

DATE: April 15, 2003
TO: NTA Board Members
FROM: Carole Vilardo
SUBJECT: Gross Receipts Tax Questions

Observations/Questions/Comments	Gov. Bill	Task Force
<p>1. Section 8. Definition of Gross Receipts includes phrasing “. . .fair market value of any other property or services received or receivable, . . .”</p> <p>Because of the word “receivable”, a business that is on cash basis accounting cannot meet the requirements established in section 19, Subsection 8 if the billing turns out to be a bad debt. Was this the intent? If it was, it is patently unfair.</p> <p>Also, if as a service-based business on cash method of accounting a contract is renegotiated downward, there does not appear to be a provision to allow a credit against my future tax liability. Why not?</p> <p>Business that is on cash-accounting will be audited on the accrual method. Was it the intent to require two sets of books to be kept by the business?</p> <p>Additionally as the tax is not based on the ability to pay, a substantial receivable could result in a tax liability greater than cash-on-hand for the person/business. While another section in both bills allows the Department to defer payment for 30 days, it comes with penalty and interest charges. Further, a 30 day deferral may still not provide the business time to get the cash to make the payment. Is that fair?</p>	<p>X</p> <p>X</p> <p>X</p> <p>X</p>	<p>X</p> <p>X</p> <p>X</p>
<p>2. Section 9.2(f) – Provides a credit for the gross gaming tax and slot tax. Why isn’t a credit given for the gross boxing receipts tax (NRS 467.107)?</p>	<p>X</p>	<p>Sec. 8.2(d) X</p>
<p>3. Section 16. 2. Says “The form must provide each business entity with an opportunity for account reconciliation.” Paragraphs (a), (b) and (c) establish the quarterly payment schedule.</p> <p>Paragraph (c) does not allow a reconciliation to be carried forward into the next fiscal year. Why no carry forward? For some businesses this will eliminate the “opportunity for account reconciliation”.</p> <p>It would also appear that if I go out of business in the fourth quarter I would be unable to apply for a refund of any overpayment.</p>	<p>X</p> <p>X</p>	<p>Sec. 17</p> <p>Sec. 17. 3 X</p> <p>X</p>

<p>4. Section 18 Requires the Department to determine the amount of gross receipts attributable to a business entity doing business in this State and sets criteria for the Commission to consider.</p>	<p>X</p>	<p>Sec.17 X</p>
<p>Section 18.1 (b) (c) (d) - The wording of these sections does not allow me to receive full-credit for the taxes paid to another State. Why, other than to “get” revenue?</p>		<p>X</p>
<p>Sections 2&3 - The criteria cited for the Commission to consider are so very general, that as in some later sections, it is not the legislature, but the Tax Commission that will be writing Nevada’s tax laws.</p>	<p>X</p>	<p>X</p>
<p><i>Please note that the language in the Task Force bill with regards to this issue is much better, because it uses the UDITPA formula. However, it does not specify the ratio that each will bear to the other or if they will have equal value.</i></p>	<p>X</p>	<p>Sec. 20</p>
<p>Section 3 - Allows the Department to determine the value of products or services if they do not believe that the value is indicative of the true value. The Department has been made both judge and jury.</p>		<p>Sec. 17.2 X</p>
<p>What is the rationale for this provision?</p>	<p>X</p>	
<p>The same comment made with regards to subsection 2 also applies to this subsection</p>		
<p>Section 4 (a) This begs the question what is the definition of nexus? Also, this section speaks to “substantial” nexus. The use of the word substantial implies economic nexus.</p>		
<p>Again, please note: In the Task Force bill, it appears that nexus is economic not physical? If so is that correct? Will it withstand a court challenge? I believe that Washington State is the only State where economic nexus has been upheld.</p>		
<p>Does that mean that TRW as a major supplier of credit reports in Nevada, but which has no physical location in Nevada will be subject to the tax? Or General Motors (Detroit) will have to pay on the revenue received from the vehicles which it ships into the state?</p>		
<p>Does that mean that we are taxing both manufacturing imports and exports?</p>		
<p>The answers to those questions are critical: - For the Department/Commission to have the necessary parameters to adopt regulations; and - As to how economic development and diversification efforts will be impacted.</p>		
<p>Section 5 - Creates a standard of proof that is not used in any other tax statute .for the taxpayer to prevail he must proved by “clear and convincing evidence”/ This is a court room standard and contradicts the provisions of the Taxpayers Bill of Rights found in NRS 360 (the administrative provisions of Title 32)</p>		

<p>5. The bill requires the Department of Taxation/Tax Commission to: Sec. 12, sub.1 “...to adopt such regulations as it deems appropriate . . .”; Sec. 17, sub. 4 “ Aa business entity may, under such conditions as the Department deems appropriate, elect to defer the remittance of any of the sums . . .” Sec 18. 1. The Department shall, by regulation adopt criteria for determine the amount of gross receipts attributable to business conducted in this state . . . “</p> <p><i>Please note: There are similar provisions in the Task Force bill.</i></p> <p>These are very substantive issues that are being put to the Tax Commission, which is a part-time body. At this point these issues have very limited parameters and do not include other regulatory obligations they are being given, such as in the amusement tax)</p> <p>I believe that you are creating a full-time Commission, and at the very least if they remain part-time a Commission that should receive a lot more than \$80 a meeting. Currently, for each day of meeting there is at least one day of preparation. I have personally seen, more often than not, over the past two years where the Commissioners walk in with a carton of back-up material for their meetings.</p>	<p>X</p>	
<p>6. Section 19. 5. - Why is telecommunications not included as a public utility? In fact under the provisions of NRS 704.033, utilities as defined in this section of law are subject to a mill tax on their gross revenues. Why aren’t they provided with a deduction for this tax? <i>Please note: A deduction for utilities is not considered in the Task Force bill, nor is a credit for what is paid under NRS 704.033. Why wouldn’t a credit be allowed?</i></p> <p>Subsection 6 – For-profit hospitals already have substantial tax liabilities not incurred by non-profit or government hospitals. Why are for-profit hospitals not exempt, or in the reverse, why aren’t non-profit hospitals required to pay the gross receipts tax in an attempt to minimize the unfair competitive advantage being provided to non-profit and government hospitals? <i>Please note: The Task Force bill does not include government payments to health care providers. What distinguishes the difference in government payments for medical services being all inclusive in one bill and selective in another?</i></p>	<p>X</p> <p>X</p>	<p>X</p>

<p>7. Miscellaneous Questions</p> <p>The following answers will make a big difference in how complicated regulations will be.</p> <p>Unless I have missed it, I am unable to determine if this is an origin or destination-based tax? Which is it?</p> <p>I think the Task Force bill is destination based, is that correct?</p> <p>How will interstate and intrastate transportation be required to report?</p> <p style="padding-left: 40px;">Will UPS be required to report revenue from:</p> <p style="padding-left: 80px;">Shipments into Nevada?</p> <p style="padding-left: 80px;">Shipments in Nevada, to Nevada destinations?</p> <p style="padding-left: 80px;">Shipments originating in Nevada without regard for where they are to be shipped?</p> <p style="padding-left: 40px;">How will an airline report their gross revenue?</p> <p style="padding-left: 80px;">Will it be apportioned based on in Nevada line miles to total system miles?</p> <p style="padding-left: 80px;">Or will it be domestic system miles for international carriers?</p> <p style="padding-left: 80px;">Can we collect gross receipts from foreign carriers?</p> <p style="padding-left: 80px;">Or do we create a competitive disadvantage for domestic airlines?</p> <p style="padding-left: 40px;">How will the revenue be defined for Credit Card Billing Centers?</p> <p style="padding-left: 80px;">Will it be on interest charges?</p> <p style="padding-left: 80px;">If it is will it be the interest charges on:</p> <p style="padding-left: 80px;">Nevada Accounts only?</p> <p style="padding-left: 80px;">Or?</p> <p style="padding-left: 40px;">What will determine revenue from a call center?</p> <p style="padding-left: 40px;">How is the revenue of banks being determined?</p> <p style="padding-left: 40px;">How are the revenues of financial institutions being determined?</p> <p style="padding-left: 40px;">And would financial institutions be defined?</p>	<p>X</p>	<p>X</p>
<p>8. Section 23 - If the Department determines an overpayment, etc., is made and so certifies to the State Board of Examiners, why does the second sentence in this section say, "If approved by the State Board of Examiners . . .".</p> <p>Why, if the Department makes the certification, does it appear that the State Board of Examiners has the discretion to determine if they will grant the credit or refund?</p>	<p>X</p>	<p>Sec. 25 X</p>