MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT

Seventy-Eighth Session
February 26, 2015

The Senate Committee on Revenue and Economic Development was called to order by Chair Michael Roberson at 3:55 p.m. on Thursday, February 26, 2015, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael Roberson, Chair
Senator Greg Brower, Vice Chair
Senator Joe P. Hardy
Senator Ben Kieckhefer
Senator Ruben J. Kihuen
Senator Aaron D. Ford
Senator Pat Spearman

GUEST LEGISLATORS PRESENT:

Senator Moises (Mo) Denis, Senatorial District No. 2
Senator David R. Parks, Senatorial District No. 7
Senator James A. Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Mike Wiley, Committee Manager
Julia Barker, Committee Secretary

OTHERS PRESENT:

Robert Compan, Farmers Group, Inc
Joseph Guild, State Farm Insurance Company

Jesse Wadhams, Nevada Association of Insurance and Financial Advisors
Deonne Contine, Executive Director, Department of Taxation
Lisa Foster, Allstate Insurance Corporation; American Family Insurance Company
Noel C. Young, Allstate Insurance Corporation
Bryan Wachter, Retail Association of Nevada
Terry Rubald, Chief Deputy Executive Director, Local Government Services, Department of Taxation
Paul Enos, CEO, Nevada Trucking Association
Josh Hicks, Nevada Trucking Association
Keith Lee, Southwest Airlines; Airlines for Aviation

Chair Roberson:
I open the hearing of the Senate Committee on Revenue and Economic Development with Senate Bill (S.B.) 103.

SENATE BILL 103: Exempts certain persons from the modified business tax on financial institutions. (BDR 32-42)

Senator James A. Settelmeyer (Senatorial District No. 17):
Senate Bill 103 came out of situations that popped up during the interim. I was contacted by insurance agents about things occurring with the Department of Taxation and interpretation of *Nevada Revised Statute* (NRS) 363A.050 which stated that anyone holding a certain classification of license allowing them to do investments is a financial institution. This issue went to the Nevada Tax Commission. I was present at a hearing and the Commission agreed with the Department's interpretation. This means that every insurance agent is considered a financial institution. Prior to this, my insurance agent was exempted under the Modified Business Tax and did not owe any money to the Department; now he owed $2,000.

I question whether the intent of this Legislature was to apply NRS 363A.050 to individuals who only dealt life insurance on the side. With this interpretation, if the person holding a life insurance policy passed away, the recipients of the policy would end up having a payout and could structure that investment for their family or whomever they decided to name as beneficiary to that investment. The insurance agent in this case would act as a financial institution in helping the recipients set that up. After the Tax Commission hearing, I worked with Senator Moises Denis, who is a cosponsor of this bill.

Section 1, subsection 3, subparagraph (d) of S.B. 103 states a person who sells and negotiates insurance and whose business "primarily consists of the sale, solicitation or negotiation of motor vehicle insurance or homeowner's insurance" is not to be considered a financial institution. It further clarifies that definition and includes a business that primarily consists of the sale and negotiation of homeowner's insurance if more than 50 percent of the annual income of the business from commissions is derived from the sale, solicitation or negotiation of such insurance. I have no problem with amendments if 50 percent is not right or this body wants to do otherwise. It seemed improper that someone who only does one or two annuity transactions on the side is a financial institution.

The literal wording of the Tax Commission creates a situation where anybody working for an entity who holds Series 6 and 63 licenses automatically becomes a financial institution. I felt that S.B. 103 was an easy potential solution.

Senator Moises (Mo) Denis (Senatorial District No. 2):
Senator Settelmeyer and I had this idea at about the same time, and he submitted the bill, so I agreed to cosponsor the bill. This situation is unfair when it comes to unintended consequences. It is good to fix it so those who work in insurance and only sell one product on the side are not considered financial institutions. This will make it more fair. This has been in place a while, but somebody in the Department of Taxation began to interpret and apply this statute differently. To be fair, it is good to correct the language in NRS 363A.050, which S.B. 103 will do.

Senator Hardy:
In the 72nd Session, we passed a bill on financial institutions and went to the Tax Commission after the Session imploring the Commission to define financial institution. Otherwise, my paper boy and every person who had an account receivable qualified as a financial institution. This has finally caught up with the insurance world, and we need to fix it.

Robert Compan (Farmers Group, Inc.):
Farmers Insurance became aware of this after the 76th Legislative Session once the sunsets on Modified Business Tax were upheld and extended. At that time, somebody at the Nevada Tax Commission noticed that agents with Series 6 and 63 licenses are deemed to be financial institutions. Our agents with that license started to get taxed because they were no longer a regular business owner qualifying for the Modified Business Tax and were therefore subject to a

2 percent tax rather than a 1.17 percent general payroll tax. The additional tax is $85,000 more per quarter. While NRS 363A.050 was aimed at banks and stockbrokers, the law was interpreted to include persons who hold Series 6 and 63 licenses as financial institutions. Insurance agents obtain this license to sell life annuity products.

When shopping for insurance, you like to go to a one-stop shop to get car and home insurance. We ask that our agents be qualified as higher-tiered agents to carry Series 6 and 63 licenses so they can represent the interests of their insured as whole. Our agents are primarily engaged in the sale of home and auto insurance. The sale of life insurance products helps ensure customer satisfaction and allow the agents to grow their businesses while serving the needs of their customers. *Nevada Revised Statute* 363A.050 has an unintentional implied consent that a person with Series 6 and 63 licenses is now subject to a 2 percent Modified Business Tax.

An agent who holds regular property and casualty and auto insurance licenses is carrying different licenses. If you carry Series 6 and 63 licenses as a securities agent, you are governed by the federal government; you and your support staff sell financial services. Under the law, you are the only one allowed to do that. That person is responsible for paying the 2 percent Modified Business Tax for the entire payroll.

In 2012, Farmers Insurance respectively paid commissions to our agents on auto and homeowner insurance of $40 million, $221,000 and $741. Of that, financial services—which is a separate company paid under a 1099 tax statement—paid commissions of $399,000. Of 286 agents in Nevada, only 86 agents are registered to carry Series 6 and 63 licenses. We gave an example during the Tax Commission hearing in 2014 that was not uncommon for an agent to get a $5,000 tax bill in a quarter for a commission of financial services where that agent made less than $1,000. The unintended high tax amount should not be managed this way. This bill would correct that.

Joseph Guild (State Farm Insurance Company):
State Farm Insurance supports S.B. 103. My involvement in this issue goes back to 2011 when a State Farm agent was assessed a tax bill for financial service activities. That agent was represented by Jim Wadhams, who challenged that tax. The end result was that the assessment was upheld. In 2013, we tried to bring an amendment to NRS 363A which would exempt

producers of insurance from the definition of a securities agent subject to the Modified Business Tax. That amendment failed. As time has gone on, more agents have been subject to this, so it became a significant problem to Nevada insurance agents who carry Series 6 and 63 licenses.

This bill would correct an unintended consequence from the 2003 Modified Business Tax and further the attempts to clarify what constitutes a financial institution. We approve of the amendment that Jesse Wadhams will propose.

Senator Ford:
Is there an estimation of the effect this would have on the State coffers if your amendment is accepted?

Mr. Guild:
I do not know.

Jesse Wadhams (Nevada Association of Insurance and Financial Advisors):
I do not know.

Chair Roberson:
Without the amendment, the fiscal impact for the biennium is $700,000.

Senator Ford:
What effect would the proposed amendment have on that?

Deonne Contine (Executive Director, Department of Taxation):
With the proposed amendment, the fiscal impact would be the same, which is the highest estimate. It is based on queries that the Department of Taxation can run within our system on how taxpayers are classified.

Senator Hardy:
Section 1, subsection 1, subparagraph (s) includes a financial institution as an issuer or service provider who is conducting a business activity in this State. That is pretty broad. Does that deal with just insurance?

Ms. Contine:
Does your question concern how the Department interprets that provision in applying the Modified Business Tax to financial institutions?

Senator Hardy:
Yes.

Ms. Contine:
I would need to look at the various categories of employees and determine what type of business is in that category. This statute is NRS 90 licensees.

Senator Hardy:
If we are defining a financial institution as broad enough for anybody conducting a business activity in the State, that is a problem.

Mr. Guild:
The 72nd Session created the Modified Business Tax. Afterward, the Department of Taxation utilized the North American Industry Classification System to determine a financial institution subject to the tax. At the time, the Department determined the North American Industry Classification System code was applicable to insurance agents as a general business. In the 73rd Session, the Legislature exempted pawn shops and bill collectors from the Modified Business Tax and the classification of financial institutions. Between 2005 and 2010, an interpretation within the Tax Department led us to this point.

Mr. Wadhams:
Our proposed amendment (Exhibit C) simply adds other products of insurance to the life and health category of those that would offer a suite of insurance-related products and not be subjected to the Modified Business Tax for financial institutions.

Lisa Foster (Allstate Insurance Corporation; American Family Insurance Company):
Allstate Insurance Corporation supports S.B. 103. Many of our Allstate agents have been contacting Legislators and myself in the interim. There has been some concern about this issue.

Noel C. Young (Allstate Insurance Corporation):
Allstate Insurance Corporation supports S.B. 103. This tax began in 2013, and Allstate agents raised issues because of the way that NRS 363A.050 is written, making those agents with Series 6 and 63 licenses financial institutions. In 2003, the language of the bill originally did not include property and casualty agents because a primary business portion exempted them. In 2005, that

language was removed when the law was amended and brought in agents who primarily sold homeowners and automobile insurance. The very small number of Allstate agents who sell annuities make a small amount of money. They have to have this license to sell life insurance. Allstate requires its agents to carry Series 6 and 63 licenses because it provides a service to Nevada consumers.

The real issue is that these small businesses get hit with this tax which, at times, is more money than they make from selling life insurance policies.

Bryan Wachter (Retail Association of Nevada):
The Retail Association of Nevada supports S.B. 103. We wish that the sponsors of the bill had gone further. This could be solved if the financial tax on the Modified Business Tax was taken away. A difficult thing we look at is the ease of tax compliance. We have seen a decade's worth of issues over definitions, how to apply that tax and what the tax looks like. If we applied this evenly, we would not look at the kind of business a person is in but whether that business is in Nevada and should support the government.

Senator Settelmeyer:
We understand the concept of creating parity either by making all banks like everybody else or everybody else like banks, but we hope that is the subject of a different bill.

Senator Denis:
I agree with that.

Senator Kieckhefer:
You indicated that the fiscal note incorporates the proposed amendment. Do you know the fiscal impact based on the bill as written?

Ms. Contine:
The fiscal note is $700,000 for the biennium. The fiscal note assumes that everybody in this category would pay zero under the general business provisions. If businesses are not financial institutions, they are general businesses and get the $85,000 a quarter exemption. When the Department calculated the fiscal note, we assumed that they would not be paying anything, which is what I meant when I said it was the highest estimate.

Senator Kieckhefer:
Understanding that the fiscal note is the broadest version, do you know what the fiscal note would be without the proposed amendment?

Ms. Contine:
I do not. It would be difficult to determine that because of the way we have data in our system. I do not know that there is any distinction within our system as to whether an insurer is property, casualty, or life and health.

Chair Roberson:
I will close the hearing on S.B. 103 and open the hearing on S.B. 78.

SENATE BILL 78: Makes various changes to provisions relating to taxation. (BDR 32-303)

Bryan Fernley (Counsel):
The asterisk on the front of the bill reflects that the Legal Division has made a technical correction to the bill by removing section 5 of the original version of the bill. Section 5 amended NRS 362.135 to provide that section 1 of the bill is an exception to that section. Section 1 relates to appeals of the Department of Taxation's appraisal and assessment of property associated with a mine for the purposes of property taxes. Section 5 related to appeals of the Department's certification of the amount of net proceeds of a mine for the purposes of the Net Proceeds of Minerals Tax. Section 1 is not an exception to NRS 362.135 and the Legal Division made the technical correction, removing section 5 from the original bill. The updated version of the bill has the asterisk in the top left corner to reflect that.

Terry Rubald (Chief Deputy Executive Director, Local Government Services, Department of Taxation):
Last year, an appeal of property taxes assessed to a mine property by the Department of Taxation brought to light the question of what the appropriate forum in which a mine property tax appeal should be heard. Based on advice received from the Attorney General, a county board of equalization under NRS 361.345 does not have the authority to determine the value of real or personal property assessed by the Department. A county board's authority is limited to determining the value of real or personal property assessed by the county assessor. This is because the county board is a creature of statute with special and limited powers. The authority to review values established by the

Department is more appropriately vested in the State Board of Equalization. *Nevada Revised Statute* 361.403 provides for direct appeals to the State Board from evaluations determined by the Tax Commission for industries such as telecommunications, railroads, utilities and other centrally assessed property. In the NRS chapter on Net Proceeds of Minerals, NRS 362.135 indicates that all Net Proceeds of Minerals Tax appeals should be heard directly by the State Board of Equalization. It does not reference the property tax of a mine, even though mine property is appraised and assessed by the Department, pursuant to NRS 362.100, subsection 1, paragraph (b).

Because we ask the counties to bill mines and collect the taxes on our behalf, it can be confusing to taxpayers as to which agency is the correct forum for appeal. We want to make clear what is the proper forum of appeal for property taxes on a mine property. Based on the Attorney General's advice, that forum is the State Board of Equalization.

Section 1 of S.B. 78 will be a new section in NRS 361 that provides for direct appeals of a mine property to the State Board of Equalization. Consistent with other types of appeals, the deadline for the appeal would be January 15.

The rest of the bill language makes reference to this change in section 1, so that the definition of property includes mine property. Like other appeals, the State Board would give at least 10 days notice about when the appeal would be heard and give notice of any increased evaluation.

Chair Roberson:
I will close the hearing on S.B. 78 and open the hearing on S.B. 80.

SENATE BILL 80: Makes changes relating to the imposition of use taxes on the storage, use or other consumption of personal property used in interstate or foreign commerce. (BDR 32-305)

Ms. Contine:
Senate Bill 80 is the Department of Taxation's bill to repeal a use tax presumption related to interstate commerce in NRS 372.258. General provisions in NRS 372.250 and NRS 372.255 regard the application of use tax that basically says if you purchase property outside of Nevada and relocate and use that property here, the use tax applies. For example, if a business located in

Nevada buys a computer out of state and brings it into Nevada, the business has a use tax due to the State.
The presumption is rebuttable. If a business located in Utah buys property for use in its Utah business and then later moves to Nevada, the business would not have a use tax due in Nevada. If it was determined that use tax was due, the taxpayer would be entitled to a credit against any sales tax the business paid someplace else. A resident of Nevada can rebut the use tax presumption by providing a statement in writing of his or her intent to use the property out of State. The statutes provide various ways for rebutting whether use tax applies.

In the 70th Session, NRS 372.258 was enacted and created a presumption that the use tax does not apply to property used in interstate commerce. Testimony at that time highlighted that Nevada would not tax property in interstate commerce as a general rule, and testimony said it was intended to create a general rule that taxpayers could rely on. Three examples were discussed. The first was aircraft or regularly scheduled flights that stop in Nevada. The second was tour buses that made regular multistage trips in and outside of the State. The third was a situation in which a taxpayer received a use tax refund for a lease on railcars which were shipping material in and out of the State. Based on the testimony, it seemed that the intent was to provide protections to taxpayers from double taxation. That way, if you had property in another state, you would not be subject to use tax in Nevada.

However, the enactment in that Session was recently interpreted by the Nevada Supreme Court when Justices applied the presumption to four planes purchased out of State by Harrah's and used in Nevada. Even though the hearing officer found that the planes were purchased for use in Nevada because the flight log showed the planes were Nevada-based, the Nevada Supreme Court noted that:

> The distinction created by the statutory scheme is between goods purchased for use in Nevada and those purchased for use in interstate commerce. Even if such use might occur in Nevada, we are not concerned with the soundness of this distinction, we merely apply it.

In the case, the Court noted it was aware that as a result of the statute interpretation, Harrah's would pay no sales tax on two of the aircraft. Nevertheless, Justices opined that they must apply the statutes as written,

despite the fundamental change in federal Commerce Clause jurisprudence. The Justices affirmed they were limited by the language of the statute.

It was determined that NRS 372.258 creates an artificial distinction. Under Commerce Clause jurisprudence, the only property that should not be subject to use tax property moving between hubs, among different states or in and out of the State because there is potential for multiple states to tax that property. The original intent of NRS 372.258 to address that type of situation was not intended to establish an exemption for property that is held or has a domicile in Nevada.

The Department asks that this presumption be repealed so we can go back to the general use tax presumption: if you purchase property outside of Nevada and bring it to Nevada, you owe a use tax. Taxpayers are able to rebut that presumption under NRS 372.250 and NRS 372.255.

Paul Enos (CEO, Nevada Trucking Association):
The Nevada Trucking Association opposes S.B. 80. The trucking industry has been using this presumption in varying degrees since 1999, and we have been working with the Department of Taxation for several years to seek some clarification and clear rules for our trucking companies and taxpayers. Many neighboring states have clear rules on exemptions for property used in interstate commerce, and we do believe that having a rule on the books is important. We would like to see some clarity in how that rule is applied. We have submitted a proposed amendment (Exhibit D).

Josh Hicks (Nevada Trucking Association):
The Nevada Trucking Association opposes S.B. 80. This bill entirely repeals this presumption of determining interstate commerce and the tax application of that. It is not a perfect rule, but it is better than no rule. If you have no rule, you revert back to Commerce Clause jurisprudence which has a four-part test, existing since the U.S. Supreme Court 1977 ruling and 1985 adoption in Nevada. You would have a situation where a lot of taxpayers following this law, who have some comfort knowing whether they have a tax in an interstate situation, would refer back to this generic four-point test. This would create significant uncertainty in the tax world for a lot of these industries.

The proposed amendment, Exhibit D, is not a perfect amendment; but we wanted to get something on the books to start the dialogue. Director Contine has been helpful and accessible in this process.

The proposed amendment strikes the presumption from NRS 372.258, subsection 1, making this a test whether the tax is due. That is consistent with what some neighboring states such as California do. We also added some language in subsection 1. We suggest applying the proposed amendment to NRS 374.263, the contemporaneous statute. In subsection 1, we also added language about different types of property. The idea is to capture commerce.

In subsection 2 of Exhibit D, we add the test for interstate or foreign commerce. That has been an area of confusion and doubt. It is also recognized by the Nevada Supreme Court. The question comes down to this: If you are using something between Nevada and somewhere else, does Nevada count as one of the states? In our opinion, it should not matter whether that product is being used in Nevada. If it has an interstate use, it should count as an interstate use. That is the reason for including Nevada under the definition of state in S.B. 80, section 2, subsection 2, paragraph (b). Subsection 2, paragraph (c) in our proposed amendment, Exhibit D, defines passenger. The idea is that the driver of a truck, operator of a locomotive or the pilot of a plane does not count as a passenger. This is getting back to the commerce idea. Transportation equipment under subsection 2, paragraph (d) of Exhibit D ties it back to NRS 360B.350, subsection 2, which is overkill but defines transportation equipment under the tax section.

Subsection 3 lists activities we want to clarify as not removing property from this determination of continuous use. These are items you would see in a business commerce context. It includes property that is registered, licensed or based in the State; property based in the State between periods of movement in interstate or foreign commerce State for purposes of maintenance or routine business delays during periods of movement; property during refueling periods; and property awaiting dropping off or picking up passengers or property. We do not want these things to take property back into the tax contest. They would still be in the interstate stream if you are doing any of those activities.

We look at this proposed amendment as an open process and want to have further discussion with interested parties.

Keith Lee (Southwest Airlines; Airlines for Aviation):
We oppose S.B. 80 and support the proposed amendment. By virtue of the fact that Southwest Airlines is the largest major air carrier in the State, I also speak for the Airlines for Aviation, which is the trade group of all of the major air, passenger and freight carriers. We fought this battle in 1999, and it was very important to the airlines to include this provision. We think it is necessary to keep this provision or include the proposed amendment, Exhibit D. Keeping in NRS 374.258 and 374.263 is also important to interstate commerce. Southwest planes travel in interstate commerce. It is difficult, in terms of scheduling, to determine where the first flight of a plane is made.

Ms. Contine:
I received the proposed amendment late last night. The elimination of the presumption makes the law more broad. I would like to continue talking with Mr. Hicks and Mr. Enos to flesh some of those things out. But I would ask that you pass S.B. 80.

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Chair Roberson:
I will close the hearing on S.B. 80 and adjourn the hearing of the Senate Committee on Revenue and Economic Development at 4:49 p.m.

RESPECTFULLY SUBMITTED:

Julia Barker,
Committee Secretary

APPROVED BY:

Senator Michael Roberson, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	2		Attendance Roster
S.B. 103	C	1	Nevada Association of Insurance and Financial Advisors	Proposed Amendment
S.B. 80	D	1	Nevada Trucking Association	Proposed Amendment