

TAXTOPICS

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TAXING TIMES & ISSUES

According to the December 2008, Fiscal Survey of States, issued by the National Governors Association and the National Association of State Budget Officers, "In fiscal 2008, 13 states reduced their enacted budgets by \$3.6 billion. So far in fiscal 2009, 22 states have cut their enacted budget (sic) by \$12.1 billion, with another five forecasting cuts. Additionally, 31 states have reported budget gaps totaling \$27.7 billion for fiscal 2009 since budget enactment." The complete report can be accessed at www.nasbo.org.

In Nevada the reduction in revenue has been a constantly moving target. That's made revenue forecasting and budget creation difficult at best. The Governor must use the projection delivered last month by the Economic Forum to prepare his budget for the next biennium. That gives him less by approximately \$2.3 billion than was available for the FY 2007-2009 budget. (Note: This issue went to press prior to the Governor's State of the State address.)

Enter the Legislature

Convening on February 2 for the biennial session, legislators will face a daunting task - - reviewing the Governor's budget and approving a balanced budget to take us through FY 2011. The task will be conducted amid cries on one side that taxes must be raised because the budget cuts are draconian; and on the other side that increased taxes will further exacerbate the rising unemployment rate and business closures, creating a multiplier effect that will further reduce state revenue.

On the Expenditure Side

Cuts are expected to be across the board in most cases. Reductions that have been reported in the press have ranged from reducing the senior property tax rebate, to closing Nevada State prison. Also discussed - - eliminating options allowed by medicaid, eliminating various education programs, reductions in public employee compensation, and more.

In Nevada as well as other states, the greatest cuts are expected to come in the education, human service and public safety (prisons and corrections) budgets as these budgets tend to account for 90% or greater of general fund expenditures. Also expected are changes in employee benefits, which impact the expenditures of all agencies and departments in government.

On the Tax Side

Number 1 on the hit parade in this category is doing away with most exemptions. (See related story on page 2.) There's a long list of proposals, some of which are oft - repeated rumors. They include: an increase in the room tax, possibly in just Clark and Washoe counties; a temporary increase in the local school support portion of the sales tax; an increase in

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Tax Exemptions: Are We All Speaking the Same Language?

As the state scrambles to find money, the 2009 legislature is preparing to scrutinize tax exemptions. By definition, exemptions reduce revenue collection.

But when we say "exemption," are we all talking about the same thing? Beware --- a typical discussion of exemptions may include mistaken references to other kinds of legal mechanisms that lessen or eliminate taxes. *Exemptions* are sometimes confused with *exclusions*, *deductions* or *abatements*.

An **exemption** is not an *exclusion*. Yet these terms are sometimes used as if they were interchangeable. Exemptions and exclusions are defined differently, although their effect is the same, which is to excuse a category of persons, properties, or activities from taxation.

Here's the difference: When exempt from a tax, you are relieved of a burden that applies generally to everyone. For reasons of policy, there was recognition after the tax went into effect that you (and the sub-category of taxpayers to which you belong) should not have to pay it. Most likely, a subsequent law was passed to create the exemption.

Groceries and prescription medications are exempt from Nevada sales tax, although by legal necessity, those exemptions were accomplished at the ballot box. These are the most benign examples from a long list that's fueling a drive to reevaluate the tax exemptions in the NRS.

Exclusion, on the other hand, means the law was deliberately crafted from its inception not to apply to certain items or categories. Exclusions may be specifically enumerated in the tax statute, or they may simply be absent from a list of taxable items or categories named in the statute. One example can be found in Nevada's sales tax statutes, where the price charged for labor associated with installing a taxable item is excluded from the taxable gross receipts of retailers

Abatements, as the term is applied to most taxes in Nevada, generally refers to a partial exemption of a time-limited duration.

Abatements that serve as economic development incentives, and those offered to renewable energy resources require the taxpayer to fill out an application, and to meet certain conditions. The abatement is granted by the authority named in the relevant statute.

A property tax "abatement" is properly defined as a correction to an assessment error. But it's more commonly understood as way to decrease the value of property by omitting part of its worth from the assessment calculation.

Conceptually, Nevada's 2005 partial property tax abatement did have the effect of correcting a looming universal assessment error, as the real estate bubble threatened to produce a corresponding statewide tax escalation. The 2005 legislation created an abatement formula that prevents a marketplace surge from influencing the assessment process.

Blind persons, surviving spouses, and certain veterans of the armed services, are a few examples of other taxpayers who receive property tax abatements.

Deductions, also, are not exemptions. They are the subtraction of one amount from another amount as provided for by statute, to arrive at the taxable activity.

In Nevada, the modified business tax has a statutory provision that allows businesses a deduction if they provide health care; the gross gaming tax provides for a deduction of bad debt; as does the sales tax. There are also specific deductions enumerated for mining companies to calculate the net proceeds of minerals tax.

One more thing. At some point, you might hear any of these legal mechanisms described pejoratively as "loopholes." The term "loophole" suggests that someone is violating the spirit of the law while keeping to the letter of the law. The implication is that the literal text of a law is being used to derive a benefit that was never intended. People do this, of course. But for the sake of this session's focus on exemptions, the term "loophole" should be avoided, since it really doesn't apply. Whether or not you agree with them, the conventions described here are serving the purposes for which they were adopted.

Abuse of Taxing Power

From the Farewell Speech of President Andrew Jackson , March 4, 1837

We include this small excerpt from the farewell speech of the nation's seventh president, because it serves to remind us of the forces that influence taxation, and of taxation's ultimate effect on the people who drive the economy. President Jackson captured some timeless truths. The complete speech is available online at the University of Virginia's Miller Center of Public Affairs. <http://millercenter.org/scripps/archive/speeches/detail/3644>

There is, perhaps, no one of the powers conferred on the federal government so liable to abuse than the taxing power. The productive and convenient source of revenue were necessarily given to it, that it might be able to perform the important duties imposed upon it; and the taxes which it lays upon commerce being concealed from the real tax payer in the price of the article, they do not so readily attract the attention of the people as smaller sums demanded from them directly by the tax gatherer. But the tax imposed on goods enhances by so much the price of the commodity to the consumer, and as many of these duties are imposed on articles of necessity, which are daily used, by the great body of the people, the money raised by these imports is drawn from their pockets.

Congress has no right under the Constitution to take money from the people unless it is equipped to execute some one of the specific powers entrusted to the government; and if they raise more than is necessary for such purposes, it is an abuse of the power of taxation, and unjust and oppressive. It may indeed happen that the revenue will sometimes exceed the amount anticipated when the taxes were laid.

When, however, this is ascertained, it is easy to reduce them, and in such a case it is unquestionably the duty of the government to reduce them, for no circumstances can justify it in assuming a power not given to it by the Constitution nor taking away the money of the people when it is not needed for the legitimate wants of the government.

Plain as these principles appear to be, you will yet find there is a constant effort to induce the general government to go beyond the limits of its taxing power and to impose unnecessary burdens upon the people. Many powerful interests are continually at work to produce heavy duties on commerce and to swell the revenue beyond the real necessities of the public service, and the country has already felt the injurious effects of their combined influence. They succeeded in obtaining a tariff of duties bearing most oppressively on the agriculture and laboring classes of society and producing a revenue that could not be usefully employed within the range of the powers conferred upon congress, and in order to fasten upon the people

this unjust and unequal system of taxation extravagant schemes of internal improvement were got up in various quarters to squander the money and to purchase support, thus one unconstitutional measure was intended to be upheld by another, and the abuse of the power of taxation was to be maintained by usurping the power of expending the money in internal improvements. You cannot have forgotten the severe and doubtful struggle through which we passed when the executive department of the government by its veto endeavored to arrest this prodigal scheme of injustice and to bring back the legislation of congress to the boundaries prescribed by the Constitution. The good sense and practical judgment of the people when the subject was brought before them sustained the course of the executive, and this plan of unconstitutional expenditures for the purpose of corrupt influence, is I trust, finally overthrown.

The result of this decision has been felt in the rapid extinguishments of the public debt and the large accumulation of a surplus in the treasury, notwithstanding the tariff was reduced and is now very far below the amount originally contemplated by its advocates.

But, rely upon it, the design to collect an extravagant revenue and burden you with taxes beyond the economical wants of the government is not yet abandoned. The various interests, which have combined together, to impose a heavy tariff and to produce an overflowing treasury are too strong and have too much at stake to surrender the contest. The corporations and wealthy individuals who are engaged in large manufacturing establishments desire a high tariff to increase their gains. Designing politicians will support it to conciliate their favor and to obtain the means of profuse expenditure for the purpose of purchasing influence in other quarters; and since the people have decided that the federal government cannot be permitted to employ its income in internal improvements, efforts will be made to seduce and mislead the citizens of the several states by holding out to them the deceitful

Continued next page

Abuse of Taxing Power Continued

prospect of benefits to be derived from a surplus revenue collected by the general government and annually divided among the states; and if, encouraged by these fallacious hopes, the states should disregard the principles of economy which ought to characterize every republican government, and should indulge in lavish expenditures exceeding their resources, they will before long find themselves oppressed with debts which they are simply unable to pay, and the temptation will become irresistible to support high tariff in order to obtain a surplus for distribution. Do not allow yourselves, my fellow citizens, to be misled on this subject. The federal government cannot collect a surplus for such purposes without violating the principles or the Constitution and assuming powers, which have not been granted.

It is, moreover, a system of injustice, and if persisted in will inevitably lead to corruption, and must end in ruin. The surplus revenue will be drawn from the pockets of the people—from the farmer, the mechanic, the laboring classes of society; but who will receive it when distributed among the states, where it is to be disposed of by leading state politicians, who have friends of favor and political partisans to gratify? It will certainly not be returned to those who paid it and who have most need of it and are honestly entitled to it. There is but one safe rule, and that is to confine the general government rigidly within the sphere of its appropriate duties. It has no power to raise revenue or impose taxes except for those purposes enumerated in the Constitution, and if its income is found to exceed these wants it should be forthwith reduced and the burden of the people so far lightened.

Taxing Times, Continued from page 1

the modified business tax with a provision to limit the impact on small business; increasing the net proceeds of minerals tax; changing the tax on slot route operators to the gross gaming tax; expanding the sales tax to apply to services; and creating an income tax. Finally, there is the frequently-heard call to raise the gross gaming tax and cigarette tax..

The Unknowns

In light of the Governor's pledge that he will veto any tax increase that crosses his desk, can and would the legislature come up with the 2/3's vote in each house that is necessary to override a veto?

Will the federal stimulus package provide additional funding in the areas of education, human resources and transportation? Will it happen in time to know if some budget cuts can be avoided?

Will there be a resolution to the comp meal issue so that this sales and use tax revenue will once again be remitted?

Will Congress pass the Streamlined Sales Tax Act so that remote sellers will once again be able to collect sales tax on purchases shipped into Nevada?

Ed. Note: The Streamlined Sales Tax is not a new tax. When the Sales and Use Tax Act was enacted in 1955, retailers were obliged to collect Nevada Sales Tax. That changed with the 1969 and 1991 U.S. Supreme Court decision which removed the burden of having remote sellers collect the tax unless the seller had a physical location in a state. That shifted the burden for paying the tax to individual Nevadans under the Use Tax statutory provisions. The average Nevadan has no idea that they are supposed to be remitting this tax.

IN MEMORIAM

Former NTA executive director Roy Nickson, died last month at the age of 83. While Nickson occupied the chair, familiar conversations about new taxes swirled through the hearing rooms in Carson City. If your only experience of Roy Nickson were his *Tax Topics* articles, you might walk away with the impression he was a desk thumper. That is to say, a person who drummed the nearest flat surface for emphasis as he spoke. His missives were peppered with underscored words, sometimes several in a single sentence, and many in a paragraph.

Those who had occasion to work with Nickson remember him as a polite and composed gentleman, who did his homework. And, says former State Senator Ann O'Connell, Nickson was possessed of a dry wit. "We were very fortunate as a state to have him," says O'Connell. "We couldn't have asked for anyone who was more professional. His expertise was beyond compare, and he was outstanding as far as ethics and integrity. He was in a class by himself." Former Assembly Speaker Joe Dini remembers Nickson as a hard worker who was tough on the tax issues. "And he was a nice guy to work with," Dini adds.

Nickson served two governors over sixteen years. He worked on the Nevada Tax Commission under Governor Paul Laxalt, and reported to Governor Bob List as Director of Taxation. Prior to working for the state, Nickson had a 24-year career in the Navy.

NTA's Board of Directors cordially invites you to join in greeting and meeting with some of our honored guests - - - Nevada Legislators, State Officials, and Award participants - - - during the Association's:

**BIENNIAL LEGISLATIVE DINNER
&
87th ANNUAL MEETING**

Tuesday, February 25, 2009

at the
Carson Nugget - Carson City, Nevada
[2nd Floor Convention Center]

No Host Cocktails 5:30 PM. and Dinner and Program at 6:30 P.M.

◆ Cost - \$ 90.00 Per Person Prepaid

[Please note: **Reservations are required.** A \$10.00 fee will be added for reservations which are paid at the door.]

RSVP By: February 17, 2009

◆ PROGRAM ◆

Presentation

Cashman Good Government Award

Key Note Speaker

Bruce James, Chairman - SAGE Commission



DINNER RESERVATION FORM

☐ I would like to reserve individual seats at \$90.00 Per Person: # of Seats required: _____

☐ I am unable to attend but am enclosing a donation of \$_____ to support the Association's work.

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Please list the names of guests in your party._____

☐ I am enclosing a check for \$_____ ☐ I will pay at the door (Sorry we do not accept credit cards.)

Please return this form and check made payable to: Nevada Taxpayers Association to
2303 E. Sahara Avenue, #203 Las Vegas, NV 89104.

Need to keep tabs on what's happening to Nevada's tax structure during the 2009 session?

Then you need a copy of *TAX FACTS*, a 100 page booklet summarizing the major taxes levied in Nevada, which also contains a history of the major taxes.

TAX FACTS, which normally sells for \$20, is being offered at the special price of \$10.00.



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NEVADA
TAXPAYERS
ASSOCIATION
2303 East Sahara Avenue
Las Vegas, NV 89104