

**MINUTES OF THE MEETING OF THE  
GOVERNOR'S TASK FORCE ON TAX POLICY IN NEVADA  
(ACR 1 of the 17<sup>th</sup> Special Session)**

**September 18, 2002**

The September 13, 2002, meeting of the Governor's Task Force on Tax Policy in Nevada was reconvened at 9:35 a.m., on Wednesday, September 18, 2002. Chairman Guy Hobbs presided in Room 4401 of the Grant Sawyer Office Building, Las Vegas, Nevada. The meeting was videoconferenced to Room 4100 of the Legislative Building, Carson City, Nevada.

**COMMITTEE MEMBERS PRESENT IN LAS VEGAS:**

Mr. Guy Hobbs, Chairman  
Ms. Eva Garcia-Mendoza  
Mr. Brian Greenspun  
Mr. Kenneth Lange  
Mr. Mike Sloan  
Ms. Nancy Wong

**COMMITTEE MEMBER PRESENT IN CARSON CITY:**

Mr. Russ Fields  
Dr. Luther Mack

**LEGISLATOR PRESENT IN LAS VEGAS:**

Assemblyman David Parks

**EXHIBITS:**

Exhibit A: Meeting Agenda  
Exhibit B: Attendance Records  
Exhibit C: Letter from the Retail Association of Nevada, presented for the record by Chairman Hobbs  
Exhibit D: Letter from Ted Mendalski, private citizen  
Exhibit E: Letter from Paula Berkley, representing the Reno-Sparks Indian Colony, requesting clarification on cigarette tax issues

***Opening Remarks***

Chairman Hobbs referred to the agenda from the September 13<sup>th</sup> meeting and said the main focus of the meeting would be agenda items IV and V.

Chairman Hobbs said the Task Force, the Nevada Taxpayers Association, and other groups, initially mailed several hundred solicitations requesting input and guidance from various groups throughout Nevada. The chairman referred to the numerous presentations heard by the Task Force and stressed those presentations had not fallen on deaf ears. The specific mandates of ACR 1 included the identification of a funding gap, or structural deficit, and alternative sources of funding. The Task Force had met the requirement of soliciting information regarding long-term care and K-12 education. The chairman said ACR 1 also included specific requirements to deal with broadening the tax base and improving stability and predictability for the state's budget. Members had identified the potential funding sources that would be discussed, and a substantial amount of analytical work was generated. A matrix was produced that was used to rank order some of the alternatives. The members had discussed broadening the sales tax base, a net profits tax, and various forms of other alternative revenue sources, including a value added tax (VAT) and an income tax. All of the suggestions had been analyzed and evaluated, and the information disseminated.

Chairman Hobbs stated his reason for providing a brief history of the Task Force was to address the perception that

some recommendations discussed during the last few meetings were “coming out of the blue.” The chairman emphasized the process had been thoughtful. It was important to note that a series of revenue sources had been identified that would potentially reduce some of the deficit; most were less problematic revenue sources. The mechanics of a property tax, a transaction tax, or a liquor tax were clear, because the infrastructure was already in place. The Task Force would be focusing more on new revenue sources because the mechanics were much more difficult.

Chairman Hobbs explained the Task Force was entering into a workshop phase. Due to the importance of the mandates of ACR 1 and the timelines, the chairman requested that individuals providing testimony present suggestions on how to remedy the revenue problems.

Chairman Hobbs said the Task Force had received some public comment prior to the recess of the meeting held September 13<sup>th</sup>, however, referencing that agenda item, he pointed out there were individuals in attendance who would help the Task Force understand any legal impediments that might exist with recommending a gross receipts tax as a revenue source. The chairman invited Senator Richard Bryan, Richard Morgan, and Brian McKay to come forward.

### *Public Comment*

Senator Richard Bryan said he was engaged by the Nevada Resort Association to determine if the Nevada Legislature had the power to levy a tax upon the net or gross revenue or income of businesses. Former Attorney General Brian McKay and Richard Morgan, Dean of the Boyd Law School, University of Nevada, Las Vegas (UNLV), were engaged to assist with the determination. Senator Bryan said it was the consensus that the Nevada Legislature had the power to levy a business tax on net or gross revenues or income.

Senator Bryan shared the basis upon which he reached his conclusion and referred to the distinction between the powers of federal government and state government. Unlike the federal government, a government with delegated or enumerated powers, every act of Congress predicated its constitutionality upon a delegated power conferred expressly in the U.S. Constitution. State constitutions and state governments were markedly different, having inherent powers. The Legislature was vested with all power unless expressly denied by the U.S. Constitution or the Nevada Constitution. It was clear in reading the U.S. Constitution there was no provision that would deny to state governments or state legislatures the power to impose business taxes on businesses. Any restriction must be found in the Nevada Constitution. Senator Bryan read Article 10, Subsection 9 of Section 1, of the Nevada Constitution, which contained the operative language that would be of interest to the Task Force:

No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the state.

The provision was added to the Nevada Constitution following the general elections of 1988 and 1990. The purpose was to prohibit a personal income tax, which was accomplished in the first sentence of the provision: “No income tax shall be levied upon the wages or personal income of natural persons.” The term natural person was a **term of art** legally that would not include, for example, a business that was owned as a sole proprietorship or any of the various manifestations of partnerships, and there were many of them under federal and state law, or corporations. It was the consensus of Senator Bryan, Brian McKay, and Richard Morgan that the prohibition of an income tax applied only to individuals.

Senator Bryan explained the Nevada Constitution did not make a distinction between net versus gross income. The statement “taxes may be levied upon the income or revenue of any business in whatever form it may be conducted” was very broad and expansive language. When the Legislature intended to impose a distinction between net and gross, either by way of a constitutional amendment initiated by the Legislature or a vote of the people, it had not hesitated to do so. Senator Bryan noted Section 5 of Article 10 of the Nevada Constitution provided for a tax upon the “net” proceeds of all minerals, however, no distinction was made with respect to Subsection 9 between gross and net revenues. It was the conclusion of Senator Bryan and his colleagues that the Legislature had the power to impose a business tax based upon gross revenues or net revenues.

Brian McKay said he had issued numerous official attorney general opinions during his eight years in office and was very comfortable in concurring with Senator Bryan's testimony.

Dean Morgan underscored the Legislature had two sources of authority to act. The first was the general plenary power of the Legislature, and that authority would be enough. There was an abundance of case law that indicated the plenary power would give the Legislature the authority to impose a tax on business income or revenue. There was also the specific authority that the taxpayers or voters granted in 1990 with the addition of Subsection 9 to Section 1 of Article 10. Dean Morgan also underscored the point that there was no distinction made between net and gross in the terms revenue and income. In accounting terms, revenue contemplated all receipts of the enterprise, and income often contemplated net receipts, or some netting of expense from the overall revenues. Dean Morgan shared the view that those terms were wide open, and the Legislature could tax either gross or net income.

In response to a question posed by Ms. Garcia-Mendoza, Senator Bryan indicated he had read the opinion of the Nevada Supreme Court concerning the net profits tax brought forward by the Nevada State Education Association (NSEA). Ms. Garcia-Mendoza asked on what grounds the court invalidated the initiative. Senator Bryan said the argument was not raised at trial but was raised for the first time on appeal, and the issue related to a provision in the Nevada Constitution that when one was proposing, by initiative, a measure that required the expenditure and appropriation of monies, which the teachers' initiative did, it must also identify the specific revenue source. The court concluded the initiative was constitutionally infirm because it did not specifically provide for a revenue source. The court said in effect, although education had always enjoyed a primacy with the Legislature, there was no legal requirement that the Legislature had to fund education at a particular level. The court went on to say, because the revenue source was not specifically provided, the initiative would fail under the terms of the constitutional provision.

Mr. Lange recalled toward the end of the decision the court actually said, despite what was decided, the Legislature had within its scope of authority the ability to do anything proposed inside the petition. He thought that language was particularly salient and said the effort failed because all other funding for public education was not incorporated in the petition. During the process one of the key questions on the net profits tax was the issue of sole proprietors and partnerships. Mr. Lange said he understood there was a difference between merely earning income and earning income as a registered business, and thought that was a fundamental point of confusion with many people, especially sole proprietors who viewed revenue coming into their business as personal income.

Senator Bryan said the term natural person had a deep history in the law and that was distinguished from business entities, which might be organized as sole proprietorships. It was the opinion of Senator Bryan that an individual who owned his or her business could be subject to a gross or net revenue tax that the Legislature chose to impose.

Dean Morgan concurred with Senator Bryan's assessment and said Subsection 9 of Section 1 of Article 10 specifically stated that taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit. One of the common forms of conduct of a business was a sole proprietorship. Sole proprietors may regard their income as personal income, but they should not. They have to distinguish between their business operations and their personal operations in tax filings, business licenses, etc.

Senator Bryan said Mr. Lange was quite correct in his earlier statement that there was language, which would be dicta, in the Rogers versus Heller Opinion. For the record, Senator Bryan read from the opinion:

Although the Legislature is barred from taking further action on the void initiative, that is the matter before them, nothing in this opinion is to be construed as precluding the Legislature from considering or adopting the same or similar legislation as it may deem appropriate.

Mr. Fields asked if a not-for-profit business would be excluded from a gross receipts or net profits tax? Dean Morgan said the answer was not entirely clear. Under Subsection 9 of Section 1 of Article 10 taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in this state. Under that specific section that the voters added in 1990, clearly the contemplation was profit-making businesses would be impacted, not non-profits. There was not a prohibition in the Nevada Constitution that stated there could not be some kind of a tax on non-profits. Dean Morgan indicated there was conflict between the two provisions.

Brian McKay said under the operative language the Legislature clearly had the authority to exclude non-profit businesses.

Senator Bryan thought an income tax based upon gross or net revenues on a non-profit business would leave open the question of the imposition of other forms of tax; i.e., licenses and excises would not necessarily be precluded. The provision dealt with revenues and income, as opposed to an excise tax or privilege tax or a license.

### *Discussion and Adoption of Variables for the Economic Models and Alternatives for the Baseline Solution*

Chairman Hobbs referred to agenda item IV and said his intent was to add some clarification to the discussion of the last meeting that would allow the members to move forward on some of the items and form a basis for part of the recommendations. There was a big difference between the recommendation and the form of that recommendation. From a modeling and analytical standpoint there had to be some frame of reference to allow for judgments about numbers of components, sizes of components, rates, etc. In final form, a recommendation that included 6 or 8 different revenue sources would comprise one recommendation. How the members made that recommendation was probably more important than how the analysis was conducted.

Chairman Hobbs returned to items previously discussed that were not as mechanically problematic, including the passive generators, the amusement or transaction tax, cigarette and liquor taxes, property tax, and slot route operators tax. The chairman suggested increments for each one with full recognition that the Task Force was not binding themselves to those values, but rather using them as stronger benchmarks going forward. Chairman Hobbs suggested that the Task Force consider the following recommendations:

- Amusement Tax at a 6.5 percent rate,
- Liquor Tax to be adjusted with the full inflation adjustment as previously discussed and annual inflation adjustments thereafter,
- Cigarette Tax at an increase of 35 cents per pack over the current rate with annual inflation adjustments thereafter.

Chairman Hobbs explained the annual inflation adjustment would index the rate forward by the increase in the Consumer Price Index (CPI) allowing the rates to move with time and avoiding the need to return to request large increases in the taxes in the future. The chairman continued with the recommendations:

- Increase the property tax rate 10 cents per \$100 of assessed valuation as a beginning point for discussion,
- Slot route operators subject to gross receipts tax.

The chairman thought there might be some difficulty in determining a benchmark rate for modeling purposes.

Mr. Sloan recalled when the concept of the amusement tax was first introduced, there was a suggestion it would be a replacement for some existing taxes and have a uniform rate. Mr. Sloan wanted to clarify for the record, given that was no longer part of the chairman's proposal, that this would not be a compounding of the tax of 10 percent on the casino entertainment tax.

Chairman Hobbs said he did not mean to be presumptive and short circuit any discussion about the point raised by Mr. Sloan. There had been dialogue by members of the committee in the past about the substitution of a new amusement tax for the existing casino entertainment tax that seemed to be somewhat negative. The point as to whether or not the amusement tax would replace the casino entertainment tax was still open to discussion. However the chairman emphasized he was not suggesting the amusement tax would be in addition to the casino entertainment tax. Mr. Sloan said he was not suggesting that the amusement tax be a replacement, but wanted to clarify that the proposal was not in addition.

Mr. Sloan indicated he was not aware of indexing tax rates and asked if there were models or examples from other states where tax rates increased by the CPI. Chairman Hobbs said Washoe County voters would be voting on a package to finance road projects in the northern part of the state, and part of the proposal involved indexing the fuel tax. Chairman Hobbs did not have information readily available on the use of indexing in other states, but was relatively certain it was not a new concept. When referring to indexing taxes there should also be discussion related to placing a "collar" around the index, because there might be periods of extraordinary inflation. The chairman

suggested bringing back for consideration by the members a manner of placing a cap or collar around any inflation adjustment in the future. The suggestion of indexing tax rates on liquor and cigarettes should be considered a topic of discussion and a possible mechanism to be considered, as opposed to making a final determination.

Mr. Greenspun questioned the recommended 6.5 percent rate for the amusement tax, and Chairman Hobbs explained 6.5 percent was the applicable sales tax rate in most of Nevada. In Clark County there were three additional .25 percent option taxes that had been added, bringing the rate to 7.25 percent. The most uniform rate for sales tax was 6.5 percent. The amusement tax would be a transaction tax and would avoid the issue of the sales tax being divided between state and local governments. Mr. Greenspun asked if the amusement tax would cover venues such as rock concerts and boxing matches, as opposed to softball leagues, etc. Chairman Hobbs was not certain the intent was to include softball leagues or high school games—the Task Force would have to make that determination. The chairman though adult cabarets and certain memberships that were more discretionary types of spending would be included.

Jeremy Aguero, Chairman, Technical Working Group, said the definition used in the model for entertainment was broad and included bowling leagues, payment for lessons, daily golf fees, concert tickets, and health club memberships. The sporting events were specifically extracted, but unfortunately there was not sufficient detail to allow for distinguishing between what someone paid for bowling versus what someone paid to place a child in Little League Baseball. Extracting those out was almost impossible. Chairman Hobbs reiterated the definition of amusement tax was open for discussion and subject to the definition provided by the Task Force. Mr. Greenspun wanted to avoid recreational activities that families engaged in on a daily, weekly, or monthly basis. He did not know if it served a purpose to address those issues because there would be more exemptions than taxes.

Mr. Lange thought the rationale for the proposal around the amusement and entertainment tax was to open the door to be in a future position to deal with the erosion of the sales tax base as it related to a shift to services and internet sales, etc. The prior discussion related to the recommended amusement tax was reflective of what would result with a proposal to place a tax on services. There was no way to “dip your toe in that water” without extracting the same kind of reaction than if a tax was proposed on all services. Although he was not advocating the suggestion, Mr. Lange said one alternative would be to take a much broader basket of services and apply a relatively low rate to those services. Mr. Lange had some concerns about how much amusement and entertainment occurred outside the casinos. He was not opposed to opening that kind of door, but once the door was opened, a full set of arguments against taxing any kind of discretionary activities would be revealed.

Mr. Lange referred to the scenarios presented at the September 13th meeting and noted the line item “State General Fund Surplus/Deficit” indicated the deficit for FY 2003 was projected to be \$253 million. He asked if that amount was analogous to the amount reported in the newspapers as the projected shortfall in the state budget.

Mr. Aguero explained the amount most often reported in the newspaper was the estimate for the biennium, or what the deficit would be at the end of the biennium. The Budget Office originally projected \$275 million at the end of the biennium. The most recent estimate reported by the Legislative Counsel Bureau in conjunction with the Budget Office was \$335 million, and the working group was estimating \$370 million. The differences were some of the one-time changes that were entered into in the current biennium. For example, the efforts by the State Treasurer to accelerate the revenues from some sources generated another \$20 million. Mr. Aguero thought it was important to draw the distinction between a long-run model and a model that looked at each biennium, which the state was forced to do every two years. Mr. Aguero believed the Budget Office, Legislative Counsel Bureau (LCB) and the working group were all “speaking the same language.” The working group had been in close contact with the Budget Office and LCB throughout the process. Mr. Aguero indicated the long-term estimates were consistent.

Mr. Lange referred to the Hovey Report, which made the distinction between regular business cycles that drive revenue generation and deficits, and the structural deficit. As the members looked at various rates on taxes, there was a need to reach a threshold to deal with the impact of those two cycles, the business cycle and the structural deficit. Mr. Lange did not think he could support proposing rates that did not deal with the deficit presentation.

Mr. Aguero thought the point made by Mr. Lange was excellent. The working group was not attempting to model the business cycle, which was often seen as an ongoing task. It was important to note that next year the revenues might come in higher or might come in lower. The model attempted to smooth out that variability over the entire ten-year period. During the ten-year period there would be peaks, perhaps even in 2004 and 2005. Mr. Aguero thought there would be some type of a boom with regard to retail sales, the casino entertainment tax, as well as the

gross gaming tax, as some of the construction projects continued to evolve and come on line. Over the ten-year time frame it was likely there would be another recession.

Mr. Lange noted some of the rates recommended by the chairman were different than the three scenarios presented by Mr. Aguero, and asked if there was a revenue figure based on the rates presented by the chairman.

Chairman Hobbs said in FY 2004 his recommendations would generate the following: amusement tax, \$122 million; liquor tax, \$16.4 million; cigarette tax, \$61.2 million; property tax, \$61.8 million; slot route operators tax, \$12.2 million; and passive revenue generators, \$21 million. Because the recommendations would not generate sufficient revenue to address the projected early year gap, the members needed to discuss other areas to close and go beyond the gap.

Mr. Lange felt the chairman's recommendations were on the right track, but pointed out in FY 2004 the deficit was projected to be \$359 million, and the income was projected to be \$335 million. The \$24 million difference was significant and represented a gap that needed to be filled. Chairman Hobbs said he understood the trepidation, but emphasized the importance of the Task Force moving forward. He said the baseline package, and above-baseline package, discussed in previous meetings would probably have yielded more revenue than the current suggestions because of the balancing factor.

Chairman Hobbs referred to a concern Mr. Greenspun had with the amusement tax, and said it was likely further restrictions on the application of the amusement tax would drive the dollar value down. The chairman said he would like to develop a definition detailing the types of venues that would be included in the amusement tax, taking into account the concerns of the members about recreational choices. The amount of revenue that would be generated by the amusement tax was significant. Due to the weakness of the current sales tax, the chairman said he could not begin to overemphasize the importance of beginning to enter into a broader application of a transaction tax. If the members were not comfortable with the amusement tax, they would be forced to look at other methods of applying sales tax on a broader basis—an extremely complex task. Chairman Hobbs said additional information would also be provided for the inflation adjustment.

Chairman Hobbs referred to the ability to produce revenue and thought the biggest variable among his recommendations was the increase in property tax rate. Based on current valuation statistics, each penny of property tax produced over \$6 million. Based on past history, the valuation could rise by 10 percent. Property tax was an obvious revenue producer and a substantial stabilizer.

Mr. Greenspun suggested possibly increasing the property tax rate by 20 cents because of the large amount of revenue that would be generated. Chairman Hobbs explained each penny of property tax on a \$100,000 home resulted in an impact of \$3.50 per year. In response to a question posed by Ms. Garcia-Mendoza, the chairman said assessed value was not market value. Assessed value was the value of the land indexed forward, plus the replacement value of the improvements depreciated by 1.5 percent a year. Assessed value was a number for purposes of computing the tax liability.

Mr. Sloan said he was comfortable with the recommended 10-cent increase in the property tax rate, but suggested if the amount was increased to 20 cents, it be phased-in over time. The members needed to recognize the political reality of any recommendations made by the Task Force. Mr. Sloan requested a model beginning at 10 cents and phasing up to 20 cents.

Dr. Mack requested a model beginning at a lower rate and phasing up to 10 cents.

Mr. Lange thought the Task Force had to commit to higher numbers, and stated he could support a phase-in of the property tax beginning with 10 cents, but to start any lower than 10 cents resulted in numbers well below the needed revenue.

Chairman Hobbs said his recommendations would get the modeling process started and would not end discussion about corporate filing fees, a lottery, or any other revenue sources. The chairman explained recommended rate amounts would all be revisited when all of the suggested revenues sources were combined, and final judgment would be made prior to submission of the report to the Governor.

Ms. Garcia-Mendoza requested information on the additional taxes imposed by the cities and counties on real property. Chairman Hobbs used Clark County as an example. An individual living in Las Vegas would pay: 1) the state rate of 15 cents plus the school district component of 75 cents; 2) the Clark County rate; 3) the city rate, both operating and debt; 4) Clark County Library District, and 5) the Metropolitan Police Department. The school component was set in statute and did not change from year to year. The city and county rates were capped individually based on a formula. Generally the city and county rates did not increase unless there was a vote of the people to either incur bonded indebtedness or otherwise override the tax rate. The rate changes were fairly constant, but changes in valuation changed an individual's property tax bill. The total amount of property tax in Clark County was approximately \$3.05 on a weighted average basis. Property tax was much higher in other parts of the state. The chairman said assessed valuation was 35 percent of the appraised value, and appraised value had nothing to do with market value.

Dr. Mack asked if there was any appetite for an apartment tax, and Chairman Hobbs said the issue needed to be discussed in more detail. The chairman reiterated the recommendations made earlier in the meeting were not exclusive. There would be further discussion about numerous revenue sources including multi-family housing. Dr. Mack stressed the intent of the apartment tax would be to have the renter pay the tax, not the owner.

Chairman Hobbs wanted the next meeting agenda to include discussion of a lottery, corporate filing fees, and related property tax issues. There were existing taxes that needed to be reviewed, not necessarily for purposes of increasing. One of the most problematic taxes was the Government Services Tax, or the Motor Vehicle Privilege Tax (MVPT). The MVPT, a property tax on vehicles, was charged at the \$5.00 constitutional limit and used a suggested manufacturers retail price and a 7-year depreciation schedule to impose an annual tax on the ownership of vehicles. The chairman wanted to also include review of the MVPT on the next meeting agenda.

Mr. Sloan said he wanted to broaden the corporate filing fee to a business filing fee, which would include partnerships, sole proprietorships, and any other kind of business activity. If the Task Force was serious about a business tax, all forms of businesses needed to be included.

Mr. Greenspun recommended a minimum 20-cent increase in the property tax spread out over three or four years. Chairman Hobbs noted the property tax was the most variable and substantial of the revenue sources among his recommendations. The phasing feature was an important issue that would need more discussion by the members.

Mr. Lange referred to the gradual phase out of the estate tax and thought the members needed to be cognizant of the fact the estate tax was explicitly enumerated for specific programs such as higher education and class-size reduction.

Ms. Wong said she felt comfortable that the tax rates proposed by Chairman Hobbs should be included in the solution so the Task Force could move forward. The recommendations generated only \$295 million in FY 2004, which did not cover the projected deficit. All the other possible sources of revenue should be discussed, and Ms. Wong thought there were enough caveats indicating no revenue source had been ruled out. The Task Force needed to begin addressing a possible business tax. Mr. Lange concurred with Ms. Wong's observations.

Chairman Hobbs emphasized anything the Task Force did to move his recommendations forward did not reflect negatively on any of the other revenue sources that would be addressed.

Mr. Aguero referred to the imposition of a tax on rented residential dwellings suggested by Dr. Mack. An analysis was completed on all 14 of the major criteria outlined by the Task Force to reveal the revenue that tax would generate and the impact. A brief white paper was prepared for Dr. Mack. As of 2001 home ownership rates were 61 percent, 5 percent lower than the national average. Of the 830,000 housing units in Nevada, approximately 324,000 were rentals. An average rent of \$740 per month, less a vacancy factor, created a rental tax base of \$2.6 billion per year; that would be the base upon which any tax on rented property would exist. The working group did complete a relatively comprehensive analysis of both vertical and horizontal equity. There was a heavy regressive element with regard to a tax on rented properties, and Mr. Aguero believed Dr. Mack's proposal was to look at higher rents, as opposed to lower rents, to offset some of the regressivity. The Working Group was in the process of obtaining additional information on the stratification of rental properties.

Mr. Greenspun was concerned with the regressivity of a tax on rentals. He recognized a property owner paid property tax on his rental, and that tax was incorporated into the rent paid by individuals. It appeared both the owner

of the property and the renter would be paying property tax. Mr. Aguero agreed. He pointed out the group had used information provided by the International Association of Apartment Managers and two other organizations that developed analyses on the income and loss of apartments in different jurisdictions.

CHAIRMAN HOBBS MADE A MOTION TO MOVE FORWARD WITH, AS A PART OF THE SOLUTION BASE, THE PASSIVE REVENUE GENERATORS AS PREVIOUSLY DESCRIBED; THE AMUSEMENT TAX AT A RATE OF 6.5 PERCENT, SUBJECT TO CLARIFICATION OF DEFINITION AND APPLICATION, WHICH WILL BE BROUGHT BACK; LIQUOR TAX WITH THE FULL INFLATION ADJUSTMENT IN FY 2004, WITH A CAVEAT OF WHETHER OR NOT TO PRESUME ANY KIND OF INDEXING GOING FORWARD VERSUS ASSUMING THAT THERE WOULD BE ADJUSTMENTS IN THE FUTURE SUBJECT TO FURTHER REVIEW; CIGARETTE TAX AT A 35-CENT INCREASE PER PACK BEGINNING IN FY 2004, WITH THE SAME CAVEAT ABOUT THE INFLATION ADJUSTMENT OR PRESUMPTION THERE WOULD BE INCREASES IN THE FUTURE; PROPERTY TAX AS A BEGINNING POINT FOR MODELING PURPOSES AT A RATE OF 10 CENTS IN FY 2004, WITH FURTHER DISCUSSION TO TAKE PLACE REGARDING PHASING-IN AND ULTIMATE CAPPING ON THAT RATE, THAT WOULD ALSO INCLUDE PRIOR DISCUSSION ABOUT BIFURCATION OF THE \$3.64 CAP THAT WOULD MAKE SOMETHING LIKE THIS POSSIBLE; AND THE SLOT ROUTE OPERATORS BEING SUBJECT TO THE GAMING GROSS RECEIPTS TAX BEGINNING IN FY 2004. THAT WOULD FORM THE RECOMMENDATION OF COMPONENTS OF THE OVERALL SOLUTION BASE. TO BE FURTHER DISCUSSED WOULD BE ITEMS INCLUDING LOTTERY, BUSINESS CORPORATE FILING FEES, FURTHER DISCUSSION ON PROPERTY TAXES, POSITIVE MODIFICATION TO THE MOTOR VEHICLE PRIVILEGE TAX, THE RENTAL TAX, AS BROUGHT FORTH BY DR. MACK, AND EXPLAINED BY MR. AGUERO, THE DEFINITION OF AMUSEMENTS AS PREVIOUSLY MENTIONED, AS WELL AS THE DEFINITION AND IMPACT OF INDEXING.

Ms. Garcia-Mendoza requested the addition of a review of the value added tax (VAT), a review of the sales tax, and a review of the gaming tax.

Chairman Hobbs accepted Ms. Garcia-Mendoza's request as part of the motion.

MR. SLOAN SECONDED THE MOTION.

THE MOTION AS AMENDED BY MS. GARCIA-MENDOZA PASSED UNANIMOUSLY.

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Chairman Hobbs asked if there were any comments from the public on the motion just passed.

Knight Allen, private citizen, referred to the motion and asked Dr. Mack to consider withdrawing the concept of a tax on rental property. The presentation made by Mr. Aguero documented property taxes were clearly a line item included in all rent. Mr. Allen indicated Mr. Greenspun was correct in stating an individual renting an apartment paid property tax. Mr. Allen stressed the recommendation to tax renters was double taxation that went "way beyond the line."

Carol Vilardo, Nevada Taxpayers Association, said if the casino entertainment tax was not changed, the statute would have to be revised. The entertainment tax, as structured in statute, would not capture some of the new venues due to restrictions. The Task Force could structure a second component, such as an amusement tax or an admission tax, and focus on progressive areas. For example, a NASCAR event—some of tickets started at \$50. Obviously someone at a lower income would not spend that much money for a ticket. Ms. Vilardo suggested, instead of the 6.5 percent rate, the members look at a 10 percent rate for the amusement tax if it was going to be narrowed down from the recommendation made by the association.

Mr. Sloan said the amusement tax recommended by the Nevada Taxpayers Association was intended to replace existing taxes with an overall tax. Mr. Sloan thought there would be no change to the existing casino entertainment tax. However, the new amusement tax would apply to specified activities without regard to location. For example,



a motion picture theater located at a casino and a stand-alone theater would both be subject to the amusement tax. Mr. Sloan explained the casino entertainment tax was the vestige of the cabaret tax and was originally designed to cover only those events for which there was no admissions tax, because admissions were covered separately. Mr. Sloan did not believe it was the chairman's intent to try and expand the casino entertainment tax to things that were not currently covered, but rather to say the casino entertainment tax would stay as it is, and the new tax would apply to all events not covered by the casino entertainment tax. It would not be fair to tax a prizefight held at a hotel at 10 percent and tax a prizefight at the Thomas and Mack Center at 6.5 percent. Mr. Sloan emphasized his opposition to expanding the proposed amusement tax rate to 10 percent.

Ms. Vilardo said the Nevada Taxpayers Association viewed the Task Force as an important committee. She explained there were cyclical and problem revenue sources, and revenue sources in place for a number of years often did not reflect the changes in the economy of the state. The association's proposal combined two taxes that no longer reflected the economy, and it was not the intent of the proposal to treat the same venue differently depending on location. Ms. Vilardo said under current statutes a theatre, such as the one being constructed for the Celene Dion Show, with more than 2,700 seats would not be a taxable item. However, if the same event occurred in a casino showroom with the same number of seats the event would be taxed at the casino entertainment tax rate of 10 percent. Ms. Vilardo said it was frustrating to look at existing taxes and know that changes were made because collection was not efficient. Initially a tax was placed on Greyhound racing in Nevada, but then it was eliminated. Of the numerous sporting events held within the state, fees were only imposed on boxing and wrestling. Ms. Vilardo emphasized members now had the opportunity to take existing taxes and make them fit the economy.

Mr. Greenspun said clearly the intent of Task Force was that a venue like the Celene Dion Show would be subject to the casino entertainment tax. Chairman Hobbs said the Task Force would have to clarify the intent and said the members would "take to heart" the comments made by Ms. Vilardo and would try to make them part of the definitions brought back for clarification and discussion. He thanked Ms. Vilardo for her comments.

### ***Discussion and Possible Action Regarding Potential Business-Related Tax Sources***

Chairman Hobbs referred to the gross receipts tax being considered and thought the members were looking more at a modified gross receipts tax, or a Nevada business-related tax. The suggested tax no longer reflected the definition of gross receipts used in other states, and the chairman thought it might be more appropriate to begin to call it a Nevada business-related tax that had at its heart and soul the use of either gross receipts, modified gross receipts, or net profits as the mechanism for taxing. The chairman reaffirmed that the gross receipts tax had a much stronger record of stability than the net profits tax.

Chairman Hobbs said at the September 13<sup>th</sup> meeting the members had discussed the potential of a gross receipts tax of .25 of 1 percent on the receipts of all businesses with a threshold exemption of \$200,000. Businesses that generated gross receipts of less than \$200,000 would not have any tax liability under this particular tax, but would continue to pay the existing business license tax. An additional exemption for the business license taxes paid would be a one-for-one exemption through the use of \$40,000 increments per employee. The additional exemption would be added to the baseline exemption. The chairman recognized that the two exemption components were subject to much further deliberation and discussion.

Mr. Sloan said some of the reasons a gross receipts tax had appeal was the simplicity and the attempt to avoid an intrusive audit process and the creation of a more costly administrative structure that would result from an income tax. The evidence from states with gross receipts tax suggested they were more efficient in terms of the cost of collection as a percentage of the amount collected. There was the added complication of having a prohibition against a personal income tax, which was usually the companion to a corporate income tax. Those were among the items that led members to think there was value to at least exploring a gross revenue or gross receipts tax. The opportunity to have a very low rate was also appealing. Mr. Sloan thought the Task Force was identifying existing revenue sources and revenue sources that were harnessed in most other states—the larger and more cash intensive businesses.

Chairman Hobbs said he neglected to state that members had discussed thus far potential application of the business-related tax as being one with no industry specific exemptions and reaffirmed that was still very much a part of the core of the discussion.

Mr. Lange said at the September 13th meeting he attempted to present a different perspective on the exemption issue. He thought mixing the business license tax and the gross receipts tax complicated the conversation because of mixing metaphors in terms of what would be taxed. Mr. Lange said he would prefer pegging a rate that accommodated the elimination of the business license tax. The business license tax generated \$80 million a year. It seemed it would be better to pay one tax rather than two. Mr. Lange referred to the overlaps that occurred when dealing with two separate kinds of issues. Increasing the recommended tax to .30 of 1 percent would generate \$150 based on gross receipts of \$50,000. As a businessperson, Mr. Lange said he would be more interested in not having to deal with two different types of taxation as opposed to a single tax. He continued to believe a business owner had an obligation, as part of the social contract, to contribute to the public good and the services received.

Ms. Garcia-Mendoza said when the business tax was first introduced she was concerned that small business owners would be put out of business by a tax that would be so burdensome. However, she would support a business tax structured in a way to not unduly harm small businesses. Ms. Garcia-Mendoza was concerned that the tax would be a flat tax, which was inherently unfair because the high-income producing businesses would pay the same amount as the low-income producing businesses, yet the high-income producing businesses had larger margins. Many businesses shifted the tax on to the consumer. Ms. Garcia-Mendoza said the committee could look at the value added tax (VAT) or an income tax. The VAT was a tax in between a gross receipts and a net income tax and would be more burdensome and complex to administer. She proposed a modified gross receipts tax similar to that proposed by Chairman Hobbs, but wanted to raise the threshold exemption to the first \$350,000 of gross income of a business. That business would continue to pay a business license tax and not the gross receipts tax. Ms. Garcia-Mendoza did not concur with Mr. Lange that the tax would be confusing to businesses; businesses were used to paying the business license tax and it was a rather simple computation.

Mr. Fields referred to Mr. Lange's discussion on the possible elimination of the business license tax. It was important to remember in discussing the modified gross receipts tax that there were many businesses conducting business in the state with relatively little investment in Nevada employees. Mr. Fields thought the chairman had recommended there should be some recognition for businesses that actually hired and employed Nevadans. The business license tax credit would meet the goal of providing some sort of recognition to those businesses that actually have employees working here in the state. Mr. Fields said he liked the BLT credit and would like to leave it in.

Mr. Sloan said he would like to see a model detailing how the business license tax and the gross receipts tax would merge. A business with 10 employees that had gross receipts of \$350,000 would pay \$1,000 per year based on the BLT; another business with gross receipts of \$351,000 might wind up paying less under the gross receipts tax than under the BLT tax. Mr. Sloan concurred with Ms. Garcia-Mendoza that the recommended tax should not harm small businesses.

Mr. Greenspun did not think the BLT should be eliminated because existing business owners were used to paying the tax. He suggested using some type of CPI increase based on the \$100 per employee per year. A small business would pay the BLT as adjusted from year-to-year for the CPI. Once the business exceeded \$350,000 it would then begin paying the gross business tax and the BLT tax, which would be capped at the original amount; i.e., the \$100, resulting in a credit to the company that was growing and paying the gross business tax and still capturing the existing revenue of the BLT.

Dr. Mack agreed with Ms. Garcia-Mendoza recommendation to raise the threshold exemption of a gross receipts tax to the first \$350,000 of gross income of a business. Dr. Mack referred to the definition of a small business and thought the Small Business Administration (SBA) used a dollar amount. Ms. Garcia-Mendoza indicated the SBA classified businesses in various industries and the code assigned to a business determined the dollar threshold used to define a small business. Mr. Sloan explained the SBA definition for a small business was for loan purposes, not tax purposes. Mr. Sloan did not think there was a tax on businesses in the nation that had an exemption as high as \$350,000.

Mr. Lange said he could not support increasing the threshold to \$350,000. Initially when dealing with the net profits tax, the members were looking for a realistic number in terms of per capita income that would say a business owner ought to at least have the opportunity to generate somewhere in the neighborhood of the average income out of his profits, especially if the owner was a sole proprietor. There was a \$50,000 exemption in net profits for the purpose of dealing with the "moms and pops." There were some very successful small businesses that made a lot of money in this state and had a responsibility to contribute to the public good. A tax based on a rate of .25 on \$50,000 gross

receipts would be \$125. Mr. Lange emphasized the members needed to be careful in selecting numbers. He noted small business owners had testified before the Task Force indicating a \$35 tax would be devastating. Mr. Lange stated he did not want to be insensitive, but if a business could not incorporate an additional \$125 or \$300, then the business owner needed to revisit the business model. The BLT had not been increased in 10 years, and adding indexing could result in higher numbers on the sole proprietor and on the mom and pop operation. Mr. Lange did not want create a disincentive for people to hire more employees.

Mr. Greenspun said a \$350,000 threshold would exempt between 60 and 70 percent of the businesses in Nevada, all of which would pay the \$100 per year on the BLT. Mr. Greenspun stressed he was not suggesting applying the CPI for the last 10 years. Clearly the businesses under \$350,000 were contributing under the BLT. He was not certain there was a significant difference between the threshold of \$200,000 and \$350,000 in terms of the amount of revenue that would be generated under the gross business tax. Ms. Garcia-Mendoza indicated support for the comments made by Mr. Greenspun.

Ms. Wong asked if the Technical Working Group could provide an analysis that showed the incremental difference between a \$200,000 threshold and a \$350,000 threshold.

Mr. Aguero explained the working group had completed an analysis using a threshold of \$300,000 and could run the same analysis on \$350,000. At 2002, based on a prior analysis with 50 percent of businesses being under a \$200,000 threshold, the figure was a difference of approximately \$2.5 million every year between \$200,000 and \$300,000. Mr. Aguero said he would run the analysis again using the \$350,000 threshold.

Mr. Greenspun wondered if the data indicated the lost revenue in that range was insignificant. Mr. Aguero answered in the affirmative, and said at the maximum, even assuming at the highest level of the number of businesses, there would be approximately 85,000 businesses, and multiplying that by another \$100,000 would result in only \$21 million per year at the maximum.

Mr. Lange said he still was having difficulty trying to crossover the BLT and the gross receipts tax. Mr. Aguero said the model indicated there was a difference between the \$200,000 threshold and the \$350,000 threshold of \$3.5 million of less revenue to the state using a tax rate of .25 percent. In response to a question asked by Ms. Garcia-Mendoza, Mr. Aguero said the total revenue generated would go from \$213 million down to \$209.6 million using FY 2002 numbers.

Mr. Aguero said he met with the Las Vegas Chamber of Commerce and reviewed their survey instrument, which was reflective of their membership, and the survey indicated the threshold for 50 percent of businesses was slightly higher, probably between \$350,000 and \$500,000.

Mr. Sloan indicated his concern with a CPI adjustment for the small business owner and said a tax that was automatic "sure gives a politician a place to hide." There was value to the suggestion that there be some recognition and some attempt to minimize the full impact of having to pay both the BLT and the gross business tax.

Chairman Hobbs said the purpose of the agenda item was issue identification, which the chairman thought was achieved at the September 13<sup>th</sup> meeting. Issue refinement was what needed to be achieved during the current meeting. The chairman agreed that there was a crossover/break-even type of issue under the \$200,000 or \$350,000 that needed to be clarified so the credits or exemptions worked appropriately. Chairman Hobbs indicated his strong support for a threshold credit.

Chairman Hobbs referred to the business license tax exemption. The chairman felt the integration between the BLT and the gross receipts tax was a good thing. Over time it resulted in more flexibility to adjust one component versus the other. Having something like the BLT exemption would tend to marginally provide reward or credit to Nevada companies having a human resources investment, versus companies that simply extracted gross receipts.

The Chairman restated the issues that had been identified by the members. The chairman indicated he would work with Mr. Aguero to develop a list of the various alternatives that had been discussed and evaluate those. The results would be presented to the Task Force. Another feature that needed to be discussed was the differential margins and the notion of whether there should be a single rate or multiple rates. The chairman believed simplicity should be a priority on a gross receipts tax. Rate differentials also needed to be discussed.

Mr. Sloan agreed with the chairman's recommendation for simplicity, and stated a rate of .25 was substantially lower than any gross revenue or gross receipts tax anywhere in the United States. He thought the rate would probably not be so burdensome as to prevent people from continuing in business. The Task Force could recommend that the Legislature consider, in the biennium following the enactment of such a tax, that there be a rate study to ensure there was no oppressive unfairness in the application of the tax. There had been no real consideration as to the impact of the BLT on businesses with different margins. Mr. Sloan hoped the Task Force could avoid recommending the use of multiple rates.

Mr. Greenspun said his concern for not getting rid of the BLT on a one for one credit had more to do with maintaining the revenue generated by the BLT, which was a significant amount of money to subtract. Mr. Greenspun felt the one for one credit would be fair, but thought the members should look at an increase in the recommended .25 percent rate.

Ms. Garcia-Mendoza said it appeared in the first year \$800 million would be captured, which was far more than needed. The purpose of the establishment of the Task Force was to find revenue to address the revenue shortages in health care and education. Ms. Garcia-Mendoza recommended that businesses providing health care benefits for their employees also receive some type of a credit.

Chairman Hobbs recognized all of the members wanted to make very thoughtful recommendations and had spent a great deal of time on the numerous issues. The Task Force would be providing the Legislature with a device for decision-making related to taxes. The chairman hoped the report generated by the Task Force would provide enough foundation in establishing the fact that a problem existed and that the funds were insufficient to even maintain current levels. Once that was established, it would be difficult for the Legislature not to recognize that something must be done. Chairman Hobbs said in constructing the recommendation around a type of gross receipts tax there needed to be recognition that everything being discussed was a variable.

Chairman Hobbs believed a one for one credit was a good beginning for discussion of the BLT, but recognized there should be some type of capping at the upward level. An analysis needed to be generated to determine what that upward level would be. The chairman noted individuals were already responding to the issues as if all the details were determined, and that was not the case. Chairman Hobbs requested a letter received from the Retail Association of Nevada (RAN) be placed on the record. The presumption in the letter was that issues discussed at the September 13th meeting of the Task Force were actually the way everything was going to work and numbers were being run accordingly. The chairman felt the assumptions of the RAN were premature. An agenda item at the next Task Force meeting would deal with the gross receipts tax with sub bullets dealing with rate differentials, threshold exemption, BLT exemption, and any other features that the members believed were of the same kind of policy that needed to be discussed.

Mr. Sloan recognized any tax system would have to have adjustments for special circumstances. There would have to be an understanding of a whole range of potential exemptions that might exist in other jurisdictions. Mr. Sloan thought the members could develop a list containing areas to be recommended to the Legislature.

Chairman Hobbs asked if the members were receptive to honing in on the issues he described and those added to the list by Mr. Sloan and place those issues on the next agenda for specific resolution at the next meeting. Between the current meeting and the next meeting analytical support would be provided to the members that would help bring closure.

Mr. Sloan supported the suggestion made by Ms. Garcia-Mendoza to provide credit to businesses providing health care benefits for their employees. There were excellent policy reasons due to the health care costs in Nevada and the large number of employers who provided little or no health care. Mr. Sloan said he would like the Task Force to discuss the issue of health care credit.

Mr. Greenspun thought it was an excellent idea to review health care credit, but recognized the charge of the Task Force was to find revenue sources. However, if the members could recommend to the Legislature to favor those businesses providing health care, that would ultimately reduce the need for government to provide health care services.

Chairman Hobbs referred to the next Task Force meeting and said selected issues would be brought back before the members to make a determination if an issue should or should not be moved forward. Agenda items would include the lottery, the business filing fees, additional refinement on property tax discussion, motor vehicle privilege tax, the rental tax, definition for an amusement tax, indexing discussion relative to cigarette and liquor taxes, a value added tax, sales tax, and gaming tax. There would be sub bullets on a gross receipts tax dealing with the BLT credit, threshold exemption, nailing down of any rate differential issues, issues related to profit and non-profit businesses, and credit-related issues. Given the amount of data presented, the chairman thought the members would be able to move through the items quickly.

Chairman Hobbs said the next meeting would be held in Carson City at 9:30 a.m. on Wednesday, October 2, 2002.

The chairman asked for any additional public comment.

Knight Allen, private citizen, referred to the entertainment tax and said a family of four attending a movie would pay \$27.00 and the 6.50 percent entertainment tax would add \$1.76. Mr. Allen thought at that rate of taxation a family could attend a movie 15 times and then could make a conscious decision whether or not to skip a movie. He was not certain the entertainment tax would be oppressive to individuals. The entertainment tax was the one tax rooted in choice and was not oppressive to anyone at any level of income. Mr. Allen again asked Dr. Mack to rethink his position on taxing renters.

Mr. Greenspun said he did not disagree with Mr. Allen, but thought there was another side. To the extent that a family decided to attend one less movie, or a golfer decided to play one less round, the person providing the services and the cost of those services would be affected. The impact on the business had to be considered. Mr. Allen thought the point should be discussed at the next Task Force meeting and recognized he was putting the choice of the citizen first and the repercussions on business and government second.

Ted Mendalski, private citizen, indicated his support for a state lottery, but understood the Nevada Constitution did not allow a state lottery. The chairman said the constitution could be changed. Mr. Mendalski said he did not like changing any constitution, state or federal. Mr. Mendalski provided the members with a letter outlining his concerns related to the various tax issues (see Exhibit D).

Doug Ansell, small business owner, asked if the issues discussed during the meeting were the only issues that would be contemplated. Chairman Hobbs said the members had taken action to move on a selected set of issues and other items would be brought back to the next meeting for additional discussion. Mr. Ansell said the last Legislature had approved a modest increase in the corporate filing fee and a certain number of businesses were redirected to other states with less onerous fees. One factor the members needed to consider when discussing the corporate filing fee was the mass exodus of existing entities and the loss of income to the Secretary of State from those companies moving.

Mr. Sloan agreed the Task Force needed to check with the Secretary of State to determine if Nevada's filing fees were significantly higher than other states. Recently the *Wall Street Journal* had identified large corporations that sought havens to complete paper transactions and those corporations managed to circumvent the requirement of paying taxes where they conduct business.

Mr. Ansell said he was also concerned about the bureaucracy that would be created to enforce any type of business tax. There would be ways to circumvent legitimate payment. Mr. Ansell said he was opposed to an exemption because that created an imbalance and was also opposed to any business tax.

### *Adjournment*

The chairman adjourned the meeting at 1:05 p.m.

Respectfully submitted,

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Linda J. Smith

Approved by:

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Mr. Guy Hobbs, Chairman

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Date

Copies of the exhibits mentioned in these minutes are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at 775-684-6827.