TAX POLICY

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While the November 30, 2006, Economic Forum forecast for state General Fund revenues, which was the basis of the Governor's recommended budget, anticipated moderate revenue growth for the upcoming biennium, double-digit growth in General Fund revenues over the last three fiscal years fueled expectations of similarly robust growth for the 2007-09 biennium. A significant number of the bills that were referred to the Legislature's two taxation committees involved tax reductions or exemptions, such as exemptions from state and local sales taxes for mobility-enhancing and ocular devices, as well as deductions or credits against the modified business tax (MBT) for child-care expenses, donations made to public schools, and employer-assisted housing project costs. However, the mood quickly changed as it became evident that revenues would not come in as anticipated, thus compelling the Economic Forum to make a downward revision in its May 1, 2007, forecast, compared to its November 30, 2006, forecast.

BILLS REGARDING STATE REVENUES AND TAXES

In addition to the practical constraints posed by reduced revenue streams, Governor Jim Gibbons' adherence to his "no tax increase" pledge established another parameter for the Legislature to consider when crafting tax legislation. The Governor's position came strongly into play when the Legislature explored a funding mechanism to address a projected $3.8 billion shortfall for transportation projects through 2015.

A select few pieces of legislation relating to state revenues and taxation did emerge from the "no taxes" environment and were approved by the 2007 Legislature and signed by the Governor:

Assembly Bill 595 is an omnibus bill introduced by the Assembly Committee on Transportation that contains, among other procedural changes relating to fuel taxes, provisions for the funding of transportation projects. Assembly Bill 595, endorsed by Governor Gibbons, establishes funding sources for major highway projects in Clark County and Washoe County through reallocation of a number of existing revenue sources without raising taxes.

First, the bill requires the Las Vegas Convention and Visitors Authority (LVCVA) to issue bonds to be redeemed through the existing room tax imposed on lodging to assist in the funding of projects in Clark County. The total principal amount of the bonds issued by the LVCVA cannot exceed $300 million or an amount that can be serviced by $20 million per year over 30 years, whichever is less.

Second, A.B. 595 allocates an incrementally increasing portion of the five cent property tax imposed in Clark and Washoe counties for the purpose of capital projects to the state Highway Fund for use in the construction and maintenance of public highways in the respective counties.

Finally, the bill requires a short-term lessor of passenger cars to impose a recovery surcharge of four percent. One-quarter of the proceeds from the recovery surcharge must be deposited in a separate account in the state Highway Fund and must be used exclusively for construction, reconstruction, improvement and maintenance of highways.

Assembly Bill 595 requires the Department of Transportation to adopt performance measures and provide annual reports of performance. The bill also requires the department to perform a cost-benefit analysis of each proposal for a highway project whose projected cost is $25 million or more.

Assembly Bill 628 is the General Appropriations Act. Among its numerous provisions implementing the state budget, A.B. 628 permanently sets the MBT rate imposed on non-financial institutions at 0.63 percent of taxable wages, which was the rate assessed during the 2005-07 biennium. The tax rate was scheduled to increase to 0.65 percent on July 1, 2007.

BILLS REGARDING TECHNICAL AND ADMINISTRATIVE CHANGES

Assembly Bill 209, which was introduced on behalf of Nevada's county assessors, contains various revisions to the administration of property taxes within the state. The bill:

- Allows county assessors to disseminate information regarding property taxes to taxpayers via regular mail, electronically, or via other appropriate means.
- Revises the formula used to calculate the exemption amount given to veterans, blind persons, persons with service-connected disabilities, and other eligible persons.
- Removes the dollar limitation for the exemption of funds, furniture, regalia, and paraphernalia owned by certain fraternal organizations.
- Creates an exemption from taxation for real property and improvements owned by the Archaeological Conservancy, a nonprofit group that acquires land for the purpose of preserving items of historical significance on that site.
- Revises the application deadline for personal property tax exemptions for property purchased after June 15 and before July 1, and creates an appeal process for persons whose exemption claims are denied or who miss the deadline to file.
- Clarifies the method by which common elements within a common-interest community are taxed.
- Provides that changes made to assessments appealed to the State Board of Equalization are valid only in the year for which the appeal is made, but allows the county assessor to review such changes and maintain or remove them in subsequent fiscal years as necessary.
- Extends the expiration of the two percent commission that county assessors were allowed to keep to finance technology needs, from June 30, 2007, to June 30, 2009.

In addition, A.B. 209 makes various technical changes regarding the administration of the property tax abatements approved under A.B. 489 and S.B. 509 of the 2005 Session, including:

- Revising the method of calculation of the abatement percentage used under the alternative scenario, such that the property tax increase under this scenario cannot exceed eight percent nor become negative.
- Requiring the Committee on Local Government Finance to develop regulations regarding the distribution of property tax revenues in redevelopment districts.

- Revising the method by which county assessors collect recaptured property taxes when the recaptured amount is less than $100.

Assembly Bill 236 authorizes the Department of Taxation to refrain from collecting unpaid sales and use tax when the amount due, including penalties and interest, is less than the amount that it would cost to collect these unpaid taxes. The threshold amount used by the department to determine whether the liability should be collected is set on an annual basis by the Nevada Tax Commission. The bill also clarifies that the uncollected amounts remain a liability of the taxpayer, to be collected by the department when the unpaid amount exceeds the threshold set by the Tax Commission.

Assembly Bill 236 also allows for annual filing of sales and use tax returns, rather than quarterly or monthly, for those persons whose taxable sales do not exceed $1,500 in the preceding four calendar quarters or who file returns showing zero taxable sales in the preceding three quarterly reporting periods.

Assembly Bill 433 revises the Open Meeting Law regarding closed appeal hearings held by the Nevada Tax Commission. Under the provisions of the bill, the Tax Commission is required to close a meeting at the request of a taxpayer to hear proprietary or confidential information. The commission is required, as soon as practicable after closing the hearing, to determine whether the information to be presented in the closed hearing is proprietary or confidential. If it is not determined to be proprietary or confidential, the commission is required to reopen the hearing.

If the information is determined to be proprietary or confidential, the commission may meet in the closed hearing to receive the information to the extent that all members of the commission have reasonable and ample opportunity to review the information and make inquiries as needed. After this process is completed, however, the commission is required to reopen the hearing and deliberate in a manner that does not disclose the proprietary or confidential information. (The bill does allow the commission to reclose the hearing for further deliberation if a member feels he is unable to deliberate in the open meeting without disclosing the proprietary or confidential information.)

Assembly Bill 433 also requires the Tax Commission to prepare, no later than 45 days after the hearing, an abstract that contains the reasons for the decision made that must be made available to the public upon request. The abstract must contain information on the taxpayer's name, the amount of the liability and the type of tax, and the general nature of the information presented; however, the abstract must not contain any proprietary or confidential information.

Assembly Bill 585, requested by the Nevada Association of County Treasurers, makes various technical changes regarding public financial administration. These changes include:

- Setting the interest rate that must be paid on overpayments of property tax at a rate of 0.5 percent per month, rather than a floating rate.
- Requiring that petitions requesting review of a partial abatement of taxes be submitted to the county assessor instead of the tax receiver.

- Establishing a de minimis amount for which a county treasurer may keep an overpayment of taxes or forgive a deficiency in payment.
- Clarifying that interest charged on delinquent taxes is assessed on a monthly basis.

Additionally, A.B. 585 makes various changes regarding property held in trust by a county treasurer, including reducing the period for filing a claim for the excess from two years to one year after the deed given by the county treasurer is recorded, and prescribing a priority order for the payment of excess proceeds.

Assembly Bill 586 expands the enforcement and criminal penalty provisions that previously applied to contraband cigarettes to include all illegal tobacco products. This legislation allows the Department of Taxation to enforce regulations regarding counterfeit and contraband material for all tobacco products, not just cigarettes.

Assembly Bill 586 also requires retailers where tobacco is sold to conspicuously post signs indicating that sales to minors are illegal and makes it illegal for cigarettes to be sold via self-service displays, with the exception of cigarette vending machines.

Senate Bill 203 revises provisions governing the use of proceeds from the short-term car rental tax imposed in Washoe County, pursuant to S.B. 497 of the 2003 Session, for the purpose of financing a minor league baseball stadium. The bill requires the board of county commissioners to determine whether a certain set of criteria regarding the construction of the facility have been met by October 1, 2007, and to make findings if all of the criteria have been met.

If the board of county commissioners does not make such a finding by October 1, 2007, the proceeds of this tax may be used to acquire, lease, improve, equip, operate, and maintain any project approved by the Legislature, or the Interim Finance Committee, if the Legislature is not in session.

Senate Bill 502 is a technical bill requested by the Department of Taxation that revises and clarifies various provisions governing sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement. In addition to the technical adjustments, the bill provides for the submission of a ballot question at the November 4, 2008, general election asking voters to authorize the Legislature to enact, without an additional direct vote of the people, any legislation deemed necessary to carry out any federal law or interstate agreement for the administration of sales and use taxes. The measure proposed in the ballot question also repeals NRS 372.317, which provides a sales tax exemption for aircraft and major components of aircraft that was declared unconstitutional by the Nevada Supreme Court.

Senate Bill 503 imposes a penalty of up to ten percent of the amount of tax due, on any person or governmental entity that fails to pay the state business license imposed on persons participating in an exhibition. Under current statute, a person or governmental entity that operates a facility at which an exhibition is held is responsible for payment of the licensing fee on behalf of participants who do not have a business license.

Senate Bill 503 also provides an exemption from the tax on tobacco products other than cigarettes, for products that are acquired free of charge at a trade show, convention or other exhibition or public event and which do not have significant value, as determined by the Department of Taxation.

Senate Bill 504 standardizes the rate of interest that the Department of Taxation must pay on refunds or credits of overpayment of certain taxes, fees and assessments collected by the department at the rate of 0.5 percent per month. The previous laws required the department to pay different rates of interest on refunds or credits of overpayments for various taxes.

BILLS REGARDING EXEMPTIONS, ABATEMENTS AND POSTPONEMENTS

Assembly Bill 110 removes the prospective expiration date for the tax exemption for real and personal property owned by eligible apprenticeship programs. The exemption, which was enacted as a result of Assembly Bill 476 of the 1997 Session, was scheduled to expire on June 30, 2007.

Assembly Bill 487 provides an exemption from the Live Entertainment Tax, effective July 1, 2007, for all professional minor league baseball games held within the state.

Assembly Bill 621 made numerous changes to the property tax abatements and sales tax exemptions for "green" buildings that were originally granted as a result of A.B. 3 of the 22nd Special Session. The bill sets eligibility criteria for the sales tax exemptions that were enacted in A.B. 3 and limits the amount of property tax abatements granted pursuant to the 2005 legislation to 35 percent.

The criteria required to receive the sales tax exemptions and property tax abatements for those projects that originally applied under A.B. 3 are:

- The building must be constructed according to a construction or preconstruction contract executed on or before December 31, 2005.
- An opinion letter must have been issued by the Department of Taxation before February 1, 2007, stating that the project will qualify for a partial sales and use tax exemption under A.B. 3.
- The project is certified at the silver level or higher under the green building rating system adopted by the Director of the Office of Energy in accordance with certain provisions originally established in A.B. 3.

The sales and use tax exemptions apply to products and materials to be used in the construction of an eligible building on or after October 1, 2005, and on or before December 31, 2010.

Assembly Bill 621 also sets forth future guidelines for new buildings applying for property tax abatements, using a green building rating system to be developed by the Office of Energy. The rating system used must be based on the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, must include LEED standards that have been in place for at least two years, and must require a building to earn a certain number of points at the LEED silver, gold, or platinum levels.

Buildings that earn the silver, gold, or platinum certification are eligible for property tax abatements of between 25 and 35 percent, depending on the level of certification reached, for up to ten years, so long as the building continues to meet the requirements applicable to the rating. Abatements do not apply to any property taxes imposed on the value of the land or to taxes imposed for the benefit of K-12 education. Residential buildings with four or fewer units or buildings that receive public benefit for the acquisition, design, or construction of the building are also not eligible to receive abatements.

Senate Bill 196 provides real and personal property tax exemptions to the Boulder City Museum and Historical Association.

BILLS REGARDING LOCAL GOVERNMENT TAXES AND REVENUES

Governor Gibbons' "no tax increase" pledge figured most prominently in proposed legislation that aimed at generating revenue for local governments. A consequence of the property tax abatements enacted by the 2005 Legislature is the reduced ability of local governments to raise revenue through property taxes. In 2007, local governments sought authorization from the Legislature to access additional revenue sources to meet their most pressing funding needs. A number of the bills approved by the 2007 Legislature and signed by the Governor that impacted local government revenues include:

Assembly Bill 461 amends the Clark County Sales and Use Tax Act of 2005 (A.B. 418 of the 2005 Session) to require police departments utilizing revenue from the one-quarter cent sales tax authorized under the act to report to the Director of the Legislative Counsel Bureau (LCB), on a quarterly basis, the amount of tax revenues received, the expenditures of these revenues, and the number of police officers hired as a result of these tax revenues. The amendment to the act also requires an annual report of the prior fiscal year's activity to be transmitted no later than August 15 of each year. Additionally, the first reports transmitted to the LCB on or before November 15 must separately account for all retroactive activity from the inception of the tax on October 1, 2005.

Assembly Bill 461 also creates the Nye County Sales and Use Tax Act of 2007, which authorizes the imposition of a sales and use tax rate, from October 1, 2007, to October 1, 2027, of up to one-half cent for the purpose of recruiting, employing, or equipping additional sheriff's deputies or firefighters; for the construction and equipping of new public safety facilities; or for the improvement and equipping of additional public safety facilities. The proceeds of the tax must be allocated among any cities, towns, and unincorporated areas within Nye County according to population.

The Nye County Sales and Use Tax Act of 2007 also contains reporting requirements that are identical in form to those adopted for the Clark County Sales and Use Tax Act in A.B. 461.

Assembly Bill 461 was not signed by the Governor. The bill became law due to the Governor not vetoing the bill within ten days of its transmittal from the Legislature.

Senate Bill 74 allows the board of county commissioners in counties with a population less than 100,000 to use the proceeds from the one-quarter percent sales tax for infrastructure for road construction, maintenance or repair and for the acquisition, establishment, construction, expansion, improvement or equipping of facilities relating to public safety or judicial functions. Senate Bill 74 did not impose a new tax but merely expanded the allowed use of an existing tax.

Senate Bill 146 authorized the board of county commissioners of at least two counties whose populations are less than 100,000, namely Lyon and Churchill counties, to impose an ad valorem tax of four cents per $100 of assessed valuation to pay the costs of operating a regional facility for the detention of children. The new rate would be subject to $3.64 statutory property tax limit, but it would be outside of the property tax abatements in the first year in which it is imposed.

The Legislature approved the measure, but Governor Gibbons later vetoed the bill because it imposed a tax increase in the participating counties without voter approval.

Senate Bill 147 allows counties with a population less than 100,000 to use the proceeds of the regional transportation commission (RTC) fuel tax for construction and maintenance or repair. Under current statute, only counties with populations less than 50,000 can use the RTC fuel tax of up to nine cents for construction and maintenance or repair. The measure extends this authority to Carson City.

Senate Bill 154 was originally introduced as a bill to clarify that the current exemption from the county, state and optional local real property transfer taxes, for mere changes in identity, form or place of organization, provided under subsection 1 of NRS 375.090, applies to all business entities, not just corporations.

Provisions were amended into the bill that create the Washoe County Schools Construction and Revitalization Advisory Committee, which is tasked with preparing recommendations for a tax plan to fund capital projects for the Washoe County School District. An advisory question must be placed on the ballot at the November 4, 2008, general election asking the voters of Washoe County whether the recommended tax plan should be imposed in the county. The board of county commissioners can impose the taxes only upon voter approval.

Senate Bill 374 authorizes the creation of a tax increment area by cooperative agreement between the city of Henderson and the Board of Regents of the University of Nevada. The bill allows the Board of Regents and the governing body to undertake infrastructure and capital projects for the principal campus of the Nevada State College. If a public school lies within the bounds of the tax increment area, the county school district and the Nevada System of Higher Education shall consult with one another regarding the funding for the operating costs of the public school.