

SENATE BILL 8: RECENT TAX LAW CHANGES¹

Statutes Affected: NEV. REV. STAT. 78.150; 80.110; 86.263; 87.510; 88.395; 88A.600; 89.250; 218.53883; 233B.039; 244.335; 268.095; 353.2705; 353.2735; 353.274; 353.2745; 353.2751; 353.2753; 353.2754-.2755; 353.276-.2765; 353.2771; 353.288; 360.225; 360.2935; 360.300; 360.417; 360.419; 360.510; 360.750; 364A.020; 364A.120; 364A.130; 369.174; 369.330; 370.165; 370.260; 370.350; 375.018; 375.030; 375.070; 375.090; 375.120; 375.130; 375.160; 375.170; 375.250; 375.270; 375.290; 375.300; 375.330; 376A.040; 376A.050; 376A.070; 387.205; 387.207; 388.750; 391.165; 396.405; 414.135; 459.3824; 463.0136; 463.270; 463.370; 463.373; 463.401; 463.4055; 463.408; 463.770; 481.079; 612.265; 612.618; 616B.012; 616B.679; 616B.691; 623A.240; 634.135; 645B.060; 645B.670; 645E.300; 645E.670; 649.395; 658.151; 665.133; 673.484; 675.440; 676.290; 677.510; 679B.228; 687A.130; 694C.450; 1999 Nev. Stat. 458 § 6; 2003 Nev. Stat. 507 § 1; 2003 Nev. Stat. 327 §§ 19, 35, 58, 61.

Adds new chapters to NEV. REV. STAT. Title 32; new sections to NEV. REV. STAT. Chapters 218, 353, 353C, 360, 375, 387.

Statutes Repealed: NEV. REV. STAT. 364A.010; 364A.020; 364A.030; 364A.040; 364A.050; 364A.060; 364A.070; 364A.080; 364A.090; 364A.100; 364A.110; 364A.120; 364A.130; 364A.135; 364A.140; 364A.150-.1525; 364A.160; 364A.170; 364A.175; 364A.180; 364A.190; 364A.230; 364A.240; 364A.250; 364A.260; 364A.270; 364A.280; 364A.290; 364A.300; 364A.310; 364A.320; 364A.330; 364A.340; 364A.350; 375.025; 375.075; 463.4001; 463.4002; 463.4004; 463.4006; 463.4008; 463.4009; 463.4015; 463.401-.406.

Statutes of Nevada: S.B. 8, 2003 Leg., 20th Spec. Sess. (Nev. 2003) (Comm. of the Whole); 2003 Nev. Stat. 5 (20th Spec. Sess.).

I. Introduction

The Nevada legislature recently passed a broad-based tax package² that has significant implications on numerous industries and transactions in Nevada. These tax changes have ramifications on businesses, financial institutions, gaming companies, live entertainment venues, sellers of alcohol and cigarettes, and real estate sales in the state of Nevada. This summary provides the information necessary to understand and comply with these new tax law changes.

II. How Do the New Tax Changes Affect a Business or Financial Institution?

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² 2003 Nev. Stat. 5 (20th Spec. Sess.) [hereinafter S.B.8, 2003 Leg., 20th Spec. Sess. (Nev. 2003)].

Generally, the tax package includes a fee of \$1,750 per bank branch, a 2 percent payroll tax on all financial institutions, a .7 percent payroll tax on all businesses, and a \$100 business license fee.

A. The Banking Branch Tax³

Each bank must pay, on a quarterly basis, a \$1,750 tax for each branch office⁴ (in excess of one) which is maintained by the bank in this state. This tax must be paid on or before the last day of the first month of each calendar quarter. A bank includes a corporation or limited-liability company that is chartered by this state, another state, or the United States, which conducts banking, banking and trust business, or a foreign bank. A financial institution engaging in business as a thrift company, or a credit union organized under the laws of Nevada, is not liable for this tax. This tax becomes effective on January 1, 2004.

B. The Financial Institution Payroll Tax⁵

Each employer must pay a two percent (2%) tax on wages paid by the employer during each calendar quarter of employment. This tax is assessed on any financial institution that is required to pay a wage contribution for employment per quarter. Indian tribes, nonprofit organizations, and political subdivisions are excepted from this tax. Financial institutions are defined as:

- (a) An institution licensed, registered or otherwise authorized to do business in this state pursuant to the provisions of chapter 604, 645B, 645E or 649 of NRS or title 55 or 56 of NRS,⁶ or a similar institution chartered or licensed pursuant to federal law and doing business in this state;
- (b) Any person primarily engaged in:
 - (1) The purchase, sale and brokerage of securities;
 - (2) Originating, underwriting and distributing issues of securities;
 - (3) Buying and selling commodity contracts on either a spot or future basis for the person's own account or for the account of others, if the person is a member or is associated with a member of a recognized commodity exchange;
 - (4) Furnishing space and other facilities to members for the purpose of buying, selling or otherwise trading in stocks, stock options, bonds or commodity contracts;
 - (5) Furnishing investment information and advice to others concerning securities on a contract or fee basis;
 - (6) Furnishing services to holders of or brokers or dealers in securities or commodities;
 - (7) Holding or owning the securities of banks for the sole purpose of exercising some degree of control over the activities of the banks whose securities the person holds;

³ *Id.* § 10.5

⁴ "Branch office" is defined as "any location or facility of a bank where deposit accounts are opened, deposits are accepted, checks are paid and loans are granted, including, but not limited to, a brick and mortar location, a detached or attached drive-in facility, a seasonal office, an office on a military base or government installation, a station or unit for paying and receiving, and a location where a customer can open accounts, make deposits and borrow money by telephone or through use of the Internet, and excluding any automated teller machines, consumer credit offices, contractual offices, customer bank communication terminals, electronic fund transfer units and loan production offices." *Id.* at § 10.5(3)(b).

⁵ S.B. 8, § 4, 2003 Leg., 20th Spec. Sess.(Nev. 2003).

⁶ These chapters and titles include institutions licensed as or for check cashing and deferred deposit services, mortgage brokers and mortgage agents, mortgage companies, collection agencies, banks and related organizations, and other financial institutions, such as savings and loan associations and thrift companies.

- (8) Holding or owning securities of companies other than banks, for the sole purpose of exercising some degree of control over the activities of the companies whose securities the person holds;
 - (9) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain a provision requiring redemption by the company upon request of the holder of the security;
 - (10) Issuing shares, other than unit investment trusts and face-amount certificate companies, whose shares contain no provision requiring redemption by the company upon request by the holder of the security;
 - (11) Issuing unit investment trusts or face-amount certificates;
 - (12) The management of the money of trusts and foundations organized for religious, educational, charitable or nonprofit research purposes;
 - (13) The management of the money of trusts and foundations organized for purposes other than religious, educational, charitable or nonprofit research;
 - (14) Investing in oil and gas royalties or leases, or fractional interests therein;
 - (15) Owning or leasing franchises, patents and copyrights which the person in turn licenses others to use;
 - (16) Closed-end investments in real estate or related mortgage assets operating in such a manner as to meet the requirements of the Real Estate Investment Trust Act of 1960, as amended;
 - (17) Investing; or
 - (18) Any combination of the activities described in this paragraph, who is doing business in this state;
- (c) Any other person conducting loan or credit card processing activities in this state; and
 - (d) Any other bank, bank holding company, national bank, savings association, federal savings bank, trust company, credit union, building and loan association, investment company, registered broker or dealer in securities or commodities, finance company, dealer in commercial paper or other business entity engaged in the business of lending money, providing credit, securitizing receivables or fleet leasing, or any related business entity, doing business in this state.
2. The term does not include a credit union organized under the provisions of chapter 678 of NRS or the Federal Credit Union Act.⁷

This tax may not be deducted from any wages of an employee. This tax must be paid on or before the last day of the month immediately following the calendar quarter for which the employer is required to pay a wage contribution for employment. This two percent (2%) tax is assessed on wages which include:

- (a) All remuneration paid for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash; and
 - (b) Income from tips reported by an employee to his employer . . .
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- (2) Tips reported after the 10th day of the month following the calendar month in which they were received may not be included or used in any claim for benefits.⁸

Wages do not include, and thus the tax is not assessed on:

- (a) The amount of any payment made . . . on behalf of a person or any of his dependents . . . on account of:
 - (1) Retirement;
 - (2) Sickness or accident disability;
 - (3) Medical or hospitalization expenses in connection with sickness or accident disability; or
 - (4) Death.
- (b) The amount [paid to a person] . . . on account of retirement.

⁷ S.B. 8, § 5, 2003 Leg., 20th Spec. Sess. (Nev. 2003).

⁸ NEV. REV. STAT. ANN. 612.190(1) (West 2003).

- (c) The amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability . . . on behalf of a person [who has not performed services for the past six months].
- (d) The amount of any payment . . . to or on behalf of a person performing services for the [employer] or his beneficiary:
 - (1) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the Internal Revenue Code of 1954 at the time of the payment unless the payment is made to a person performing services for the trust as a remuneration for his services and not as a beneficiary of the trust; or
 - (2) Under or to an annuity plan which, at the time of the payment, meets the requirements of Section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954.
- (e) The payment by an [employer], without a deduction from the remuneration of the [employee], of the tax imposed upon [the employee], under Section 3101 of the Internal Revenue Code of 1954 with respect to services performed for the [employer].
- (f) Remuneration paid in any medium other than cash to any person who performs agricultural labor or to a person for service not in the course of the [employer's] trade or business.
- (g) The amount of any payment, other than vacation or sick pay, made to a person after the month in which he attains the age of 65, if he did not perform services for the [employer] in the period for which the payment is made.⁹

The employer may also deduct from the total amount of wages reported, and thus decrease the amount on which the tax is imposed, health insurance or health benefit plans paid by the employer for the employees in the calendar quarter for which the tax is paid. Proof of the amount deducted must be submitted with a return when the tax is paid. If the deduction amount exceeds the amount of reported wages, excess amount may be carried forward for the following quarter until the deduction is exhausted. The deduction amounts include:

- (a) For an employer providing a program of self-insurance for its employees, all amounts paid during the calendar quarter for claims, direct administrative services costs, including such services provided by the employer, and any premiums paid for the individual or aggregate stop-loss insurance coverage. An employer is not authorized to deduct the costs of a program of self-insurance unless the program is a qualified employee welfare benefit plan pursuant to the Employee Retirement Income Security Act of 1974 . . .
- (b) The premiums for a policy of health insurance or reinsurance for a health benefit plan for its employees.
- (c) Any amounts paid by an employer to a Taft-Hartley trust . . . for participation in an employee welfare benefit plan.
- (d) Such other similar payments for health care or insurance for health care for employees as are authorized . . .¹⁰

However, an employer may not deduct from the total amount of reported wages:

- (1) Amounts paid for health care or premiums paid for insurance for an industrial industry or occupational disease for which coverage is required.
- (2) Any payments made by employees for health care or health insurance or amounts deducted from the wages of employees for such care or insurance.¹¹

This tax becomes effective on October 1, 2003.

⁹ *Id.* at 612.190(3).

¹⁰ S.B. 8, § 11(4), 2003 Leg., 20th Spec. Sess. (Nev. 2003).

¹¹ *Id.* § 11(5).

C. The Business Payroll Tax¹²

Generally, the tax package includes a .7% tax on the wages paid by each employer during a calendar quarter with respect to employment. This tax is assessed on any employer that is required to pay a wage contribution for employment per quarter, except a financial institution, an Indian tribe, a nonprofit organization, or a political subdivision. This tax may not be deducted from any wages of an employee. This tax must be paid on or before the last day of the month immediately following the calendar quarter for which the employer is required to pay a wage contribution for employment. The wages included, and the deductions allowed, on this tax are exactly the same as detailed under the financial payroll tax section.¹³

However, businesses are also allowed a separate fifty percent (50%) tax exemption from the payroll tax. This tax exemption applies for an employer who is entitled to abatement for a new business or an expansion of a business in this state. The employer is then entitled to an exemption of fifty percent (50%) of the amount of tax otherwise due during the first four (4) years of its operation. A partial abatement is also allowed with approval from the Commission on Economic Development. This tax becomes effective on October 1, 2003. However, this tax rate drops to .65% beginning in July, 2004.

Businesses are also allowed to stop paying the \$100 per employee business license fee. This fee was repealed.

D. The Annual Business License Fee¹⁴

A person shall not conduct a business in this state unless he or she has a business license. A fee of \$100 is assessed and must be paid with the application for a business license. If a business in this state already has a business license, then a fee of \$100 must be paid annually on or before the last day of the month in which the anniversary date of the issuance of the business license is found. This tax is assessed on any person who conducts a business in this state. A person conducts a business in this state if: (1) the business is organized as a business association, other than a nonprofit corporation or a limited-liability company; (2) if the business has an office or other base of operations in this state; or (3) if the business pays wages to persons who perform duties in the state for which he or she was hired. This tax becomes effective on October 1, 2003.

III. How Do the New Tax Changes Affect the Owner of a Live Entertainment Venue?¹⁴

Generally, the tax package includes a tax on admission, sales of food, refreshments, and merchandise purchased within the facility, or a tax solely on admission, owned by a business entity.¹⁵

¹² *Id.* § 50.

¹³ *See supra*, Part II.B.

¹⁴ S.B. 8, § 108, 2003 Leg., 20th Spec. Sess. (Nev. 2003).

¹⁴ *Id.* § 78.

¹⁵ A business entity includes “a corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of this state or another jurisdiction and any other type of entity that engages in business.” *Id.* § 69. A natural person is also a business entity if the person files a Schedule C (Form 1040), Profit or Loss From Business Form, or its

If the maximum seating capacity is less than 7,500 people, then the rate of the tax is ten percent (10%) and is assessed on admission to the facility and sales of food, refreshment, and merchandise purchased within the facility. If the maximum seating capacity is at least 7,500 people, then the rate of the tax is five percent (5%) and is only assessed on the admission charge to the facility.

The amounts paid for gratuities directly or indirectly to persons employed at a live entertainment facility, or for service charges, including those in connection with the use of credit cards or debit cards, which are collected by persons other than the taxpayer, are not taxable.

The entertainment tax may be collected from any person paying for the admission ticket or for the food, refreshment, and merchandise located within the facility. The admission ticket to the facility must state whether or not this tax is being collected from the ticket's purchase. If the ticket does not have such a statement, then the taxpayer shall pay the tax based on the face value of the ticket.

This tax does not apply to:

- (a) Live entertainment that this state is prohibited from taxing under the Constitution, laws or treaties of the United States, or the Nevada Constitution.
- (b) Live entertainment that is provided by or entirely for the benefit of a nonprofit religious, charitable, fraternal, or other organization that qualifies as a tax-exempt organization . . .
- (c) Any boxing contest or exhibition . . .
- (d) Live entertainment that is not provided at a licensed gaming establishment if the facility in which the live entertainment is provided has a maximum seating capacity of less than 300.
- (e) Live entertainment that is provided at a licensed gaming establishment that is licensed for less than 51 slot machines, less than six games, or any combination of slot machines and games within those respective limits, if the facility . . . has a maximum seating capacity of less than 300.
- (f) Merchandise sold outside the facility in which the live entertainment is provided, unless the purchase of the merchandise entitles the purchaser to admission to the entertainment.
- (g) Live entertainment that is provided at a trade show.
- (h) Music performed by musicians who move constantly through the audience if no other form of live entertainment is afforded to the patrons.
- (i) Live entertainment that is provided at a licensed gaming establishment at private meetings or dinners attended by members of a particular organization or by a casual assemblage if the purpose of the event is not primarily for entertainment.
- (j) Live entertainment that is provided in the common area of a shopping mall, unless the entertainment is provided in a facility located within the mall.¹⁶

A taxpayer is allowed to take a credit for the amount of a tax previously paid on account of an uncollected amount of an admission charge, or charges for food, refreshments, and merchandise. This credit is only allowed if the taxpayer has taken a deduction on his or her federal income tax return for the amount which was uncollected. This credit can be used against the amount of tax that the taxpayer is required to pay in the future. This tax becomes effective on January 1, 2004.

equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.

¹⁶ S.B. 8, § 78(5), 2003 Leg., 20th Spec. Sess. (Nev. 2003).

IV. How Do the New Tax Changes Affect Real Estate Transfers?¹⁷

A new \$1.30 tax is assessed on each \$500 value, or a fraction thereof, on each deed by which lands, tenements, or other realty is granted, assigned, transferred, or otherwise conveyed to, or vested in, another person, if the consideration or value of the interest or property conveyed exceeds \$100. The amount of this tax is computed on the basis of the value of the transferred property. This tax does not apply to:

- 1) A mere change in identity, form, or place of organization, such as a transfer between a corporation and its parent corporation, a subsidiary or an affiliated corporation if the affiliated corporation has identical common ownership.
- 2) A transfer of title to the U.S., any territory or state or any agency, department, instrumentality, or political subdivision thereof.
- 3) A transfer of title recognizing the true status of ownership of real property.
- 4) A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common
- 5) A transfer of title between spouses including gifts or to effect a property settlement agreement or between former spouses in compliance with a decree of divorce.
- 6) A transfer of title to or from a trust without consideration if a certificate of trust is presented at the time of the transaction.
- 7) Transfers, assignments or conveyances of unpatented mines or mining claims
- 8) A transfer, assignment or other conveyance of real property to a corporation or other business organization if the person conveying the property owns 100 percent of the corporation or organization to which the conveyance is made.
- 9) A transfer, assignment or other conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of consanguinity.
- 10) The making, delivery, or filing of conveyances of real property to make effective any plan of reorganization or adjustment
 - (a) Confirmed under the Bankruptcy Act
 - (b) Approved in an equity receivership proceeding involving a railroad
 - (c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act, if the making, delivery, or filing of instruments of transfer or conveyance occurs within 5 years after the date of confirmation, approval, or change.
- 11) The making or delivery of conveyances of real property to make effective any order of the SEC if:
 - (a) The order in obedience to which the transfer or conveyance is made recites that it is necessary or appropriate.
 - (b) The order specifies and itemizes the property; and
 - (c) The transfer or conveyance is made in obedience of the order.
- 12) A transfer to an educational foundation.
- 13) A transfer to a university foundation.¹⁸

¹⁷ *Id.* § 124.

¹⁸ *Id.* § 130. This is a paraphrased list.

However, this tax, along with the tax specified in NEVADA REVISED STATUTES § 375.020¹⁹, does apply to a transfer of title to community property without consideration, when held in the name of one spouse, to both spouses as joint tenants or tenants in common, or as community property. This tax, along with the tax specified in NEVADA REVISED STATUTES § 375.020, also applies to a transfer, assignment, or other conveyance of real property to a corporation sole from another corporation sole. This tax becomes effective on October 1, 2003.

V. How Do the New Tax Changes Affect Liquor and Cigarette Sales?

Generally, the tax package includes a tax on all liquor and cigarette commerce found within the state.

A. The Liquor Tax²⁰

A tax must be paid on all liquor or on the privilege of importing, possessing, storing, or selling liquor in this state. The amount of the tax varies based upon the alcohol content of the liquor. This tax is effective on August 1, 2003. The tax includes:

- 1) A \$3.60 tax per wine gallon of liquor containing more than 22% of alcohol.
- 2) A \$1.30 tax per wine gallon of liquor containing more than 14% of alcohol.
- 3) A 70 cent tax per wine gallon of liquor containing between one-half of 1% and up to and including 14% of alcohol.
- 4) A 16 cent tax per gallon on malt beverage liquor brewed or fermented and bottled in or outside of the state.

B. The Cigarette Tax²¹

A tax must be paid on the purchase or possession, or on the use of cigarettes in this state. A consumer must pay a tax at the rate of 40 mills per cigarette on the purchase or possession of cigarettes. This tax must be added to the selling price of the cigarettes and paid by the consumer to the wholesaler or retailer.

¹⁹ NEV. REV. STAT. 375.020 states:

1. A tax, at the rate of:
 - (a) In a county whose population is 400,000 or more, \$1.25; and
 - (b) In a county whose population is less than 400,000, 65 cents,for each \$500 of value or fraction thereof, is hereby imposed on each deed by which any lands, tenements or other realty is granted, assigned, transferred or otherwise conveyed to, or vested in, another person, if the consideration or value of the interest or property conveyed exceeds \$100.
2. The amount of tax must be computed on the basis of the value of the transferred real property as declared pursuant to.NRS 375.060.

²⁰ S.B. 8, § 122.1, 2003 Leg., 20th Spec. Sess. (Nev. 2003).

²¹ *Id.* § 122.3.

A tax of forty mills per cigarette is assessed on the use of cigarettes. This tax does not apply where Nevada cigarette revenue stamps have been affixed to cigarette packages as required by law or where tax exemption is allowed. This tax is effective immediately.

VI. How Does the New Tax Package Affect Slot Licensing Fees?²²

A license fee of \$81 is assessed for each slot machine of an operator who has at least one, but not more than five, slot machines when the owner applies for an application for a restricted operation. This fee will be collected quarterly with payment on or before the last day of the last month in a calendar quarter for the ensuing quarter.

A license fee of \$405 plus \$141 is assessed for each slot machine of an operator in excess of five, but not more than fifteen slot machines when the owner applies for an application for a restricted license. This fee will be collected quarterly with payment on or before the last day of the last month in a calendar quarter for the ensuing quarter.

These fees are assessed upon the total number of slot machines of the operator situated in that location, whether or not the machines are owned by one or more licensee-owners. This fee becomes effective immediately.

VII. How Do the Tax Changes Affect the Gaming Tax Rate?²³

The tax package assesses a .5 percent increase in the gaming tax rate. A manufacturer of interactive gaming system who is authorized to receive a share of the revenue from an interactive gaming system from a licensed establishment is liable to the establishment for a portion of the license fee. The portion that must be paid is 6.75 percent of the amount of revenue to which the manufacturer is entitled from the licensed establishment. This tax is effective on August 1, 2003.

²² *Id.* § 170.

²³ *Id.* § 173.5.