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March 7, 2003

RECEIVED

Ms. Birgit Baker
Nevada Department of Employment,
Training & Rehabilitation
State of Nevada
500 East Third Street
Carson City, NV 89713

MAR 13 2002

EMPLOYMENT SECURITY DIV
ADMINISTRATOR

Dear Ms. Baker,

We have recently reviewed Nevada Assembly Bill (AB) 185, introduced before the Nevada State Legislature this session. We offer the following comments for your consideration.

AB 185 amends Chapter 612 of the Nevada Revised Statute (NRS) by adding a new section to read:

"Employment" does not include service performed while officiating a sporting event by a person who acts as a sports official if:

- a) The person is paid a nominal fee for his service; and*
- b) The sporting event is:

 - 1) Amateur, intercollegiate or interscholastic; and*
 - 2) Sponsored by a public agency, public entity or private, nonprofit organization.**

We believe the proposed amendments to NRS would create an issue under Section 3304 (a) (6) (A), FUTA. Specifically, Section 3304(a) (6) (A) requires, as a condition for employers in a State to receive credit against the Federal unemployment tax, that State law provide that unemployment compensation (UC) be payable based on services performed for State and local governmental entities and certain nonprofit organizations in the same amount, on the same terms, and subject to the same conditions as UC payable on the basis of other covered services. Section 3304 (a) (6) (A) requires coverage of services to which Section 3309 (a) (1) applies. Section 3309 (a) (1) applies to services excluded from the term "employment" solely by reason of either Section 3306 (c) (7) or (8), FUTA. Exceptions to this required coverage are found in the remaining paragraphs of Section 3306 (c) and Section 3309, subsections (b) and (c).

FUTA does not contain an exclusion from coverage for services as a sports official. As such, Section 3304 (a) (6) (A) requires that these services be covered if they are performed for a governmental or nonprofit organization.

We note that Section 3304 (13), FUTA, permits sports officials to be denied UC between athletic seasons. Nevada could add these officials to its athletic denial provisions without creating an



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Assembly Commerce & Labor
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Submitted By: Birgit Baker 1082

issue. However, the State may not exempt these services from coverage without creating an issue.

We also note that Nevada law contains a recapture clause at 612.070 NRS. While this clause is intended to ensure that the services identified above are covered if performed for a governmental entity or nonprofit organization, AB 185 specifies that the exception is applicable to sports officials at events sponsored by a public agency, public entity or private, nonprofit organization. Therefore, we believe that if AB 185 were enacted in its present form, it would create an issue of conformity with the requirements of Section 3304 (a) (6) (A), FUTA.

We hope this information is useful in your deliberations of AB 185. Please keep us advised as to the status of this bill. Questions concerning this letter may be directed to Jamie Bachinski at (415) 97504625 or through email at jbachinski@doleta.gov.

Sincerely,



John Humphrey

Regional Director

Office of Workforce Security

Cc: John McGucken, USDOL, ETA, OUIS, Rm. C-4512, FPB, Washington, D.C.