

MINUTES OF THE AUGUST 29, 2022
MEETING OF THE
JOINT INTERIM STANDING COMMITTEE ON REVENUE

Chair Dina Neal called a meeting of the Joint Interim Standing Committee on Revenue (created by Assembly Bill 443, 2021 Legislative Session) to order at 11:05 a.m. on August 29, 2022, in Room 4401 of the Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

COMMITTEE MEMBERS PRESENT:

Senator Dina Neal, Chair
Assemblywoman Lesley Cohen, Vice Chair
Senator Moises Denis
Senator Don Tatro
Assemblywoman Natha Anderson
Assemblywoman Venicia Considine
Assemblyman Gregory Hafen II
Assemblywoman Heidi Kasama

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Russell Guindon, Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division
Michael Nakamoto, Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division
Susanna Powers, Deputy Fiscal Analyst, Fiscal Analysis Division
Christian Thauer, Deputy Fiscal Analyst, Fiscal Analysis Division
Anna Freeman, Committee Secretary, Fiscal Analysis Division

EXHIBITS:

[Exhibit A:](#) Meeting Packet

I. ROLL CALL.

MICHAEL NAKAMOTO, Chief Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau (LCB) called roll. All members were present.

II. OPENING REMARKS.

CHAIR NEAL provided housekeeping remarks.

III. PUBLIC COMMENT

There was no public comment.

IV. APPROVAL OF THE MINUTES OF THE MAY 26, 2022, MEETING.

SENATOR DENIS MOVED TO APPROVE THE MINUTES OF THE MAY 26, 2022, MEETING.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

V. PRESENTATION ON THE LIVE ENTERTAINMENT TAX.

Agenda Item V was not discussed.

VI. PRESENTATION ON THE OTHER TOBACCO PRODUCTS TAX.

YVONNE NEVAREZ-GOODSON (Chief Deputy, Department of Taxation):

In 1983, a 30% excise tax was created on the manufacturers' wholesale price for the distribution of other tobacco products (OTP) in Nevada. These funds are distributed 100% to the State General Fund. Collections have increased steadily over the past few years (page 58, [Exhibit A](#)).

This tax is imposed on wholesale dealers of OTP either at the time OTP is first possessed or received by a wholesale dealer that maintains a place of business in Nevada for sale or disposition in the state; at the time OTP is sold by an out-of-state wholesale dealer to a tobacco retail dealer or ultimate consumer in Nevada; or—for OTP manufactured, produced, assembled, labeled, or finished in Nevada—at the time OTP is sold in the state to a wholesale dealer, retail dealer, or ultimate consumer.

This tax does not apply to product that is displayed, exhibited, or distributed free of charge at a trade show, convention, or other exhibition in Nevada.

The terms "Other tobacco product" and "Cigarette" are both defined in statute (page 60, [Exhibit A](#)). "Cigarette" means all rolled tobacco or substitutes therefore wrapped in paper or any substitute other than tobacco, irrespective of size or shape, and regardless if the tobacco is flavored, adulterated, or mixed with any other ingredient. "Other tobacco product" means any tobacco of any description, any vapor product, any alternative nicotine product, or any product made from tobacco, other than cigarettes.

Examples of OTP include, but are not limited to (page 61, [Exhibit A](#)):

- Cigars
- Pipe tobacco
- Chewing tobacco
- Snuff
- Alternative nicotine products
- Synthetic nicotine products

- Vapor or “Vape”
- Electronic cigarettes
- Hookah
- Vape pens

and the components of these products and devices if they are to be used primarily with or in the mentioned products.

An OTP wholesaler is any of the following (page 62, [Exhibit A](#)):

- One who brings or causes OTP to be brought into Nevada that was purchased from a manufacturer or wholesaler if they sell or otherwise dispose of this product in Nevada.
- One who manufactures or produces OTP within the state and sells or distributes those OTP in Nevada to other wholesale dealers, retail dealers, or ultimate consumers.
- One who purchases OTP solely for the purpose of resale to retailers.

JENNIFER ROEBUCK (Compliance Deputy, Department of Taxation):

Nevada Revised Statutes (NRS) 370.567 requires those who intend to engage in the tobacco business to first secure a license in each type of business activity including:

- Wholesale
- Retail
- Vending
- Logistics, warehouse, and distribution
- Manufacturing

Note that NRS 370.440 includes in the OTP wholesale dealer definition those that do not maintain a place of business in Nevada but sell such product by any means to an in-state retail dealer or ultimate consumer in the state.

Licenses for OTP are privileged and there is a rigorous application process (page 64, [Exhibit A](#)). Wholesale dealers of OTP undergo an in-depth review, and a background check is performed by the Office of the Attorney General on all officers, owners, members, and the company. The Office of the Attorney General sends its recommendation to the Department of Taxation. The department then finalizes the review to determine the issuance of a license. All local and state licensing must be in order before the license is issued by the department.

All out-of-state companies applying for a license must have a Nevada registered agent for the service of process. If no issues are found during the review and background check and all required licensing is in order, the department will issue the license. If issues are found, such as past tobacco crimes or taxes owed in another state, the department has the authority to deny the license.

Prior to 2020, there were no OTP wholesaler licensing requirements, tobacco retail licensing requirements, or renewal requirements (page 65, [Exhibit A](#)). The 2019 Legislature approved several tobacco licensing fees, including a \$650 wholesale OTP dealer license fee and annual renewal requirements. Renewal license fees are due and payable on January 1 each year; otherwise, the license is canceled. A canceled license can be renewed with payment of the fee and a penalty.

A licensed wholesale dealer is authorized to purchase and possess OTP from unlicensed entities located out of state for resale to another wholesale dealer or retail dealer (page 67, [Exhibit A](#)).

Wholesale dealers are required to keep complete records on the premises for every transaction for every facility for no less than five years. Records may be centralized with permission from the department, but records must be transmitted within 24 hours upon request.

Nevada Revised Statutes 370.413 provides the authority to search for evidence of any violation of Chapter 370 (page 68, [Exhibit A](#)). To obtain evidence, the department, its agents, and all peace officers and revenue-collecting officers of the state may enter and inspect without a warrant during normal business hours, and with a warrant at any other time. *Nevada Revised Statutes* 370.460 states it is unlawful to sell products on which tax is not paid. It is unlawful for any person to sell or offer to sell any products made from tobacco, other than cigarettes, on which the tax is not paid as provided for in NRS 370.450. Unlawful products are contraband and subject to seizure.

Nevada Revised Statutes 370.415 requires the department's agents to seize contraband product (page 69, [Exhibit A](#)). To determine whether product is contraband, the department will review the facilities and records of any manufacturer, wholesale dealer, or retail dealer and any other place where they may have reason to believe contraband OTP is stored. Product is considered contraband when sold by an unlicensed person, sold untaxed, or otherwise not following NRS chapter 370. Investigators verify licensing and check invoices to verify whether purchases and payments are from licensed OTP dealers. Filing of monthly excise tax reports by the wholesaler is checked, and audits are conducted.

Investigators may work with other in-state and out-of-state agencies. For seized product that has been determined to be contraband and cannot be returned to a manufacturer or resold, the product must be destroyed. Vape products have proven to be extremely costly to store and destroy.

The department is required to seize, store, and destroy illegal OTP (page 70, [Exhibit A](#)). If the department seizes or accepts the transmission of OTP contraband from law enforcement, it will store the product through the due process period established by law for a person to appeal the department's seizure through administrative appeal and/or judicial review. Upon the conclusion of any applicable due process requirements, the department will destroy the product.

Nicotine products, lithium batteries, and other e-liquid OTP have been federally designated as hazardous waste. Such designation requires specific storage and/or destruction techniques that can be costly.

The department is authorized by the Federation of Tax Administrators Uniform Exchange of Information Agreement to exchange information related to OTP business activities (page 71, [Exhibit A](#)). The department may receive reports from other states about those that have not paid tax on products when shipped to Nevada. Conversely, Nevada will notify a state that a wholesaler has reported sales delivered to that state with no Nevada tax paid.

In addition to OTP seizure, pursuant to NRS 370.523, any company which knowingly violates any provision of NRS chapter 370, including operating without a license or buying from unlicensed sources, may owe civil penalties of \$1,000 to \$5,000 for each subsequent violation of the same provision (page 72, [Exhibit A](#)).

In addition to, or in lieu of, any other penalty or remedy provided by law, the Office of the Attorney General may seek a civil penalty in the amount of \$1,000 per day for any wholesale dealer or non-participating manufacturer that fails to comply with any provisions of NRS chapters 370 or 370A.

Failure to pay taxes on time results in progressive penalties up to suspension or revocation of the license.

In addition to issuing civil penalties, the department may suspend or revoke a license for reasons such as failure to pay the tax, purchasing or possessing unlawful OTP, failure to file reports, or selling untaxed product. A wholesaler with a suspended or revoked license in another state or conviction of any crime relating to the manufacture, sale, or distribution of tobacco products could have their license suspended or revoked in Nevada as well (page 73, [Exhibit A](#)).

Upon finding that a licensee has knowingly or negligently failed to comply, the department may suspend the license for no more than 60 consecutive calendar days for a first violation. In the case of a subsequent violation, the department may suspend the license for no more than 180 consecutive calendar days or permanently revoke the license.

MS. NEVAREZ-GOODSON:

Additional references are provided on page 74 ([Exhibit A](#)).

ASSEMBLYWOMAN ANDERSON:

How many investigators are employed by the department?

JO LYNN SMITH (Tax Manager, Department of Taxation):

There are currently five investigators in Southern Nevada and two in Northern Nevada. The department has a full staff of revenue officers that helps with investigations and the Las Vegas Metropolitan Police Department is utilized when needed.

There was no further discussion on this item.

VII. PRESENTATION ON HISTORICAL STATE GENERAL FUND REVENUE COLLECTIONS INCLUDING ON AN INFLATION ADJUSTED AND INFLATION ADJUSTED PER CAPITA BASIS.

A. LIVE ENTERTAINMENT TAX

Agenda Item VII (A) was not discussed.

B. OTHER TOBACCO PRODUCTS TAX

RUSSELL GUINDON (Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

Table 4 shows the actual OTP collections from FY 1990 through FY 2021 and the Economic Forum forecast for FY 2022 and FY 2023 along with the statewide population and Consumer Price Index (page 85, [Exhibit A](#)). The Department of Taxation and other agencies will report the final actual collections for FY 2022 in September 2022. Once the Economic Forum has made its forecast for FY 2023, FY 2024, and FY 2025, the tables will be updated, and they will be available to the revenue committees during the 2023 Legislative Session.

Chart 1 shows the growth rate of OTP collections in relation to population and inflation (page 86, [Exhibit A](#)). There is a significant change in FY 2020 due to the addition of vapor and alternative nicotine products to the OTP tax base. The COVID-19 pandemic also affected FY 2020 and FY 2021.

Chart 2 shows OTP collections in current dollars and inflation-adjusted dollars over time (page 87, [Exhibit A](#)). Collections were relatively stable from FY 1990 to FY 2011, or even FY 2015 when they started to increase with growth in the tax base. The increase with the addition of alternative nicotine products and vape products is seen in FY 2020.

Chart 3 shows OTP collections in current dollars per capita and inflation-adjusted dollars per capita (page 88, [Exhibit A](#)). The tax maintained itself on an inflation-adjusted per-capita basis through FY 2015. The collections for FY 2022 are now expected to be approximately \$35 million, rather than the \$32 million shown. Collections will rise slightly from FY 2021 to FY 2022.

Chart 4 shows all four lines together (page 89, [Exhibit A](#)). The most helpful statistic in evaluating revenue sources is the inflation-adjusted per-capita revenue. When it is relatively flat, it is essentially maintaining its purchasing power. The OTP is difficult to understand because of the tax base and consumption behavior.

A few months ago, the U.S. Food and Drug Administration (FDA) issued marketing denial orders (MDOs) stating that JUUL Labs Inc. vape products were no longer to be sold in the United States. An administrative stay suspends the MDOs during the additional review. This uncertainty will affect tracking and forecasting OTP revenue. The market for OTP may change with the FDA evaluation.

CHAIR NEAL:

How many taxpayers are in the OTP category?

JO LYNN SMITH (Tax Manager, Department of Taxation):

There are approximately 166 OTP wholesalers registered in Nevada.

CHAIR NEAL:

A stable revenue stream is needed to replace the American Rescue Plan Act (ARPA) funds currently used. There are two categories in which the Department of Health and Human Services (DHHS) is expending funds for children's mental health services, averaging approximately \$1.6 million each and currently funded by ARPA. It is important to find funding that will continue to grow in the future. This presentation was intended to determine if OTP revenue is stable enough to be used for this budget so that, in FY 2024, there will be money available to start funding children's mental health services. The idea is not to earmark this for a certain program but to allow the DHHS to plan programs and have a reliable funding source when ARPA funds dissipate. Long-term revenue sources are necessary to take care of the state's long-term needs.

Outside of the JUUL conversation, the OTP is a stable revenue to start filling a hole in FY 2024.

SENATOR DENIS:

Please explain the drop in OTP revenue after FY 2021 (page 86, [Exhibit A](#)). Was this due to COVID-19?

MR. GUINDON:

The tax change adding vaping and alternative nicotine products became effective on January 1, 2020. This increased taxable revenue in the OTP tax base for the second half of FY 2020. There were also supply and demand issues in March 2020 due to the COVID-19 pandemic. The last actual collections on the chart are for FY 2021. The forecast shown is from May 2021. Actual collections for FY 2021 have come in stronger than forecast. The preliminary information for FY 2022 actual collections suggests that FY 2022 collections will be approximately \$35 million. The forecast shows a drop in revenue, but that is no longer expected. The collections in FY 2022 will be higher than in FY 2021.

These numbers will be updated with the FY 2022 actual collections and then will be updated with the Economic Forum's December 2022 forecast. All the revenue sources are generating much more in FY 2022 than forecast. The chart on page 86 shows the actual collections for FY 2021 but shows the forecast for FY 2022 ([Exhibit A](#)). Many taxes—sales tax, Commerce Tax, marijuana taxes—are coming in above forecast. Once FY 2022 actual collections are included, the revenue will be up, not down.

ASSEMBLYWOMAN KASAMA:

It is a good idea to allocate a dependable revenue stream for mental health issues. During the legislative session, it will be interesting to compare what is currently allocated toward mental health services from the General Fund to the projections for this. Instead of that amount changing and being voted on each biennium, this would be a steady revenue stream.

MR. GUINDON:

Fiscal staff will follow up on the revenues and expenditures for budget accounts funding mental health programs. This information will be available during the 82nd Legislative Session.

CHAIR NEAL:

The budgets for the DHHS programs currently funded by ARPA are available as well.

ASSEMBLYWOMAN COHEN:

Does NRS 370.038 include cessation products under the definition of other tobacco products?

MS. SMITH:

Products that are federally recognized as cessation devices are not subject to the OTP tax. There may be some off-brands that are not federally recognized and would therefore be subject to the OTP tax.

ASSEMBLYWOMAN ANDERSON:

Regarding the JUUL lawsuit on page 89: is the potential impact positive or negative on revenue collections?

MR. GUINDON:

With respect to JUUL products, it may not have an effect. The FDA said that JUUL would no longer be able to sell these products, but the court put a stay on that order. The two parties reached an understanding that the FDA would withdraw its order, allowing JUUL to sell its products while the FDA evaluates the information that JUUL provided for the regulatory process. There was no effect on OTP tax in Nevada because the order was lifted.

There was no further discussion on this item.

VIII. WORK SESSION - DISCUSSION AND POSSIBLE ACTION ON RECOMMENDATIONS RELATING TO:

A. OTHER TOBACCO PRODUCTS TAX

MICHAEL NAKAMOTO (Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

The work session document begins on page 95 ([Exhibit A](#)). The Committee is limited to ten legislative measures, including the drafting of resolutions, pursuant to NRS 218D.160. The items for the Committee's consideration are based on recommendations submitted by Chair Neal and members of the Committee. Committee members do not necessarily support or oppose the recommendations in this work session. The Committee may accept, reject, modify, or take no action on the recommendations.

The first recommendation involves the OTP tax. The proceeds from the OTP tax are currently 100% dedicated to the State General Fund. The proposal is to draft a bill amending NRS 370.500, which specifies that the proceeds of the 30% wholesale excise tax on tobacco products other than cigarettes be deposited in the State General Fund, to require that a portion of the revenue instead be allocated to the Division of Public and Behavioral Health of the Department of Health and Human Services. The amount of revenue allocated to this purpose will be \$1.6 million in FY 2024. In FY 2025 and subsequent fiscal years, the annual allocation will increase from the allocation in the prior fiscal year by 2% or the 5-year average percentage increase in the Consumer Price Index (CPI), whichever is greater. The CPI to be used is All Urban Consumers, West Region published by the Bureau of Labor Statistics of the U.S. Department of Labor.

ASSEMBLYWOMAN CONSIDINE:

There were two sections mentioned, each requiring approximately \$1.6 million: personnel and mobile crisis teams. Would this \$1.6 million cover one, both, or a mixture?

CHAIR NEAL:

It would not be allocated directly to a certain program, but it must be used to help fund children's mental health services. There are several programs that the DHHS is trying to fund and maintain—including the mobile crisis teams—that could lose funding due to their ARPA designations. With \$1.6 million each

year, the DHHS would have a reliable funding source. Over time, this money—along with any additional grants and other funding sources—could grow.

ASSEMBLYMAN HAFEN MOVED TO DRAFT A BILL AMENDING NRS 370.500, WHICH SPECIFIES THAT THE PROCEEDS OF THE 30% WHOLESALE EXCISE TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES BE DEPOSITED IN THE STATE GENERAL FUND AND REQUIRE THAT A PORTION OF THE REVENUE INSTEAD BE ALLOCATED TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF PUBLIC AND BEHAVIORAL HEALTH. THE AMOUNT OF REVENUE ALLOCATED FOR THIS PURPOSE WILL BE \$1.6 MILLION IN FY 2024. IN FY 2025 AND SUBSEQUENT FISCAL YEARS, THE ANNUAL ALLOCATION WILL INCREASE FROM THE ALLOCATION IN THE PRIOR FISCAL YEAR BY 2% OR THE 5-YEAR AVERAGE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX (ALL URBAN CONSUMERS, WEST REGION), WHICHEVER IS GREATER.

SENATOR DENIS SECONDED THE MOTION.

SENATOR DENIS:

It is important to discuss and work this out during the legislative session.

THE MOTION PASSED UNANIMOUSLY.

B. PROPERTY TAX

MICHAEL NAKAMOTO (Chief Principal Deputy Fiscal Analyst, Fiscal Analysis Division, LCB):

The second and final item on today's work session relates to property taxes, which were discussed at the July 7, 2022, meeting (page 96, [Exhibit A](#)). The proposal is to draft a bill amending subsection 1 of NRS 361.4722, which provides a partial abatement from property taxes for all properties that are not single-family owner-occupied residential properties or eligible residential rental dwellings, which receive abatements such that their taxes cannot rise by more than 3% per year under NRS 361.4723 and NRS 361.4724. The proposal is to revise the current abatement for the properties that do not qualify for those abatements—just the properties covered under NRS 361.4722, which currently specifies that the annual increase in the property tax bill may not exceed a percentage between 0% and 8%, based on statutory formulas specified in that subsection. The percentages would be amended such that the annual increase in the property tax bill may not exceed a percentage between 3% and 8%, based on those statutory formulas.

The only proposed change is the 0% to 8% range would change to 3% to 8%. This proposed recommendation is identical to the provisions of Assembly Bill 43 (2017 Legislative Session) and Senate Bill 10 (2021 Legislative Session).

ASSEMBLYWOMAN KASAMA:

Nevada property taxes are patched together; the Legislature should consider ways to simplify them. It is good to continue this discussion.

CHAIR NEAL:

There are many ideas on the table for property taxes. There was not enough time in this interim to vet them. This should not be piecemealed; it should make sense. This measure mitigates the low or negative assessment experienced in the past to ensure it does not happen in the future. This would create some stability. There are future property tax measures to debate extensively during the legislative session, but it is an in-depth topic requiring more time.

ASSEMBLYMAN HAFEN:

Many abatements need to be addressed, specifically solar abatements when that solar energy is sold to other states. This should move forward, but the conversation needs to continue.

SENATOR DENIS MOVED TO DRAFT A BILL AMENDING SUBSECTION 1 OF NRS 361.4722, WHICH PROVIDES A PARTIAL ABATEMENT FROM PROPERTY TAXES FOR ALL PROPERTIES THAT ARE NOT SINGLE-FAMILY OWNER-OCCUPIED RESIDENTIAL PROPERTIES OR ELIGIBLE RESIDENTIAL RENTAL DWELLINGS; REVISE THE CURRENT ABATEMENT FOR THESE PROPERTIES, WHICH CURRENTLY SPECIFIES THAT THE ANNUAL INCREASE IN THE PROPERTY TAX BILL MAY NOT EXCEED A PERCENTAGE BETWEEN 0% AND 8%, BASED ON STATUTORY FORMULAS SPECIFIED IN THAT SUBSECTION; AND AMEND THE PERCENTAGES SUCH THAT THE ANNUAL INCREASE IN THE PROPERTY TAX BILL MAY NOT EXCEED A PERCENTAGE BETWEEN 3% AND 8%, BASED ON THOSE STATUTORY FORMULAS.

ASSEMBLYWOMAN COHEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

IX. PUBLIC COMMENT.

There was no public comment.

X. ADJOURNMENT.

Chair Neal adjourned the meeting at 12:05 p.m.

Respectfully submitted,

Tom Weber, Committee Secretary

APPROVED:

Senator Dina Neal, Chair

Date