

## THE NEVADA TAXPAYERS ASSOCIATION ON THE ANGLE/GUSTAVSON PROPERTY TAX INITIATIVE

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While the Initiative is arguably well intentioned, it is unfortunately ripe for Court challenges because of questions of interpretation. That does not bode well for many taxpayers and does not make for good tax policy; in many instances it would be the Courts writing property tax law instead of the Legislature.

### **General Comments on the Initiative**

Because the initiative speaks only to real property, business personal property will be taxed under the existing provisions. Even though the provisions would not take effect until FY 2007-2008, it is unlikely that the rural assessors will receive enough money to allow them to upgrade their computer systems to accommodate two different taxing schemes, thereby creating administrative problems for them.

Another administrative problem occurs because the initiative caps the tax at 1% of "taxable value", while the debt allowed outside this cap is based on "assessed value". Assessed value is 35% of taxable value. Taxable value equals the Assessor's appraised value, which does not take into account the reduction of value to 35%. I have not been able to find anyone who yet knows the full implications, but the comments generally are "it creates a problem". This administrative problem may be minimized if computer issues (programming and funds) can be resolved.

Assembly Joint Resolution 19, introduced by Assemblywoman Sharon Angle and Assemblyman Don Gustavson et al, during the 2003 regular session, is the language of the Initiative Petition. The Resolution was heard by the Constitutional Amendments Committee. Assemblyman Gustavson testified that he wanted the Committee to consider an amendment to change the base year (Section 6.1) from FY 2001-2002 to FY 2005-2006 to mitigate the harm to smaller counties. Based on his testimony, that change should have been made to this Initiative; it was not. Taken from the Committee minutes, his testimony relative to the need for this change is as follows:

*[Assemblyman Gustavson continues.] Since this change in our Constitution of the State of Nevada could not take effect until passing a vote in November 2004 and 2006, we are proposing an amendment to change the assessed value starting dates.*

*On page 1, line 14, and on page 2, line 4, we are changing the fiscal year [FY] dates from 2001-2002 to 2005-2006. I will explain why further on as we proceed.*

*This bill would set a cap of 1 percent of the taxable value of the property figured on the fiscal year of 2005 and 2006. A.J.R. 19 would limit the amount of any increase the county could make in each year to 2 percent or to the CPI (consumer price index), whichever is less.*

*[Assemblyman Gustavson continues.] We are not real happy with this option, but by using other rollback dates, the bill could harm smaller counties. We originally used the 2001-2002 rollback dates, but some of the smaller counties would be harmed too much under that proposal, so we have worked for some time to reach numbers the counties and property owners could all live with. That, of course, would be a policy decision to be made by this Committee. (Underlining added for emphasis.)*

### **Specific Comments on the Initiative**

Sec.6.1. The maximum amount of the property tax levy is 1% of the taxable value of the property with voter approved debt outside this cap. The problem with this provision is that it addresses only voter approved debt, not voter approved operating overrides. In unincorporated Clark County and the City of Las Vegas, voters have approved operating overrides for Metro of 28 cents per \$100 of assessed value; other entities have other amounts that have been voter approved for operating overrides. In Elko County the voters have approved 75 cents for pay-as-you-go funding for school construction. It appears that the property tax revenue received under this proposal, will have to be calculated and distributed to provide first for the 75 cent statutory rate set for schools, and then to cover any approved operating overrides. The remaining revenue would then be apportioned to the various entities for them to use for operating.

## Specific Comments on the Initiative

### **Sec. 6.1 continued**

This provision effectively limits the amount of revenue available for operating. While you would think this would force budget cuts, it is definitely not a given; that would probably require an "expenditure cap". In California, this provision resulted in the various governmental units increasing a myriad of fees and charges to make up the loss of revenue. The reduction in expenses came only in those instances where government could not replace all of the lost property tax revenue with other surrogate revenues.

Unlike California, Nevada has limited the use of special elections to recalls and when the governing body votes to declare a financial emergency. This was done to avoid having tax increases approved when there would be a very low voter turnout. The 2/3s vote in California was determined necessary because they use special elections which historically have very low voter turnout. Do we need that provision in Nevada, where special elections are limited and have not been used to approve any tax increase since that provision was put into law in the early 1990s?

Sec. 6.2. This section (subject to the qualifiers in sections 6.3 and 6.4), says that property on the tax roll in FY 2001-2002 shall have the value that existed in that fiscal year as the base value. If the property was not appraised or reappraised for that fiscal year (2001-2002) it must be adjusted to the taxable value for that fiscal year.

In some of the rural counties, the taxable value of the property is currently lower than it was in FY 2001-2002. In those instances, the value of property increases and is further increased by the 2% increase allowed in section 6.4. Even with the 1% cap, when voter approved debt is added on it will result in increased, not decreased property taxes.

Sec. 6.3. This is the most straight-forward section. It provides that if the ownership interest of real property is transferred to the extent of 50% or more, that constitutes a sale of the property. This would apply primarily to business holdings. Certain transfers are exempted from this provision.

Sec. 6.4 Restricts the increase in value to 2% or the Consumer Price Index (CPI) whichever is less.

Since the passage of California's Proposition 13 in 1978, the issue of determining valuation has been one of the most litigated provisions. To this day, as evidenced by a case before the California Supreme Court, the determination of value has been the subject of constant differences in interpretation.

Sec. 6.5 Allows the Legislature to establish a method whereby a Senior Citizen can transfer the value of his residence to another residence of comparable value, upon the sale of his residence.

While the Legislature has the option of enacting this provision, it is hard to envision that seniors who tend to be inveterate voters and very vocal, would not pressure the Legislature into addressing this issue and very liberally construing the provision, thereby unforeseen problems.

Sec. 6.6 - This provision can be interpreted in two extremely different manners. The first interpretation is that the real property transfer tax rate is frozen to the rate in place if the initiative is approved. The second interpretation, and I believe more accurate interpretation, is that property not on the tax roll which is placed on the tax roll after the initiative is approved will thereafter be exempt from the real property transfer tax (an example of this occurring would be land sold by BLM to private parties). In California, this provision which was added after the passage of Prop 13, eliminated the future imposition of this tax. (Note: In California the transfer tax is similar to a stamp tax.)