

A.B. 538

ASSEMBLY BILL NO. 538—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MAY 21, 2019

Referred to Committee on Taxation

SUMMARY—Revises provisions governing certain taxes.
(BDR 32-1199)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Executive Budget.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; revising provisions governing the administration of certain taxes; eliminating certain duties of the Department of Taxation relating to the commerce tax and the payroll taxes imposed on certain businesses; maintaining and continuing the existing legally operative rates of the payroll taxes imposed on certain businesses; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law imposes an annual commerce tax on each business entity whose
2 Nevada gross revenue in a fiscal year exceeds \$4,000,000, with the rate of the
3 commerce tax based on the industry in which the business entity is primarily
4 engaged. (NRS 363C.200, 363C.300-363C.560) Existing law also imposes: (1) a
5 payroll tax on financial institutions and on mining companies subject to the tax on
6 the net proceeds of minerals, with the rate of the payroll tax set at 2 percent of the
7 amount of the wages, as defined under existing law, paid by the financial institution
8 or mining company during each calendar quarter in connection with its business
9 activities; and (2) a payroll tax on other business entities, with the rate of the
10 payroll tax set at 1.475 percent of the amount of the wages, as defined under
11 existing law but excluding the first \$50,000 thereof, paid by the business entity
12 during each calendar quarter in connection with its business activities. (NRS
13 363A.130, 363B.110, 612.190) However, a business entity that pays both the
14 payroll tax and the commerce tax is entitled to a credit against the payroll tax of a
15 certain amount of the commerce tax paid by the business entity. (NRS 363A.130,
16 363B.110)

17 Existing law further establishes a rate adjustment procedure that is used by the
18 Department of Taxation to determine whether the rates of the payroll taxes should



19 be reduced in future fiscal years under certain circumstances. Under the rate
20 adjustment procedure, on or before September 30 of each even-numbered year, the
21 Department must determine the combined revenue from the commerce tax and the
22 payroll taxes for the preceding fiscal year. If that combined revenue exceeds a
23 certain threshold amount, the Department must make additional calculations to
24 determine future reduced rates for the payroll taxes. However, any future reduced
25 rates for the payroll taxes do not go into effect and become legally operative until
26 July 1 of the following odd-numbered year. (NRS 360.203) This rate adjustment
27 procedure was enacted by the Legislature during the 2015 Legislative Session and
28 became effective on July 1, 2015. (Sections 62 and 114 of chapter 487, Statutes of
29 Nevada 2015, pp. 2896, 2955) Since July 1, 2015, no future reduced rates for the
30 payroll taxes have gone into effect and become legally operative based on the rate
31 adjustment procedure. As a result, the existing legally operative rates of the payroll
32 taxes are still 2 percent and 1.475 percent, respectively. (NRS 363A.130,
33 363B.110)

34 **Section 4** of this bill eliminates the rate adjustment procedure used by the
35 Department of Taxation to determine whether the rates of the payroll taxes should
36 be reduced in any fiscal year. **Section 3** of this bill maintains and continues the
37 existing legally operative rates of the payroll taxes at 2 percent and 1.475 percent,
38 respectively, without any changes or reductions in the rates of those taxes pursuant
39 to the rate adjustment procedure for any fiscal year. **Section 3** also provides that the
40 Department must not apply or use the rate adjustment procedure to determine any
41 future reduced rates for the payroll taxes for any fiscal year.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 363A.130 is hereby amended to read as
2 follows:

3 363A.130 1. ~~Except as otherwise provided in NRS 360.203,~~
4 ~~there~~ **There** is hereby imposed an excise tax on each employer at
5 the rate of 2 percent of the wages, as defined in NRS 612.190, paid
6 by the employer during a calendar quarter with respect to
7 employment in connection with the business activities of the
8 employer.

9 2. The tax imposed by this section:

10 (a) Does not apply to any person or other entity or any wages
11 this State is prohibited from taxing under the Constitution, laws or
12 treaties of the United States or the Nevada Constitution.

13 (b) Must not be deducted, in whole or in part, from any wages of
14 persons in the employment of the employer.

15 3. Each employer shall, on or before the last day of
16 the month immediately following each calendar quarter for which
17 the employer is required to pay a contribution pursuant to
18 NRS 612.535:

19 (a) File with the Department a return on a form prescribed by
20 the Department; and



1 (b) Remit to the Department any tax due pursuant to this section
2 for that calendar quarter.

3 4. In determining the amount of the tax due pursuant to this
4 section, an employer is entitled to subtract from the amount
5 calculated pursuant to subsection 1 a credit in an amount equal to 50
6 percent of the amount of the commerce tax paid by the employer
7 pursuant to chapter 363C of NRS for the preceding taxable year.
8 The credit may only be used for any of the 4 calendar quarters
9 immediately following the end of the taxable year for which the
10 commerce tax was paid. The amount of credit used for a calendar
11 quarter may not exceed the amount calculated pursuant to
12 subsection 1 for that calendar quarter. Any unused credit may not be
13 carried forward beyond the fourth calendar quarter immediately
14 following the end of the taxable year for which the commerce tax
15 was paid, and a taxpayer is not entitled to a refund of any unused
16 credit.

17 5. An employer who makes a donation of money to a
18 scholarship organization during the calendar quarter for which a
19 return is filed pursuant to this section is entitled, in accordance with
20 NRS 363A.139, to a credit equal to the amount authorized pursuant
21 to NRS 363A.139 against any tax otherwise due pursuant to this
22 section. As used in this subsection, "scholarship organization" has
23 the meaning ascribed to it in NRS 388D.260.

24 **Sec. 2.** NRS 363B.110 is hereby amended to read as follows:

25 363B.110 1. ~~{Except as otherwise provided in NRS 360.203,~~
26 ~~there}~~ *There* is hereby imposed an excise tax on each employer at
27 the rate of 1.475 percent of the amount by which the sum of all the
28 wages, as defined in NRS 612.190, paid by the employer during a
29 calendar quarter with respect to employment in connection with the
30 business activities of the employer exceeds \$50,000.

31 2. The tax imposed by this section:

32 (a) Does not apply to any person or other entity or any wages
33 this State is prohibited from taxing under the Constitution, laws or
34 treaties of the United States or the Nevada Constitution.

35 (b) Must not be deducted, in whole or in part, from any wages of
36 persons in the employment of the employer.

37 3. Each employer shall, on or before the last day of
38 the month immediately following each calendar quarter for which
39 the employer is required to pay a contribution pursuant to
40 NRS 612.535:

41 (a) File with the Department a return on a form prescribed by
42 the Department; and

43 (b) Remit to the Department any tax due pursuant to this chapter
44 for that calendar quarter.



1 4. In determining the amount of the tax due pursuant to this
2 section, an employer is entitled to subtract from the amount
3 calculated pursuant to subsection 1 a credit in an amount equal to 50
4 percent of the amount of the commerce tax paid by the employer
5 pursuant to chapter 363C of NRS for the preceding taxable year.
6 The credit may only be used for any of the 4 calendar quarters
7 immediately following the end of the taxable year for which the
8 commerce tax was paid. The amount of credit used for a calendar
9 quarter may not exceed the amount calculated pursuant to
10 subsection 1 for that calendar quarter. Any unused credit may not be
11 carried forward beyond the fourth calendar quarter immediately
12 following the end of the taxable year for which the commerce tax
13 was paid, and a taxpayer is not entitled to a refund of any unused
14 credit.

15 5. An employer who makes a donation of money to a
16 scholarship organization during the calendar quarter for which a
17 return is filed pursuant to this section is entitled, in accordance with
18 NRS 363B.119, to a credit equal to the amount authorized pursuant
19 to NRS 363B.119 against any tax otherwise due pursuant to this
20 section. As used in this subsection, "scholarship organization" has
21 the meaning ascribed to it in NRS 388D.260.

22 **Sec. 3.** 1. The Legislature hereby finds and declares that the
23 purpose and intent of this act is to maintain and continue the
24 existing legally operative rates of the taxes imposed pursuant to
25 NRS 363A.130 and 363B.110, at 2 percent and 1.475 percent,
26 respectively, without any changes or reductions in the rates of those
27 taxes pursuant to NRS 360.203, as that section existed before the
28 effective date of this act, for any fiscal year beginning on or after
29 July 1, 2015.

30 2. Notwithstanding any other provisions of law, in order to
31 accomplish and carry out the purpose and intent of this act:

32 (a) Any determinations or decisions made or actions taken by
33 the Department of Taxation pursuant to NRS 360.203, as that
34 section existed before the effective date of this act, before the
35 effective date of this act:

36 (1) Are superseded, abrogated and nullified by the provisions
37 of this act; and

38 (2) Have no legal force and effect; and

39 (b) The Department shall not, under any circumstances, apply or
40 use those determinations, decisions or actions as a basis, cause or
41 reason to reduce the rates of the taxes imposed pursuant to NRS
42 363A.130 and 363B.110 for any fiscal year beginning on or after
43 July 1, 2015.

44 **Sec. 4.** NRS 360.203 is hereby repealed.

45 **Sec. 5.** This act becomes effective upon passage and approval.



TEXT OF REPEALED SECTION

360.203 Reduction of rate of certain taxes on business under certain circumstances; duties of Department.

1. Except as otherwise provided in subsection 4, on or before September 30 of each even-numbered year, the Department shall determine the combined revenue from the taxes imposed by chapters 363A and 363B of NRS and the commerce tax imposed by chapter 363C of NRS for the preceding fiscal year.

2. Except as otherwise provided in subsection 4, if the combined revenue determined pursuant to subsection 1 exceeds by more than 4 percent the amount of the combined anticipated revenue from those taxes for that fiscal year, as projected by the Economic Forum for that fiscal year pursuant to paragraph (e) of subsection 1 of NRS 353.228 and as adjusted by any legislation enacted by the Legislature that affects state revenue for that fiscal year, the Department shall determine the rate at which the taxes imposed pursuant to NRS 363A.130 and 363B.110, in combination with the revenue from the commerce tax imposed by chapter 363C of NRS, would have generated a combined revenue of 4 percent more than the amount anticipated. In making the determination required by this subsection, the Department shall reduce the rate of the taxes imposed pursuant to NRS 363A.130 and 363B.110 in the proportion that the actual amount collected from each tax for the preceding fiscal year bears to the total combined amount collected from both taxes for the preceding fiscal year.

3. Except as otherwise provided in subsection 4, effective on July 1 of the odd-numbered year immediately following the year in which the Department made the determination described in subsection 1, the rates of the taxes imposed pursuant to NRS 363A.130 and 363B.110 that are determined pursuant to subsection 2, rounded to the nearest one-thousandth of a percent, must thereafter be the rate of those taxes, unless further adjusted in a subsequent fiscal year.

4. If, pursuant to subsection 3, the rate of the tax imposed pursuant to NRS 363B.110 is 1.17 percent:

(a) The Department is no longer required to make the determinations required by subsections 1 and 2; and



(b) The rate of the taxes imposed pursuant to NRS 363A.130 and 363B.110 must not be further adjusted pursuant to subsection 3.

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