MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Ninth Session
February 28, 2017

The Committee on Taxation was called to order by Chair Dina Neal at 4:05 p.m. on Tuesday, February 28, 2017, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Irene Bustamante Adams, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Edgar Flores
Assemblyman Jason Frierson
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblyman Keith Pickard
Assemblywoman Ellen B. Spiegel

COMMITTEE MEMBERS ABSENT:

Assemblywoman Teresa Benitez-Thompson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Heather Drake, Deputy Director, Division of Local Government Services, Department of Taxation
Jeff Mitchell, Supervisor, Centrally Assessed Properties, Department of Taxation
Dylan Shaver, Vice President, Nevada Mining Association

Chair Neal:
[Roll was taken and Committee rules and protocol were reviewed.] The first order of business today is a presentation by the Department of Taxation on the net proceeds of minerals (NPOM), and after the presentation we will hear Assembly Bill 82. I would like to call the Department of Taxation to the table.

Heather Drake, Deputy Director, Division of Local Government Services, Department of Taxation:
I am here today to give a presentation on the NPOM on behalf of the Department of Taxation. At the high level, the NPOM tax is a property tax. On page 2 (Exhibit C) you can see how it is calculated. It is similar to an income-approach value. They start with the gross yield of the mining operation and deduct out allowable expenses, which is similar to what you would do with an income-approach value on property value. These allowable expenses have to do with the actual cost of extraction and transportation of the minerals. What this leaves remaining is what we call the "net proceeds," which are similar to a net income in an income approach. These net proceeds are multiplied by the applicable tax rate, which is set out to not exceed 5 percent. Once we do that, the result is the NPOM tax. This is kind of the high level of how it works. It becomes more complicated as we go through this.

When we look at how the tax rates are actually calculated [page 3, (Exhibit C)] under *Nevada Revised Statutes* (NRS) 362.140, the rate of tax depends on the percentage ratio of net proceeds to gross yield. What that means is that when we start with a gross yield, we deduct out our expenses to get our net proceeds. The next thing that is looked at is the relationship between those net proceeds and what the gross yields were, and that determines the initial rate of tax. If the net proceeds is a percentage or if the ratio is less than 10 percent, the tax rate becomes 2 percent and goes up from there. The rate of tax varies based on the percentage ratio. For example, if the percentage ratio is more than 10 percent but less than 18 percent, the tax rate goes up to 2.5 percent; 18 percent or more but less than 26 percent becomes 3 percent; 26 percent or more but less than 34 percent becomes 3.5 percent; 34 percent or more but less than 42 percent becomes 4 percent; 42 percent or more but less than 50 percent becomes 4.5 percent; and the maximum tax rate on the NPOM for 50 percent or more is at 5 percent. This is a starting point on how the tax rates are set for the NPOM tax.

Exceptions to this are set out in statute [page 4, (Exhibit C)]. The first is that the minimum tax rate—even though we said it could be 2 percent if it was a less than 10 percent relationship between net and gross yield—is actually the combined property tax where the operation is located. If that rate is higher than 2 percent, it would become the minimum tax rate. The second exception is on geothermal. Geothermal does not calculate the relationship between net and gross. It is simply the combined property tax rate where the property is located. Despite the sliding scale we set out with the different percentage rates, those rates do not apply to geothermal. Another exception on the 5 percent is if the net proceeds are greater than $4 million, the tax rate becomes the maximum tax rate of 5 percent. We are no longer concerned about the ratio of net to gross. On royalties, the maximum tax rate is set at 5 percent. There is the initial sliding scale, and there are the exceptions.

Page 5 (Exhibit C) explains the distribution. Initially, the county gets an amount equal to the net proceeds of minerals. That amount is multiplied by the combined rate, with the exception of the rate that is set for the state debt fund. That amount is the distribution to the county. The rate for the state debt is $.17 per $100 of assessed valuation. That goes into the state debt fund, and that is true for all property taxes. The balance, there have been cases where there potentially would not be a balance, would go to the State General Fund. That is how those taxes get distributed.

To give an example of this, we have a hypothetical mathematical example with Nelson County [page 6, (Exhibit C)]. In this example, we have an overlapping combined tax rate of 3.66 percent. We have a gross yield of $1 million and net proceeds of $400,000. This gives us a net-to-gross ratio of 40 percent. With the sliding scale, 40 percent would result in a 4 percent tax rate. If you look at the highlighted portion, you can see the tax rate on the minerals will be 4 percent, of which 88 percent will go to the county. This is because the county would receive the combined tax rate of the 3.66 out of the rate of 4 percent. Geothermal simply gets the combined tax rate of 3.66 percent, and royalties are set at 5 percent. When it translates over to the total, you can see that if the tax rate was 3.66 percent in this hypothetical example, the county distribution would be $30,537.50, and the distribution to the State General Fund would be $2,365.

You can see the effect of what happens with an overlapping tax rate on the next slide [page 7, (Exhibit C)]. This example shows an overlapping combined tax rate of 1.8743 percent, so with this drop in the rate, you can see the effect it has on how the net proceeds are distributed. We still have a gross yield of $1 million, net proceeds of $400,000, a net-to-gross ratio of 40 percent, and a tax rate of 4 percent on the minerals. The tax rate is still 5 percent on the royalties, but now the tax rate on geothermal is 1.87 percent. As a result, you can see the distribution to the county, instead of being in excess of $30,000, is $14,000, and the distribution to the State General Fund goes up to $11,342.50 from $2,365. The state gets the difference between the rates as they exist, and the county is limited to the maximum of the overlapping combined rate. In this case, as that combined rate drops, the distribution to the state becomes a greater percentage of the overall total.

Page 8 (Exhibit C) shows some actual numbers from 2015. There was a total of 119 operators. You can see the actual gross proceeds of $7,001,473,777; actual net proceeds of $2,051,175,348; the distribution to the counties was $51,088,726; the distribution to the state debt at $3,486,998; and the distribution to the State General Fund at $47,015,793. The total tax due for 2015 was $101,591,517.

On page 9 (Exhibit C), you can also look at the same information historically. The red part of the bar on this chart shows the distribution to the state, and the blue part shows the distribution to the counties. You can see that over the last 20 years, it has typically been a 50-50 split; if you calculate the average percent of the total tax distributed to the state over those 20 years, the mean is a 50 percent distribution to the state. This is visually apparent through this graph on this slide.

The next slide shows the distribution of the NPOM as it related to the counties in 2015 [page 10, (Exhibit C)]. The top three counties are Lander at 32.85 percent, Eureka at 27.77 percent, and Humboldt at 19.70 percent. Those three counties actually accounted for 80 percent of the total distribution of NPOM to the counties. That has been pretty typical.

The next slide [page 11, (Exhibit C)] shows the timeline as it existed prior to the ending of some of the provisions in NRS 362.110 and NRS 362.130. Prior to the sunset that occurred June 30, 2016, the provisions provided for a prepayment and made a fairly complicated timeline. If you look at the yellow on the top, this is showing calendar year 2016. You can see that on February 16, 2016, there was a report for the 2015 NPOM, per NRS 362.110, and then the certification of NPOM for 2015 on April 20, 2016. On May 10, 2016, those NPOM taxes for 2015 became payable. If we go down to the gray boxes on the bottom, these also show the 2016 calendar year. Under the previous provisions on March 1, 2016, the taxpayer would file the projected 2016 NPOM along with a prepayment. If you look at the red box with the arrow, these provisions are in this calendar year and show the timeline as it existed for 2016. However, those were the provisions that actually ended as of June 30, 2016. That had to do with getting rid of the prepayment for the year that the projections were being made.

If you go to the next slide [page 12, (Exhibit C)], you can see how this has changed with the sunset for the 2017 calendar year. The 2016 NPOM would still be reported by February 16, 2017. This would still be certified by the Department of Taxation for 2016, and any remaining net proceeds would be due. The difference on the bottom is that even though a projection of the NPOM for the 2017 calendar year would still be filed, there is no prepayment made for 2017 because of the ending of those provisions. This will change the amount of net proceeds that will be paid for 2017.

You can see from the example on page 13 (Exhibit C) how the amounts received are going to change. This shows 2017 as a crossover year between when the operations were doing prepayments and when we move to the system where the operations file the final report of net proceeds. This point is when the net proceeds will become due. In 2015, their projection was $1 million and the tax paid based on the projection was $30,000. On February 16 of the following year, the final report of the net proceeds for the 2015 year is certified, and that becomes the actual tax payable for the mining operations in 2016. You can see that the arrow moves it over because any difference in the projection is payable the following year, and that would be $27,000. In this case, they had overpaid the prepayment, so there was a surplus of $3,000. This is the way the law existed up to when these provisions ended as of June 30, 2016.

Moving on to 2016, the tax paid based on projections was $36,000. In 2017, the certificate actually showed a tax owing of $45,000 on the $1.5 million. It is for the 2016 production, but the certificate was issued in 2017. These are fairly complex timelines. The big difference we have this year, in 2017, is that there are going to be zero taxes paid on projections; the only taxes that will be collected in 2017 will be the difference between what had been projected and what was actually paid. You can see the only taxes collected in 2017 were $6,000. It is the difference between what was prepaid in 2016, including any carry-over, for a total of $39,000. The taxes due on the final certificate for 2016—which again, was issued in 2017—were $45,000. The only taxes that would be collected that year would be $6,000.

We are going to have this year in between, for 2017, to move from where the mines are prepaying the NPOM, and toward a position where they will now be paying as the certificate is issued and the taxes become due to the Department based on actual numbers. Again, this is due to the ending of those provisions in NRS 362.110 and NRS 362.130. When we get to 2018, you can see there is still no prepayment. The taxes in 2018 are based on the final certificate for the 2017 proceeds, and in the example, $42,000 will become payable in 2018. We are going to have one gap year in 2017 because of this changeover of getting rid of the prepayment system and going to a payment of the NPOM on actual.

Page 14 (Exhibit C) goes over the changes on the prepayment. Prior to June 30, 2016, there was a projection report and prepayment. After the June 30, 2016, sunset, operators still have a projection report due, but there is no payment associated with it. Under the prior provisions, quarterly adjustment and payments were allowed for. The other large change is the third bullet point on the left and the second bullet point on the right, and that has to do with the mines. Prior to the sunset, they were withheld from the royalty payments, and the mines or the operators were responsible to remit the taxes on the royalties. After June 30, 2016, the royalty holders no longer had the tax withheld from the payments. They are responsible to file the report and make the payment for the taxes directly to the state. The next bullet point does not change. The reports are still due in February on the previous year's production. To calculate what the actual taxes would be in the last two scenarios, one was simply a true-up between the prepayment the way it was prior to June 30, 2016. After that sunset date, the total payment due on the net proceeds would be by May 10. These are the changes that happen due to the end of the sunset provisions for these two statutes.

You can find the links to the Department's website on page 15 (Exhibit C). There is also more information on our website at tax.nv.gov under the "Local Gov" and then "Net Proceeds Forms and Instructions Main" menu links. The information we showed in the slides, including setting out the distribution of the counties and the year-over-year split between the State General Fund and the counties, can be found in the annual NPOM bulletins. I believe these go back to 1994 or 1995. There is a lot of data that is set out in these annual bulletins located on our website. Mr. Mitchell and I are available to answer any questions you may have.

Assemblyman Pickard:
I recognize this is greatly simplified, and I do not pretend to understand the details. My first question is with respect to the sunset, and then in terms of the amounts that are due. As I understand this, the legislation requiring prepayment was a temporary fix that was intended to sunset. This was intended to meet an immediate need because of the economic downturn. I am assuming they contemplated what would happen at the back end when the provisions ended. When this was established, we were getting payments early; when it ends we are going to have a delay in payments before it picks up. With that as the outset, as I go through the calculations, we are talking about an issue of time, not amount. We do not lose any money. It is just that we shift it later in time when the payment is made. If the royalty holder is ultimately responsible for the tax—and that is who I understand the taxpayer is—and the mining company may be facilitating the payment, but the taxpayer is the royalty holder, why would we shift their tax liability to the mining company?

Chair Neal:
That is probably more of a bill question.

Assemblyman Pickard:
I am sorry. You are absolutely right. I will hold the question and I beg your pardon. I was combining the two, having read it. Can you confirm that I have the calculation and timing right?

Jeff Mitchell, Supervisor, Centrally Assessed Properties, Department of Taxation:
Your analysis of the shift of the payment is correct. There is not less money coming in; it is just a timing factor of when this money comes in. There is a tax due, not only to the operator, but also a separate tax due on the royalties received. There are two taxes that we are talking about here. The operators themselves incur a net proceeds tax based on their net proceeds, and the royalty holders pay a tax based on the royalties they receive.

Assemblyman Pickard:
Were both of those tax payments accelerated, and with the sunset are they both coming off? Are they both going to be delayed in time?

Jeff Mitchell:
Yes.

Assemblywoman Spiegel:
In looking at the payments that are given to the counties, could you speak to how the counties get their money and when they are paid? Is it also currently being done through the mining companies? Is it being paid directly to the counties, or is it a distribution through your office?

Jeff Mitchell:
The mines pay directly to the Department, and the Department distributes out to the counties.

Assemblywoman Bustamante Adams:
My question is on the second slide (Exhibit C), the "certain allowable deductions." Can you highlight what those include?

Heather Drake:
These are things related to the actual cost of extracting the minerals, transporting the minerals, any refining of the minerals, and delivery of the minerals. These are also deductions similar to an amortization of capital equipment, if I am using the right term.

Assemblywoman Bustamante Adams:
At some point in past sessions, did we take away the deduction of marketing and advertising?

Jeff Mitchell:
In general, no. Based on various years, different deductions have come in and out. The marketing and advertising is no longer a specifically allowed deduction. There are some intricacies that are allowed deductions.

Assemblywoman Bustamante Adams:
My other question has to do with slide 8 (Exhibit C). Of the 119 operators, how many entities receive royalties? Do we know that number?

Heather Drake:
I believe the last number we had for royalty holders was 478.

Assemblywoman Bustamante Adams:
Can you expand a little more about royalty holders? Do they have to register as a business in the state? What are their requirements as far as us identifying them?

Jeff Mitchell:
To be honest, I am unsure if they have to register as a business in regard to the Department. For the past eight years, since the mines themselves have paid on behalf of the royalty holders, we have had very little contact with them. They do not have to report to us directly.

Assemblywoman Bustamante Adams:
Are any of the 478 royalty holders located within Nevada, or are those also outside of the state?

Jeff Mitchell:
There is an incredible mix. They are in-state, out-of-state, and outside of the country. They are spread worldwide.

Assemblywoman Bustamante Adams:
The contractual relationship between the operator and the royalty holder, that is between them. They sign a contract, and they negotiate their terms. If someone were to default on paying their taxes, who does the Department of Taxation pursue for payment?

Jeff Mitchell:
For the past eight years, the liability has been with the mines per NRS 362.150. If any taxes are not paid, a lien is establishable upon the mine. It is my understanding that this does not change with the sunset provisions.

Assemblyman Kramer:
You said that with the economic crisis we had a couple years ago, it changed to where the mines paid the royalties. It was taken out of the royalties and remitted to the state. How was the tax on the royalties collected prior to having it collected by the mines?

Heather Drake:
Prior to Senate Bill 2 of the 25th Special Session in 2008, the royalties were reported and paid by the royalty holders. At the time the prepayment provisions were instituted in 2008, they shifted the reporting and the responsibility for the tax to the operator of the mine and off of the royalty holders.

Assemblyman Kramer:
My understanding is that is also the time when the prepayment of the proceeds of mines took place, so it was a package deal. Is that correct?

Jeff Mitchell:
That is correct.

Assemblyman Kramer:
Now that is ending?

Jeff Mitchell:
Yes.

Chair Neal:
You said you have lost contact with the 478 royalty holders. When did this occur?

Jeff Mitchell:
I may have phrased that poorly. We lost direct contact, where we did not mail to them. As a claim deduction, the mines are allowed to claim the amount they spend on the royalties and where they are dispersed. As part of that claim deduction, they have to give us a list of the royalty holders and the amount they are paying out. We have been able to maintain a list of these royalty holders through the mines and the returns they file. The royalty holders themselves have not had to report to us.

Assemblywoman Bustamante Adams:
I have a follow-up question on the deductions. From what I understand, when we were doing the prepayments, we did not allow insurance and health benefits to be deducted, but now we put that back in. As a result, these operators are allowed to deduct insurance and health benefits from the overall cost. Is that correct?

Jeff Mitchell:
Yes, that is correct, and that deduction started January 1, 2017. It is for the 2017 production year. That is in NRS 362.120, subsection 3, paragraph (g). It includes all money expended for premiums for industrial insurance and the actual cost of hospital and medical attention and accident benefits and group insurance for employees. That is a deduction that ended during the prepayment era. It is back and in effect starting January 1, 2017.

Assemblywoman Bustamante Adams:
Do you know of any other major taxpayers, like the largest taxpayers, who get to deduct insurance and health?

Jeff Mitchell:
In regard to the net proceeds?

Assemblywoman Bustamante Adams:
Not to net proceeds, but in the way they calculate them. For instance, does the casino industry have the same deductions?

Heather Drake:
My background actually is in Clark County, working on the casino properties. When you look at an income-producing property, that would be an allowable expense for casino operations in particular. If you are looking at property tax itself, you would be looking at expenses of just owning and managing the property. When we got to the casinos and looked at the income to the casino, we would look at those as being allowable expenses on a casino property.

Assemblywoman Bustamante Adams:
For clarification, you said that the operators are allowed to deduct the expenses that they charge for paying out the royalties. Is that correct?

Jeff Mitchell:
They are allowed to claim the amount of royalties they have paid.

Chair Neal:
Are there any additional questions? [There were none.] Thank you for your presentation. I will now open the hearing for Assembly Bill 82.

Assembly Bill 82: Revises provisions governing the responsibility for reporting the amount and payment of taxes on mineral royalties to the Department of Taxation. (BDR 32-248)

Heather Drake, Deputy Director, Division of Local Government Services, Department of Taxation:
As a background, prior to 2008, the royalty holders reported total royalties and paid tax on the net proceeds of minerals (NPOM) on the gross amount received. There were some inefficiencies in this system because of problems related to balancing the royalty payments that were reported by the royalty holders to the deductions claimed by the operators. This caused some bookkeeping issues and some inefficiencies in the balancing and making sure that everything was accounted for and reported properly. There were also collection issues, especially having to do with out-of-state royalty holders. At times, this resulted in unnecessary assessments of penalties and interest.

With Senate Bill 2 of the 25th Special Session, the statutes were changed to include the provisions for the prepayment requirements. At that same time, changes were made so the royalty recipients were no longer responsible for the reporting or payment of the tax. The operators deducted the taxes owed from the royalty payments prior to remitting them to the royalty holders. Then the operators themselves were responsible for remitting the taxes to the state. This did add some additional work to the operators, but it also protected them from having to be involved in the collection process if the royalty holders failed to pay the taxes due.

With the sunset provisions in Chapter 362 of *Nevada Revised Statutes* (NRS) that became effective June 30, 2016, there was the change to the prepayment provisions. This also removed the 2008 changes with respect to the reporting and payment of taxes on royalties. The effect was to place the reporting and tax payment responsibilities for the royalties back on the royalty recipients. That is the background leading up to Assembly Bill 82. I will now take you through the bill.

This bill revises the current provisions of NRS 362.110 and NRS 362.130 that became effective July 1, 2016. The intent of these revisions in A.B. 82 is to reinstate the provisions regarding the royalties back to where they were from 2008 up to the 2016 sunset. What that means is it puts the responsibility for reporting and remitting the taxes back to the operators of the mines, rather than having it be the responsibility of the royalty holders to report the royalties and remit the taxes.

Under these provisions, the person extracting the mineral would provide the annual statement. They would receive the certificate of the amount of net proceeds, royalties paid, and taxes due from the Department of Taxation. The operator would also pay the taxes on both the net proceeds and royalties. This is not affecting the amount of taxes due, but only who receives the certificate of the amount due from the Department and who is responsible for the payment of the taxes.

In looking at the bill, section 1 amends NRS 362.110 to state that the person extracting any mineral will file a statement showing the gross yield and claimed net proceeds, and the name and address of and royalty paid to each recipient of a royalty. It removes subsection 3, which was the requirement of reporting by the royalty holder. The difference in NRS 362.110 from the way it was prior to July 1, 2016 is that it puts the gross yield and claimed net proceeds as subsection 1, paragraph (a), subparagraph (1), and it adds subparagraph (2), which requires the person extracting the minerals to provide the name and address of and royalties paid to each recipient of a royalty. It does not change how it would be administered. It simply puts how it was already being administered directly into the statute. The statute reflects the way the tax was being administered from 2008—after S.B. 2 of the 25th Special Session—up until the sunset provisions ended in 2016.

Section 2 includes the amendments to NRS 362.130. This is to provide that the certificate of net proceeds from the Department would include the tax due on both the net proceeds and the royalties reported. It would be sent to the person extracting the mineral. The tax due would be the responsibility of the person extracting the mineral, again putting the responsibility back to where it had been starting in 2008 through the sunset provisions in 2016. The differences in the amended NRS 362.130 from the presunset language simply relate to references to NRS 362.115, since the provisions referenced were also changed in the current NRS 362.115.

Section 3 of the bill simply sets the effective date of July 1, 2017. Again, if passed, there would be a short time frame over which the royalty holders would again become responsible for reporting the royalty payments—and paying the taxes on them—prior to going back to the way it had been from 2008 through 2016. That is a general summary of the bill.

Assemblywoman Cohen:
Do you know how many mining operators will be affected by this?

Jeff Mitchell, Supervisor, Centrally Assessed Properties, Department of Taxation:
Currently there are 109 operators that have to report to the state for the NPOM tax. Of that, approximately 60 actually have royalty recipients they pay out to.

Assemblywoman Cohen:
If this does not pass and your Department is required to get in touch with all of these royalty recipients, how will that affect the Department? Will you be taking on a new employee?

Jeff Mitchell:
It is going to require quite a few man-hours in order to administratively check the royalty recipients against the mining claim deductions. There will be more time required. I do not believe it will require an extra employee. It will just require extra time and will detract from the time we spend reviewing other deductions.

Assemblywoman Cohen:
Do you have an estimate on the man-hours?

Jeff Mitchell:
Based on what we are currently seeing this year, I would be hesitant to throw a number out there. I apologize; I do not have an estimate.

Assemblywoman Cohen:
Is there any industry you can think of where the industry paying out the royalties is responsible in this way? When I think of royalties, the only industry I can think of is the entertainment industry. Is there anything similar to that in Nevada or California where they are directly paying royalties in the industry like that?

Jeff Mitchell:
My experience and expertise is with the mining industry. I know that royalties are very involved in mining nationwide. I do not know of other industries that royalties affect.

Heather Drake:
I would like to add a little bit from the other side of the property tax experience. We had a reference earlier to the casinos. When we look at regular property tax on income, we start with a potential gross income. We subtract out for cost of sales or for allowable expenses and you get the net revenue, which is usually capitalized into an indication of value. That, in turn, gets a tax rate and becomes the rate. Any other property tax is assessed to the owner of the property. When you think of a casino, you are taxing the casino; you are not taxing other entities or sending out bills to people who might have an investment interest in that property. Under Chapter 361 of NRS, you assess and appraise the value, and you assign the tax to the owner of the property.

Assemblyman Pickard:
Now I will ask my bill question from earlier. You are right on the topic, and you may have started to answer my question. In light of the royalty payments, I was under the impression the royalty holder was liable for the tax; but it sounds like under a property tax paradigm, you are suggesting the mine is responsible to pay the tax. I need some clarification. Who is ultimately liable for the tax on the royalties?

Heather Drake:
The way it was up until S.B. 2 of the 25th Special Session, the royalty holders were responsible for reporting and paying the tax. That bill changed that and added the prepayment provisions, putting the responsibility on the operator to deduct the taxes from

the royalty payments, so they were responsible for the payment of the tax. With the sunset, it reverted back to the operator paying their net proceeds, and the royalty holders became responsible for payment of the tax. If you look at other types of property tax, such as the casinos, we do not tax shareholders or other business interests for the casinos' property tax. They receive profits, payouts, dividends, and those types of things. It is not taxed to them as individuals. We tax the owner of the property.

Assemblyman Pickard:
I understand what you are saying, but as I understand it, the royalty holders are actually the property owners. The mines come in, lease the ground or have a contract to use the property to extract the minerals, and they pay a royalty on the minerals, but the property owner is still that royalty holder. This seems to be modeling more of an income tax withholding type of arrangement. Is the royalty holder still liable for the tax?

Jeff Mitchell:
That is a very good question, and one I do not know the policy and procedure on prior to 2008. What I have been leaning on is NRS 362.150, where it says if the taxes are not paid, the lien is established upon the mine.

Assemblyman Pickard:
It seems to me what we are trying to do is achieve an issue of convenience and efficiency for the Department of Taxation. In other words, it is a lot easier to go to one or two people to get all the money than it is to send bills out and collect from all. I agree that government efficiency is an important consideration. What I am driving at, and maybe we can do this offline, is I want to get clarity on who is liable for the tax, not so much who is paying it or who has paid it, but who is liable for it. Are we taxing the right people? Personally, I think we should be taxing the people who owe it. We can talk about this offline.

Assemblyman Paul Anderson:
I am going to follow along the lines of my colleague. I think the liability piece is important because if I am a royalty recipient and the mine was paying on my behalf—as the last eight years they had been—and there is a discrepancy, am I liable for any penalties and interest that may be applied because of that discrepancy I had no control over? I think that is a key answer we need to have before we can shift the liability from the mining company, or away from the royalty recipient. The last eight years the liability was with the mining companies because they were prepaying it. I do not think we had all 478 royalty recipients that could have possibly prepaid one year's worth of their royalties. In 2009, the industry may have double-paid their actual payment. I think the industry came together in times of need when the state was in a tough spot.

I know we have been doing it this way for the last eight years, but I am concerned about the liability piece, shifting the burden back to the mining company when we just changed the law to go back to how it was before. I recognize the efficiency of being able to collect this like a sales tax or some other withholding through the industry folks themselves, but the liability piece concerns me. If I am a large or small royalty recipient, I need to have control over my destiny at some level. If I cannot control that I have paid my bills, paid my taxes, and I am trued up with the Department of Taxation, that would concern me as a taxpayer.

Assemblyman Kramer:
If indeed it is your intent to have the mines actually pay the tax on the royalties, why is it then that in section 1 you even need to know the name and address of the people who are getting royalties paid to them? If it is a nonissue, why bother?

Jeff Mitchell:
The mines are allowed to claim the amount of royalties they pay as a deduction. If a mine had a negative net proceeds, if their expenses outpace their gross, there would be no need for them to claim the royalty payments as a deduction. We have had instances where they have not listed out those royalty recipients to us, and that would be a missed tax because there would be no tax on the royalty recipients if the mine did not claim them as a deduction. Under A.B. 82, this would require them to report the royalty recipients no matter what.

Assemblyman Kramer:
I beg to differ. If you are going to make the mines pay the royalty, they are going to pay it regardless, whether they had a negative year or not, if that is what you are changing. You say you want to know what their address is and the royalty paid to each, but are you not going to find that out when the mine remits the tax?

Jeff Mitchell:
If it was a negative net proceeds, then there would be no tax to remit except for the tax on the royalties.

Assemblyman Kramer:
When they remit the tax on the royalties, you know how much it is. Do you want to know the breakout of it?

Jeff Mitchell:
If it reverted back, there would be no way for the Department to know if they were remitting the tax on the royalty holders or not, and that net negative net proceeds.

Assemblyman Kramer:
I agree. If it reverts back to the way it was before 2008, you would need to know these things, but I do not see the need if you are going to have the mine pay the taxes.

Assemblywoman Bustamante Adams:
If we have the royalty holders paying their own fees to the Department and they do not remit it, could the Department shut down the mine?

Jeff Mitchell:
I do not know the answer to that question.

Assemblywoman Bustamante Adams:
What is your remedy for collecting the lien if they do not pay?

Jeff Mitchell:
Prior to 2008, there would first be the establishment of penalties and interest. The Department would then work with mines to garnish the royalty payment to the royalty recipient, and they were able to collect the tax that way. I believe that is what we would establish as a policy, but I do not know if I am able to speak to if that is exactly what we would do.

Assemblyman Pickard:
If we could go back and garnish the future royalty payments, it sounds like if the mine can calculate what that royalty should have been, and thus the tax. In that scenario, are we not pretty much back to where we want to go with this bill, where now we are collecting it directly from the mine and we do not have to chase anyone else?

Jeff Mitchell:
Pretty much. It would just be minus the establishment of the penalties and interest on the royalty recipients.

Assemblyman Pickard:
Presumably the penalties and interest are going to replace what we would have benefited from had we paid on time. Is it correct that the state is made whole at that point?

Jeff Mitchell:
Correct.

Chair Neal:
In looking at NRS 362.110, the old law required a form to be submitted, and we do not know what was on the form. The new language in A.B. 82 now requires the name and address for each royalty recipient. Was that on the form?

Jeff Mitchell:
Yes.

Chair Neal:
From the earlier presentation, when you said that you lost contact with the 478 royalty holders, I wondered how do you lose contact with somebody who is already on the form? You need to help me clarify that particular point.

Jeff Mitchell:
On the form the mines submit to the Department, we have them list out all the deductions they claim, and part of that is the royalties they pay out. When they pay that, they provide us the royalty recipient's name and address. When I said we lost contact with the royalty

recipients, what I meant was we no longer required the royalty recipients to file a form with the Department. The royalty recipients themselves did not file with the Department. The mines filed that list.

Chair Neal:
At first I thought this was an efficiency measure. You said it would take a lot of man-hours. How many hours will it take for you to stay under the old law and get the remittance separately?

Jeff Mitchell:
A rough estimate would be around 4,000 man-hours, which is 4 hours per return on the royalty recipients. We are going to have to check each return that the royalty recipients files and reach out to them if there are discrepancies.

Chair Neal:
That is why it is confusing. Under the prepayment, there was an estimation of the tax. Now we are going to the actual remittance of the tax. When estimating or projecting what is in existence, there is the possibility of greater errors that may occur. How many hours were you dealing with when you had to true-up the estimate? It sounds like that would take more work.

Jeff Mitchell:
With the prepayment ending, there is going to be less work balancing against the credits, carry-overs, and things along that line coming forward. There will be slightly fewer hours on that front. We had reached a stage where all of that was pretty much automated. It was not as man-hour heavy to double-check a lot of those prepayments and the calculations.

Chair Neal:
How many hours did the Department spend truing up the estimates or the projections?

Jeff Mitchell:
There are two full-time appraisers that work on it, along with myself. We pretty much dedicate from February to May to the NPOM process, so three full-time employees for those three months.

Assemblywoman Spiegel:
I did not see a fiscal note attached to this bill. What would the fiscal impact be if the bill passes versus not passing, relative to the *Executive Budget*?

Jeff Mitchell:
If the bill passes, there would be less fiscal impact to the state. We are not going to require as many man-hours to work on it, so there is no fiscal impact if it passes.

Assemblywoman Spiegel:
It sounds like there would be a fiscal impact, not a cost but a savings. Could you quantify that?

Michael Nakamoto, Deputy Fiscal Analyst:
Fiscal notes on legislation are not required under NRS 218D.430 when there is a cost savings to a state agency. A fiscal note is only required when there is a reduction in revenue or an increase in expenditures.

Assemblywoman Cohen:
I am somewhat confused. When I asked if there was going to be the need for a new employee, you said there would not, but you just told the Chair this would be about 4,000 hours more work. That sounds like a new employee to me—more than a new employee. Can you please clarify?

Jeff Mitchell:
Right now we are in the process of desk-reviewing these returns. It is very hard for me to give an estimate of hours. In past years, I have been able to dedicate more of my time to other areas, and I have shifted my focus completely on to net proceeds. The mining appraisers I have who review these, during this time period they also had been doing other work. We have refocused all our work on to this, and we have shifted those other projects to later. We will not necessarily need a new employee, but we are dedicating more time to this. I apologize if there was any confusion.

Assemblyman Pickard:
I am thinking in terms of how we map this, or place this into a flow chart. If we are moving payments into the future, because we are shifting from getting it early to getting it after the fact, will that not actually reduce the immediate man-hour requirements? You are not doing the reviews until they come in after the fact. What does the cascade look like as we go forward in time?

Jeff Mitchell:
The yearly requirement to file the returns is still in place. It is just the payment itself that has shifted, and most of that is automated.

Chair Neal:
Are there any additional questions? [There were none.] Is there anyone here in support of A.B. 82? Seeing no one, I would ask those who are in opposition to A.B. 82 to come to the table.

Dylan Shaver, Vice President, Nevada Mining Association:
We are here unfortunately in opposition to A.B. 82. We believe that what the Department put forth as a good-natured attempt to streamline their process a little bit will place an undue burden on our mine operators and on royalty recipients at the same time. The prepayment of

these taxes was not something done in the spirit of making excellent policy, it was done to resolve a budget crisis for the state. The prepayment was to resolve cash flow issues that presented to the state at a very difficult time.

As the Department mentioned, unrolling that prepay did take quite some time because of the gap year and cash flow that it would create. As members of the Committee have accurately pointed out, the state ultimately gets the same amount of revenue. It was just the cash flow that was necessary at that time, and fortunately that policy was allowed to unwind June 30, 2016, and with it the requirement that mine operators pay the NPOM tax on behalf of the royalty holders.

When the prepayment policy was in place, I cannot say we liked being in the position of holding on to that money for the royalty holders and paying it to the state on their behalf, but as was pointed out earlier, it would be very difficult for a royalty holder to make a prepayment on a royalty they have not yet received. Wrapped in a policy that in and of itself may not have been great, it was something that had to be done to get this state through a very difficult time.

Now we have returned to a traditional taxpayer method in which basically the person making the money is paying the taxes. We do not see any reason to return to the system where we would hold on to a royalty holder's tax payment and then remit it to the state. As they mentioned, there are about 478 different royalty holders in the state, and each one of those royalty holders represents a complex negotiated agreement between two parties. Something this bill perhaps does not consider is that agreement contains, among other things, a schedule of payments, the amounts of payments, and perhaps varying amounts of payments depending on a mine's production. For example, if we had a royalty holder who was being paid out quarterly, would our direction from the Department be to withhold all of those taxes from the first quarterly payment or to withhold them equally from all four payments? It is left unaddressed. If the Department were to try and address them, then they would be getting into the middle of the contract between a mine operator and a royalty holder, which is a place I do not think the Department wants to be, and we certainly do not need them to be.

The Department mentioned that under a property tax setup, the owner of the property is taxed. It is important to note, from our perspective as mine operators, royalty holders are the owners of that property. They are the ones being taxed here. We must also remember that this provision has already ended [June 30, 2016], so the burden is already on the Department to track down these royalty holders so they can submit their payments for the partial year. We have and will continue to work with the Department to help track these people down, and of course with our deductions, we do report the amounts and locations of our royalty holders.

The Department testified to the fact that under the current system where the property owner is paying their own taxes, there is already a remedy in place if they are unable to track down or find a royalty holder, which is they come to the mine operators and tell them they are going to garnish the royalty holder's distribution by a certain amount. We believe this is a more clean-cut way to approach the situation. It is much easier when you have a carefully negotiated contract between two parties. When the government comes in with an order to perform a task, we are still going to perform that task. We will still garnish as necessary and allow for the Department to make the state whole, which is where it needs to be.

We are also here as a mining association, representing not just mine operators and vendors along the supply chain, but also a good number of royalty holders who are members of the association as well. We have presented a letter to the Committee (Exhibit D) from royalty holders objecting to this measure. Their preference is not to be governed in this way. Similarly to a question asked earlier in the meeting, they would prefer to be in control of making their own tax payments. From our perspective, while we said at the outset that this was a well-meaning attempt to streamline our process, we believe the burden it places on both sides of this equation, for the mine operators and the royalty holders, makes for suboptimal public policy. We would prefer to continue with the way the current law reads. Thank you for your time. With me today is a man who needs no introductions, Jim Wadhams, to answer any questions you may have. We are here at your disposal.

Assemblyman Pickard:
To follow up on a similar question I asked the presenters, this seems to me to be similar to an employer who withholds income tax or a retailer who is withholding sales tax for the benefit of the person making the purchase. If we were to pass this bill, how would this be any different than what we see already in the existing tax law?

Dylan Shaver:
The first part of your question was about income tax withholding. When your income taxes are withheld, there are a handful of calculations that take place. The first one, and the most important one, is done by you. You inform your employer what withholdings you are going to take. They remit those taxes on your behalf, but by April 15 of each year you are going to have to fill out a form and give it to the federal government saying what you made last year and list the other taxes you have paid. The government will either owe you money or you will owe the government. There is a succinct resolution that ultimately places you, the taxpayer, at the end of that equation. The comparison to sales tax is a tempting one because it looks like a similar transaction, but it is actually very different. In this situation, a mine operator is remitting to a property holder a payment that is owed to them. In a retail scenario, you are coming into my shop and I am collecting money from you then turning around and remitting it to the state. It is also worth noting that through that remittance process the retailer is allowed a certain collection allowance for their troubles, which is not considered in this bill, and to clarify, it is not something we are asking for.

Assemblywoman Bustamante Adams:
Out of the royalty holders, the 60 they mentioned, how many of them are members of your association?

Dylan Shaver:
I think you are referring to the 60 mines I said were paying out royalties right now. We have not canvassed our members to see who is and is not paying out royalties. We have operators of every size, and I would hesitate to venture a guess, but I would be happy to provide that information to you after talking to some of them.

Assemblywoman Bustamante Adams:
I would also be interested to know if those royalty holders have business licenses in the state? You made a statement earlier about wanting to garnish royalties to make the state whole again. Could you repeat that?

Dylan Shaver:
Absolutely. Under the current law, should the Department fail to receive payment from a taxpayer who is a royalty holder, they have the option to come in and garnish that person's royalty payments. I do not like to use the income tax comparison, but this is similar to when somebody's paycheck would be garnished. The state does have the option to make themselves whole, and that has been something that has been done in the past. The Department mentioned earlier they cannot say that is how they would do it in the future, but it is a tool in their tool box, and it has worked for us.

Assemblywoman Bustamante Adams:
The question I asked the Department of Taxation was regarding the remedy to be able to collect or place a lien on the property if they do not receive their money. I am sure you do not support the mining operations being shut down if they do not receive the taxes from the royalty holders. Is that correct?

Dylan Shaver:
You are correct. We are actually talking about the same thing. You say they come in and put a lien on the property, that is the garnishment we are talking about. They will come in and garnish that royalty holder's income we would be sending them. We absolutely do not support their shutting down the mine over a royalty holder.

Assemblywoman Bustamante Adams:
If there are 4,000 additional hours for them to deal with the royalty holders, that will obviously be a cost to the state. Has the association had a discussion on being taxed at a higher rate so that the state could recuperate that cost?

Dylan Shaver:
The 4,000-hour number was surprising for us. We heard it at the same time you did. It is surprising for a couple of reasons. The first is that currently, whether this bill passes or not, the Department will have to track down these royalty holders because there is still going to be a gap year between the previous law lapsing and the current law going into effect.

This bill does not address that one way or the other. The second piece is with regard to the 4,000 hours. We are willing and able to assist the Department in tracking down royalty holders, as we always have. I do not believe an additional tax levy would be necessary, or even warranted, under the passage or failure of this measure.

Chair Neal:
Are there any additional questions? [There were none.] Is there anyone else who would like to speak in opposition to A.B. 82? Seeing no one, I will now take testimony from those who are neutral on A.B. 82. Seeing no one, can we have the bill presenters come back to the table for final comments or clarifications?

Jeff Mitchell:
Perhaps I spoke out of line when I mentioned the 4,000 hours. I was trying my best to provide an estimate of the man-hours provided. Because we are in the process right now, it is hard for me to determine the extra hours that will actually come to fruition from this bill not passing. I apologize if I confused the issue there.

[(Exhibit E) was presented but not discussed and is included as an exhibit for the meeting.]

Chair Neal:
Do the members have any final questions? [There were none.] I will close the hearing on A.B. 82. I will now open the meeting for public comment. Seeing none, I will close public comment. We are adjourned [at 5:26 p.m.].

RESPECTFULLY SUBMITTED:

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Gina Hall
Committee Secretary

APPROVED BY:

____
Assemblywoman Dina Neal, Chair

DATE: ______________________________

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a PowerPoint presentation titled "Nevada Department of Taxation, Local Government Services Division, Net Proceeds of Minerals," dated February 28, 2017, presented by Heather Drake, Deputy Director, Division of Local Government Services, Department of Taxation

Exhibit D is a letter dated February 27, 2017, in opposition to Assembly Bill 82 to Chair Neal and members of the Assembly Committee on Taxation, authored by Jeffrey D. Jenkins, Director of Finance - US Operations, Franco-Nevada US Corporation, presented by Dylan Shaver, Vice President, Nevada Mining Association.

Exhibit E is a time line showing the net proceeds of minerals tax, submitted by Dylan Shaver, Vice President, Nevada Mining Association.