

LCB File No. R001-00

PROPOSED REGULATION OF THE NEVADA TAX COMMISSION

Proposed Regulation - AB 486

WHEREAS, pursuant to NRS 360.090, members of the Nevada Tax Commission (the “Commission”) are authorized to prescribe regulations for carrying out the business of the Nevada Tax Commission and of the Nevada Department of Taxation (the “Department”); and

WHEREAS, pursuant to NRS 354.594, the Department is to determine regulations, procedures and report forms for compliance with NRS 354.470 to 354.626, inclusive, and is to make such determinations after hearing the advice and recommendations of the Committee on Local Government and Finance Committee (the “Committee”); and

WHEREAS, NRS 237.030 through 237.110 (the “Act”) requires that with respect to certain legislative actions taken by local governments, certain procedural steps be taken including the making of certain determinations, in some events the holding of a hearing and the preparation of a business impact statement; and

WHEREAS, one of the primary purposes of AB 486 was to require that business impact statements be prepared when a local governing body proposes to take a legislative action that would impose a direct and significant economic burden on a business or directly restrain the formation, operation or expansion of a business; and

WHEREAS, fees and other exactions by of local government, which become a part of the local government’s budget and are which are imposed by legislative action of the local government are within the scope of the Act; and

WHEREAS, the Committee and the Department and the Commission believe that in order to have stable local government budget, stable finding sources for local government, it is necessary and desirable for there to be a further guidance on the interpretation of certain provisions of the Act; and

WHEREAS, the Committee has therefore requested the Department and the Commission to provide regulations for the guidance of local government.

NOW, THEREFORE, the tax Commission hereby adopts the following regulations:

Section 1. These regulations apply to the procedures required by the Act. The Act applies by its terms to an ordinance, regulation, resolution or other type of instrument adopted by a local government (a “local action”) which is an exercise of that local government’s legislative

powers (local actions which are an exercise of legislative powers are herein and in the Act called “rules”). The Act generally requires that the governing body, before adopting a rule, make a determination as to whether the rule would impose a direct and significant economic burden on a business or directly restrict the formation, operation or expansion of a business. If the local government determines the proposed rule will impose a direct and significant economic burden on the business or directly restrict the formation, operation or expansion of a business, the local government must take additional procedural steps.

Section. 2. The Department shall provide, for the convenience for local governments, forms for (1) business impact statements; and, (2) appeal procedures which will comply with NRS 237.100.

Section. 3. Unless otherwise provided by a decision of a court of lawful jurisdiction, the determination as to whether or not a local action is or is not an exercise of legislative powers and therefore is or is not a rule, shall be made by the local government. The local government may rely on its staff in making this determination and if staff determines that a proposed local action is not a legislative action and the local government therefore adopts the rule without making a finding as to whether it would impose a direct and significant burden on a business or directly restrict the formation, operation or expansion of a business, the adoption of that action shall constitute a finding by the local government that the local action is not a rule. Such adoption shall constitute (prima facie?) evidence that proposed action is not a legislative action.

Section. 4. The staff of a local government may make an initial determination as to whether a proposed rule imposes a direct and significant economic burden on a business or directly restricts the formation, operation or expansion of a business.

A. If staff determines that the rule has no such direct significant economic burden on a business or direct restriction on the formation, operation or expansion of a business, staff may place a finding to that effect in the proposed rule to be adopted by the governing body. If the governing body subsequently adopts that rule, such action will be sufficient to evidence compliance with NRS 237.080 notwithstanding that the finding in the rule is made simultaneously with adoption of the rule.

B. If staff determines that the rule does effect business as provided in the Act, it may proceed to hold consultations required by NRS 237.080(2)(b), make the consideration required in NRS 237.080(b), and prepare the business impact statement required by NRS 237.080(c), and schedule a hearing before the governing body on the business impact statement and proposed rule. If the governing body adopts the rule without providing otherwise, that action should be a ratification of staff’s actions.

Section 5. Generally, local actions which impose other than an insignificant fee on a business, including a business license tax, a fee for permit, or any other fee that is not insubstantial, or local actions that increase those fees by more than an insubstantial amount, which are adopted pursuant to an ordinance of a local government are actions that impose a direct and significant and economic burden on a business. In reviewing budgets of local governments which include a new fee or a budgeted increase in the fee that is not substantial, the

Department shall request the local government provide it with evidence that is has complied with the Act.