

SENATE TAXATION COMMITTEE  
MEETING OF MAY 6, 1977

The meeting was called to order by Chairman Bryan at 7:10 p.m.  
The following members were present:

Senators Gary Sheerin, Norman Ty Hilbrecht, Carl Dodge,  
Norman Glaser, and Richard Bryan.

Senator Floyd Lamb was absent.

The following item was discussed and action taken:

AB 700 Provides additional procedure for collecting gaming taxes.

Mr. A.J. Hicks, Deputy Attorney General assigned to gaming, stated this bill pertains only to tax collection procedures and procedures for claiming refunds of gaming taxes. It would put into the statute what has been the practice for many years. The statutes are silent as to collection procedures and refund procedures. The sales tax procedures were the main guide to developing this bill.

Mr. Hicks gave a section-by-section description. Section two provides that if the commission is not satisfied by the tax report filed by the licensee, it may recompute the taxes it believes are due from whatever information is available. This is consistent with the audit procedures presently used. Paragraph two permits the Board of Commission to determine the amount of tax due if the licensee fails to make a report. Paragraph three permits the commission to off set overpayments and interest due with underpayments. This is a current practice. Paragraph two reads if overpayments exceed underpayments, that amount shall be refunded.

Mr. Hicks explained section three requires the commission to give written notice of its determination of an audit or reassessment. Paragraph two provides that the notice shall be sent by certified mail. Paragraph three is consistent with current provisions in that notice of assessment or other determination shall be mailed within five years after the last day of the calendar month following the quarterly period in which the deficiency occurred. Paragraph four provides for agreement between the licensee and the commission.

He said section four provides that once a person has a determination made against him, he may petition the commission for a redetermination within 30 days. Paragraph two says the commission shall reconsider and grant a hearing, if necessary. The commission shall enter its order and the order shall be final within 10 days after its hearing.

Mr. Hicks stated section five states the remedies of the state. The collection and payment of license fees, taxes, penalties and interest are cumulative and any action taken by the commission or the Attorney General does not constitute an election by the state. The remedies are not limited.

He said section six is an amendment to the existing statute, which was unworkable. It talks of the five-year statute of limitations.

Senator Hilbrecht asked for an explanation of section c, lines 46-47.

Mr. Frank Daykin, from the Legislative Counsel, said this is a three-year limitation after determination of a fee, interest, or penalty, pursuant to section two where the commission itself would make the determination. The five-year period applies to collecting a delinquency upon the report of a licensee.

Senator Hilbrecht questioned the shorter period.

Mr. Daykin stated that this speaks of the determination pursuant to section two. The determinations would be possible bankruptcy or the disappearance of the licensee.

Senator Hilbrecht questioned the reason for this distinction. He asked why that was not five years, also.

Senator Bryan stated he was not clear about the inter-relationship between the notice of deficiency and the statute of limitations. He asked for an explanation about the triggering of the time period when the notice of determination is sent. It states within five years after the amount required to be paid or collected. He asked if that would be independent of the notice of assessment.

Mr. Daykin replied that was correct. That is after the amount becomes due and payable.

Senator Hilbrecht asked if the determination serves as the triggering mechanism.

Mr. Daykin stated the determination does not serve as a trigger except in the case of paragraph c, where there was not a return and the determination was made.

Senator Hilbrecht said he did not view that as exclusive of a return. Can't the determination be made after the return?

Mr. Daykin stated that could happen.

Senator Sheerin asked how can there be a determination made if there isn't a return.

Mr. Daykin said there is a provision under section two in which if a person fails to make a report, the commission shall make an estimate of the tax due. The estimate would be the determination without a return. That would trigger the three-year statute.

Senator Bryan asked if a notice of determination is generally given only when a return is not filed.

Mr. Hicks said that was not necessarily the case. A notice of determination is given when it is not filed or when the commission reviews the return, which has been filed, and believes it to be in error.

Senator Hilbrecht asked if a determination would be made in the case of an independent audit.

Mr. Hicks answered it could be made.

Senator Hilbrecht asked if a determination would be made in the case of a review of the periodic return.

Mr. Hicks said it could be made.

Senator Hilbrecht asked what is the practice with respect to the review of the periodic return.

Mr. Hicks stated, in practice, the review of the actual return is very minimal at the time it is filed. An actual determination is made when the board sends audit agents out to do a full audit.

Senator Hilbrecht stated the Legislature recently approved the enlarging of the audit staff. The reason it was enlarged was because the Legislature was told the board did not have the capability to audit within the limitation period. This is what frightens Senator Hilbrecht about a three-year period.

Mr. Hicks said this is three years after the determination. If anything, it will give more time to the attorneys to attempt to negotiate, settle and ultimately sue.

Senator Bryan stated that on January 1, the taxes are required to be paid. That is the triggering device for sub-section a. Then a determination is made sometime at the end of the quarter after reviewing what was paid. That determination will be made in April. In April, a notice of the determination is sent to the licensee. By sending the notice of determination, is the operation of the five-year statute automatically avoided, and then it becomes subject to the three-year statute of limitation?

Mr. Hicks said that was correct.

Senator Hilbrecht asked why the five-year limitation was a problem.

Mr. Hicks said it is a problem when, for example, the auditors go into Harrah's. They will commence the audit at the end of the last audit period. That may be beyond the period of limitations. The audit will be made to the present quarter. That may take one year. When the audit is completed, it will be up to date completely.

Senator Hilbrecht stated that there may be some deficiencies which would be barred under the five-year limitations period.

Mr. Hicks said that was correct.

Senator Bryan stated suppose it's three years after a tax should be paid. A determination is made that the fee is owed. Can the three-year limitation period under sub-section c be extended to five years under sub-section a.

Mr. Daykin said that is not possible because the three are joined by the word "and."

Senator Hilbrecht stated it would make sense to tack on the three years to permit the audit to be completed and to determine the net impact of any deficiencies.

Mr. Daykin stated then the language should read, "within a, b, or c."

Senator Bryan stated that would create more flexibility.

Senator Hilbrecht said this would not affect the audit. Once the audit is commenced, it will affect the time available to proceed after a determination is made. That may be good policy because it would permit the trading off over overpayments against underpayments.

Mr. Daykin said if that is the case, the determination should be tied down as having been made within the five-year period, which is not done now.

Senator Hilbrecht suggested that it be clarified as to what is being talked about in this section.

Senator Bryan stated he would not have trouble with the three-year limitation in c if that was done. He asked Mr. Robert Faiss if the changes being discussed would pose problems for the industry.

Mr. Faiss said he did not see any problems. He questioned how the licensee would pursue a redetermination in court.

Senator Hilbrecht asked what is the practice now.

Mr. Faiss stated the practice is changed case by case. One of two things can be done now. The money can be paid under protest and an action for refund may be filed. When that is rejected, it can go to court. Or, if the basis for the determination of the tax is inconsistent with the statute, an action for a declaratory judgement can be filed and the construction of the statute can be challenged.

Senator Bryan stated the statute should spell out the remedies available to the licensee.

Mr. Faiss said any attorney, licensee or judge would appreciate that.

Mr. Hicks stated the general tax statute is one year.

It was agreed to provide one year on page four.

Senator Hilbrecht requested an expansion of the language on line 45.

Mr. Daykin stated it will be made clear that the three-year limitation refers only to the determination by the commission, made within the original five-year period.

Mr. Hicks said section seven, line 39 pertains to distributors and manufacturers who must pay fees and taxes. They were omitted in 463.270. It is a clean up provision. Paragraph eight states the commission may order immediate closure of all gaming activity if the licensee fails to renew his license. If the license is not renewed within 30 days, it will be rescinded.  
~~It said section~~

He said section eight pertains to the action by the claimant after the commission's action on a claim for refund. Within 90 days that person may file action in a court of competent jurisdiction. If he doesn't, it's a waiver of any demand against the state. Paragraph four is a six-month provision if the commission fails to act. Then it is deemed to be denied and the commission may bring suit. Paragraph five pertains to the seven per cent interest provision.

Mr. Faiss questioned allowing interest only to the date the refund is allowed or judgement is entered. There may be some lapse of time before the licensee actually receives use of his money again. He stated all refunds received before had been prorated to the date that the check was issued by the state.

Mr. Hicks said Mr. Faiss has a good point because it takes between 5-14 days to get a refund from the State Treasurer's office.

Mr. Daykin stated if that was allowed, the date of payment would be merged in the judgement and there would be no double recovery.

Senator Hilbrecht stated if the date of payment was entered, there would be no need to include the time of judgement.

Senator Bryan stated the other changes decided upon are with respect to section six. There would be a disjunctive and the three-year period would be extended. Also there is the one-year period for the licensee to file a claim in court after the redetermination is made.

Mr. Faiss explained he was representing no one at this meeting. He testified at the request of Chairman Bryan as an attorney who represents many gaming licensees and has appeared for them on other bills. He cannot make any representation on behalf of the industry, but he can factually report that he was present at a meeting where AB 700 was considered. No member of the industry nor any attorney for the licensee voiced objections to it. He was present at the Assembly Taxation Committee hearing in which there was one representative of the industry, who testified in favor of AB 700.

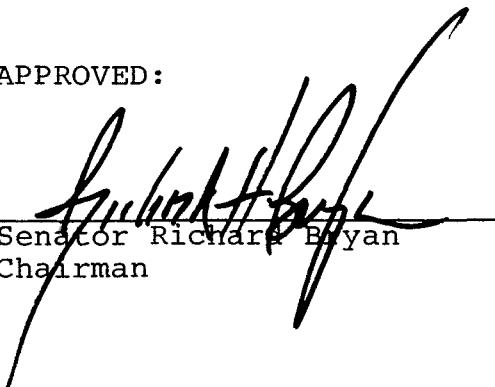
Senator Glaser moved to Amend and Do Pass. Senator Hilbrecht seconded the motion and it passed unanimously with Senators Sheerin and Lamb absent.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Colleen Crum, Secretary

APPROVED:



\_\_\_\_\_  
Senator Richard H. Bryan  
Chairman