

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

**Seventy-Eighth Session
May 25, 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 2:10 p.m. on Monday, May 25, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

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 Randy Kirner
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 Joyce Woodhouse

COMMITTEE MEMBERS EXCUSED:

Senator Debbie Smith

STAFF MEMBERS PRESENT:

Cindy Jones, Assembly Fiscal Analyst
Mark Krmpotic, Senate Fiscal Analyst
Russell J. 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

After call of the roll, Chair Anderson called for public comment and hearing none, he closed public comment.

Chair Anderson stated the purpose of this hearing was to hear the proposed amendment to Assembly Bill 464.

Assembly Bill 464: Revises provisions relating to the State financial administration. (BDR 32-851)

Michael J. Willden, Chief of Staff, Office of the Governor, stated he would like to acknowledge Chair Anderson, Assemblyman Armstrong, Senator Kieckhefer, and Senator Roberson for the assistance they had provided in the last weeks and months.

Mr. Willden also wanted to correct the record, because Fiscal Analysis Division, Legislative Counsel Bureau staff had indicated that his previous testimony of May 21, 2015, on the government services tax (GST) was inaccurate. He had

mentioned in that testimony that in 15 counties, persons who paid their registration fees, based on the new vehicle depreciation schedule, would see a \$42 change in the registration fee per year, after year two. His testimony was that residents in Washoe County and Clark County would see a \$52 to \$53 change. Mr. Willden said that was inaccurate: the two counties were Churchill County and Clark County, and not Washoe County. He wanted to be accurate on the record concerning the affected counties.

Mr. Willden stated he would summarize the basic provisions of Assembly Bill (A.B.) 464. As testified to earlier, there were four significant provisions of the proposed amendment to A.B. 464. Mr. Willden emphasized that three revenue streams and an adjustment to the GST revenue would generate approximately \$262 million per year in additional revenue. The first component was the business license fee (BLF), which was proposed to change from a \$200 per year BLF to a \$500 per year fee for corporations and a \$300 per year fee for noncorporations, and would generate approximately \$46 million per year in new revenue.

According to Mr. Willden, the next component was the modified business tax (MBT). The MBT was currently levied for nonfinancial institutions at 1.17 percent; the proposed amendment would change that to 1.47 percent for nonfinancial businesses and 2 percent for financial and those businesses that were required to pay tax on the net proceeds from mineral extraction. The MBT was expected to generate about \$94 million per year in new revenue.

Mr. Willden explained that the commerce tax proposal would create a tax based on Nevada gross revenue of \$3.5 million or more. This tax used a schedule of 23 or 24 types of businesses categorized by North American Industry Classification System (NAICS) codes. There would be a 50 percent credit allowed against the MBT for commerce taxes paid in the previous year. The commerce tax was expected to generate about \$121 million at fruition. Mr. Willden said the three combined taxes were projected to generate approximately \$262 million.

The final component of the Nevada Revenue Plan was the governmental services tax (GST). Currently, the GST generated about \$63 million for the State General Fund on an annual basis. That revenue stream to the State General Fund would be eliminated and the depreciation schedule on the GST would be changed to return to the pre-2009 depreciation schedule, which would provide a decrease of \$42 to \$53 per year for vehicle registration fees.

Mr. Willden noted that at the last budget hearing, there were a number of questions asked, particularly by Assemblywoman Kirkpatrick, Senator Lipparelli, Assemblywoman Benitez-Thompson, and Assemblywoman Carlton. Posted to the Nevada Electronic Legislative Information System (NELIS) were the responses to Assemblywoman Kirkpatrick ([Exhibit C](#)), Senator Lipparelli ([Exhibit D](#)), and Assemblywoman Benitez-Thompson ([Exhibit E](#)). A meeting had been held with Assemblywoman Carlton to answer her questions.

Assemblyman Armstrong questioned the commerce tax credit and wondered whether an unintentional loophole would be created for certain businesses. He believed he could see that there were going to be some combined business groups, and because the commerce tax rates were fairly low, some companies with a large MBT liability could combine with other companies that were under the \$3.5 million in revenue to raise the total revenue number and receive a bigger credit against their MBT liability.

Jeremy Aguero, Principal Analyst, Applied Analysis, said the brief answer to Assemblyman Armstrong's question was that the definition of a "business entity" contained the concept of a combined group, which did not exist in Senate Bill (S.B.) 252, and was included in the proposal in error. The concept of the combined group in terms of who reported would be similar to how businesses currently reported for the MBT. Mr. Aguero said that if those businesses were disaggregated for purposes of their MBT reporting, they would report at the same unit base level for the commerce tax, and if they aggregated for purposes of that payroll tax reporting, they would then report in aggregate so there would be uniformity between those groups.

Assemblyman Armstrong said there was no aggregation and there would be no traps under this credit. He understood that certain companies under the combined tax would be unable to use any sort of credit against the commerce tax if they did not have MBT liability. He asked whether that was correct.

Mr. Aguero said he believed the answer was yes, because businesses were being aligned based on how they were reporting for the MBT and how they were going to report the commerce tax. A company did not have the ability to take a commerce tax overage and apply it to combined businesses. For example, several small entities would not have the ability to share that overage when not paying any commerce tax. Mr. Aguero pointed out that in the definitions, both the terms for "affiliated group" and "controlled by" pertained to the commerce tax in the event revenue was rolled upstream, not coming back down.

Assemblywoman Titus asked Mr. Willden whether Clark and Churchill Counties would lose revenue because of the change to the GST vehicle depreciation schedule.

Mr. Willden replied that both counties would be affected. Based on information received from the Department of Motor Vehicles (DMV), changing the depreciation schedule back to what it was before 2009 would decrease revenue for Churchill County by about \$204,000 and Clark County by about \$11 million.

Assemblywoman Titus asked how much money would go to the State Highway Fund if the GST portion of the plan were not included.

Mr. Willden said the GST currently generated \$63 million to \$64 million for the General Fund, and if the funds did not go back to the tax payee, that amount would go to the State Highway Fund.

Assemblywoman Kirkpatrick referred to sections 52 and 53 of proposed Amendment 7519 ([Exhibit F](#)). She requested an explanation of the interest for overpayment of the commerce tax, how it was calculated, and the time frame involved.

Christopher G. Nielsen, Deputy Chief of Staff, Office of the Governor, said sections 52, 53, and others throughout the administrative portion of the proposed amendment contained language that had been copied and pasted from existing statutes. For example, *Nevada Revised Statutes* (NRS) Chapter 372 contained the language for sales tax and the current modified business tax. Mr. Nielsen said the Department of Taxation had historically denied interest for overpayments. The business would have to demonstrate that it did not intentionally overpay the tax. In the past, the Department of Taxation had been very careful and had been successful in denying interest to those who intentionally overpaid.

Assemblywoman Kirkpatrick said she had received an answer to her previous questions from Mr. Aguero ([Exhibit E](#)), but wanted additional information about the exemption for nonprofits being assessed the commerce tax.

Mr. Aguero said regarding the 501(c)s as listed in [Exhibit F](#), it was simply a decision to not limit the exemption to just 501(c)(3)s, but to include the larger category of 501(c)s to avoid some unintended consequences. To answer the broader question of why every business could not be classified as a nonprofit, there were protections in place. Mr. Aguero did not see businesses flocking to

become nonprofit organizations to avoid paying the payroll tax, and he believed it was the same with the commerce tax. He said the situation would be monitored, which he thought was probably the best approach to not overcorrect the other way.

Assemblywoman Kirkpatrick stated that in 2003, to avoid the live entertainment tax, businesses were very creative about 501(c)(3)s and she disagreed with Mr. Aguero about simply monitoring businesses. She wondered why there was no language in the proposed amendment, because a true 501(c)(3) would file a Form 990-N with the Internal Revenue Service (IRS).

Assemblywoman Dickman said she was trying to compile a total administrative cost for this plan. Under Senate Bill (S.B.) 252, the collection of the business license fee was going to be moved from the Office of the Secretary of State (SOS) to the Department of Taxation, but now the BLF would remain with the Secretary of State and the commerce tax would be administered by the Department of Taxation. If Assemblywoman Dickman remembered correctly, the SOS was going to add two positions under S.B. 252 for SilverFlume and she wondered whether those positions were still needed.

Mr. Nielsen said that he had not spoken with the Office of the Secretary of State, but he suspected that those positions would not be needed, because the Office would be dealing with rate changes for the existing business license fee. However, Mr. Nielsen said he would get a definitive answer for Assemblywoman Dickman.

Assemblywoman Dickman stated that according to the Secretary of State's fiscal note for S.B. 252, there was a potential to create millions of dollars in additional credit card transaction fees through SilverFlume. The Office's budget could obviously not support paying those fees, and she wanted to know whether the current plan contemplated using SilverFlume to collect the commerce tax and if so, how much was estimated in credit card transaction fees.

Mr. Nielsen said it was his understanding that the tax would not be paid through SilverFlume, but would be paid like all existing taxes the Department of Taxation currently administered. The commerce tax could be paid in either of two ways: through the Department of Taxation's online payment system or through a paper return. Mr. Nielsen said that option currently existed for sales tax filers, MBT filers, and live entertainment tax filers.

Assemblywoman Dickman remarked that businesses would have to file an additional form each quarter.

Mr. Nielsen explained that the commerce tax would be an annual return. The first return would be due August 15, 2016. The Department of Taxation anticipated a one- to two-page form.

In response to a question from Assemblywoman Dickman as to when the tax would be due, Mr. Nielsen said the tax would begin accruing as of July 1, 2015, but the first payment and return would not be due until August 15, 2016.

Assemblyman Sprinkle referred to section 50 of the proposed amendment ([Exhibit F](#)) and said it appeared that in subsections 1 and 2 there were different accounting methods. He asked for an explanation of the different types of accounting methods and the significance of differentiating between the two and setting the three-year parameter for switching between accounting methods.

Mr. Aguero said there were different ways in which businesses accounted for the revenue received. One was a cash basis of accounting, which meant recording revenue when a business was physically paid. Some businesses used the cash basis of accounting and would be able to account for the commerce tax using the same methodology. Other businesses used what was called the accrual method of accounting, which meant revenues were recognized when they were earned. For example, a business built something and recorded it on the books as revenue that it would eventually receive. Mr. Aguero said there had also been some discussion about what was referred to as the installment method of accounting, because there were certain businesses that received revenue over time. Mr. Aguero said the Office of the Governor proposed modifying section 50 to permit the different accounting methods which a business could use to report its income to the federal government. The primary purpose of section 50 was to allow businesses to account for their revenues and expenditures the way they were currently handled, whether the cash basis, the accrual basis, or the installment basis. Mr. Aguero said that was what section 50 was intended to do.

Assemblyman Sprinkle asked if businesses were changing from one accounting method to another, the concern was that it might throw off the amount of money that was owed.

Mr. Aguero replied that was correct. The Department of Taxation would not want a business to switch over to the cash basis of accounting after working on the accrual basis of accounting because, for whatever reason, the business would not be required to record those revenues that were earned on accounts receivable as opposed to what the business had already received in cash. Mr. Aguero said the idea was to limit a taxpayer's ability to avoid taxes by switching between different methods.

Assemblyman Hambrick had a question on section 31 of the proposed amendment ([Exhibit F](#)). He said he had no problem with intrastate transportation such as helicopter tours going over the Grand Canyon and things like that, but he had a concern about the federal aspect of interstate travel. He said he traveled with Southwest Airlines going from Phoenix to Las Vegas to Reno and on to Boise, Idaho. That was interstate commerce and he wondered whether the bill would apply.

Mr. Aguero referred Assemblyman Hambrick to section 22, subsection 1(e) of the proposed amendment that read, "Gross revenue from the sale of transportation services is situated to this State if both the origin and the destination point of the transportation are located in this State." Mr. Aguero believed that issue had been resolved by the situsing rules provided in the bill.

Senator Kieckhefer requested information about the interaction between the MBT buy-down in section 68 of the proposed amendment ([Exhibit F](#)) and how the state budgeted. He said, for example, if the state had a good year in the first year of the biennium and taxes were more than 4 percent above expectations, then the rate on the MBT would be reduced in the second year of the biennium. Senator Kieckhefer's worry was that the good year in the first year would be used to buy down a very stable revenue source. If the income from the MBT were reduced in the second year of the biennium, the state would not know what the commerce tax collection was going to be until after that fiscal year ended. Senator Kieckhefer said if the state were heading into an economic decline, it would be compounding two different taxes in a downward trend, while knowing expenditures were going up in the second year of the biennium.

Mr. Aguero said the idea behind the buy-down of the MBT was to try to balance the concern over revenues coming in over expectations while also protecting the state against exactly the scenario alluded to by Senator Kieckhefer. First and foremost was that it only occurred at the end of the biennium, so there would be a first full year to learn how much revenue was being generated and the

state would only adjust for the first year after the end of the second year. In theory, there would be a year and three-quarters to realize how much revenue the state was receiving. In addition, Mr. Aguero said the Legislature would be in session during that time frame, and it would have the ability to go back and review the program. He said Senator Kieckhefer was correct. In the second year of the biennium, there was a nuance that did not occur in the first part of the biennium, and that was the credit against the MBT. The taxpayer paid the commerce tax at the end of the first fiscal year and then received the credit in the second fiscal year because there was no commerce tax to take the credit for in the first period. Again, Mr. Aguero thought the briefer answer to the question was that the Office of the Governor had tried to balance the concern of creating any kind of a hole for the state by having a full one-year lookback on that particular adjustment that would only take place in the event that revenue came in more than 104 percent of expectations.

Mr. Nielsen wanted to clarify that if the commerce tax exceeded 104 percent, the MBT buy-down would not incur until July 1, 2017.

Senator Kieckhefer inquired whether the first year of commerce tax would be collected on August 15, 2016, and then it would be determined whether to reduce the MBT for fiscal year 2018.

Mr. Willden said that in fiscal year (FY) 2016, the first year of the next biennium, the MBT would be paid on a quarterly basis and the commerce tax would be paid at the end of FY 2016 and credited back to FY 2016. There would be a commerce tax and an MBT paid in FY 2016. In FY 2017, a business would pay its MBT and receive the credit for the commerce tax in FY 2016, but the credit would be taken in FY 2017. The state would analyze the buy-down in the first quarter of FY 2017, but the buy-down process would not take effect until FY 2018, which would be a three-year process.

Senator Kieckhefer asked whether he was correct that if the economy started to decline, there would be an opportunity to override the buy-down in the 2017 legislative session.

Mr. Willden replied that was correct, and he reiterated that if the commerce tax and the MBT were not performing at greater than 104 percent, there would be no buy-down.

Assemblyman Edwards asked whether the commerce tax was going to be paid on an annual basis, not a quarterly basis, as it would have been in S.B. 252.

He said his first question was about money management and risk. It would make more sense to pay on a quarterly basis so that all the agencies would be getting their money in a routine manner and could budget better. He said the second aspect, which might be more important, was the risk involved. If the state did well economically, it might work out, but Assemblyman Edwards said that every seven years there was usually a problem economically. He was concerned about the risk involved with collecting the money on an annual basis, not only because the state might not collect it all, but if businesses closed in the interim, the state would lose that revenue. He asked Mr. Aguero to address the risk factors involved and the potential for the loss of that revenue when a recession occurred.

Mr. Aguero said the change was designed specifically to reduce the administrative and compliance cost for the taxpayer. Under S.B. 252, there were quarterly returns and many more taxpayers. The objective was simply to design an alternative that created less of an administrative burden on the Department of Taxation and less of a compliance burden on the taxpayer.

With regard to the question of money management, Mr. Aguero said the state had a \$7 billion-plus budget. There was \$121 million worth of revenue, with a backstop against the MBT where the credit would be taken. He said if something came in at zero, there would be \$62 million, plus or minus, against that backstop, which was designed to provide some degree of protection for the state based on a familiar revenue source, the MBT, versus the implementation of a new one, the commerce tax.

Mr. Aguero said business cycles were unavoidable. There would be periods in which the economy cycled up and there would be periods, as Assemblyman Edwards said, probably every seven years, in which the economy was going to cycle down. Mr. Aguero said that was something to be dealt with in any type of annual tax, and there would be businesses that started up and businesses that failed. However, the majority of businesses would survive those periods.

Assemblyman Edwards believed there would be an increased risk each year, and Mr. Aguero agreed there would be increased risk because this tax would be a growing source of revenue that was broadly based.

Mr. Nielsen explained that the Department of Taxation faced that problem every month and every quarter with the existing tax types. Businesses closed without paying taxes, leaving a tax liability, which became a collection issue. Should

there be an additional commerce tax type, the Department of Taxation would have the ability and authority to ensure that tax was collected.

Assemblyman Edwards said the difference was that in the current cases, the Department would only be missing one quarter of the taxes, but if the timing was bad, it could be missing an entire year of taxes. If the business closed 10 to 11 months into the year, that entire ten months would be lost as opposed to a business closing in the second month of a quarter where the state would only lose one or two months. Mr. Aguero agreed that was correct.

Assemblyman Oscarson commented that currently there was one MBT rate that everyone paid; he was concerned that mining and financial institutions were paying a higher tax rate in the proposed amendment.

Mr. Aguero said that currently there were two tax rates that were paid. The modified business tax was applied to businesses generally at 1.17 percent, and financial institutions currently paid a higher rate of 2 percent. In the proposed amendment, Mr. Aguero said there would be two categories of businesses: one would be financial institutions, which would be unchanged from the rate charged today, and the second would be mining, which would be charged at a higher rate.

Assemblyman Oscarson said he had been told that A.B. 464 had one rate.

Assemblyman Armstrong clarified that A.B. 464, as it was introduced, brought financial institutions into the one MBT rate.

Mr. Aguero said that A.B. 464 as introduced contained a single tax rate for the MBT. As the payroll tax existed in statute today, it was bifurcated into two separate rates, one at 1.17 percent and the other at 2 percent. As originally drafted, A.B. 464 would have combined everything into a single rate, which would have brought every other industry up to 1.56 percent and lowered the rate for financial institutions from the 2 percent they were currently assessed to the 1.56 percent. Under the proposed amendment ([Exhibit F](#)) being discussed, all businesses would pay 1.475 percent except for financial institutions, which would pay 2 percent as they paid currently, and mining companies, which would also pay 2 percent.

Mr. Aguero continued, answering the second half of Assemblyman Oscarson's question, which was why that rate difference would occur. He said the reason was that as currently structured, the commerce tax did not affect mines and

financial institutions in the same way that it did other businesses. Under the *Constitution of the State of Nevada*, the state's ability to tax mining companies was limited and, therefore, mining would pay relatively little under the commerce tax as it was currently structured. Mr. Aguero said the second piece was that a great deal of financial institutions' revenue was sourced to interest income, and interest was exempt from the commerce tax.

Assemblyman Oscarson noted that the health-care deduction was back in the proposed amendment ([Exhibit F](#)) and asked whether the MBT rate of 1.475 percent would be lower if that deduction was eliminated.

Mr. Aguero replied yes, because imposing a tax on businesses that currently provided employer-paid health care would have had the effect of a higher rate on those businesses. He said it was a policy decision.

Chair Anderson referred to page 7, line 1, of the proposed amendment ([Exhibit F](#)), concerning amended returns and refunds. He said companies that carried accounts receivable were not always able to collect them in full, but still paid a commerce tax on gross receipts, which were counted on an accrual basis. A company had those monies and was using the credit, hopefully, to apply to its MBT, because it had employees. He said he could envision this company having to write off its receivables because they were uncollectable and submitting an amended return that affected the credit on the MBT. Chair Anderson said it became a little convoluted determining what the refund might be or how quickly a business could receive a refund for those unpaid receivables.

Mr. Aguero referred to section 21, subsection 1(x) on page 6 of [Exhibit F](#), that listed bad debts expensed for the purposes of federal income taxation as a deduction from gross revenue for purposes of computing the commerce tax. He said if a business was using the cash basis of accounting, it was going to book bad debt at the point at which it decided to use it, and if the business was on the accrual basis, it would book it in a separate year. In either one of those cases, the objective would be that a taxpayer not be required to bear the burden of revenue that had been written off. Mr. Aguero said he would explain how that folded into the credit on the MBT, which he believed to be relatively straightforward. The taxpayer would pay his commerce tax at the end of the first year and would be able to take 50 percent of the total commerce tax and apply it against the MBT in the subsequent year. The taxpayer would know what that amount was, and should the business acquire additional bad debt in the second year, it would increase the credit for the third year.

Chair Anderson remarked that a business would not necessarily get a refund based on that, but it would see a reduction in the next year. If a business was not paid by a client for six months, he asked whether it would still have to carry that burden in the commerce tax that had been paid and not get a refund for the following year.

Mr. Aguero said he thought he understood the question, and the answer would be yes. He said that in much the same way as a business would book something as bad debt at the beginning of the fiscal year, it would not be required to include or not include that debt until the end of the fiscal year when making the commerce tax payment to the state. The timing issue would be odd, depending on whether it was at the beginning or the end of the year, but because the tax was paid once a year, the taxpayer only had the ability to make that adjustment one time each year.

Chair Anderson said he was trying to determine when the business would realize a refund. He wondered whether the business would refile or have to wait the entire next fiscal year and report a lower number.

Mr. Aguero stated that he did not believe the business would have any type of refund, but he would defer to the Department of Taxation, because a cash-basis taxpayer would take the credit in the year in which it was booked and an accrual-basis taxpayer would take the credit in the year in which the bad debt was accrued.

Chair Anderson said he was picturing an entire year before a business would see that reduction, and it might be 12 months later before it would see a reduction on the commerce tax liability. He asked whether that was accurate.

Mr. Aguero said that sounded accurate, particularly if a business recognized the bad debt on the first day of the fiscal year.

Mr. Nielsen said the bad debt provision existed in sales tax as well. The Department of Taxation had dealt with the problem for a number of years through an amended return with a credit or an amended return with a refund, depending on what the taxpayer preferred.

Chair Anderson noted that Department of Taxation dates did not follow the federal dates, so the strategy of when things were written off would revolve around the federal deadlines, and he believed that had been clarified for him.

Chair Anderson referred to retention amounts for construction contracts and said there could be retention of up to 10 percent. He was not certain how that was booked on an accrual basis or whether that was a cash-basis item, but he wondered whether there were any scenarios when the taxpayer might be paying the commerce tax even though he or she had not received the retained amount.

Mr. Aguero said he did not have an answer to that question, but he believed that revenue would be treated the same way as other revenue. He said he would look into it.

Chair Anderson wondered whether the tax credit going the other direction had been considered and what the implications would be of the MBT tax crediting against the commerce tax.

Mr. Aguero said that problem had been considered and the difficulty that occurred when the tax credit was reversed was associated with the size of the MBT as it currently existed. The MBT was a \$500 million revenue source, and the credit would have to be much smaller to carry over and work the other way. There were also some other mechanics where some businesses would pay and some businesses would not. Mr. Aguero said the process became complicated, and the Office of the Governor had opted for the simpler version that did not result in those outcomes.

Chair Anderson said when considering gross receipts in general, he assumed the commerce tax would follow the volatile structure of any other tax that was based on revenues: sales tax, gaming tax, and those types of taxes. The MBT had been a very stable revenue and perhaps did not recover as quickly as other sources, but also did not decline as quickly as other sources. Chair Anderson wondered whether there was any concern about adding another volatile tax or if Mr. Aguero believed it to be volatile.

Mr. Aguero stated that he believed the commerce tax would be among the most stable sources of revenue in Nevada. His reasoning was that the gaming tax had a base of approximately \$11 billion and the sales tax had a base of approximately \$50 billion, with Nevada's economy at roughly \$132 billion. He believed the MBT would be more analogous to something like the sales tax, which had a broad base, than it would be to something like the percentage fees on a gaming win, which was a much narrower base. Mr. Aguero said in comparison to the payroll tax, which had been a relatively stable source of revenue, he would argue that the commerce tax would actually be more stable.

Assemblywoman Kirkpatrick asked how independent contractors would be affected by the business license fee and the commerce tax. She noted that section 25 of the proposed amendment ([Exhibit F](#)) listed various business categories and entities that would be subject to the commerce tax, but she did not see any reference to independent contractors.

Mr. Aguero stated there were three elements to the new tax plan. The first element was the business license fee, which was applied to both NRS Title 7 and non-Title 7 entities. The MBT taxed payroll, which limited the effect on small businesses and sole proprietors. The third component, the commerce tax, contained the \$3.5 million threshold, which was how much an entity would have to make regardless of its size or structure before it was subject to the commerce tax. Mr. Aguero said there that there would be a limited number of sole proprietors that would fall under that particular category.

Assemblywoman Kirkpatrick questioned the accuracy of the NAICS categories and whether there was a good audit procedure to ensure that the NAICS codes were appropriate based on the businesses' federal tax returns. She did not want businesses changing their NAICS category for the benefit of the tax rate.

In addition, Assemblywoman Kirkpatrick noted that Nevada was trying to grow the foreign trade portion of the economy, and in a foreign trade zone, taxes were not paid until the goods were actually distributed within the state. She asked whether entities would be allowed to come through Nevada, drop ship for storage, and then move forward, and whether that would be counted as gross revenue or a pass-through.

Mr. Aguero said with regard to the first portion of Assemblywoman Kirkpatrick's question about category shopping, he would leave it to the Department of Taxation to answer the question. It was his understanding that the taxpayer could determine what category to select at the initial filing. Businesses were being classified at the six-digit level by the Department of Employment, Training and Rehabilitation (DETR). He said a database existed, and every business could be monitored to determine whether the category it was selecting was the same as in the DETR database.

Mr. Aguero imagined that a great deal of scrutiny would be given by the Department of Taxation to any business that elected a NAICS code different from its classification at DETR. He said he believed that while there would be some category shopping, the state's monitoring would prove sufficient.

Regarding the second portion of Assemblywoman Kirkpatrick's question concerning the foreign trade zone, Mr. Aguero said nothing in the amendment specifically addressed the foreign trade zone, but he wanted to review those laws and would need to follow up with Assemblywoman Kirkpatrick.

Mr. Willden referred the Committees to section 20 of the proposed amendment ([Exhibit F](#)) regarding the NAICS code process. He noted that the business designated its NAICS code and could not change that code unless the Department of Taxation permitted the change.

Mr. Nielsen commented that it was his understanding after a discussion with Deonne E. Contine, Executive Director, Department of Taxation, that a Department employee would be assigned to coordinate the existing NAICS code data from the Office of the Secretary of State; the Employment Security Division, DETR; and the Department of Taxation.

Assemblywoman Titus stated that she had made it clear throughout the legislative session that she had concerns about Medicaid reimbursement to providers and Medicaid health-care issues. She asked why, under section 21, subsection 1(j) ([Exhibit F](#)), only 50 percent of the revenue received from Medicaid and Medicare was going to be exempt from the computation of the commerce tax. She said the very first statement in section 20 indicated that it was a privilege to do business in the state of Nevada, and she wondered whether it was a privilege to lose even more money when seeing Medicaid patients, because reimbursement rates did not cover costs. It seemed to Assemblywoman Titus that the new tax plan would cause even greater problems with access for Medicaid clients.

Mr. Aguero explained that it was purely a policy determination as to why there was 100 percent on one end and 50 percent on the other. Part of the reason was that was how it was modeled in the states that were studied, and that data was used to get a sense of the revenue yield. He said it was a carryover from that analysis.

Mr. Willden requested Assemblywoman Titus repeat the question regarding the loss.

Assemblywoman Titus stated that through the Medicaid reimbursement model, the reality was that even though Medicaid had decided to reimburse at Medicare rates, health-care vendors were not reimbursed for the actual cost of seeing a patient. She said it was not like the Walmart model where a doctor could see

more and more patients to compensate and make a profit: health care did not work on those models. According to Assemblywoman Titus, health-care providers lost money when seeing a Medicaid patient, and while she understood that the new tax plan would provide 50 percent from the top based on section 21, subsection 1(j), providers were still losing money with Medicaid patients and this did not make the situation better.

Mr. Willden said it was clear that the Medicaid program did not pay costs in most cases; however, reimbursement rates were closer to Medicare rates for radiology and labs and some other items. He said the state was trying for a balance between what it could afford and guaranteeing access for patients.

Assemblyman Armstrong pointed out that under this plan, not only was the MBT rate on Medicaid providers being increased, but a commerce tax was being added. He equated that to a "double whammy" for Medicaid providers.

Assemblyman Armstrong referred to section 50 of the proposed amendment ([Exhibit F](#)) and asked why the law did not require the taxpayer to use the same accounting method as used for the federal return.

Mr. Aguero replied that a change would be made to allow whatever was available under the federal law. He said the idea was to provide maximum flexibility to the Nevada taxpayer.

Assemblyman Armstrong remarked that since taxpayers would be required to renew the accounting option every three years, perhaps it would be better to tie it to the IRS form to change the accounting method.

Mr. Aguero agreed that seemed to be a reasonable approach.

Assemblyman Armstrong asked whether everyone defined as a business that generated revenue would have to file the commerce tax return.

Mr. Aguero replied that every business that generated revenue would be required to file a commerce tax return.

Assemblyman Armstrong commented there were roughly 170,000 entities in Nevada, and Mr. Aguero said he believed there would be more than that because out-of-state businesses would be included.

According to Mr. Aguero, there was a time when only a taxpayer that had a positive amount would have been required to pay. That was designed to limit the administrative requirements and limit the compliance requirements. However, after some discussion, it was determined that the state had a responsibility to collect as much information as possible, and the Department of Taxation would not know about that taxpayer if additional information was not collected.

Assemblyman Armstrong asked whether all entities that filed even a zero return were subject to being audited by the Department of Taxation.

Mr. Aguero said he would defer to the Department of Taxation concerning its audit procedures.

Mr. Nielsen confirmed that every nonexempt business would be required to submit a return and that was no different than filing the MBT return. The Department of Taxation currently had a risk-based audit program with multiple components. He noted that one component was high-dollar businesses because when spending audit resources, the largest taxpayers were audited first. In addition, certain industry types tended to have compliance issues, which was another risk factor. He said while every business needed to be in the audit pool, it would be heavily weighted toward businesses reporting revenues of \$3 million to \$3.5 million and above.

Assemblyman Armstrong asked whether there would be a sharing agreement between the Department of Taxation and the IRS to attempt to verify numbers for all businesses in Nevada.

Mr. Nielsen said he would have to check with the Department of Taxation, but there was a limited agreement with the Internal Revenue Service, which was a one-way agreement. In other words, IRS information was given to the state, but state information did not go to the IRS. Mr. Nielsen believed there would be a baseline set by using some of the federal data because the Department of Taxation had no current data. He reminded the Committees that NAICS codes were already assigned to existing MBT payers, and he believed a model would be developed with that existing data.

Assemblyman Armstrong said his next question was about the process for filling out the forms because the tax was applied using the state's fiscal year. At this point, the procedure would be to file federal returns based on a calendar year,

but apportion Nevada revenue based on the state's fiscal year. Businesses would have to keep a second set of books to arrive at the tax liability.

Mr. Aguero said there was going to be an additional requirement. At the outset, there was the question as to whether it should be a tax that was paid quarterly or a tax that was paid annually. To ensure that the revenue yield was what the state needed, the full four quarters had to be included. The initial default position was to go back to a quarterly payment like existed in S.B. 252; however, that would eventually lead to higher compliance costs, exclusive of the federal income tax. Mr. Aguero said the idea was to have a single tax return based on the same four quarters businesses used today for the payroll tax.

Assemblyman Armstrong noted that the difference was that businesses would have to compute the Nevada gross revenue, which was not something currently required.

Mr. Aguero said that was correct. The same way a business had to compute payroll and the employer-paid health-care deduction, it would also have to know how much was sold in Nevada.

Senator Lipparelli said he was still unclear as to why there was a gross revenue definition in the bill if the applicability of the tax was Nevada revenue. He asked the reason for defining gross revenue.

Mr. Aguero said he would be happy to explain the memorandum that was drafted ([Exhibit D](#)) to define gross revenue and how it was situated to the state of Nevada. The definition of gross revenue was the same between S.B. 252 and A.B. 464; however, the definition of a business changed between the two bills.

Senator Lipparelli said he still did not see the relevance of reporting gross revenue to the state and wondered why taxpayer information was going to be in Department of Taxation records if it was not relevant to the tax payment obligation.

Mr. Aguero replied that the information was to ensure the taxpayer was clear that this was not a tax on total gross revenue, but rather a tax on Nevada revenue.

Senator Lipparelli said if he understood correctly, this was not necessarily a reporting item. The information was trying to guide the taxpayer: this was how it was calculated and ultimately reported—not necessarily a reporting item in and of itself.

Mr. Aguero replied that he was correct.

Senator Kieckhefer said in a previous hearing, Assemblyman Armstrong had asked a question regarding the exemption from gross revenue for liquor sales. He said he had received some feedback from representatives of the liquor industry that all the representatives had meant was that they would not be taxed on the excise tax, so it was not a tax on the tax. The way the bill read, it would be an exemption of all revenue from that sale, because he believed it was the industry's intent that it was only an exemption from the excise tax itself and not the total value of the sale.

Mr. Aguero said he would be more than happy to discuss the excise tax to ensure that he and Senator Kieckhefer were clear on what was intended.

Assemblywoman Dickman referred to Assemblyman Oscarson's question about the different rates in the MBT, and based on the 2 percent for financial institutions, she asked whether payday lenders would be assessed at 2 percent.

Mr. Nielsen stated that payday lenders were considered financial institutions and would be taxed at 2 percent.

Assemblywoman Dickman stated the more she heard about the tax, the more complicated it sounded. She wondered when there was something as simple as the MBT, why this new plan was so popular.

Mr. Aguero referred to the business license fee and said he did not know if he could imagine a tax that was simpler. A business entity paid either \$500 if it was a corporation or \$300 if a noncorporation. Under the payroll tax, for some entities it was relatively simple, but others might say it was somewhat complex. A business had to calculate every quarter how much it was paying for employer-paid health-care coverage and properly calculate wages and salaries. Under the commerce tax, the majority of businesses would have to know two things: what industry it was in and how much revenue that business generated in Nevada. Mr. Aguero said having looked at taxes in other states and considering the incredible complexity of things like the federal income tax code, he could not accept the premise that this tax was complicated.

Assemblyman Armstrong asked about section 14, subsection 1(a), of the proposed amendment ([Exhibit F](#)). He wondered whether there was a reason that a limited liability company (LLC) was not included as a potential passive entity.

Mr. Aguero explained that the definition of a passive entity was borrowed from other states.

Assemblyman Armstrong said that in section 14, subsection 1(b) ([Exhibit F](#)), the 90 percent rule applied to LLCs but did not apply to partnerships. He noted that on a federal level there was no distinction between an LLC and a partnership.

Mr. Aguero said that, again, the definition of a passive entity had been borrowed and the goal was to try to get as much of it included as possible. He told Assemblyman Armstrong that if he believed parity was needed, perhaps that could be changed.

Assemblyman Armstrong said the next concern was section 14, subsection 1(c) ([Exhibit F](#)). He wondered, when a business entity received a federal Schedule K-1 that included income, whether that was classified as active income. And further, whether that K-1 income was treated as income from conducting an active trade or business for purposes of this section, or whether that treatment would be overridden by section 14, subsection 1(b)(1).

Mr. Aguero said he believed the controlling section was whether 90 percent of that revenue was passive.

Assemblyman Armstrong referred to section 14, subsection 3(a)(1), and questioned whether a business entity that performed management functions for another entity and had no other involvement in operations of the entity, would be considered as conducting an active trade or business for purposes of the section.

Mr. Aguero said he believed the answer would be yes, because the entity was actively engaged in the business of providing that management.

Assemblyman Armstrong referred to section 8, subsection 2(a) ([Exhibit F](#)), and said the definition of gross revenue included other disposition of a business's property and asked whether that would also include a business disposing of property through a charitable contribution.

Mr. Aguero said the answer to that question would be yes.

Assemblyman Edwards wanted to return to the complexity issue. It seemed to him that the state was going to collect \$120 million but potentially give \$60 million back, and in the process, every taxpayer who was going to pay the money and get the money back had to file forms. In addition, 175,000 other organizations that did not have to pay or get money back were also going to have to submit forms every year. He said it seemed to him this was getting very complex, very labor intensive, and very hard to accomplish. He wondered whether, for \$60 million, this plan could be done better.

Mr. Aguero said that the majority of businesses would report the total amount of revenue, would owe nothing to the state, and simply file the form, not unlike what businesses did currently under the MBT, but every quarter instead of every year. At the end of the day, the tax would generate \$121 million, and while there was going to be a credit against the MBT, Mr. Aguero believed the state would be getting more than \$121 million in revenue.

Assemblyman Edwards reiterated that the more he heard of the plan, the more complicated it became. He believed taxpayers would not like it and there would be additional costs. Ultimately, he did not know whether the Nevada Revenue Plan was the most efficient way to reach the end goal.

Mr. Aguero said the Office of the Governor had taken every step; listened to what every legislator had provided and what every business person had provided relative to increasing the sufficiency, equity, and the stability of the state's tax system; and arrived at a fair and simple way to increase tax revenue. Mr. Aguero maintained that in comparison to S.B. 252, this plan was much simpler, and he suggested it would cost less for both the taxpayer and the Department of Taxation.

Mr. Nielsen pointed out that for the vast majority of businesses subject to the commerce tax with Nevada revenue of more than \$3.5 million, the process was merely calculating what the Nevada gross revenue was, multiplying it by the applicable rate, and filing a return once a year. He said the MBT, as simple as it was, disproportionately affected certain industries, such as health care and construction. He said Nevada did not have a services tax and by adding a commerce tax component, it captured the service tax industries in a fair and equitable manner, especially when balanced with the MBT credit. Mr. Nielsen believed the Office of the Governor had put together a thoughtful and fair plan. Most importantly, it captured revenue from large out-of-state companies that

came to Nevada and made money from Nevada residents, businesses, and state government.

Assemblyman Edwards said that while he could understand what Mr. Nielsen was saying, he was looking at the overall picture of \$60 million in a \$7 billion budget, which was less than 1 percent of revenue. It seemed to be a lot of effort and complexity for the businesses that were in Nevada; that was one of the concerns he was hearing from his district.

Mr. Nielsen said the goal was not a completely new tax system; by adding one additional layer to it—one return for only about 10,000 taxpayers—it would bring in out-of-state revenue that was not currently being captured. He maintained this was not a corporate income tax, because there were no complex deductions and no complex carryover credits and depreciation schedules. Mr. Nielsen believed the tax had been balanced and made simple enough that most businesses that paid the tax would not incur a significant amount of administrative costs.

Mr. Willden noted one other thing: the commerce tax would generate \$121 million ongoing, with administrative costs of approximately \$2 million to \$2.5 million per year. He said that seemed to be relatively cost-effective to administer.

Assemblyman Edwards stated the \$121 million was only for the first year and after it stabilized, it would go down to \$60 million.

Mr. Aguero stated the commerce tax by itself would generate \$121 million in year one and probably a little bit more in year two and a little bit more in year three. It was the MBT that would decline as a result of the credit taken against that revenue source. He suggested that Assemblyman Edwards was talking about the net new revenue between the two revenue sources, while Mr. Willden was talking about the gross revenue that was being yielded by the new revenue source. He commented there were two different ways of looking at the same equation.

Assemblyman Edwards commented that at the end of the day, the net gain under the stabilized plan was going to be about \$60 million.

Mr. Aguero stated that the tax plan, like all of the others talked about before, generated somewhere between \$250 and \$270 million a year when all of the components were added together.

Assemblywoman Dickman said she would like Mr. Willden or Mr. Nielsen to follow up regarding payday lenders because she believed they were exempt from financial entities' higher MBT rate.

Mr. Nielsen replied that he had just received notice from the Department of Taxation that payday loans paid the 2 percent MBT.

Chair Anderson requested clarification on how income from a single-member LLC and other disregarded entities would be considered, because the IRS treated it as personal income.

Mr. Aguero explained that the *Nevada Constitution* prohibited taxing of personal income. The Nevada Revenue Plan had a couple of protections; of the three components of the plan, only the commerce tax could be an area to consider. However, Mr. Aguero believed there was protection in both the \$3.5 million threshold level and the fact that if it was income from a passive entity that was not actively engaged in business, it would not be included as income subject to the commerce tax.

Chair Anderson asked whether there were additional questions from the Committees and seeing none, he called for testimony from those in favor of the proposed amendment, followed by neutral testimony and finally, testimony from those opposed.

Bill M. Welch, President/CEO, Nevada Hospital Association (NHA), testified in support of the proposed amendment to A.B. 464. Mr. Welch prefaced his remarks by saying he shared concerns about Medicaid with Assemblywoman Titus. The NHA had authorized him to speak in support of broad-based taxes and he had been able to speak to many Committee members on an individual basis.

Mr. Welch stated the NHA and its membership would be supportive of a broad-based tax because they understood that Nevada's education system was inadequately funded and the Nevada Medicaid program was inadequately funded. He also understood that most economic studies showed that to have a viable and growing economy, there must be a quality educational system and health-care delivery system. Mr. Welch said he had considered the proposed amendment to A.B. 464 and to the extent it continued to be a broad-based tax, the NHA would be supportive.

Billy Vassiliadis, representing the Nevada Resort Association, testified in support of the proposed amendment to A.B. 464. He said the Nevada Resort Association unanimously supported the proposed amendment. He believed it was important that Nevada begin to broaden the tax base and there were pros and cons to every tax. Large employers had more of a concern about the MBT and retailers had concerns about gross receipts. Mr. Vassiliadis said everyone's concerns were warranted, and he believed it was important that Nevada look at its tax policy in its entirety. He was in a service business and said he would submit that the state was a service business here to provide services. The biggest fear that Mr. Vassiliadis had as a service business was being reliant on one client. He said the pursuit of broad and multiple revenue sources was critical to staying in business and keeping his employees employed and insured. Mr. Vassiliadis remarked that the service business that was the State of Nevada should also have those concerns and those goals.

Hugh Anderson, representing Las Vegas Metro Chamber of Commerce, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

We are a group of business leaders from a cross section of small and large businesses representing a variety of industries including retail, restaurants, insurance, gaming and hospitality, professional services, general business, and nonprofits. As the Government Affairs Committee of the Las Vegas Metro Chamber of Commerce, we come together to analyze public policies from a variety of angles, consider the pros and cons and unintended consequences, and ultimately vote on the public policy decisions of the Metro Chamber. As business leaders, we know that the time has come that we finally address the inadequate state of education in Nevada. The students in our classrooms are not prepared for the challenges of today's jobs, let alone have the skills that would be required to fill the jobs of tomorrow.

For businesses, qualified and capable employees are the number one business need and Nevada is simply not creating a competitive workforce. The status quo is no longer an option.

Since the defeat of the margin tax, the Government Affairs Committee and Chamber leaders have been engaged in promoting the principles of sound tax policy in analyzing a variety of tax proposals to determine the impacts they would have, not just on

individual industries, but also to the overall business climate. The Metro Chamber has said strongly, succinctly, and constantly since the beginning of the legislative session that we, as the leading business organization in Nevada, are committed to funding education reforms that will lead to measured improvements. We are on record in supporting funding for the Read by Three program, Zoom schools, and English language learner (ELL), Victory schools, the Great Teaching and Leading Fund, expanding full-day kindergarten, and revising the Nevada Plan formula. We have also testified in support of additional funds for gifted students, career and technical training, and college and career readiness.

The Metro Chamber has also said that our state needs to invest in medical education to expand the health-care sector and increase the number of medical professionals to serve our state's growing population. Chamber leaders recognize that improving K-12, building a University of Nevada, Las Vegas (UNLV) school of medicine, and investing in graduate medical education would require more resources. And although no one likes taxes to increase, these are investments worth making and the business community would support a broad-based tax plan that adheres to the principles of sound tax policy, which is transparency, simplicity, stability, and neutrality. Our economy is still fragile, so it is imperative that any plan passed not harm job creation or economic growth. While the Governor has attempted to bridge the biennium with a new additional revenue stream, for Nevada to truly have a stable tax system that will provide adequate funding over the long run, we need to modernize our tax structure to more closely reflect our economy.

We have noted that every observer of our state's economy has stated that Nevada is predominantly a services-based economy. About that there has been no disagreement. We commend Governor Sandoval for recognizing this fact in his State of the State Address earlier this year and requesting an amendment to Senate Bill (S.B.) 483 to begin collecting that data on the sales of services. We ask this body to seize this opportunity and go one step further to aligning sales tax with our economy to not only broaden the tax base, but also to create a system that will be more stable in providing the resources we need for the long term. Let me say that any support from the Chamber for this amendment

must be conditioned on the development of a bill to broaden our sales tax base to better reflect our economy.

We hope this legislative body can reach an appropriate compromise. It is absolutely time. We have waited long enough to finally implement needed K-12 reforms with adequate funding. We as employers, the number one customer of our education system, know that dismal results in the classroom are producing a workforce that is impeding business's ability to grow. We cannot attract new businesses, expand sectors, or compete regionally or globally unless we change this dynamic and significantly improve education outcomes. We cannot wait another two years to act.

Kristin McMillan, President and CEO, Las Vegas Metro Chamber of Commerce, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

There have been many ideas and a lot of debate along the way. The Metro Chamber's strategy has been to make sure that we understand each of the educational programs being proposed for funding, as well as the tax proposals and the amendments as they have arisen, and not to precipitously take a position on any one program or any one plan until careful consideration of the impact and how to better reconcile the interests and potential hardships across a very broad base of members.

In terms of the education programs and reforms, Mr. Anderson spoke to some of the reforms we have supported during this legislative session. In terms of how to pay for these programs, we have done in-depth analysis of each of the tax proposals. We have taken serious stock of the varying degrees of interest amongst a very broad base of businesses in Nevada that comprise our membership. The Metro Chamber is very unique in the fact that it represents businesses of every size and type. We have also had to be cognizant of other types of interests of our businesses: small businesses, labor-intensive versus capital-intensive businesses, those that are creating jobs, those that are working in low-margin businesses, those who need a skilled and educated workforce. Our goal throughout this session has been to keep the interests of our members at the forefront to ensure that the burden of additional

taxation is shared fairly by the broadest base possible and that it does not slow the recovery and expansion of Nevada's economy.

The Governor has, in his proposed amendment last week, essentially put forward a compromise to his original plan and we commend him for that. In doing so, he has included some improvements. And we also acknowledge and recognize that there are some positive attributes to the Nevada Revenue Plan. For example, it broadens the number of businesses paying taxes, including out-of-state businesses that sell products and services in Nevada and take advantage of our economy and laws but have not previously paid for any of the burdens that they are placing on our state's economy, systems, and infrastructure. Including this set of taxpayers into the mix we believe will lessen the overall burden on Nevada's employers. That is positive. It is also a plan that keeps the overall burden on the smallest businesses low because businesses with revenues less than \$3.5 million are exempt from paying the commerce tax. It is a plan that will allow some businesses to obtain deductions, including a 50 percent credit of their commerce tax payment against their MBT liability as well as a credit for providing health insurance to employees. That was eliminated in an earlier proposal. That is positive.

Yet, the featured commerce tax is still a tax based on gross revenue. For that reason, while broadly applied, the Metro Chamber cannot endorse it as a matter of policy. There are several reasons for this, in particular, that it is susceptible to divisiveness among and between industries, but I am not going to get into that discussion for now. We believe we are past the time of debating that policy. It is now time to take the Governor's lead to support efforts to bring compromise to this process. It is time for us to find a common ground to bridge the revenue gap. So, in the spirit of compromise, the Metro Chamber is here today to say that we can live with a less than optimal solution so long as there is an identifiable path to better tax policy in the future.

In that spirit, we are proposing some conditions that will define the terms under which the Metro Chamber can live with the Governor's amendments to A.B. 464.

This first one is the creation of a serious path to developing and implementing a plan for broadening the sales tax to include services for adoption by the 2017 Legislature.

Number two is an absolute commitment to a thorough review and reevaluation of all business taxes, taking into consideration the principles of fairness, stability, simplicity, and transparency, with a recommendation to be submitted to the Legislature in 2019.

Number three is approval of the Nevada System of Higher Education (NSHE) proposed level of requested dollars for the 2015-2017 biennium for funding a public allopathic medical school at UNLV.

Number four is sufficient funding for graduate medical education to broaden the base of medical professionals in Nevada and to address critical shortfalls.

What are the consequences if we cannot reach a compromise? Without compromise, this session may end without implementing the reforms we believe are necessary to improve classroom achievement and quality of workforce.

We cannot forget this: the voters and the people of Nevada are frustrated by the current level and quality of education. We have let this frustration drive initiative petitions that have been poorly written, overly expensive, and drive the public debate in a fashion that is not productive to the ends the business community sees as beneficial to strong business growth and development. Voters were willing to vote against the margin tax, but with the idea in mind that this Legislature would find a way to pay for a higher quality of education. If compromise is not reached, we fear that it is very likely that we will be faced with more initiative petitions.

We are at a critical juncture at this time. The actions we take now, or choose not to take, will determine the future economic consequences of our state for possibly many years to come. The Metro Chamber is asking this body to embrace the spirit of compromise and move forward with the amended version of A.B. 464 with our recommended conditions.

Senator Roberson stated that he had expected more support for the bill from the Metro Chamber and wanted to review some of the conditions Ms. McMillan had listed. He said the first and second conditions, funding of the UNLV medical school and graduate medical education, were supported by many legislators.

Condition number three was a serious path to including a sales tax on services. Senator Roberson noted sales tax on services was a consumer tax, not a business tax, unless Ms. McMillan meant a business service tax, which he believed the Tax Foundation was opposed to and the Metro Chamber had paid for its report. He said he was trying to understand what Ms. McMillan believed the Legislature should be doing with sales tax on services. There were hearings on that tax this session, and there was no support in the Senate Committee on Revenue and Economic Development for a sales tax on services. He noted that the Governor had placed language in the proposed amendment to try to collect data for a study on sales tax on services. Senator Roberson said it was hard for him to understand what Ms. McMillan meant when she said "a serious path toward sales tax on services as a condition to supporting this amendment." He asked her to clarify that statement.

Ms. McMillan said she would be happy to clarify her conditions, and Senator Roberson was correct, S.B. 483 did contain a requirement to collect data from employers regarding services. She believed that was a good start, but the Metro Chamber was requesting the Governor to convene an interim committee to develop and implement an introduction-ready bill in the 2017 Legislature. She acknowledged that one of the reasons the expansion of a sales tax to include services was not ripe for the 2015 Legislature was that information and data were not available to predict the level of revenue generation. The Metro Chamber understood that, but also understood that Nevada's economy was a service-based economy. She said at least 70 percent of Nevada's economy was service-based and sales tax was a very broad-based tax. She believed there was support within the business community and among the various trade organizations to broaden the base of the sales tax to include services.

Senator Roberson said there was another condition and asked what it was.

Ms. McMillan said the last condition was a commitment to a thorough review and reevaluation of all business taxes, taking into consideration the principles of good tax policy that had been talked about in the various legislative hearings.

Senator Roberson commented that that entire tax structure was reviewed this session in the Senate Revenue and Economic Development Committee.

Ms. McMillan suggested that the Governor convene an interim committee to evaluate all of the taxes. She had heard throughout the course of these hearings that there were positives and negatives to each of the taxes and no one really knew how the commerce tax was going to perform. There were also issues with the MBT. Ms. McMillan said a full evaluation in the interim, with sufficient time and the appropriate people at the table, would be a good idea.

Assemblyman Armstrong said he appreciated Ms. McMillan stressing the fact that the state needed to move forward and possibly move toward a more broad-based services tax, because it was more reflective of Nevada's economy. He acknowledged that was probably in line with the study the Metro Chamber commissioned earlier in the session, which contained a services tax as one of the recommendations. Assemblyman Armstrong's concern with the recommendation was that the state did not know how the commerce tax was going to function and it might not be possible to remove it if it did not work as expected. There was a possibility that a services tax might encounter the same problems once it was installed. He wondered whether that was a concern to Ms. McMillan.

Ms. McMillan said that was why the services tax was a compromise. As she indicated in her testimony, the Metro Chamber was not favorably inclined toward a gross receipts or a gross revenue tax.

Assemblyman Armstrong said he was aware of the opposition to the gross receipts tax, but it was confusing to him that the Metro Chamber would support it if it sunset.

Ms. McMillan replied that it was a compromise and the Metro Chamber was willing to do this as a means to an end. She believed there needed to be a full evaluation and reevaluation of all of the business taxes during the interim from 2015 to 2017. In the spirit of compromise, she said the Metro Chamber had taken the lead, and as a bridge to the future was willing to live with the plan in the interim.

Brad Spires, Chair, Legislative Committee, Nevada Association of Realtors, testified in support of the proposed amendment to A.B. 464. Mr. Spires said realtors' incomes were based on commissions that were passed through a brokerage, and the proposed amendment addressed the issue, which had been

a concern. He thanked the Governor and his staff for working through that issue with the Nevada Association of Realtors. Mr. Spires applauded the Governor for his leadership and for moving education forward in Nevada.

Samuel McMullen, representing the Nevada Bankers Association, testified in support of the proposed amendment to A.B. 464. Mr. McMullen said he and his organization cared about the state and wanted to ensure it was funded. There were some challenges presented to the Legislature this session, but Mr. McMullen believed the Legislature would come up with the best budget possible for the future and the Nevada Bankers Association would be paying its fair share. While the banks were supposed to be against the 2 percent MBT on financial institutions, Mr. McMullen said in this context, it was part of banking's obligation.

Mr. McMullen said one of the issues of a commerce tax, or any tax that had different rates for different sectors, was that someone could be picked to be "in the barrel" one year and someone else the next, allowing the rates to be adjusted. He believed that was a concern. He believed a statement in the bill that if rates were raised, they had to be raised proportionately across the board for the commerce tax to prevent the tax from being a mechanism to tax certain industries disproportionately. He said that would make an important statement that the state was in favor of a broad-based tax policy.

Mr. McMullen stated that a service sales tax was not something that could be considered and installed in a matter of weeks in the session, but it was important to think about. According to Mr. McMullen, many businesspersons believed a service sales tax would have great value in ensuring that Nevada's tax system was set for the future and would generate revenue even when the economy was down. Mr. McMullen was not stating this as a condition, but as a policy objective that the Legislature should pursue.

Assemblywoman Carlton stated that she wanted to be sure she understood Mr. McMullen correctly. She asked whether she was correct that financial institutions were still taxed at 2 percent and nothing was changing in the proposed amendment that would lower that 2 percent.

Mr. McMullen said he did not believe there was anything in the proposed amendment to the bill that reduced the obligation of financial institutions. He stated for the record: banks would pay the business license fees just like everyone else; banks would pay 2 percent modified business tax; and banks

would receive a credit of 50 cents on the dollar for everything paid on the commerce tax against the financial MBT.

Assemblywoman Carlton noted that the credit against the MBT would be a new component for the financial industry and Mr. McMullen agreed.

Tony Sanchez, Senior Vice President, Government and Community Strategy, NV Energy, testified in support of the proposed amendment to A.B. 464. Mr. Sanchez read the following statement into the record:

NV Energy is in full support of the Nevada Revenue Plan developed by Governor Sandoval to allow Nevada to make critical investments in its future. We feel it is important to line up, shoulder-to-shoulder, with other Nevada businesses, which are our customers, that will be working together to help fund these important education initiatives. The preliminary cost to NV Energy is calculated at approximately \$3 million annually. It is our intent to absorb these incremental costs through our continued improvements that we are making to benefit all of our customers.

Senator Kieckhefer said he wanted to make sure he had heard Mr. Sanchez correctly that NV Energy was going to absorb the cost of the tax and not go before the Public Utilities Commission (PUC) of Nevada to ask for a rate increase.

Mr. Sanchez said taxes were an expense that NV Energy took into consideration when going before the PUC. For example, in 2014, NV Energy paid about \$214 million throughout the state in mil taxes, franchise fees, and property taxes. The PUC had full discretion to decide what was encompassed in NV Energy pricing. Mr. Sanchez said it was the intent of NV Energy to tighten its belt, and over 2013 to 2014, it decreased expenses by over 10 percent and would continue so that the commerce tax was not passed on to customers.

Stephanie Tyler, State President, AT&T Nevada, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

I am here before you today in a couple of capacities. First, I would like to take the opportunity to thank you for allowing us to address this issue today and hopefully be able to play a small role in the path forward of improving the K-12 educational system in Nevada.

I am representing the CTIA, the national wireless association. There are four major members of that association, the four major national wireless companies. I am here to present a letter on their behalf today, addressing the proposed amendment to A.B. 464.

Ms. Tyler presented [Exhibit G](#), a letter from James Schuler, Assistant Vice President, External and State Affairs, CTIA-The Wireless Association, dated May 21, 2015. Ms. Tyler continued with her statement:

The wireless industry is a highly competitive industry and as you will notice from television Chair Anderson, we have advertising budgets that rival those of the beer and auto industries. There are many things that we do disagree on, so coming forward today in unison in support for broadening the base of taxes is an important move.

I am also here representing my company, AT&T Nevada. As I know I have said to many of you, I am a proud Nevadan and a product of our K-12 school system. On behalf of our over 1,000 employees and statewide customer base, we keenly understand the need for a top-notch K-12 educational system.

AT&T is a 102-year-old Nevada company. Yes, we work here, but more importantly, we live here and we raise our families here. AT&T has a rich history of focusing our philanthropic efforts on ensuring students have the skills they need to graduate from high school and be successful in life. Some of this is self-serving because these are our future employees. We need them educated and ready to work and be successful. We have a national philanthropy program called AT&T Aspire that is narrowly focused on improving the high school graduation rate and ensuring our graduates are workforce ready. Nationally, we have committed to spend \$250 million over five years to achieve this goal. Right here in Nevada, we have spent over \$900,000 during this same period. I compete with all other AT&T state presidents across the United States for infrastructure investment dollars and further job opportunities in my state. I want to grow our business with new jobs for our existing employees and new hires, but to be able to do that I need to be able to demonstrate that Nevada is not only a good place to do business, but a great place to live and raise a family. I believe this amendment strikes that balance.

Robert Ostrovsky, representing Cox Communications, testified in support of the proposed amendment to A.B. 464. Mr. Ostrovsky stated that Cox Communications was committed to improving the educational system in Nevada and embraced its corporate responsibility to give back to the community. Mr. Ostrovsky said Cox Communications was proud to stand with the Governor and legislative leadership and he understood that a good education could not be had "on the cheap."

Jesse Haw, representing the Builders Association of Northern Nevada, testified in support of the proposed amendment to A.B. 464, and read the following statement into the record:

The Nevada Home Builders Association, composed of board members from the Southern Nevada Home Builders Association and the Builders Association of Northern Nevada, supports the passage of comprehensive tax reform, including the adequate funding for education and educating the next generation of Nevadans. We applaud the Governor for his leadership and the Legislature for its thorough and ongoing deliberations of these issues and support the concepts set forth in the proposed amendment to A.B. 464.

The Nevada Home Builders Association continues to believe Nevada's education system needs help. In his State of the State Address, Governor Sandoval talked about the "New Nevada" and setting Nevada's economy up to thrive and grow in the 21st century. We agree with the Governor and the legislators who feel that the time is right to fix the historic volatility of the Nevada tax system and ensure that taxes are imposed broadly and fairly and improve the education system in Nevada. We also hope that the Governor and this body will continue to work toward passage and reforms on the spending side of the ledger to ensure that taxpayer dollars are spent frugally and carefully. Passage of a tax plan that creates a more stable revenue structure, increases school funding, and implements needed reforms will help prevent special interests from seeking to bypass the Legislature with petitions like the recent proposal to enact the margin tax in Nevada. Taxation by initiative and authored by special interests without deliberative consideration in a legislative body is damaging and flexible and unwise.

There will undoubtedly be concerns and questions in the remaining time this body has to evaluate and discuss this proposal. The Nevada Home Builders Association looks forward to being part of the discussions and working to help support the passage of a package of legislation that will increase school funding and implement necessary and sensible reforms.

Josh Griffin, representing the Nevada Subcontractors Association, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

Nevada subcontractors make up the vast majority of the employment base of the residential construction industry. We are made up of hundreds of really small businesses: roofers, electricians, plumbers, graders, painters, and landscapers. You name it. If it is part of your house, it was likely built by a subcontractor. As business owners, specifically small business owners, we support tax policy that is simple, broad, and at very low rates. This commerce tax does just that. Make no mistake, Nevada's construction industry is improving and starting to grow with opportunities in front of us. It is time for our state to start sharing that improvement and this bill is a fair way for Nevada to better provide services to its citizens, especially our education system.

Dana Bennett, President, Nevada Mining Association, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

Established in 1913, the Nevada Mining Association represents the broad spectrum of the Nevada mining industry. With members in every county in Nevada, we are a significant sector of the state's economy and vital to the economy as a whole. A healthy mining industry as the source of raw materials is essential for a successful manufacturing sector in the state. We are proud to be Nevada's oldest and most enduring STEM industry. Science, technology, engineering, and math (STEM)—that is what mining employees do on a daily basis. As a high-tech industry that develops and applies cutting edge technology, mining is also proud to support a strong educational system in the state. Every day thousands of kids from mining families in every county in the state attend Nevada schools.

As employers, mining companies expect to hire Nevada graduates. It is important to this industry, now and in the future, that Nevada's educational system is an excellent system. We are encouraged by the educational programs that have been proposed by Governor Sandoval and approved by this Legislature.

Our entire industry appreciates the hard work that it takes to build the next generation of Nevada leaders. In that spirit, we are here today to support the Nevada Revenue Plan. For many years, the Nevada Mining Association has consistently supported the establishment of a new broad-based revenue source for this state. Nevada's economy has become more diversified and it is time for the tax system to be diversified too. This plan offers that diversification.

The Nevada Revenue Plan ensures that everyone who benefits from doing business in this state will participate in supporting this state. It recognizes that some industries, such as ours, already pay a substantial amount of industry-specific taxes and this revised plan takes care not to unduly burden small businesses. It will raise the money this state needs for its future.

The Nevada Mining Association commends this Governor and this Legislature for working together to tackle two of Nevada's toughest problems. We congratulate you for the hard work you have already done on education reform. We encourage you to take the next step and ensure that it is properly funded by implementing meaningful tax reform.

John Griffin, representing DIRECTV, DISH Network, and Sprint, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

Collectively, these three companies provide products and services to over 500,000 Nevadans, employ thousands of direct employees, and partner with hundreds of small businesses in the state. These three companies would pay taxes in all three portions of the Nevada Revenue Plan. All three companies sell products, but primarily they are service providers. As such, all of the revenue from the services in the commerce tax is paid at the corporate level, not at the consumer level, in response to some of

the earlier discussion on service taxes. While they do have a brick-and-mortar component, it is not as substantial as many of the other businesses that testified here today. Nevertheless, these companies are all part of the Nevada family and value the importance of a stable tax system and a premier educational system. This tax, as laid out in the proposed amendment to A.B. 464, levels the playing field and recognizes that impacts, value, income, and tax participation are not a one-size-fits-all situation. The components of this tax plan address that disparate treatment in a very thoughtful and appropriate manner. Assembly Bill 464 represents a tax increase for DIRECTV, DISH Network, and Sprint. They are all here today in support of the Nevada Revenue Plan.

Michael D. Hillerby, representing Charter Communications, testified in support of the proposed amendment to A.B. 464. Charter Communications was a video, Internet, and telephone provider in northwestern Nevada with approximately 350 employees living in the communities Charter Communications served. Mr. Hillerby said Charter Communications agreed and wholeheartedly supported the idea that a strong health-care system, a strong education system, and a high-quality life were important to attract the kind of employees business wanted and for the customers it served. Charter Communications was happy to support the amended version of this bill, and Mr. Hillerby thanked the Office of the Governor for listening to some of the concerns of the communications industry and incorporating those changes in the bill. He said Charter Communications had been a significant payer of the payroll tax, and he was glad to see that base would be broadened under a variety of proposals in front of the Legislature to bring more businesses to the state.

Steve Hill, Executive Director, Office of Economic Development, Office of the Governor, testified in support of the proposed amendment to A.B. 464. Mr. Hill said he would echo many others who had testified to thank the Legislature for its support of education. He maintained that education was the number one issue in Nevada when it came to economic development. The steps that the Legislature had taken were appreciated by the Office of Economic Development and would continue to be a wise and important investment.

Mr. Hill stated that the commerce tax portion of the revenue package was the most aligned with economic development. He believed that the commerce tax

was the only tax proposal currently being discussed that would allow for less of that revenue to be generated from current Nevada businesses. He noted that approximately 25 percent of the commerce tax would be generated by businesses that were taking advantage of Nevada's economy, but were currently not paying that portion of the revenue. He said the commerce tax portion of the tax plan allowed current Nevada employers to pay less, and that was why he believed it was important. The commerce tax leveled the playing field by allowing a business based in Nevada to be on an equal basis with competitors with operations outside of the state.

Mr. Hill emphasized that it was important that the rate was low and referred to the carrying cost of bad debt related to this tax. That situation existed with respect to the sales tax as well, and the sales tax problem was approximately 60 times larger than the commerce tax issue. He said the sales tax was at 8 percent, but the commerce tax was going to be at about 0.0125 of a percent on average. The tax on a \$100,000 sale would be approximately \$125. Mr. Hill believed the tax should be kept in that perspective.

With respect to the complexity issue, Mr. Hill pointed out that many businesses had to keep track of sales by jurisdiction because local business licenses were paid by jurisdiction. He believed the complexity of this tax needed to be kept in perspective compared to a number of other taxes that businesses paid.

Senator Kieckhefer asked Mr. Hill for clarification whether there was anything in statute that would allow for an abatement of this tax under existing programs and Mr. Hill said there was not.

Mike Kazmierski, President, Economic Development Authority of Western Nevada (EDAWN), testified in support of the proposed amendment to A.B. 464. Mr. Kazmierski stated that he was speaking on behalf of the Board of Trustees of EDAWN, which had voted to support A.B. 464. He said the policy of EDAWN was strict, and the Board refrained from engaging in legislative and political issues unless it directly affected EDAWN's ability to attract and retain quality jobs throughout its region. In the past four years, EDAWN had only voted in opposition once, and that was about the margin tax.

Mr. Kazmierski said the education of Nevada's future workforce was important to EDAWN because an educated workforce was essential to the attraction and retention of the quality companies and jobs needed to grow and diversify the economy. Given the dramatic growth in northern Nevada of up to 5 percent a year for the next five years, there was a greater demand for an educated

workforce now more than ever. Mr. Kazmierski said the workforce really did lean heavily upon the education system to meet the needs of employers in the future. Mr. Kazmierski said he was often asked what Nevada was doing about its educational system, but he never received questions about Nevada's taxes. The Nevada Revenue Plan was, from EDAWN's perspective, an opportunity to say this state was stepping up to invest in a workforce that would drive the economy in the future.

According to Mr. Kazmierski, the proposed amendment to A.B. 464 was not a perfect solution, but it was a solution, and he appreciated the Governor's leadership and the Legislature's leadership to work together to address this important issue.

Assemblyman Hickey commented that he was interested to hear about EDAWN's mission to attract and retain great jobs. He referred to Mr. Kazmierski's conclusion that this tax, or whatever revenue plan was decided upon, would not have a negative effect upon retaining or attracting new business. Assemblyman Hickey asked whether Mr. Kazmierski believed that the positives for education outweighed the challenges to business.

Mr. Kazmierski said any time taxes were raised on businesses, there were concerns. Every company looked at how that would affect business competition, but Nevada's tax base was so low compared to the majority of states that Nevada competed with, the first question asked was what the state was doing about its education system. He said that question overshadowed the increase in taxes.

Ruben R. Murillo, Jr., President, Nevada State Education Association, testified in support of the proposed amendment to A.B. 464 and read the following statement into the record:

I see the light at the end of the tunnel and I am hoping it is not a train. It is good to hear the business community come out in support of investing in education. I never thought I would see the day when everybody comes to the table and asks for support. On behalf of the 36,000 teachers and support staff who make up the teaching community in Nevada, we thank you for considering this tax plan and hopefully enacting it. We are at a crossroads right now when it comes to funding our education program, and through all the committees and testimony that we have sat through, you have heard about collaboration and specific programs, such as peer

assistance and review, professional development, mentoring, safe schools, full-day kindergarten, English language learner (ELL) programs and also the retention of teachers in inner-city schools. We have our challenges with the teacher shortage, and what we want is for Nevada to invest in our children's future. We want to compete nationally when it comes to our students to make sure they are the best, the brightest, and can compete with anybody in this country. We ask for your support. We ask that you make sure that our children receive a quality education.

Nancy Brune, Executive Director, Kenny C. Guinn Center for Policy Priorities, testified in support of the proposed amendment to A.B. 464. Ms. Brune said she was happy to testify on behalf of the Guinn Center for Policy Priorities in support of the Nevada Revenue Plan. She said the Guinn Center believed the plan reflected elements of good tax policy, because it diversified the tax base and it was based on gross receipts, which research showed was one of the more stable forms of taxation.

Chair Anderson called for testimony neutral to the proposed amendment to A.B. 464.

Keith Lee, representing Southwest Airlines, testified as neutral to the proposed amendment to A.B. 464. By virtue of the fact that Southwest Airlines was the largest carrier in Nevada, he also spoke on behalf of Airlines for America, the trade association for the major passenger and freight airlines.

Mr. Lee said he was testifying as neutral to respond to a question from Assemblyman Hambrick pertaining to section 31 of the proposed amendment ([Exhibit F](#)). He said he had been having conversations with the Office of the Governor and the Department of Taxation, but he wanted it clear on the record what the Southwest Airlines and the Airlines for America's position was with respect to section 31. In a Senate Finance Committee meeting earlier there was a discussion regarding the federal Anti-Head Tax Act, [*United States Code*, Title 49, Section 40116], which essentially said that no state, municipality, or locality may impose a tax on the gross receipts generated by either passenger or air freight commerce in the United States. Section 22, subsection 1(e) of the proposed amendment to A.B. 464 excluded the gross revenue from the sale of transportation services. Section 21, subsection 1(a), excluded from gross revenues, for purposes of the calculation of business license fee, any gross revenue, which this state was prohibited from taxing pursuant to the *Constitution* or the laws of the United States.

Mr. Lee said it was the position of Southwest Airlines and Airlines for America, clearly supported by case law throughout the country and advisory opinions issued by the federal Department of Transportation, that gross revenues generated in air commerce could not be taxed, even in flights that started and stopped in Las Vegas or Reno. Mr. Lee submitted [Exhibit H](#), a letter from John S. Dritt, Senior Manager Property Tax, Southwest Airlines Co., dated May 21, 2015, and [Exhibit I](#), letter from David A. Berg, Senior Vice President, General Counsel and Secretary, Airlines for America, dated May 21, 2015. Southwest Airlines was a major employer in both Las Vegas and Reno and supported the increase in the MBT and was willing to pay that.

Marcus Conklin, representing the University of Phoenix, testified as neutral to the proposed amendment to [A.B. 464](#) and read the following statement into the record:

While I am not here to advocate for or against the bill, I do want to offer some perspective on how it would affect the University of Phoenix and its operations in Nevada. I would like to raise questions about the philosophy of substantially raising taxes on those institutions that provide education and pay taxes in Nevada to fund other educational alternatives. University of Phoenix provides an important educational service to our state. With 1,200 students taking classes on campus in our two locations in Henderson and Summerlin and 1,800 students taking courses online, the University of Phoenix offers a broad range of degree programs, including business, health care, education, criminal justice, and counseling. Because of its flexible learning model, which includes online courses as well as on campus evening courses, the University of Phoenix addresses a particular need in our state: those students who are going to school to pursue either a degree or training for a new field while working part time or full time. We have found this service to be even more important in light of recent changes in our economy and workforce needs created by the great recession.

We are proud of the role we play and our partnerships with the business community to ensure we are providing the best possible coursework to educate and train workers needed by businesses, old and new, to be successful in our still-evolving economy. This tax plan will definitely increase the University's tax burden. The University of Phoenix has been a good citizen to the state,

providing a needed service and gladly paying its taxes and it certainly intends to continue. Again, we would raise the question about the philosophy of substantially raising taxes on those institutions that provide education, to fund education. Is that the best policy when our common goal is to provide access to the best possible education to ensure every student can succeed in today's economy and that businesses have well-educated, well-trained employees? Or, is there an alternative to this small segment of the tax plan? These are the questions we would ask you to carefully consider as you deliberate the details of this or any other plan.

Carole Vilardo, Nevada Taxpayers Association, testified as neutral to the proposed amendment to A.B. 464. Ms. Vilardo stated that like a tax or not, if there was a chance it would pass, it should work. There were some provisions in the proposed amendment that had created concerns with members of the Nevada Taxpayers Association. Ms. Vilardo said she had received questions from five companies, which she would review.

Section 6 of the proposed amendment ([Exhibit F](#)) contained the definition for engaging in a business and the question Ms. Vilardo received was, "Is a foreign entity having no activities in Nevada but having a Nevada entity as a managing member, general partner, or manager, cause for the foreign entity to be treated as engaging in a business in Nevada?" She said she did not know, but from the tone of the emails she had received, it was a concern.

Ms. Vilardo referred to section 11, subsection 1, which referenced "pass-through revenue." She said a concern was that the taxable year was the fiscal year, and that was for the convenience of government, not the taxpayer. She maintained that section 11, because it talked about pass-through revenue, could create a problem when the revenue had to be distributed. If the bill passed in its current form it (as introduced), it would become effective July 1, 2015, which would require the payment next year. There would be no regulations other than the most basic, and Ms. Vilardo maintained that, with luck, and after going through the Nevada Administrative Procedure Act [NRS Chapter 233B], regulations would be ready by October 2015. Any business that wanted to make arrangements to account for the tax would not have the information to do so.

According to Ms. Vilardo, there was another concern that involved "pass-through entity" in section 21, subsection 1(p) of the proposed amendment ([Exhibit F](#)). In that particular section, the term,

"pass-through entity," was used, but it was so generic as to be useless to a business. Ms. Vilardo wanted to see a definition provided.

Ms. Vilardo indicated the taxable year would definitely increase the cost of compliance for any business that did business in multiple states or was an affiliated company.

Ms. Vilardo referred to the use of the NAICS code and there had been comments that the Employment Security Division (ESD), Department of Employment, Training and Rehabilitation assigned the North American Industry Classification System (NAICS) code. Unless she remembered incorrectly, Ms. Vilardo believed a business provided the ESD with a description of the business and ESD assigned the NAICS code. A business also put its NAICS code on its IRS form. She suggested that in the case of multiple NAICS codes being identified on the IRS form, the code that generated the greatest amount of revenue should be used.

Ms. Vilardo referred to the MBT rate formula that calculated any excess over 4 percent to reduce it. She wondered why in that rate formula calculation, the MBT was charged to both general business and financial institutions, but the rate was adjusted only on general business.

Peggy Lear Bowen, private citizen, Reno, Nevada, testified as neutral to the proposed amendment to A.B. 464. Ms. Bowen requested that the tax be applied in an appropriate manner and education be kept at the forefront.

Chair Anderson called for testimony in opposition to the proposed amendment to A.B. 464.

Jim Saltee, private citizen, Las Vegas, Nevada, testified in opposition to the proposed amendment to A.B. 464. Mr. Saltee said he was a Republican and had worked hard for lower taxes and less government, and now the Republican Governor wanted one of the largest tax increases in Nevada history. He believed other alternatives should be explored.

Paul J. Enos, CEO, Nevada Trucking Association, testified in opposition to the proposed amendment to A.B. 464. Mr. Enos said his main opposition was to the commerce tax portion of the bill, but there was about two-thirds of the plan he could support.

Mr. Enos said there were some practical issues with the commerce tax that the Nevada Trucking Association could not endorse. He referred to section 32 of the proposed amendment ([Exhibit F](#)), which contained a tax rate of 0.202 percent for the trucking industry. Mr. Enos said the trucking industry in Nevada was small, with approximately 50,000 employees, and with those employees, the industry moved 94 percent of all freight in the state. Because trucking was a low-margin business, Mr. Enos said he could not support the amendment because of the portion on gross receipts. According to the Guinn Center for Policy Priorities, the profit margin for the trucking industry was 1.65 percent. Assuming the Guinn Center was correct, at a 0.202 percent rate, the commerce tax on a Nevada trucking company was effectively 12.24 percent. Mr. Enos maintained that percentage was 27.8 percent higher than the tax rate in the state of California. Not only was the trucking industry affected by variations in fuel prices, but also by other occurrences in the economy.

Mr. Enos said he had a problem with keeping two different sets of books to account for federal and state taxes. He believed every future legislative session would be contentious with 27 different tax rates and taxpayers asking the Legislature to pick "winners and losers" from each tax sector.

According to Mr. Enos, there would be a pyramiding issue because there was always pyramiding with the gross receipts tax. While he appreciated that pyramiding had been dealt with concerning liquor, it had not been dealt with concerning toothpaste, pharmaceuticals, or any other products.

It was true that Nevada needed more revenue and Mr. Enos said the Nevada Trucking Association had testified in favor of more revenue for education. He understood that while this tax mechanism was not volatile for government, it could be volatile for businesses, especially businesses that were low-margin, high-revenue, and particularly susceptible to the world market.

Juanita Cox, Chair, Citizens in Action, testified in opposition to the proposed amendment to [A.B. 464](#). Ms. Cox maintained that the new Nevada Revenue Plan was not good for the people. She represented frustrated citizens and businesses that had spoken when the margin tax had been voted down in 2014.

Victor Joecks, representing the Nevada Policy Research Institute, testified in opposition to the proposed amendment to [A.B. 464](#) and read the following statement into the record:

Regardless of how much a gross receipts tax brings in, there are inherent structural problems with that type of tax. First, it raises taxes on businesses that are losing money, which puts enormous pressure on those businesses and can drive many of them out of business. Second, it creates tax-pyramiding problems. Those are just inevitable problems inherent with gross receipts taxation. They are also some of the same problems that voters rejected in the recently defeated margin tax. Again, those are based on the same type of tax.

I would also like to point out that the commerce tax portion of the amendment would only be collected once during the next biennium, because the second payment will be collected by August 15, 2017, which is in fiscal year 2018. Since the MBT deduction will be taken during fiscal year 2017, the net of the commerce tax in the next biennium will be just \$60 million. That is less than 1 percent of the Governor's recommended State General Fund spending levels. That would make the commerce tax the 12th largest tax source behind the sales tax, sales tax commissions, modified business tax on nonfinancial institutions, insurance premium tax, real property transfer tax, live entertainment tax, business license fee, cigarette tax, liquor tax, Secretary of State revenues, and short-term car rental fees.

Also, Article 10, Section 1 of the *Nevada Constitution* stated, "The Legislature shall provide by law for a uniform and equal rate of assessment and taxation." With 27 different rates depending on the type of business, this tax would create unequal rates of assessment and taxation. You have already discussed some of those problems today when you talk about businesses that might shop for the most advantageous code.

Finally, spending more on education, which is the stated purpose of this tax increase, will not increase student achievement and we have 50 years of evidence for that. In 1983, when Governor Richard Bryan took office, Nevada's inflation-adjusted per-pupil education spending was \$4,800 according to the Legislative Counsel Bureau. When he left office, it was \$5,700, also inflation-adjusted. "From 1984 to 1986, Nevada regained its economic vitality, created a record number of new jobs and new businesses, and invested more of our resources in

education than ever before." When Governor Bob Miller took over in 1989, inflation-adjusted per-pupil spending was \$5,900 and when he left in 1998 it had grown to \$7,200. In his 1993 State of the State address, Governor Miller declared that over 61 percent of all new revenues in his budget would go to education. "I propose increasing education funding by \$96 million." In 2003, Governor Kenny Guinn passed the largest tax increase in state history in order to finally, adequately fund education. We have had successful efforts to raise education spending, but those efforts have failed to improve our system of education.

According to the latest data from the Legislative Counsel Bureau, in 2011, our inflation-adjusted per-pupil spending has now grown to over \$8,700, yet we are still here. Spending more will not increase student achievement and it will not prevent unions from wanting even higher taxes in the upcoming years through ballot measures or legislation. Thank you for your time.

Jeannette K. Belz, representing Nevada Chapter of Associated General Contractors, testified in opposition to the proposed amendment to A.B. 464. Ms. Belz said she was strongly opposed to section 71 of [Exhibit F](#), the repeal of *Nevada Revised Statutes* (NRS) 482.182, which would mean that the "bump 10" change [an increase of 10 percent in the depreciation rate of vehicles implemented by Senate Bill No. 429 of the 75th Session (2009)] in the governmental services tax would no longer go to the State Highway Fund as it was supposed to on June 30, 2015. She said if she understood what Michael Willden had said earlier, the repeal would mean \$42 less in vehicle registration fees. From Ms. Belz' perspective that would be approximately 11.5 cents per day per vehicle. The \$63 million or \$64 million that Mr. Willden had said this tax would generate and could go to the State Highway Fund if it were not repealed could be bonded to over \$600 million. Ms. Belz submitted that those taxes were not comparable.

Ms. Belz addressed the problem of pyramiding and believed it would still occur and cause an unintended consequence. Taxpayers would be treated differently depending on whether materials were purchased through a subcontractor or directly from a supplier.

Assemblyman Hickey said he had a question for Mr. Enos. While Mr. Enos said he had problems with the commerce tax, he also said he supported, in principle, the Governor's education funding proposal. Assemblyman Hickey asked where

Mr. Enos would make up the money if the commerce tax were eliminated and he still supported the Governor's budget.

Mr. Enos stated he had testified in favor of A.B. 464 as introduced, and believed the Nevada Trucking Association was one of the few statewide business organizations that had supported it. Mr. Enos maintained the original A.B. 464 would have generated more money than the current amendment and did not include a commerce tax. The original bill also removed the deduction on health care. Mr. Enos said almost all members of the Nevada Trucking Association provided health care for their employees and families and it would have affected his organization. But, the amendment was considering about \$60 million a year from a commerce tax for which the state and taxpayers would have to set up an entirely new structure. It was complex for businesses to keep two sets of books and to pay taxes on receipts that had not been received. Mr. Enos said the trucking industry would prefer an increase in the MBT and would also be willing to consider an expansion of the business license fee (BLF).

Mr. Enos stated that before the session started, before he had heard about the original BLF proposal that was in S.B. 252 and the commerce tax, he had assumed there would be a discussion about an expansion of the sales tax. He had spent the last year and a half getting his association members prepared for that. There had been conversations about how a sales tax on services would work and how to avoid pyramiding. He was willing to consider all options, but the position of the board of the Nevada Trucking Association had been against a gross receipts tax since 2003, because it disproportionately affected low-margin, high-volume businesses, because it did pyramid, and because a company that lost money would still have to pay taxes. Mr. Enos said he believed the commerce tax inhibited growth in the trucking industry.

Matthew Taylor, President, Nevada Registered Agent Association, testified in opposition to the proposed amendment to A.B. 464 and read the following statement into the record:

Nevada currently has a business population of about 330,000 businesses. The commercial registered agent industry represents roughly 200,000 businesses out of those companies. We are here today in continued opposition to A.B. 464 and Amendment 7519. Our main concern with this has been and continues to be the proposed increase in the state business license fee. As you know, we have commissioned several economists to

study the effects of the proposed business license fee on businesses if raised to the levels indicated in A.B. 464. Those reports have shown an alarming prediction that Nevada will lose as many as 124,000 businesses from the state over the next two years. Even the most optimistic projections that we heard from proponents of this bill indicate that we will lose over 56,000 businesses. Those are their numbers. Even if you were disposed to land somewhere in the middle of that, it means we will lose over 90,000 businesses in the state. Not only is this an unacceptable loss, frankly, it is an unnecessary one. There are plenty of ways we can raise revenue by working with the sponsors and members of the Legislature and protect those 300,000 businesses. Many of those businesses are small businesses—the members with the one truck, the people with a dream or an idea that are starting a business. Some of them are coming from outside of the state and some of them are Nevada's smallest businesses that have not started operations. Yet this type of a fee increase puts a huge barrier in front of them trying to bring business to Nevada.

Again, we are concerned with this business license fee and we are concerned about the effect this will have on the smallest businesses. Losing 50,000 to 120,000 businesses out of the state is an unnecessary cost and there are ways to address it.

Eugene Hoover, President, Silver State Couriers, Sparks, Nevada, testified in opposition to the proposed amendment to A.B. 464 and read the following statement into the record:

The Governor's tax plan is clearly bold; however, the premise of school districts requiring additional funding to this extent is outrageous. The sunset taxes should, in fact, sunset in the next few years and not become a permanent burden on the businesses in this state. The business license fee and the modified business tax should also be removed when revenue is strong for the state. When you raise taxes on small businesses, you hinder employment in Nevada. We need to allow businesses and, most importantly, small businesses, the opportunity to succeed and with success, businesses will hire more employees, thus lowering unemployment in the state and this will raise wages as well. On the lower rung of the income scale, this would also be helpful for all Nevadans. This

is ultimately the only way to complement the needs of both business and government.

The commerce tax is the most outrageous part of the Governor's plan. Creating a revenue-based tax on Nevada businesses and creating yet another burden on businesses when the economy is still weak is also irresponsible. If this commerce tax is passed, I predict in less than ten years, the tax will expand to possibly include individuals and not just companies in this fine state and furthermore perpetuate stagnant growth in the state for the foreseeable future. I propose the Legislature stop looking to the people to bail out another poorly managed and implemented program and instead focus on solving real issues facing our school districts and other divisions of state government. We rely on you to manage and fund the departments of state government in the interests of the citizens, not in the interests of the bureaucracies themselves. Be problem solvers, not problem pacifiers. The voters sent you an overwhelming message this last election cycle that they were against new taxes. Keeping taxes low benefits all citizens in this great state and should be your goal.

Senator Kieckhefer said he wanted to be sure he understood Mr. Hoover's position. He asked whether Mr. Hoover believed that the modified business tax should be eliminated and there should be zero business tax liability in Nevada.

Mr. Hoover responded that was not correct because every citizen paid tax in the state, whether it be property taxes or sales taxes.

Senator Kieckhefer commented that Mr. Hoover appeared to not want any specified business tax and Mr. Hoover said that was correct.

Wayne A. Frediani, Executive Director, Nevada Franchised Auto Dealers Association, testified in opposition to the proposed amendment to A.B. 464 and read the following statement into the record:

We support the Governor's proposal to increase revenue at the state level to improve our education system and believe we need to do that. In that regard, our industry is in support of A.B. 464 as a means of raising additional revenue. However, we strongly oppose the amendment to the bill, which would impose a gross revenue tax. We believe a gross revenue tax would be very

damaging to Nevada's businesses and harm economic development. Proponents of the proposed gross revenue tax have stated that it is similar to the Texas margin tax, which we disagree with. The Texas tax is a franchise tax based on a business's taxable margin. One way of calculating that taxable margin is taking the business's gross revenue and subtracting the business's costs. In that sense, the taxable margin is similar to a business net income tax. In contrast, the proposed Nevada gross revenue tax is based on a business's gross revenue without deducting costs and expenses, with exception of the health insurance provision and the MBT credit. Consequently, a Nevada business would pay whether it was making little or losing money. I had four dealerships last year that lost money. They would have to pay a business tax according to the amendment. We lost 20 percent of the auto industry during the recession. We have come back and we are doing better, and we will continue to move forward.

A gross revenue tax, I believe, would harm economic development. I know a number of proponents have come before you and said that would not be the case, but we have heard that we have the worst education system in the country, and we do not produce enough college graduates for the higher end jobs. So, if they are correct, why would a business, especially a startup business, move to Nevada with our current education system and pay a gross revenue tax that could be increased at any future session of the Legislature?

We will continue to support education. We support K-12, we support it in community colleges in the technician areas, we support it at the University of Nevada, and we have loan vehicle programs for education systems throughout the state. We will work with anyone on trying to improve our education system. I thank you for considering my testimony today.

Peter D. Krueger, Executive Director, Nevada Petroleum Marketers and Convenience Store Association, testified in opposition to the proposed amendment to A.B. 464.

Mr. Krueger said he did not have anything new to say but submitted [Exhibit J](#), a letter from the Nevada Petroleum Marketers & Convenience Store Association, dated May 25, 2015. Mr. Krueger said [Exhibit J](#) would explain that something

needed to be done, because the major oil companies and some wholesalers were able to deduct from the gross the amount of federal, state, and local fuel taxes. He said it was interesting that on July 1, 2015, Washoe County motorists' federal, state, and local tax obligation would be 81 cents a gallon. A fuel load to a gas station was 10,000 gallons, and that one load had a tax obligation of \$8,100. Mr. Krueger said a retailer accepting one to four loads a week would exceed \$3.5 million very quickly.

Mr. Krueger maintained that what was proposed in [Exhibit F](#) was a gas tax increase. He said the gasoline retail industry was different from any other retail industry, because the retailer's price was posted at the pump for every motorist to see. There was no invoice where a retailer could add a line item for a convenience fee; the price at the pump was the price the customer paid.

Assemblywoman Kirkpatrick said she found it disingenuous that for 18 months she had worked to defeat Question 3, not because of what it was, but because it was cumbersome and difficult to understand and implement. She said many people in the room who raised millions of dollars to defeat Question 3 had said they would do something different during session.

According to Assemblywoman Kirkpatrick, every session everyone said the tax structure had to be fixed, and every session it was the same story, just a different year. She disagreed with Mr. Krueger and said she was certain that gasoline retailers found ways to pass tax increases on to customers.

Richard Wait, Certified Public Account, Reno, Nevada, said that he worked with businesses of all types and was opposed to the proposed amendment to A.B. 464, as were most of the clients he represented.

Terry K. Graves, representing Scrap Metal Processing Group and Nevada Cogeneration Associates, testified in opposition to the proposed amendment to A.B. 464. Mr. Graves submitted written testimony ([Exhibit K](#)).

Randi Thompson, representing the National Federation of Independent Business, testified in opposition to the proposed amendment to A.B. 464. Ms. Thompson stated Nevada still had the highest unemployment rate in the country and had only gained back 126,000 of the jobs lost during the recession, leaving the state about 87,000 short. Nevada was still a recovering economy. She said the economic development policy in Nevada had shifted to attract nongaming businesses, but it was entertaining a commerce tax that many nongaming businesses had said would force them to relocate to another state.

Ms. Thompson stated that while she could tolerate A.B. 464 as originally written, she could not tolerate it with the current proposed amendment ([Exhibit F](#)). She said businesses were being asked to fill a hole of approximately \$150 million that was created by tax incentives given to companies like Switch and Tesla Motors. She noted that Tesla was projected to create 20,000 jobs in the next ten years, but in 2012, only one year, small businesses in Nevada created 15,168 new jobs.

Ms. Thompson noted that 70 percent of Nevada's economy was not being taxed. She suggested a broad-based, lower rate, sales tax on services as a practical approach.

Ray Bacon, representing Nevada Manufacturers Association, testified in opposition to the proposed amendment to A.B. 464. Mr. Bacon commented that for most of the reasons previously stated, he could not support the bill.

Mr. Bacon remarked that the first time he had heard reference to a sales tax on services was in 2001, and 14 years later, nothing had been accomplished in that area. At that time, services were 55 percent of the economy and now services were 70 percent of the economy. The issue still had not been addressed in any meaningful way. Mr. Bacon believed a services sales tax was part of the solution for Nevada.

Bryan Wachter, Director of Public and Government Affairs, Retail Association of Nevada, testified in opposition to the proposed amendment to A.B. 464. Mr. Wachter stated the Retail Association of Nevada represented, directly and indirectly, 371,000 jobs with 31,000 entities and had a \$23.3 billion impact on the state.

Mr. Wachter commented that from a retail standpoint, the state had a captive business industry, which would not be going anywhere.

Mr. Wachter stressed that the commerce tax went into effect on July 1, 2015, the fiscal year ended June 30, 2016, and the tax had to be paid in August of 2016, which gave the Department of Taxation approximately 30 days to write the regulations to implement the tax. He said \$60 million on a net increase in the budget did not seem worthwhile to capture native Nevada businesses when the stated goal was to go after out-of-state businesses that were not paying. He said to create a brand new tax to raise \$60 million seemed like a conversation that should have been over quickly.

Assemblywoman Carlton commented the goal of the commerce tax was to capture the businesses that earned money in Nevada and then left the state to support education in other states. She maintained that those corporations took the money from the state and should contribute back.

Mr. Wachter said while he appreciated Assemblywoman Carlton's opinion, all of the retailers he represented paid every tax Nevada currently levied.

Jim Hindle, private citizen, Virginia City, Nevada, testified in opposition to the proposed amendment to A.B. 464. Mr. Hindle said he was a small businessperson who had relocated his small consulting company from the Pacific Northwest to Nevada, based on the expected tax environment. His opposition to the gross receipts tax was based on the fact that it created the same environment he had left in the state of Washington.

Chair Anderson opened the meeting to public comment.

Angie Sullivan, private citizen, Las Vegas, Nevada, stated she was a teacher in Clark County and appreciated the work the legislators had performed regarding revenue for education.

Chair Anderson closed public comment and adjourned the meeting at 6:35 p.m.

RESPECTFULLY SUBMITTED:

Anne Bowen
Committee Secretary

APPROVED BY:

Assemblyman Paul Anderson, Chair

DATE: _____

Senator Ben Kieckhefer, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Ways and Means and
Senate Committee on Finance

Date: May 25, 2015

Time of Meeting: 2:10 p.m.

Bill	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 464	C	Jeremy Aguero, Applied Analysis	Memorandum to Assemblywoman Benitez-Thompson from Jeremy Aguero, dated May 24, 2015
A.B. 464	D	Jeremy Aguero, Applied Analysis	Memorandum to Senator Mark Lipparelli from Jeremy Aguero, dated May 24, 2015
A.B. 464	E	Jeremy Aguero, Applied Analysis	Memorandum to Assembly Minority Leader Marilyn Kirkpatrick from Jeremy Aguero, dated May 24, 2015
A.B. 464	F	Legal Division, Legislative Counsel Bureau	Proposed Amendment 7519
A.B. 464	G	Stephanie Tyler, President, AT&T Nevada	Letter from James Schuler, Assistant Vice President, External and State Affairs, CTIA, The Wireless Connection, dated May 21, 2015
A.B. 464	H	Keith Lee, representing Southwest Airlines	Letter from John S. Dritt, Senior Property Manager, Southwest Airlines, dated May 21, 2015
A.B. 464	I	Keith Lee, representing Airlines for America	Letter from David A. Berg, Airlines for America, dated May 21, 2015

Bill	Exhibit	Witness/Agency	Description
A.B. 464	J	Peter Krueger, Executive Director, Nevada Petroleum Marketers Association	Letter from Nevada Petroleum Marketers & Convenience Store Association, dated May 25, 2015
A.B. 464	K	Terry K. Graves, representing Scrap Metal Processing Group and Nevada Cogeneration Associates	Written testimony on proposed amendment