBT. She also struggled with section 4 of the proposed amendment ([Exhibit D](#)) concerning nonprofits. She questioned the NAICS codes and how they addressed construction, because it did not appear that materials were considered a pass-through, and she wondered whether there was any pyramiding involved. She said it did not appear that franchise fees had been addressed.

Assemblywoman Kirkpatrick remarked that she had been having this conversation for ten years, and there were always changes that had to be made. She said she did not want to vote on something that was not 99.9 percent in place, because there was one opportunity to do this for the "New Nevada," and she wanted to get all the questions answered.

Assemblywoman Kirkpatrick said it had been discovered in 2009 that there were some businesses in Nevada that were actually coded as home-based businesses, which they were not. She said she did not see anything within the amendment that would define penalties because codes could be mixed up, and she wanted that concern addressed.

Assemblywoman Kirkpatrick said she did not understand section 14, but in the interest of time, she would not ask any more questions.

Mr. Nielsen said he believed he could answer some of Assemblywoman Kirkpatrick's questions. He pointed out there were no abatements in the commerce tax. In the [S.B. 252](#) hearings about the business license fee, several economic development entities, such as the Northern Nevada Development Authority (NNDA), testified in support of the way [S.B. 252](#) was designed, because there was no need for abatements on that piece.

To Mr. Nielsen's knowledge, there were currently no abatements for the business license fee. There were abatements on the MBT, and those abatements would continue in conjunction with this bill.

Assemblywoman Kirkpatrick noted that with term limits, legislative intent was important. While she did not expect an immediate answer, she wanted to know how tax credits would work in conjunction with the commerce tax. Specifically, she wanted to know whether the credit was taken before the tax was paid or whether the credit could not be used until after the commerce tax had been paid. Assemblywoman Kirkpatrick believed that how tax credits worked in conjunction with the commerce tax was important information for future legislators and economic development. She was pleased with the idea that the commerce tax would not be subject to tax abatements.

Mr. Willden remarked that it appeared he had a homework assignment.

Assemblyman Oscarson referred to section 4 of the proposed amendment ([Exhibit D](#)) and asked whether the term "combined group" treated multiple affiliated groups as a single taxpayer.

Mr. Aguero replied that generally speaking, the answer was yes. If affiliated groups all currently reported jointly under their payroll tax, they would continue to report jointly as one entity. If the affiliated groups reported under multiple entities, they would continue to report as multiple entities. Mr. Aguero said that section was designed so that if a company had layers, they all rolled up to a parent company. The idea was to not double-tax anybody.

Senator Roberson stated that Mr. Aguero, Mr. Willden, and Mr. Nielsen had made an excellent presentation, and he appreciated all the hard work they put into the tax plan and the added protections for small businesses. The GST was referenced earlier, and Nevada was now a low tax state when it came to businesses, and he believed it still would be after enactment of this plan. He said he had constituents who were burdened by the third highest car registration fees in the country, and he was thrilled that car registration fees were being reduced for Nevadans, especially those who could least afford to pay those fees. Senator Roberson hoped that the body could continue toward reducing the fees even further between now and the end of session.

Assemblyman Edwards read the following statement into the record:

It has been very helpful to me as we go ahead to make the decisions on the tax policies that we are going to adopt for our people and our businesses. Over the course of the last several months, like everyone else on Ways and Means, I have listened to a lot of reports from a myriad of agencies and commissions.

We have all heard about how hard each agency was hit by the economic downturn, and when Nevada's economy was hit by the economic disaster, I was working between the Middle East, Europe, and Africa, supporting our antiterrorist efforts there. I watched from afar as the whole country struggled through the disaster that befell the economy and as Nevada's jobs and housing markets plummeted. When I returned home to Nevada, I desired to be part of the solution, so I am grateful to find myself here in the Assembly where I can help to solve these problems.

Listening about the real impacts to our state and state governance these past months, it has been driven home to me just how far our state has fallen, how far we have come, and also how far we have to go. The loss of over \$700 million to our tax base is yet to be realized. The state agencies and our state employees took real hits to their budgets, but they also lost a lot of ability to serve the people that they want to.

It is our duty in the closing days of this session to come up with the best solutions we can to move Nevada forward. This Committee in particular has oftentimes the most unpopular duties because we have to decide taxes and budgets. These are two of the most important functions we owe our constituents, and I for one am glad to be serving with the members of this Committee and our counterparts on the other side of the building because I know we are all trying to come up with the best solution. I want to commend the Governor and his staff for putting forth their ideas about how to fund the state budgets and also commend them for their adaptation that resulted in this hybrid plan before us.

Like most people, I do not particularly like taxes, but like most people, I also realize that they are unavoidable. I will be doing my best to promote the most sensible plan provided. As most of you know, I have diligently searched through the Governor's recommended budget for items that we could cut or reduce, and I voted against items in Committee hearings throughout the session. I also called upon my training and experience as a public administrator to propose ways to further reduce costs to the state and recently released those publically, and I received very positive comments from people in my district and across the state. Last Saturday, this Committee reduced the budget by about



\$100 million, and many of those were recommendations that I concurred with. Today CCSD [Clark County School District] announced that it reduced its budget to meet shortfalls using another one of my recommendations. I will continue to work with the leadership of this Committee, both chambers, and the Governor's Office to further reduce our costs. I am confident that most of them will be adopted. But, I realize that we do have to have taxes in order to pay our bills. I think that we probably see an extension of the sunsets, we will be making some adjustments to the cigarette tax, and I can see that the live entertainment tax (LET) is likely to be adjusted as well. I have been enormously impressed by my colleague, Assemblyman Armstrong's efforts to create a flexible, scalable, tax structure that pays our bills while promoting business growth that our state desperately needs. Its ease of understanding and implementation as well as a broader tax base does a great job of meeting the Governor's goal of a better and broader tax structure for the state that will help to grow the economy. Using current tax options will also go a long way to do this while minimizing transition costs and confusion. I especially like the scalable nature of Assemblyman Armstrong's tax structure so that the more money we can save, the lower our tax rates can be. That will be a very good thing for the people of Nevada, and I look forward to working with all the parties to finalize our tax structure in the closing days of this historic session.

Assemblywoman Carlton returned to the healthcare issue and said if she had heard Mr. Aguero correctly, that exemption would stay in place. Her concern was why the state would keep rewarding companies for doing something they were supposed to do.

Mr. Aguero said the brief answer to Assemblywoman Carlton's question was that not all healthcare was the same. Those companies that were providing greater, more extensive employer-paid healthcare coverage benefited disproportionately from that particular deduction from taxable payroll. When comparing the largest payers relative to the ratio of healthcare costs to wages and salaries, it became clear that not all employer-paid healthcare was the same. Mr. Aguero said alternative number 1 would have been to remove the exemption and have the tax base adjusted based on that removal. The other alternative was to leave it in, and the difference between those two alternatives was that the former option created a higher level of new tax burden on businesses that were providing healthcare, with the greatest tax burden on

those businesses that were providing the most significant healthcare to their employees. Mr. Aguero said in light of that review, it seemed like the right thing to keep the healthcare deduction in the payroll tax.

Assemblywoman Carlton believed there needed to be further discussion on this subject. Healthcare rates were negotiated in employee contracts, making them part of the wages. While an employee would be taxed on healthcare as part of wages, the employer might get a rebate or an exemption. She wanted to talk about how all the pieces of the puzzle would fit together to ensure they were equitable for everyone.

Mr. Aguero said he would be happy to have that conversation.

Senator Lipparelli asked why gross revenue was an addition to A.B. 464, when he did not believe it was included in the last bill.

Mr. Aguero replied that the definitions of total revenue and Nevada revenue were in both S.B. 252 and A.B. 464.

Senator Lipparelli said that was not his specific question. He knew Nevada revenue was defined and did not think there was much difference between the two. In Exhibit D, the term "gross revenue" was used, and he did not know why that was included in the bill.

Mr. Aguero said he would have to compare the two bills, but the tax bases were the same, and he would provide that information to Senator Lipparelli.

Assemblywoman Benitez-Thompson stated that she did not need the answers to her questions on the record, and they could be provided in writing at a later time.

Assemblywoman Benitez-Thompson referred to page 11, section 44, of Exhibit D and asked about the types of social assistance programs being captured in that category separate from healthcare. In section 43 of Exhibit D concerning educational services, she requested more information about why educational services were included. Assemblywoman Benitez-Thompson said she knew it concerned for-profit types of educational services, but requested a justification of how they fit in and why it was a good idea to levy the 0.281 percent on them.

Section 48 of [Exhibit D](#) mentioned administering religious activities, and Assemblywoman Benitez-Thompson wanted to know how that would be different from just religious activities, which were typically exempt under 501(c)(3).

Assemblywoman Benitez-Thompson referred to section 50 of [Exhibit D](#) concerning the change for cash and accrual reporting. She imagined that if businesses could not do this more than once every three years, somewhere on the form they would have to indicate, disclose, or provide some type of notification to the Department if the business was doing it within three years. She wanted to know if there was a way to capture that kind of information.

Assemblywoman Benitez-Thompson said her last question concerned section 58 about a judgment against the Department and who could collect on the judgment. She said this seemed interesting, and recently in the Committee on Taxation, a bill was passed allowing a representative to appear on behalf of an owner in front of a board of equalization when there was an assessment dispute. Her question was if there was a dispute, it sounded like one specific person had to appear and not necessarily a representative. She was seeking clarification about this section.

Mr. Nielsen explained that he would have to research the first three questions, but regarding the last question about section 58, he believed that language existed in all tax statutes within Title 32 of the *Nevada Revised Statutes* (NRS), including the sales tax and the modified business tax. He believed the Legal Division of the Legislative Counsel Bureau added it because that was the existing language for other tax types.

Assemblywoman Dickman stated that she found this expansion of the bureaucracy worrisome, and once the tax was in place, it would be easy to keep expanding it. She asked whether she was reading section 18, subsection 2, of the proposed amendment ([Exhibit D](#)) correctly that if someone kept their records outside of the state, the business had to pay expenses for Nevada to go to that location and perform an audit.

Mr. Nielsen explained that was an existing law for sales tax for any out-of-state businesses. The salary or wages for the state auditor to go out of state were not paid by the out-of-state business, but the airfare, hotel, and per diem food costs were. He said it was a carryover in existing law that would be applied—it was not new.

Assemblywoman Dickman asked how often out-of-state audits happened and whether they would occur more frequently with the Nevada Revenue Plan.

Mr. Nielsen said that as the former director of the Department of Taxation, he recalled there were eight or nine auditors based out of state who audited larger companies. The purpose of the out-of-state auditors was to allow more frequent audits by allowing auditors to drive to certain locations to avoid having those businesses bear the airline costs of flying from Las Vegas to Maine or Las Vegas to Florida, for example. Auditors were based throughout the country to reduce those costs. Mr. Nielsen said out-of-state audits did not happen that frequently, and businesses typically paid for the audit without complaint. He believed it was standard practice across the country.

Assemblywoman Titus thanked Mr. Aguero, Mr. Willden, and Mr. Nielsen for the presentation. She stated that in her opinion, the current tax structure was antiquated and very biased. She said that on a national level, she was a fan of the FairTax plan because it eliminated some of the loopholes. She pointed out that the original version of A.B. 464 was being "gutted" and replaced with the amendment ([Exhibit D](#)) being discussed. She wanted to know whether the sponsors of the bill considered the amendment a friendly one or whether it was designed by corporate interests.

Chair Anderson announced that the hearing was over the time allotted, and the presentation was appreciated. He closed the policy discussion on the new Nevada Revenue Plan and opened the meeting for public comment.

Devin L. Boerm, Director, State Government Affairs, Healthcare Distribution Management Association, read the following statement into the record:

Chair Kieckhefer and Chair Anderson and members of the Senate Committee on Finance and Assembly Committee on Ways and Means, thank you for the opportunity to provide testimony before your joint committees today regarding Amendment 7519. My name is Devin Boerm and I am the Director of State Government Affairs for the Healthcare Distribution Management Association (HDMA).

The HDMA is the national association representing primary pharmaceutical distributors, the vital link between the nation's pharmaceutical manufacturers and healthcare providers. Nearly every Nevada resident receives their prescription drugs from

a pharmacy, hospital, clinic or physician's office that received pharmaceutical products from an HDMA member company. On a daily basis, HDMA distributor members deliver life-saving medications to over 5,300 pharmacy settings throughout the state, working closely with manufacturers, pharmacies, and regulators to ensure the safety and security of the pharmaceutical supply chain.

We understand the amendment to be language from the Governor's revised revenue plan, and the goal was to merge provisions from S.B. 252 and A.B. 464. This is a commendable objective to bring together the ideas of the elected leaders of the state as well as to address Nevada's vexing educational challenges.

I am here today to represent our members' opposition of Amendment 7519, the Governor's revised proposal, which remains a gross revenue tax model similar to that in S.B. 252 while adding an increased modified business tax and an increased business license fee. The adverse impact this bill will have on our members' companies does not support the intent of a more equitable, transparent, and stable system that has been laid out in the proposals. The pharmaceutical distribution industry is a high-volume, high-value, yet low-margin industry that is disproportionately affected by tax models that are based on gross revenue such as contained in the amendment proposal. Due to these extremely thin margins that are on average only 1.8 percent (on a pretax basis), the imposition of even a low-rate gross receipts tax imposes an exceptionally high burden relative to the industry's operating margins.

Healthcare Distribution Management Association members operate in all 50 states, and we are exposed to numerous revenue and taxation systems across the country. Our experience in certain states has shown that tax models based on gross receipts have a disproportionate impact on high-volume, high-value but low-margin industries like ours. In fact, a recent study by PricewaterhouseCoopers (PwC) (commissioned by HDMA) on the impact of gross receipts tax models shows the impacts these types of taxes have on pharmaceutical distributors are nine times higher than other industries.

While we appreciate the amendment allowing for a 50 percent offset of the commerce tax against the modified business tax, that does not address the disproportionate impact to our industry that would result from the gross revenues tax model as proposed. Should the legislative body choose to process this newly revised form of the Governor's plan, we fundamentally believe the Committees need to look closely at the components of a Texas "modified" gross receipts law. This law factors in the "cost of goods sold," which creates a more equitable tax structure for high-volume, high-value, low-margin distributors, whereas the amendment considered here today would implement a flat increase based on total revenue that does not account for the cost of goods sold or the operating margin of the distributor.

Given these concerns about the disproportionate impact on our industry, if the state must impose additional taxes to underwrite education, HDMA supports A.B. 464, in its current form, as a more equitable approach to generating revenue for education. As an industry, we understand the importance of the goal of the Governor and state policymakers in funding education. An educated workforce is good for our business, and we want to be good business partners in the state; however, adoption of the Governor's hybrid proposal without the opportunity to deduct the cost of goods sold is detrimental to our industry and may force a number of our member companies to carefully evaluate their operations in Nevada. Assembly Bill 464 does not create that same perilous cliff for our members.

Thank you for this opportunity to testify on this very important matter.

In response to Assemblywoman Kirkpatrick's question about where to look for a solution if A.B. 464 and the proposed amendment did not work, Ms. Boerm said HDMA preferred A.B. 464 in its current form. As an alternate suggestion to rates for industries such as pharmaceutical suppliers, HDMA preferred the modified gross receipts tax in Texas law, which contained an exception for pharmaceutical distributors and accounted for the cost of goods sold.

Chair Anderson thanked Ms. Boerm for her comments.

Carole Vilardo, President, Nevada Taxpayers Association, requested notice of at least 24 hours before hearings on the Nevada Revenue Plan in the future, and Chair Anderson promised this would not be the last hearing.

David Barrett, private citizen, Reno, Nevada, testified in opposition to Amendment 7519. He wanted to present some of the concepts and ideas he had about a gross receipts tax, mostly in regard to agriculture, because he had noticed there was a small tax on agriculture in the current proposal. Mr. Barrett referenced the business and occupation (B&O) tax in Washington State. According to Mr. Barrett, Washington State had been using the B&O tax for 80 years and did not tax agricultural production.

Mr. Barrett also wanted to call the Committee's attention to the Tax Foundation. He said he relied on the Tax Foundation with respect to investments in other states, and the Tax Foundation rankings were important. Currently, Nevada was ranked as the third best business climate. Mr. Barrett said no one had addressed what Nevada's ranking would be once a gross receipts tax was in place.

Joy Trushenski, private citizen, Carson City, Nevada, testified in opposition to A.B. 464. She maintained that Nevada's economy was weak, and increasing taxes on businesses would further weaken it. Nevada businesses would pass the tax on to the consumer, and the Nevada taxpayer was being hit from all directions, because municipalities and counties were increasing property taxes and sales taxes. Ms. Trushenski said Nevada needed more businesses to come into the state, and increasing business taxes would hinder that.

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Chair Anderson closed public comment and adjourned the meeting at 5:26 p.m.

RESPECTFULLY SUBMITTED:

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Anne Bowen  
Committee Secretary

APPROVED BY:

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Assemblyman Paul Anderson, Chair

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

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Senator Ben Kieckhefer, Chair

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



**EXHIBITS**

**Committee Name:** Committee on Ways and Means

**Date:** May 21, 2015

**Time of Meeting:** 3:16 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Michael J. Willden, Chief of Staff, Office of the Governor	Nevada Revenue Plan
	D	Michael J. Willden, Chief of Staff, Office of the Governor	Proposed Amendment 7519 to Assembly Bill No. 464