

TAX TOPICS

Nevada Taxpayers Association, serving the citizens of Nevada since 1922.

ISSUE 2-12

JUNE 2012

SPECIAL ELECTRONIC EDITION

INITIATIVE PETITION FILED FOR NEW BUSINESS TAX

Making good on a threat that began during the 2011 legislative session, the Nevada AFL-CIO and the Nevada State Education Association filed an initiative petition Wednesday, June 6 for a Texas style margin tax. The tax would be imposed on Nevada businesses and proposes to add a new chapter to title 32 (Taxation) of the Nevada Revised Statutes.

Proponents will have until November 13, 2012 to collect 72,352 valid signatures. If there are sufficient signatures gathered, which is expected, the initiative will be delivered to the legislature the first day of session. If the legislature does not act in the first 40 days, the initiative will appear on the November 2014 ballot. See page 2 for a chart on the provisions governing statutory initiatives. This initiative, at 27 pages, of which 26 contain the detail of how this tax will be imposed ranks as one of the longer initiatives that has been put forth to date in Nevada.

A copy of the initiative can be found at: <http://www.nvsos.gov/Modules/ShowDocument.aspx?documentid=2355>.

According to a Q & A sheet prepared by proponents, the initiative follows AB 582 and Texas law. A little history is in order with regards to that statement, to understand why that doesn't mean a thing.

First, A.B. 582 was introduced at 9:50 p.m., the last night of the 2011 legislative session when the chair of the Ways and Means committee called for a committee meeting behind "the bar" of the Assembly chambers. With only testimony from NTA's president opposing the introduction, the bill was passed out by the committee on a party line vote with the Democrats supporting and Republicans opposing. The bill was never brought up for a vote.

Second, the basis for AB 582 was SB 491, which in a gut and amend maneuver, created a Nevada version of the Texas margins tax. Hearings on that bill as amended pointed out more problems than there is space in this newsletter to list. And, there was never an amendment to address the problems that were identified.

Third, AB 582, supposedly based on SB491 with the identified problems "corrected" was never vetted. A reading of AB 582 the night it was introduced revealed that there were still existing problems along with new issues.

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TAX INITIATIVE OPPOSED

In a turn around survey, the association's Board of Directors voted 96% to 4% to oppose the initiative. *

NTA president, Carole Vilardo said the opposition to this initiative is not opposition to the importance of education, but is opposition to an initiative that has a number of problems which will create unintended consequences if it qualifies.

She said it is unrealistic to expect the imposition of this tax will not hurt Nevada's economic recovery. Businesses that are struggling to stay alive will owe a tax that is not based on the ability to pay. And, to the extent that competition will allow the tax will be passed on to the public in the form of higher prices, individuals will also feel the impact.

Taxation by initiative, particularly when the tax proposed is paid "by the other guy" (business) and married to a motherhood and apple pie issue (education) is not the way to craft tax policy. And, contrary to proponents claims it does not create a fair or equitable tax.

*NTA board policy requires that 60% of the board respond to a survey and that 55% agree for a position to be taken.

NEVADA INITIATIVE PROCESS TO CHANGE A STATUTE

A copy of the initiative petition must be filed with Secretary of State before circulating petition for signatures. It cannot be filed earlier than January 1 of the year prior to a regular Legislative Session.

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Petition Circulated
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The signature requirements, posted on the Secretary of State’s website, must be met in each petition district. The combined number of signatures from each district must equal at least 10 percent of the statewide total.

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Petitions must be delivered to each County Clerk no later than the second Tuesday in November of an even-numbered year.

90 days prior to the General Election, clerks must advise the Secretary of State of the sufficiency of signatures.

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Secretary of State must notify clerks if signature requirements have been met.

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Clerks have to verify validity of signatures and certify to the Secretary of State the counts 30 days prior to the start of a regular session of the Legislature.

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Secretary of State transmits the initiative to the Legislature on the first day of session.

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Legislature must consider the proposed law in the first 40 days.

LEGISLATIVE ACTION

APPROVAL WITHOUT AMENDMENT

DISAPPROVAL

APPROVAL OF LEGISLATIVE ALTERNATIVE ON SAME SUBJECT

↓

OR

↓

Approval by Governor

NO ACTION TAKEN

↓
Secretary of State for ballot preparation at the next general election

Approval by Governor

↓

↓

NEW LAW

↓

Secretary of State for ballot preparation at next general election

↓

BOTH PROPOSALS APPEAR ON NEXT GENERAL ELECTION BALLOT

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ELECTION RESULTS

Both Proposals Approved: Highest Vote Total ⇒ **NEW LAW**
Lowest Vote Total ⇒ No Further Action

One Proposal Approved ⇒ **NEW LAW**
One Proposal Defeated ⇒ No Further Action
Both Proposals Defeated ⇒ No Further Action

TAX TOPICS

Is a publication of the

NEVADA TAXPAYERS ASSOCIATION

www.nevadataxpayers.org

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Fourth, based on a cursory review of the initiative only the most complicated provisions of the Texas margins tax seems to have been included.

Problems with the Initiative

Following are just three problems that were identified during the cursory review by NTA staff. A section by section analysis is being prepared by staff and will be available for our members by the end of next week.

Confidentially Provisions (Sec. 22): Currently the various taxes imposed under Chapter 32 of Nevada Revised Statutes do not provide for public identification of the taxpayer and what they pay in taxes. Even gaming taxes paid by the various companies are aggregated for purposes of providing information on the revenue collected. This initiative requires the department of taxation upon request by any person to provide the name of the business and amount of the margin tax paid. The department is also required to annually post on its website the name of each taxpayer with the amount of tax they have paid and to update the information every 30 days with changes they have become aware of.

continued next column

Cost of Goods Sold (Sec. 26): The cost of goods sold does not follow federal law, therefore a business will need to keep a second set of records for state audits. This was identified as a problem in SB 491 1st reprint, and not corrected in AB 582 or this initiative.

Accounting Method (Sec. 32): A business may not change its accounting method more than once every four years. This was previously identified as a problem. A business may change its accounting methods by applying or notifying the IRS of the change. This is another instance, where a second set of books would have to be kept to satisfy state audits.

Ask Yourself

The initiative is 27 pages, including the statement of purpose, in eight point type! Can anyone believe that persons asked to sign the initiative will take the time to read what the initiative proposes?

Can you believe that anyone other than accountant or tax attorney will understand how the provisions dealing with cost of goods, and apportionment work?

If you have read the initiative can you believe that there won't be unintended consequences?

MAJOR PROVISIONS

WHO PAYS (Sec. 6)	A business entity doing business in Nevada, including a natural person to the extent they engage in business.
REVENUE DISTRIBUTION (Sec. 19)	To the distributive school account (DSA).
RATE (Sec. 23)	2 percent of the taxable margin.
BASIS OF TAX (Sec. 25)	Generally, all gross revenue derived from sales, dividends, interest, rents, royalties and capital gains, less other specified deductions such as bad debts.
CALCULATING THE TAXABLE MARGIN (Sec. 24, 26 & 27)	Business deducts the highest of the following items from total revenue: 1. the cost of good sold; or 2. the cost of compensation (up to 300,000 per employee) ; or 3. 30 percent of total revenue.
METHOD OF FILING (Sec.28) APPORTIONMENT (Sec. 29, 30, 31)	Combined group: financial information for subsidiaries and affiliates are combined into single tax return.
PAYMENT DUE (Sec.33)	Annual: 30 days after the date the business is required to file its return with the IRS for that taxable year.
EXEMPTIONS	All non-profits [501 (c)], revenue subject to gaming tax, businesses with total gross revenue under \$1 million.
MISCELLANEOUS	The modified business tax (NRS 363.130 & 363B.110) is not repealed, but a credit for the tax paid is allowed. The MBT on financial institutions is temporarily increased from 2% to 2.24% with revenue to be appropriated to the department of taxation.