

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Eighty-second Session
June 1, 2023**

The Senate Committee on Revenue and Economic Development was called to order by Chair Dina Neal at 3:08 p.m. on Thursday, June 1, 2023, Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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 Dina Neal, Chair
Senator Fabian Doñate, Vice Chair
Senator Pat Spearman
Senator Heidi Seevers Gansert
Senator Carrie A. Buck

GUEST LEGISLATORS PRESENT:

Assemblywoman Venicia Considine, Assembly District No. 18
Assemblyman Brian Hibbetts, Assembly District No. 13
Assemblyman Duy Nguyen, Assembly District No. 8

STAFF MEMBERS PRESENT:

Michael Nakamoto, Chief Principal Deputy Fiscal Analyst
Christian Thauer, Deputy Fiscal Analyst
Bryan Fernley, Counsel
Janet Stokes, Committee Secretary

OTHERS PRESENT:

Mike Sullivan, Malecon Tobacco
A'Esha Goins, Tap N Ash Social Club
Brad Mark, SMōK Cigar Lounge
Michelle Runlis, Tap N Ash Social Club
Caitlin Gatchalian, American Heart Association

CHAIR NEAL:

We have two bills on the agenda and will start with Assembly Bill (A.B.) 232.

ASSEMBLY BILL 232 (1st Reprint): Revises provisions governing the taxation of other tobacco products. (BDR 32-618)

ASSEMBLYMAN BRIAN HIBBETTS (Assembly District No. 13):

As written, the bill revises the taxation of premium cigars as defined in this bill and changes the taxation on other tobacco products (OTP). The law states anything defined as other tobacco products is taxed at 30 percent of wholesale value upon receipt by the retailer. The bill would change that slightly to define premium cigars and cap the tax at 50 cents per cigar with a floor of 30 cents per cigar.

Premium cigars, defined as a cigar rolled by hand, have a wrapper made of whole tobacco leaves and do not have a filter or mouthpiece. The reason for the requested change in law is economic. Our statutes place our small business owners at a disadvantage. Arizona's premium cigars are capped at 22 cents. Texas is capped at 1 cent. Florida has no tobacco tax. Internet retailers are not paying sales or tobacco tax to Nevada.

Our retailers are seeing a shift to online marketplaces. They testified in the Assembly that they see a lot of people come into their lounge, buy a cigar from their humidor and while sitting in the lounge sampling it, they get on their phone, use the Internet and order a box of those cigars from another retailer without having to pay the OTP tax, thus saving approximately 30 percent.

If you look at the fact sheet ([Exhibit C](#)), you can see an example of listings with prices from other states. This bill will help the economy and bring in more business for our brick-and-mortar retailers, thus allowing them to survive.

ASSEMBLYMAN DUY NGUYEN (Assembly District No. 8):

This bill was brought to my attention by constituents in my district with cigar lounges who are wanting to open brick-and-mortar locations and expand their businesses. They say they feel a lack of support and that there is no incentive for their businesses to grow. I am here to ensure my constituents' voices are part of this conversation.

ASSEMBLYMAN HIBBETTS:

We have consulted with the Nevada Department of Taxation to address its concerns. Taxation representatives are here for questions. There is a conceptual amendment because, when we presented this on the Assembly side, we requested to add the floor of 30 cents, which was not part of the original bill. We agreed because we did not see any problems with it or unforeseen consequences. The amendment turned this into a two-thirds majority vote bill. That was never the intention.

Legal has another version that still caps the tax at 50 cents but removes the 30-cent floor. This bill has a sunset of June 30, 2027, so we can show historically how other states have done this; the 33 states that have done something similar have shown, although they are limiting their OTP tax, their revenue goes up, and that is our anticipation. The sunset is to have data to show it does work; if it does not work, then we can go back to the previous way. We will come back in two sessions and remove the sunset if everything works out the way we anticipate.

CHAIR NEAL:

Is this a new conceptual amendment, or are you referencing the conceptual amendment that moved on the Floor of the Assembly before it got here? Because I do not have it. Should we have another document?

ASSEMBLYMAN HIBBETTS:

This is Proposed Amendment 3564, and I do have a copy ([Exhibit D](#)).

SENATOR BUCK:

What is the most a premium cigar will cost?

ASSEMBLYMAN HIBBETTS:

Are you referring to wholesale or retail?

SENATOR BUCK:

Either way?

ASSEMBLYMAN HIBBETTS:

The most would be \$10 to \$15. I am not an expert on wholesale cigars as far as pricing.

SENATOR SPEARMAN:

There is a problem with people trying cigars in our lounges and instead of purchasing them from the brick-and-mortar retailer, they go online. If it is \$15, online it is \$12. Did you factor that in terms of the tax rate? What is the lost revenue from a tax perspective?

ASSEMBLYMAN HIBBETTS:

The State loses all tax revenue because the Internet retailer is not paying OTP or sales tax. The Fact sheet, [Exhibit C](#), shows that buying one cigar in a local retail lounge versus buying the same cigar from an Internet retailer where no taxes are collected equates to a difference of approximately 30 percent.

SENATOR SPEARMAN:

Why only premium?

ASSEMBLYMAN HIBBETTS:

Nonpremium cigars that are not defined as premium by this bill do not rise to the level where they would be capped. By design, they do not cost as much. The cap kicks in at \$1.67. Anything at \$1.67 or below for a wholesale price is less than \$.50 under the existing taxation system. The average cigar that is not covered as a premium cigar would not cost \$1.67 wholesale—most of those cost \$1 or under.

SENATOR SEEVERS GANSERT:

It sounds like the taxes are paid at the wholesale level. If you are purchasing out of state, there is no cigarette stamp. Is the issue that there is no way to levy a sales tax, only an excise tax, on what comes into the state? It is going to be equitable.

ASSEMBLYMAN HIBBETTS:

The OTP tax is 30 percent of wholesale value upon receipt by the retailer or the first transaction in Nevada. For example, a retailer purchasing a cigar with a \$10 wholesale value pays the State \$3 of tax prior to ever putting the cigar on the shelf or making a sale. The retailer then marks up the price and that passes on to the consumer. The problem with the Internet is that a vendor not based in Nevada does not pay the OTP or sales tax.

SENATOR SEEVERS GANSERT:

Proposed Amendment 3564, [Exhibit D](#), fixes the price at 50 cents per unit. Does that take the two-thirds off?

ASSEMBLYMAN HIBBETTS:

Yes, Bryan Fernley, our Committee counsel, assured me the floor is the reason for the two-thirds and said that was the legal opinion of the Legislative Counsel Bureau.

SENATOR SEEVERS GANSERT:

I saw an extension of the sunset date by two years. Why did you want that?

ASSEMBLYMAN HIBBETTS:

That was the original proposed amendment prior to negotiations on the Assembly side. I would still ask that the sunset be in 2027 just so we are not messing with those numbers.

CHAIR NEAL:

As part of a negotiation to get this out of the Assembly Committee on Revenue, do the Chair and Vice Chair of that Committee know you reversed what they agreed upon as policy?

ASSEMBLYMAN HIBBETTS:

I have spoken to the Chair, Assemblywoman Shea Backus, and she is aware, as well as most of the other Assembly Committee members.

CHAIR NEAL:

You have a floor of 30 cents and the maximum of 50 cents now removing the 30 percent on the wholesale. Why are we treating one subset of OTP differently? I am not convinced this is necessarily appropriate policy. Can you continue to persuade me on why the maximum of 50 cents when it could be \$14, \$4, \$8, and now the revenue generated for the State would only be 50 cents versus 30 percent of the wholesale?

ASSEMBLYMAN HIBBETTS:

Taxation does not break out how much tax we get from premium cigars. That is not the way the system is designed. In fiscal year 2020-2021, approximately \$35 million was collected by the State in OTP tax. If you look at other states with similar systems, premium cigars make up approximately 2 percent of that.

We are looking at somewhere between \$1 million to \$2 million in revenue for the State which would be reduced. In other states, the sales tax makes up for it because people can buy a better product or more of a product. Instead of purchasing online, you would make up those portions of the tax, and the State would see the revenues, of which it now sees zero.

SENATOR SEEVERS GANSERT:

Looking at your original bill, you kept the rate but capped the level to 50 cents, which did not require a two-thirds. You may have a two-thirds because now you are changing the tax. You might need to get some input from our legal counsel on that.

I was talking with Mr. Nakamoto about whether you are tricking the two-thirds or not. I think the assumption is that they are going to sell more cigars because the net price will be much closer to the price on the Internet. Do you have examples from other states? Have other states captured a tax scheme where there is not a significant differential between the retail price and an online price?

ASSEMBLYMAN HIBBETTS:

Michigan did a similar cap to what we are proposing. They had originally put the cap in with the sunset, then they extended the sunset to get the data, and then they removed the cap because they saw revenue going up. There is another state that also showed doubling their revenue within a few years, but I do not have that information right now.

CHAIR NEAL:

This is deadline week, and the Chair of Assembly Revenue does not agree with this amendment. I hope you understand if you change something on this side, the Assembly Chair must concur. The Assembly Chair is probably not going to concur. This increase removes the floor, and then having a straight 50 cents will be considered a tax increase because you must consider what it looks like depending on what the 50 cents is applied to. If that is not an even application of what 50 cents is, it could be seen as a tax increase.

We are reaching out to Bryan Fernley. I understand you care about this policy, but when you change something that the Chair on the other side has previously decided is the only way she will accept the policy, I am going to talk to that Chair. If the Chair disagrees with the amendment you are presenting, I will lean to her, especially if she was not aware of this change.

I am just putting you on notice because Proposed Amendment 3564 will probably not be accepted. Would you like to recalculate and rethink what you would like to have because it needs to be what the other side accepted? I need to cut to the chase because I do not want to waste your time with a bill that could die because it is a nonconcurrency.

MICHAEL NAKAMOTO (Chief Principal Deputy Fiscal Analyst):

I will stress the Fiscal Analysis Division portion of this since I am not an attorney. I am in the process of reaching out to Mr. Fernley to get some more information.

I was in the original hearing for this bill in the Assembly Revenue Committee. In the original bill draft, premium cigars would be calculated at a 30 percent price up to 50 cents, so there was a cap but there was no floor. The bill as amended putting a floor of 30 cents on it, which is the reason the two-thirds was put on the bill.

The mock-up proposed amendment, [Exhibit D](#), is drafted slightly differently than the original bill draft. As stated now, it is no longer 30 percent up to 50 cents per cigar; it is just 50 cents per cigar. The amendment mock-up further states in section 1, subsection 1, paragraph (b), "If the other tobacco products are premium cigars, a tax of 50 cents for each premium cigar," which, in my opinion as fiscal staff, serves both as a floor and a cap simultaneously.

Because Proposed Amendment 3564 has been presented, the potential exists for a taxpayer to pay additional tax under this. It increases the 30-cent floor to 50 cents.

SENATOR SPEARMAN:

What is the rationale for 50 cents?

MIKE SULLIVAN (Malecon Tobacco):

We looked around the Country and the 50-cent rate was the price point that seemed to make sense. The State did not lose as much money and that was the rate where our retailers could compete with other states, sell the cigars and compete with the Internet. That is why we came up with the 50 cents.

All we were looking to do with that amendment was to go back to the original bill language and say 30 percent wholesale up to 50 cents. I think what we

gave you was not drafted correctly. Capped at 50 cents, anything under that would be 30 percent wholesale. That 50-cent level would be the cap on what you charged. That was the original bill. All we wanted to do was go back to the original bill with the sunset. I think we probably gave you the wrong amendment.

I talked to Chair Backus about going back, because when we created this amendment, we created three levels of taxation. Now we have a 30 percent wholesale, then up to \$1, then \$1 to \$1.67 is this 30-cent floor. After that is the 50 cent cap. With this floor, we accidentally created a third level of taxation of cigars. That was never our intent. We just wanted to have a simple 50 cent cap. I apologize if that was confusing.

CHAIR NEAL:

I understood it that way. You may need to have further conversation because the message I am understanding is that the original bill as presented in Assembly Revenue was amended for the votes to get it out of Committee. The adopted version voted on the Assembly Floor has the floor of 30 cents with a max of 50 cents is what they want, and they do not want it changed.

If I amend Chair Backus's bill as it came out of her Committee, she does not have to accept this Senate amendment. You will have to go through a concur or not concur vote process. If she does not accept it, you are back at the version she passed out of her Committee, or she could do several other things which could ultimately kill your bill.

You need to decide what you want to walk out of this Session with. If you want your policy, you might have to walk out of here with what the Assembly Revenue Committee told you was the only version you can get because I am not throwing this into a conference committee. Think deeply about the choices you would like to make on this policy.

ASSEMBLYMAN HIBBETTS:

I would happily withdraw Proposed Amendment 3564.

CHAIR NEAL:

That would be wise.

I will take testimony in support of A.B. 232.

A'ESHA GOINS (Tap N Ash Social Club):

The Tap N Ash Social Club is in support of A.B. 232. My clients are interested in this bill because they have a rapidly growing business. One of the places where they are losing revenue is because consumers are purchasing product online instead of from the actual business. A cigar at retail is \$22. When we purchase it wholesale, it does not apply tax. A case of those cigars ends up being cheaper than purchasing it from the retailer. The intent of this bill is to ensure those consumers using the social club can buy bulk from the retailer instead of purchasing online. I am not sure about the amendment situation, but I urge you to support this bill.

BRAD MARK (SMōK Cigar Lounge):

I support A.B. 232 as a small businessman opening a cigar lounge in Las Vegas. I am a 33-year resident of Las Vegas, and this will be my seventh business. I have enjoyed my career of creating jobs in this great State. My latest venture, SMōK Cigar Lounge, will open in October this year in Assemblyman Nguyen's District, and I appreciate his support.

To address a comment from one of the other Senators, yes, we are giving up a 30 percent revenue in some cases. However, the reality of what we have seen across the Nation in states like Wisconsin is a 78 percent increase, doubling their revenues. New Jersey, Michigan and other states have adopted this same type of policy. Although they are giving up 30 percent in one case, they are picking up 100 percent of those they were not getting because of online sales.

I submitted the receipts from the Assembly Revenue Committee showing how you can save \$6 on a \$20 cigar. We simply cannot ask our customers to support us locally. I am trying to create 20 jobs at an average with starting salaries of over \$40,000. We just need to be able to compete.

The one analogy I can give you is consider buying a car. If you could buy that car at the dealership for \$15,000, and you could buy the same car online for \$10,000, you would be a fool not to purchase it online. If the tax situation were similar and you could buy the car locally or online, most of us would agree that we would buy at the dealership from a person, someone we can see, where we can test drive the car, where we can see the car, touch the car. We would have a person's hand to shake, and we have a person to go back to for future purchases or if we have a problem.

Our cigar smokers are facing this exact situation every day in Nevada because they simply cannot buy locally at the same fair price. We are competing with other states that simply are not paying Nevada. Let us get 100 percent of the revenue from all the customers who will purchase from our employees. I am working with Nevada, the EmployNV website. I will be hiring people directly through its resources to get people off unemployment. We want to make this a fair purchasing decision for all our consumers.

MICHELLE RUNLIS:

My husband Melvin and I are in support of A.B. 232. We are owners of a newly opened minority-owned business, Tap N Ash Social Club. This bill is important to us because it would make a great fiscal difference to our business.

Lounges like ours have two options for purchasing products. The first is ordering direct from the manufacturer or an out-of-state distributor, where we are required to pay a monthly upfront tax of 30 percent already in place with no option to utilize tax incentives provided by the distributors and manufacturers that are willing to pay those fees on our behalf. Paying a 30 percent tax on an item you have not had the opportunity to sell creates a significant financial burden to our bottom line. The passage of this bill is important to us.

When we originally stocked our humidor, our inventory cost us somewhere in the range of \$50,000 to \$75,000 which is a significant investment. The current tax code left us paying almost \$23,000 in taxes for something still sitting on our shelves, we have not had a chance to recoup. Over the last year, we are close to \$70,000 in what we have invested. For a small business, that is a significant amount of money that could go toward improving our business and our customers' experience and maintaining a strong workforce. All of that is important to us.

Most cigar lounges depend solely on cigar sales, with the average item somewhere around \$10 to \$20. Online retailers are not required to pay taxes on brick-and-mortar locations. We continue to carry this tax burden based on what we sell. The change proposed in A.B. 232 from 30 percent to a 50-cent tax on each premium cigar would not only put our small minority-owned business on an equal playing field with those types of retailers, but it would also immediately improve our bottom line by freeing up working capital to allow us a better financial footing to grow and improve our business.

The precedent has already been set for this type of taxation in Arizona which only charges a 22-cent tax for each premium cigar, a state we must compete with for business due to its lower tax rate. We recently had a customer come into our lounge with a cigar that would normally sell for \$10 with a price tag of \$5 from an online retailer in Arizona.

CHAIR NEAL:

I will now take testimony in opposition to A.B. 232.

CAITLIN GATCHALIAN (American Heart Association):

The American Heart Association would like to express our opposition to A.B. 232. An estimated 380,000 U.S. students were cigar users in 2021, making cigars the second most popular tobacco product among youth. Regular cigar smoking increases the risk of cancer of the lung, oral cavity, larynx and esophagus. Cigar smokers have a 27 percent higher risk of heart disease and a 45 percent higher risk of chronic obstructive pulmonary disease as compared to people who are not cigar smokers. Cigar smoking in the U.S. has been a behavior of older men, but the industry's increased marketing of these products to targeted groups increases the prevalence of use among adolescents. The tobacco industry continues to use tactics to appeal to youth and has been since the early 1900s. Tobacco companies know youth use of tobacco is price-sensitive and raising tobacco prices reduces use of smoking. This bill would set a precedent for OTP taxes to be lowered.

ASSEMBLYMAN HIBBETTS:

I thank you and the Committee for the expeditious hearing. I apologize for the mix-up with the proposed amendment. It was not the one I intended. I was not attempting to backdoor Chair Backus from the Assembly.

Regarding the testimony from The American Heart Association, thanks to A.B. No. 360 of the 81st Session, retailers are now required to scan identifications of anyone attempting to purchase tobacco products. The chance of someone underage walking into a premium cigar lounge to purchase a cigar who is underage is almost nil, and children are not going in to purchase a \$35 Padron cigar. The cigars they are talking about are not covered by this bill.

SENATOR NEAL:

We will close the hearing on A.B. 232 and open the hearing on A.B. 345.

ASSEMBLY BILL 345: Revises provisions governing the Commerce Tax.
(BDR 32-783)

ASSEMBLYWOMAN VENICIA CONSIDINE (Assembly District No. 18):

You have copies of my presentation ([Exhibit E](#)). This is a bill about the Commerce Tax. An exemption in the Commerce Tax for real estate investment trusts (REIT) has been there since the Commerce Tax was created a few years ago. I found an odd-sounding interest in REITs, tried to track down why this exemption was put into the Commerce Tax and have been unable to find any documented information as to why. Looking at why this is here and learning more about REITs, I have not yet seen a reason for this to be here.

I assume you are not fully fluent in REITs, which is the bulk of my presentation. A REIT is a corporation, a trust or an association that meets requirements of the Internal Revenue Code in 25 USC section 856 to provide an investment vehicle that allows individuals to pool their resources, purchase rental real estate and avoid paying taxes on the returns that they receive. When they say avoid paying taxes, the REIT revenue generates 90 percent to 95 percent that goes to shareholders who do not pay any taxes.

As that goes down, shareholders pay income tax, but Nevada has no income tax. A REIT can generally be thought of as a business enterprise analogous to a mutual fund for real estate investments. They began in 1960 but did not have much success for their first 30 years. That changed in 1986 with the Real Estate Investment Trust Modernization Act which resulted in explosive growth of REITs in the industry in the 1990s.

Most REIT income comes from rental property. An equity REIT specializes in property ownership. When we are talking about property ownership REITs, there are three types, but the main ones are triple net REITs and a nontriple net REIT. A triple net REIT is a lease agreement where the REIT in the lease makes the tenant responsible for paying rent, all maintenance, insurance and property taxes. In the nontriple net REIT, an entity is not paying any of that. Those are basically lodging REITs whose rent is about 3 percent of REITs, pretty much like Marriott, Hilton or Hyatt.

In Nevada, at least 7,900 properties are owned by REITs. The property value in total is about \$78 billion. The chart on page 4 of [Exhibit E](#) shows how REITs vary. They go from Iron Mountain, which is just a storage place, to realty places

and big REITs we are aware of that own most of the property on The Strip. There are also cell tower REITs; REITs are all over the place. This bill questions why are they exempt? And is anyone paying or even falling under the Commerce Tax?

As an example, rental income over \$4 million from tenants is likely to be considered gross revenue for the purpose of the Commerce Tax. Business entities who are engaged in real estate, rental and leasing under the North American Industrial Classification System (NAICS) Code 53 are liable to pay a tax rate of 0.25 percent of all Nevada gross revenue earned in excess of \$4 million in a taxable year.

If a rental company generates \$5 million in Nevada gross revenue from the rental of its property in a taxable year, the 0.25 percent rate would apply to only \$1 million in gross revenue. The business entities' Commerce Tax liability on \$1 million would be \$2,500. That taxable year, for the purpose of this, is identical to the State's fiscal year and the taxes are due to the Nevada Department of Taxation no more than 45 days from the end of the year.

Next is the actual exemption in *Nevada Revised Statutes* 363C.020, subsection 2, paragraph (i). My understanding reading this and talking to folks is when the Commerce Tax was created, this was listed as an exemption to what is considered a business entity.

Then there are exemptions to the exemption. In bringing this bill forward, doing the research, I have had no REITs reach out to me. At the hearing on the Assembly side, there was no opposition; in the Assembly Committee on Ways and Means, there has been no support, no opposition. I am aware of two REITs that have since contacted me to say this does not matter because they pay under their LLC under one of the exemptions.

This is a dual question. If this does not assist in providing revenue or is revenue-neutral, there is no reason for this to be in the law. The second reason is if we have a growing number of REITs and that property rental money potentially could go toward revenue but goes out of state, we are in a negative net revenue for these parcels. They are growing, and it is time to have conversations about what these are and how Nevada wants to deal with them. I was hoping to start learning more about them but have not had many talk to me about this. I am not sure why it is in the Commerce Tax if it is not doing

anything. Finally, I wanted to start off a conversation about REITs in Nevada and the property they own.

SENATOR SPEARMAN:

Is the total property value of REITs \$78 billion per year or just a snapshot in time?

ASSEMBLYWOMAN CONSIDINE:

That is the total amount of worth of the property right now, not every year. The property being held by REITs in Nevada is worth \$78 billion.

SENATOR SPEARMAN:

If the LLC exempts them out of the property tax, I need to see what the legal format is for getting this bill. You said some people say it is okay that we do not capture the tax because they pay it through the LLC.

ASSEMBLYWOMAN CONSIDINE:

I have been contacted by a couple of the larger REITs. When I asked questions about the bill, they did not come to me saying they oppose or support it. What they said is because of the way we have created an LLC, it is one of the exemptions to the exemption in the law. Because they are paying it, this has no effect on them whatsoever, so I am not sure why it is here. I did not get into exactly what they were saying because it was somebody on behalf of them. I have not been able to have a bigger conversation with someone explaining to me how they are both REITs but are not subject to the exemption. I do not know if the Nevada Department of Taxation could answer that question, but it is not something I can find out, which is why I am bringing this.

SENATOR SPEARMAN:

These are corporate property owners such as apartments and homes where the rents are escalating.

ASSEMBLYWOMAN CONSIDINE:

One of the real estate investment mechanisms I have seen is building master-planned communities where every house is a rental, not necessarily in Nevada.

CHAIR NEAL:

When you have the number of properties listed as 7,937, those properties that fit the definition of having at least 95 percent of their gross income from certain sources as described in the 26 USC section 856, and at least 75 percent of its gross income from certain sources, as described in 26 USC section 856. Is that what that number represents?

ASSEMBLYWOMAN CONSIDINE:

The red text on the bottom of [Exhibit E](#), page 3, Nevada REITs Across America, is a website that lists all the rates. That is where I got this information. What is considered a REIT in Nevada plays into this number. It is my understanding that if you are a REIT, as long as you take 95 percent of the revenue and give it out to shareholders, then there is no federal tax on it.

CHAIR NEAL:

They were excluded under the Commerce Tax because they are considered a nonbusiness entity. In terms of federal law, are they considered a business entity or nonbusiness entity?

ASSEMBLYWOMAN CONSIDINE:

I do not know. That is something I would have to ask.

CHAIR NEAL:

Only three of us were present for the Commerce Tax conversation. We went through what pass-through organizations were being exempted—who is in, who is out and why. A lot of the conversation was around business interests wanting to be excluded. That would be important to know if the Internal Revenue Service (IRS) is designating it as a business entity or a nonbusiness entity. That would help determine what this change really means because it draws in the IRS code. The IRS website gives examples about what the REIT is in different situations, almost like when you have your caselaw questions and if Y exists, then X should be your conclusion. The answer to that would be helpful for further conversation on this bill because it seems like it is a gray area. Because of the revenue it generates, I understand why you are seeking it out.

ASSEMBLYWOMAN CONSIDINE:

It is something I need to go find out. When I approached this, it was an issue of equity because 7,900 landlords through REITs are not paying a Commerce Tax on property in Nevada, whereas a non-REIT is a corporate rental entity that has

land and pays tax. We have two unequal entities, and we are losing tax money. I will find out whether it is a business entity or not.

CHAIR NEAL:

While you are looking that up, can you find out when they file on the tax treatment side and their tax treatment under the IRS? That delineates how they are considered. I am curious about the tax treatment at the federal level because they could have certain parts of the income be exempted. I do not know if that is in your presentation, [Exhibit E](#), but I am curious about that.

SENATOR SPEARMAN:

The Commerce Tax included the NAICS. What is the NAICS code for the REITs? That will determine the kind of business entity they are and whether they are captured on the LLC.

ASSEMBLYWOMAN CONSIDINE:

When I looked up the NAICS, real estate, rental and leasing is code 53. But I do not think there is a REIT in NAICS because it was created to be more of a mutual fund issue. The modernization bypassed it. That is information I need to seek out.

Other states researching this are also looking at REITs. Georgia and Hawaii are looking into it. Both of those have income tax. We do not have a state income tax. This is something people are looking at across the Country.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Revenue and Economic Development
June 1, 2023
Page 17

CHAIR NEAL:

I will close the hearing on A.B. 345. Seeing no further business, I will adjourn the Senate Committee on Revenue and Economics Development at 4:14 p.m.

RESPECTFULLY SUBMITTED:

Diane Rea,
Committee Secretary

APPROVED BY:

Senator Dina Neal, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 232	C	2	Assemblyman Brian Hibbetts	Fact Sheet
A.B. 232	D	3	Assemblyman Brian Hibbetts	Proposed Amendment 3564
A.B. 345	E	12	Assemblywoman Venicia Considine	Presentation