

DATE: March 16, 2015

TO: NTA Members

The following five pages contain a section by section summary of SB 252, the Governor's major tax bill. The link to the bill is <http://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB252.pdf>,

Please note: This "fee" does not fit the definition of a fee. Because the revenue is used to fund general government expenses, it is a tax. It will be referred to in this document as a tax and abbreviated as "BLT."

FAST FACTS

The current State annual business license is replaced by a quarterly State Business Licence Tax.

The administration and collection of the tax is moved from the office of the Secretary of State to the Department of Taxation.

The effective date of this bill is upon passage and approval for regulatory and administrative tasks and July 1, 2015 for all other purposes.

The quarterly reporting periods follow Nevada's fiscal year (July 1 to June 30) not the businesses fiscal year

The first tax report and payment is due November 15, 2015.

The BLT is determined by identifying the industry NAICS code that "primarily" applies to the business then finding the quarterly rate tier of Nevada gross revenue that applies to the business in that industry category.

It is the business that determines their primary purpose, their gross revenue and the Nevada gross revenue attributable to the business. Unlike other taxes levied in Nevada this legislation does not specify how to determine the calculation of gross revenue and Nevada gross revenue.

The revenue generated by the tax is deposited to the State's general fund.

The bill indicates there is a fiscal note for the State, however it is not available.

GENERAL OBSERVATIONS

This is legislation, which has been categorized as simple is basically simple only for the smallest businesses that will most likely fall in the \$100 quarterly tax category.

Larger businesses and multi-state businesses will incur potentially substantial new costs for compliance.

Until regulations are adopted or this legislation is amended to specify the method of calculation for gross revenue and Nevada gross revenue, a business will have to use their best interpretation.

**SECTION BY SECTION OF SB 252 THE GOVERNOR'S MAJOR TAX PROPOSAL
PREPARED FOR MEMBERS OF THE NEVADA TAXPAYERS ASSOCIATION - MARCH 14, 2015**

SECTION NO.	SUMMARY/COMMENTS
1	Adds a new chapter to title 32 - Taxation statutes
2	Identifies sections 3-11 as definitions
3-11	Definitions
3	<p>Defines "business" as any person that performs a service or engages in a trade for profit; or a natural person who files IRS form Schedule C (Form 1040), or Schedule E (Form 1040) or Schedule F (Form 1040); or an entity filed with the Secretary of State's office under Title 7.</p> <p>Entities not included range from governmental entities; organizations that qualify as non-profits under IRS code 501 (c); a natural person operating from home whose earnings are less than 66 2/3 of the State average wage; a natural person who rents 4 or fewer dwelling units; a business organized under NRS chapter 82 or 84; a credit union organized under NRS 678; and various trusts.</p>
4	<p>"Fiscal year" - is defined as 12 month period beginning on July 1 and ending on June 30.</p> <hr/> <p><i>Why was the State's fiscal year used instead of the federal taxable year of the business?</i></p>
5	<p>Defines gross revenue as "the total amount realized by a person from the conduct of business in this state, without deduction for the cost of goods sold or other expenses incurred . . ." Without limitation the term includes amounts realized for the sale, exchange or other disposition of a business's property; performance of services; from another's possession of a business's property or capital and any combination of those amounts.</p> <p>The term excludes amounts realized from the sale, exchange, disposition, or other grants of the right to use trademarks, patents, etc., and similar intellectual property.</p>
6	"Nevada gross revenue" means the gross revenue of a person from conducting business in this State adjusted pursuant to section 20 and derived from business in this State pursuant to section 21.
7	"NAICS" - the North American Industrial Classification System of 2012, published by the Census Bureau.
8	<p>"Pass Through Revenue" - There are numerous references to the various types of pass through revenue in this section that range from "Revenue received by a business required by law or fiduciary duty to be distributed to another person or governmental entity" to "Revenue received by a business that is part of an affiliated group from another member of the affiliated group."</p> <p>"Affiliated group" is defined as ". . . a group of two or more businesses, each of which is controlled by one or more common owners or by one or more members of the group. "Controlled by" is defined as "...direct or indirect ownership, control or possession of the power to vote 50 percent of the outstanding voting securities of a business.</p>
9 & 10	"State Business License" and "State Business License Fee (Tax)
11	"Wages" - The remuneration paid for personal services, including without limitation, commissions, and bonuses and remuneration payable in any medium other than cash.
12	"Passive Entity" - identifies what a passive entity is and any conditions or exclusions from various definitions of passive entities in this section.
13	Deems a person to be conducting business in this State if they are organized under title 7 of NRS, other than a business organized under NRS 82 or 84 or 81 if they qualify as a federal 501(C), has an office or base of operations in this State, has a registered agent in Nevada or pays a natural person to perform duties in this State.
14 -19	Department of Taxation Administrative Responsibilities
14	<p>To administer and enforce this chapter, adopt regulations, and deposit all fees, interest and penalties for credit to the State General Fund.</p> <hr/> <p><i>Inferences to this tax was that it would be used to fund the education initiatives that the Governor outlined in his State of the State address. However, there is no reference in the bill to using the revenue generated by this tax for education.</i></p>

SECTION NO.	SUMMARY/COMMENTS
15	Record keeping requirements by a business as established by the Department.
16	Requires the Executive Director of the Department to keep any confidential information obtained confidential.
17	Provides for the Department to verify through the books and records kept by the business. Also allows the Department to cover any travel expenses for examining books and records kept out-of-state.
18	Requires a person to obtain a state business licenses before conducting business in Nevada and establishes the filing requirements. Specifies that this license is in addition to any business license required by a local government.
19	<p>Requires that in addition to a State business license, the BLT be paid by a person conducting business in Nevada. A report must be filed on or before the 45th day immediately following the end of each quarter of the fiscal year. The report must state the gross revenue and Nevada gross revenue of the business for the calendar quarter and be accompanied by the fee shown in the industry/business category in which the business is <u>primarily</u> engaged in. The fee schedules are shown in sections 22 to 49.</p> <p>Allows the department to extend payment for 30 days for good cause, however the business will be subject to interest at the rate of 0.75 percent per month for the period of the extension. Requires an amended return to be filed if Nevada gross revenue is incorrectly reported.</p> <hr/> <p><i>What constitutes “primarily” engaged in by a business? Is it the amount of revenue received or the resources expended in conducting that business?</i></p>
20-21	Calculation of Revenue
20	This is a very extensive section that provides for the following amounts to be subtracted from the Nevada gross revenue of the business: any gross revenue which is forbidden to be taxed pursuant to the U.S. Constitution or Nevada Constitution; revenue of the business from interest upon any bonds or securities of the Federal Government or State of Nevada or local jurisdiction; any gross revenue used to determine the amount of the gross gaming fee (NRS 463.370); the amount of gross revenue used to determine the net proceeds of minerals tax (NRS 362.100-240); a revenue of direct premiums written and all other considerations for insurance used to determine the insurance premium tax (NRS 680B); any amount of wages, payroll taxes employee benefits and workers’ compensation as payments to an employee leasing company and any pass through revenue. Also, subtracted are various payment to health care providers, including, but not limited to Medicaid, Medicare, CHIP, professional services in relation to workers comp claims, any uncompensated care by a health care provider. Additional revenue reductions are also identified ranging from receipts from a hedging transaction to bad debts expensed for the purpose of federal taxation.
21	<p>Establishes the rules for gross revenue to be sitused to this State. The following are considered sitused to Nevada: real property located in this state, the gross rents and royalties and gross receipts from the sale of real property; tangible personal property located or used in Nevada; gross rents and royalties and gross receipts from the sale if the property is delivered or shipped to a buyer in Nevada, regardless of the F.O.B or other condition of sale; gross receipts for the sale of transportation services if both origin and destination point of the transportation are located in Nevada; and gross revenue not otherwise described, if the gross revenue is from business done in the State.</p> <p>A person may petition the Department for a different method of situsing, or the Department may require the use of an alternative method of situsing gross revenue to this State.</p> <hr/> <p><i>When it comes time to audit a business, what will be basis an auditor will use to determine gross revenue?</i></p> <p><i>Since there is no apportionment formula to determine “Nevada Gross Revenue,” which is determined by the business, what will be the basis the auditor will use to audit Nevada gross revenue?</i></p> <p><i>Regarding transportation -What records will the Department require to determine that the origin and destination were in the State? What if the original destination is outside the State, with drop-offs made in the State?</i></p>

SECTION NO.	SUMMARY/COMMENTS
22	<p>For a person conducting business in the State with no employees the BLT is \$100 per quarter.</p> <p><i>Note:</i> The current business license is an <u>annual</u> fee of \$200 which was scheduled to revert to \$100 on July 1, 2015.</p>
23 - 49	Table for BLT Rates
	<p>General Information:</p> <p>There are 30 NAICS categories, one category identified in each section. There are 67 tiers of Nevada gross revenue in each NAICS category. The revenue tiers in each category are the same and start at "Nevada Gross Revenue of \$0 up to and including \$31,250," which has a fee of \$100 per quarter. The last revenue tier in each category is "Nevada Gross Revenue greater than \$275,572,755 and above." In each revenue category, with the exception of the first tier rate of \$100, the quarterly rates vary in each NAICS classification.</p> <hr/> <p><i>What formula was used to create the difference in rates between the various NAICS Codes and tiers?</i></p>
23	Agricultural, Forestry, and Hunting - NAICS 11. Includes businesses primarily engaged in agricultural production or support. Maximum quarterly rate: \$203,296.
24	Mining, Quarrying and Oil and Gas Extraction -NAICS 21. Includes businesses primarily engaged in mining operations and support activities, including without limitation, extracting. Maximum quarterly rate: \$164,573.
25	Utilities - NAICS 22. Includes businesses primarily engaged in providing utility services, including without limitation, electric power, natural gas, steam supply, water supply and sewage removal. Does not include waste management services. Maximum quarterly rate: \$438,860.
26	Construction - NAICS 26. Includes all businesses primarily engaged in the construction of buildings or engineering projects such as highways, utilities systems, the preparation of sites for new construction and subdividing land for sale as building sites. Maximum quarterly rate: \$296,447.
27	Manufacturing - NAICS 31,32 and 33. Includes all businesses primarily engaged in mechanical, physical, or chemical transformation of materials, substances or components into new products. Maximum quarterly rate: \$293,649.
28	Wholesale Trade - NAICS 42. Includes all businesses primarily engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Maximum quarterly rate: \$325,918.
29	Retail Trade - NAICS 44 & 45. Includes all businesses primarily engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Maximum quarterly rate: \$358,187.
30	<p>Air Transportation - NAICS 481. Includes all businesses primarily engaged in providing air transportation of passengers and/or cargo using aircraft such as an airplane and helicopter. Maximum quarterly rate: \$188,774.</p> <hr/> <p><i>Does this category also include Unmanned Aerial Vehicles?</i></p>
31	Truck Transportation - NAICS 484. Includes all businesses primarily engaged in providing over-the-road transportation of cargo using motor vehicles, such as truck and trailer. Maximum quarterly rate: \$654,450.
32	Rail Transportation - NAICS 482. Includes all businesses primarily engaged in providing rail transportation of passengers and/or cargo, using railroad rolling stock. Maximum quarterly rate: \$1,071,335.
33	Other Transportation - NAICS 483,485,486,487,488,491 & 492. Includes all businesses primarily engaged in providing: Water transportation; transit and ground passenger transportation; Pipeline transportation; Scenic and sightseeing transportation; Support activities for transportation including activities of the United States Postal Service and its subcontractors; and Couriers and messengers. Maximum quarterly rate: \$417,885.

SECTION NO.	SUMMARY/COMMENTS
34	Warehousing and Storage - NAICS 493. Includes all businesses primarily engaged in operating warehousing and storage facilities for general merchandise, refrigerated goods and other warehouse products. Maximum quarterly rate: \$413,045.
35	Publishing, Software and Data Processing - NAICS 511,512,515 and 518. Includes all businesses primarily engaged in: Publishing, except on the Internet; Motion Picture and Sound Recording, Broadcasting, except on the Internet; Date Processing. Maximum quarterly rate: \$818,022.
36	Telecommunications - NAICS 517. Includes all businesses primarily engaged in providing telecommunications and services related to that activity. Maximum quarterly rate: \$974,528.
37	Finance and Insurance - NAICS 52. Includes all businesses primarily engaged in financial transactions or facilitating financial transactions. Maximum quarterly rate: \$359,801.
38	Real Estate and Rental and Leasing - NAICS 53. Includes all businesses primarily engaged in renting, leasing, or otherwise allowing the use of tangible or intangible assets, businesses providing related services, managing real estate for others, selling, renting or buying real estate for others and appraising real estate. Maximum quarterly rate: \$806,728.
39	Professional, Scientific and Technical Services - NAICS 54. Includes all businesses primarily engaged in performing professional scientific and technical activities for others. Maximum quarterly rate: \$584,071.
40	Management of Companies and Enterprises - NAICS 55. Includes all businesses primarily engaged in: Holding of securities of or other equity interests in, companies and enterprises for the purpose of owning a controlling interest or influencing management decisions; or Administering, overseeing and managing establishments of the company or enterprise. Maximum quarterly rate: \$442,087.
41	Administrative and Support Services - NAICS 561. Includes all businesses primarily engaged in activities that support the day-to-day operations of other organizations. Maximum quarterly rate: \$498,558.
42	Waste Management and Remediation Services - NAICS 562. Includes all businesses primarily engaged in the collection, treatment and disposal of waste materials. Maximum quarterly rate: \$847,065.
43	Educational Services - NAICS 61. Includes all businesses primarily engaged in providing instruction and training in a wide variety of subjects. Maximum quarterly rate: \$909,989.
44	Health Care and Social Assistance - NAICS 62. Includes all businesses primarily engaged in providing health care assistance and social assistance for natural persons. Maximum quarterly rate: \$614,727.
45	Arts, Entertainment and Recreation - NAICS 71. Includes all businesses primarily engaged in operating facilities or providing services to meet varied cultural, entertainment and recreational interests of their patrons. Maximum quarterly rate: \$774,459.
46	Accommodations - NAICS 721. Includes all businesses primarily engaged in providing lodging or short-term accommodations for travelers, vacationers and others. Maximum quarterly rate: \$645,383.
47	Food Services and Drinking Places - NAICS 722. Includes all businesses primarily engaged in preparing meals, snacks and beverages to customer order for immediate on and off premises consumption. Maximum quarterly rate: \$626,021.
48	Other Services - NAICS 81. Includes all businesses primarily engaged in providing services not included in any of the business categories described in the prior sections. Businesses in this category are primarily engaged in activities such as repairing equipment and machinery, promoting or administering religious activities, grantmaking, advocacy, and providing dry cleaning and laundry services, personal care, pet care, photofinishing, temporary parking services and dating services. Maximum quarterly rate: \$458,222.
49	Unclassified Businesses. Includes any business that paid wages during the quarter and is not included in any of the prior business categories covered by NAICS codes. Maximum quarterly rate: \$484,037.
50 - 62	Administration, Compliance, Enforcement
50	Businesses must use the same method of accounting for gross revenue as they do for federal income tax, and if the business changes its accounting method for federal income tax the method must also change for purposes of the BLT .

SECTION NO.	SUMMARY/COMMENTS
51	<p>If a business fails to pay the BLT and interest and penalties due, the department of taxation may revoke or suspend. The department will notify the person who holds the state business license and the Secretary of State. If the business is organized under title 7 of NRS the Secretary of State must revoke the business's charter or authority to do business in Nevada. Upon payment of the BLT and interest and penalties the businesses authority to do business if reinstated.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>Will the Secretary of State put a due process procedure in place?</i></p>
52	Provides that any amount of overpayment will be reported to State Board of Examiners and the overpayment returned after any amount applied to taxes owing.
53	Provides that a claim for overpayment must be made within three years of the month following the calender quarter the overpayment was made. Claims must be made in writing, and failure to file a claim in a timely manner constitutes a wavier against recovering the overpayment.
54	Any overpayment of the BLT will receive interest pursuant to NRS 360.2937.
55-58	Specifies the time frames and procedures and time to file a claim seeking recovery of an overpayment of the BLT.
59-60	Specifies the procedure for the Department of Taxation to recover a refund.
61	Provides the process for cancellation of amounts under or over \$25 that have been determined to have been illegally collected.
62	Provides that the remedies of the State provided for in this chapter are cumulative.
63 - 159	Clarifying and Conforming Language
63-75	As appropriate adds references to the State Business License to various chapters, and replaces references to the Secretary of State regarding the State Business License with the Department of Taxation.
76-159	The majority of the changes replace reference to the Secretary of State with the Department of Taxation, the reinstatement of an entity filed under title 7 of NRS pursuant to section 51, and reference sections 2-62 of this bill.
160 - 164	Miscellaneous
160	Requires a person who holds a valid state business license issued prior to July 1 2015, to obtain a State business license on or before September 30, 2015 pursuant to section 18
161	No penalties or interest will be imposed for failure to comply with this Act before September 1, 2016, if the failure to file occurred despite the exercise of ordinary care and was not due to intentional or willful neglect.
162	Any regulations adopted by the Secretary of State shall remain in force until amended by the Department of Taxation.
163	Repeals current statutory cites relating to the annual Nevada business license fee.
164	Effective upon passage and approval for the purpose of adopting regulations and performing administrative tasks and July 1, 2015 for all other purposes.