

**DATE:** March 23, 2015

**TO:** NTA Members

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The following three pages contain a section-by-section summary of SB 378, Senator Pat Spearman's counterproposal to the SB 282, which was introduced on March 17.

The link to the bill is [www.leg.state.nv.us/Session/78th2015/Bills/SB/SB378.pdf](http://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB378.pdf).

Please note: As the revenue generated in SB 378 is used to fund general government expenses, it is a tax. This "Supplemental Revenue Fee" will be referred to as a tax in this document.

### **FAST FACTS**

The Modified Business Tax for general business is repealed.

The Modified Business Tax for financial institutions is retained and businesses who pay the Net Proceeds tax are placed in this category.

The tax rate is based on the gross receipts of a business. A business whose taxable gross receipts exceed \$25,000 a quarter will pay an amount equal to \$50 plus 0.465 percent of the taxable gross receipts for the quarter.

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 business' fiscal year.

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.

The majority of the compliance, administration and reporting requirements duplicate the provisions of SB 252.

**SECTION BY SECTION OF SB 378 TAX PROPOSAL BY SENATOR SPEARMAN  
PREPARED FOR MEMBERS OF THE NEVADA TAXPAYERS ASSOCIATION - MARCH 23, 2015**

SECTION NO.	SUMMARY/ COMMENTS
1	Adds a new chapter to title 32 - Taxation statutes
2	Identifies sections 3-12 as definitions
<b>3-11</b>	<b>Definitions</b>
3	“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.
4	Defines “business” as any activity engaged in with the object of gain, benefit or advantage direct or indirect. under NRS chapter 82 or 84; a credit union organized under NRS 678; and various trusts.
5	<p>“Business Entity” - is defined any person, except a natural person, engaging in a business; 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 even if the entity is not engaging in a business.</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 Nevada 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>
6	“Commission” - Tax Commission
7	“Engaging in a business” is defined as “. . . commencing, conducting or continuing a business, the exercise of corporate or franchise powers regarding a business, and the liquidation of a business which is or was engaging in a business when the liquidator holds itself out to the public as conducting that business.”
8	<p>“Fiscal year” - is defined as 12 month period beginning on July 1 and ending on June 30.</p> <p style="text-align: center;"><i>Why was the State’s fiscal year used instead of the taxable year of the business? The same issue was identified in the Governor’s tax bill, SB 252.</i></p>
9	“Governmental Entity” is defined
10	<p>“Gross Revenue” - Defined 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 that contributes to the production of gross income, including, without limitation, the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.”</p> <p>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>
11	“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.”
12	<p>“Taxable gross receipts” - The gross receipts of a business as adjusted by sections 20 and derived from business in this State pursuant to section 21.</p> <p style="text-align: center;"><i>This is the definition of “Nevada gross revenue” in the Governor’s tax bill, SB 252.</i></p>
13	“Passive Entity” - identifies what a passive entity is and any conditions or exclusions from various definitions of passive entities in this section.

SECTION NO.	SUMMARY/ COMMENTS
<b>14 -16</b>	<b>Department of Taxation Administrative Responsibilities</b>
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 style="text-align: center;"><i>Same as Governor's tax bill, SB 252.</i></p>
15	Record keeping requirements by a business as established by the Department. Also provides a misdemeanor penalty for violating this section.
16	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.
<b>17</b>	<p><b>Tax Rate</b></p> <p>“For the privilege of engaging in business in this State, a ‘supplemental revenue fee’ is hereby imposed upon each business entity whose taxable gross receipts in a calendar quarter of a fiscal year exceed \$25,000 in an amount equal to \$50 plus 0.465 percent of the taxable gross receipts of the business entity for that calendar quarter in excess of \$25,000.” A report must be filed on or before the 45<sup>th</sup> day immediately following the end of each quarter of the fiscal year and be accompanied by the fee due.</p> <hr/> <p style="text-align: center;"><i>This fee is really a tax and as such it should be called a supplemental revenue tax. This is the same issue identified in SB 252.</i></p>
<b>18 -19</b>	<b>Department of Taxation Administrative Responsibilities</b>
18	<p>Requires a business entity that is a member of an affiliated group and engaged in unitary business in Nevada to file such reports as the Department of Taxation determines to be appropriate. Allows two or more affiliated groups to file a consolidated return if allowed to file a consolidated federal tax return.</p> <p>Defines “unitary business” as “. . .having unity of ownership, functional integration, centralization of management and economy of scale.”</p>
19	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.
<b>20-21</b>	<b>Calculation of Revenue</b>
20	<p>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 payments to health care providers, including, but not limited to, Medicaid, Medicare, CHIP, professional services in relation to workers comp claims, and 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.</p> <hr/> <p style="text-align: center;"><i>This section is the same as section 20 and section 21 (below) that are in the SB 282.</i></p>
21	<p>Establishes the rules for gross revenue to be situated to this State. The following are considered situated 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 situs, or the Department may require the use of an alternative method of situsing gross revenue to this State.</p>

<b>SECTION NO.</b>	<b>SUMMARY/ COMMENTS</b>
<b>22 -25</b>	<b>Administration, Compliance &amp; Enforcement</b>
22	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 this filing .
23	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.
24	Provides that a claim for overpayment must be made within three years of the month following the calendar quarter the overpayment was made. Claims must be made in writing, and failure to file a claim in a timely manner constitutes a waiver against recovering the overpayment.
25	Any overpayment of the tax will receive interest pursuant to NRS 360.2937.
26-30	Specifies the time frames and procedures and time to file a claim seeking recovery of an overpayment of the tax.
31	Specifies the procedure for the Department of Taxation to recover a refund.
32	Provides the process for cancellation of amounts under or over \$25 has been illegally determined to be collected.
33	Provides a person is guilty of a gross misdemeanor if a person makes a false or fraudulent return with the intent of defrauding the State.
34	Provides that the remedies of the State provided for in this chapter are commutative.
<b>35 - 44</b>	<b>Clarifying and Conforming Language</b> As appropriate adds references to sections 2-34 of this bill including provisions relating to Economic Development abatements and film tax credits. Also removes references to the Modified Business Tax NRS 363B.
<b>45</b>	<b>Modified Business Tax (MBT) on Financial Institutions</b> Expands the 2% Modified Business Tax on financial institutions adding companies subject to the Net Proceeds tax to this provision (NRS 363.A). <hr/> <i>Can anyone explain why (other than revenue generation) banks and mining have to pay the MBT at a 2 percent rate when the MBT has been repealed for all other businesses?</i>
<b>46-47</b>	<b>State Business License</b> Maintains the requirement for obtaining an annual business license from the Secretary of State at \$200 annually. However, if an entity files an annual list with the Secretary of State, but does not “. . . intend to perform a service or engage in a trade for profit. . .” the tax for the annual license is \$400.
<b>48 -75</b>	<b>Clarifying and Conforming Language</b> As appropriate, adds references to sections 2-34 of this bill including provisions relating to Economic Development abatements and film tax credits. Also removes references to the Modified Business Tax, NRS 363B.  One oddity is found in section 51, where for purposes of being certified for bidders preference the wages paid in Nevada by architects, landscape architects, engineers, land surveyors and residential designers is increased from \$1,500 to \$300,000.
<b>76-81</b>	<b>Miscellaneous Provisions</b>
76-77	Statutes of Nevada Changes  Deletes the effective dates of the Statutes of Nevada, section 47 of chapter 281 last amended by chapter 518 Statutes of Nevada at page 3426, and section 19 of chapter 449, Statutes of Nevada 2011, as amended by Chapter 518, Statutes of Nevada 2013, at page 3426.
78	Allows the Department of Taxation to provide an abatement from the “Supplemental Revenue Fee”(tax) if an abatement from the MBT was granted prior to July 1, 2015.

SECTION NO.	SUMMARY/ COMMENTS
79-80	Repeals statutory cites for MBT for general business, and provides that any taxes due from the MBT prior to June 30, 2015 are in effect.
81	Effective dates. Generally the provisions are effective upon passage and approval for the purpose of regulations and July 1, 2015 for all other purposes.