

TAXTOPICS

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ELECTRONIC VERSION

DECEMBER 2010

GETTING NEVADANS BACK TO WORK

By now there is no one who is not aware that Nevada has been subject to the perfect economic storm - - one of the highest foreclosure rates in the nation, the highest unemployment in the nation and a substantial reduction in tourist and local spending. Many reasons have been proffered to explain these events. However, worse is the finger pointing as to whom or what has been responsible for the downturn globally and/or in Nevada.

While it would be nice to have a clear-cut explanation of how the perfect storm occurred, it doesn't get Nevadans back to work. And, while finger pointing may make some people feel better, it doesn't get Nevadans back to work. It doesn't take a rocket scientist to know that until individuals can get back to work, business will not recover and tax revenues won't begin to return. In this economy finger pointing and partisanship just delay forging solutions.

To find out what if any are the impediments that businesses are facing we asked our business members the following question,

Is there a Nevada law, regulation or local ordinance that should be changed that would allow you to consider hiring additional workers? If there is, please tell us what it is and why it would lead to more hiring. Any other comments you wish to make about improving Nevada's economy are also welcome.

Some of the answers were predictable, others were a surprise. Where similar answers and comments were received, they have been consolidated to reflect the issue identified. In no particular order, the specific comments relating to hiring more workers are identified below.

1. The cost per employee keeps rising - the modified business tax was increased, the unemployment insurance tax will increase January 1, 2011, and the federal health care provisions have started to kick in. How can I consider hiring anyone, when I don't know what it will cost me?

2. Why can't the local governments and the State look at what the federal government is doing and planning on doing to business (additional filings - 1099Ks, tax increases, increased regulatory burdens) before they add their burdens on us? Government, at any level, can't keep operating in a vacuum and expect me to survive. At what point will each level of government, that has decided they want more revenue, talk to each other to see the totality of the impacts to my business and my ability to hire?

3. I don't understand how the minimum wage can keep increasing when unemployment is so high. Why isn't there a realization that increasing the minimum wage in this economy just means I can't consider hiring entry level employees.

4. How can the minimum wage increase in Nevada, but decrease in Colorado? It is my understanding that both States use cost of living to determine the increase.

5. We could increase the number of construction jobs that would be available if the prevailing wage were: (1) eliminated; (2) the threshold was substantially increased from the current \$100,000; (3) suspended until such time as construction unemployment was reduced by at least 50%; or (4) eliminated in all non urban counties. Depending on the project and the county, the prevailing wage can add as much as 25 percent to the cost of a project. If we could get more projects in the pipeline at a state and local level, we could not only help reduce construction unemployment, but also generate additional sales tax revenue from construction supplies and equipment.

6. Why can't I include tip income as part of my wage base for the purpose of the minimum wage mandate? I have to include tips for the purpose of calculating my unemployment insurance tax. Not only is it inconsistent treatment for those of us in the hospitality industry, it seems designed to get us coming and going!

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Assault on Business

As we heard from our member businesses, *“Why can’t policy makers and elected officials look at the cumulative effects that their actions have on business?”* And yes, we know that elected officials say they want to protect small business, but just how do you define a small business? See page 7 for a few of the definitions on small business.

To assist elected officials in considering the totality of potential proposals, here’s a look at just some of the impacts that will be faced by business in 2011 and future years.

On a State Level

Increase in Unemployment Insurance Rates paid by business. The Division’s administrator, following the recommendation of the Nevada Employment Security Council has adopted, an increase in the average rate paid by employers to 2 percent from 1.33 percent.

This increase does not take into consideration the probability of a special assessment on employers to pay the interest that will be owed to Federal Government next September 30, 2011. The interest is due because of the money borrowed by the state to make unemployment payments. The interest cannot be paid from the funds collected from employers to pay unemployment benefits.

On a Federal Level

The Alternate Minimum Tax (AMT), which has been indexed over the last three filing years, has not yet been indexed for 2010. If it is not indexed, it will capture millions of additional taxpayers, both business and individuals.

Currently, all businesses can expense 50 percent of their new or used equipment purchases. As of January 2011, the expense deduction for small business is reduced to \$25,000 of new equipment purchased, and amounts above that threshold being depreciated. Larger businesses will have to depreciate all equipment purchases.

Employer-provided educational assistance is curtailed.

Employers will have to include the cost of the health insurance provided by the employer. There will be a new W-2 form and the IRS will be publishing guidance on the form later this year. The IRS announcement of October 12, 2010 says “reporting will be optional in 2011 and mandatory in 2012.”

Note: According to an IRS press release, this reporting is informational and not for the purpose of generating additional tax revenue.

The sales tax deduction allowed to the residents of states that do not have an income tax has not been extended for the 2010 filing year.

Note: As of this writing, the President announced that a compromise has been forged with Republicans in Congress to extend the Bush tax cuts for two years, with a change to the estate tax. In the compromise, estates over \$5 million will be taxed at a rate of 35 percent. It is expected that Democrats will try to make changes to the compromise. Action on the tax cuts is expected before the end of the year.

Without any action on the part of Congress, the Bush tax cuts of 2001 and 2003 will expire January 1, 2011, and the tax rates will revert to the prior rates.

- The top income tax rate will increase to 39.6 percent from 35 percent, the lowest increases to 15 percent from 10 percent.
- The estate (death) tax returns. For estates over \$1 million and under \$3 million the rates range from 41 to 53 percent, and on estates over \$3 million the rate is 55 percent.
- The capital gains tax increases to 20 percent from 15 percent, and the dividends tax increases to 39.6 percent from 15 percent. Note: Effective in 2013, these rates increase an additional 3.8 percent on certain investment income.

And then there is the new “Patient Protection and Affordable Care Act” (PPACA, Public Law 111-148) a.k.a. Obama care. It contains a number of tax and cost increasing provisions, which range in effective dates from 2011 to 2018, but in almost all cases, increase the operating costs borne by employers. One exception is that small businesses and nonprofits receive “cost-reducing” tax credits for providing health insurance. These small businesses and nonprofits are generally defined as having 25 or fewer full-time equivalent (FTE) employees, paying wages averaging less than \$50,000 per employee, per year. These comments and the summary of some of the tax provisions, is not a comment on the policy issue of providing affordable health care. Rather, this summary of taxes and costs points out how some of the provisions will impact an employer’s ability to hire additional employees and the fact that the Act does contain some unintended consequences.

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Increasing Employment

On a State level these recommendations involve both short-term solutions requiring statutory changes, and long-term solutions requiring changes to Nevada's Constitution. At the local level, for the most part, changes involve amending ordinances.

1. *Provide that an employer who hires any workers who have been unemployed for six months or longer do not have to pay the modified business tax for that employee for four quarters. For the next four quarters the modified business tax is reduced 50 percent. Allow the reduction to continue for the length of time that unemployment remains more than 6%.*

Reason: This would be a program similar to the federal HIRE program. It should also help mitigate the increases that will be occur in the premiums for unemployment insurance in future years. Most important, as no revenue has been generated from the modified business tax because these employees have been out of work, there would be no revenue loss to the State.

2. *Change the prevailing wage requirements to: (1) eliminate prevailing wage; (2) eliminate prevailing wage when construction unemployment is greater than 6 percent; or (3) increase the prevailing wage threshold from \$100,000 to \$2 million.*

Reason: With reduced tax revenue, the State and local governments lose the ability to maximize their limited capital resources. Because the cost of the project is increased, there are less projects available that would allow more workers to be employed.

3. *Eliminate Nevada's 24 hour overtime rule, in favor of the federal 40 hour overtime rule.*

Reason: Nevada is one of only seven states that does not follow federal law regarding overtime. Under federal law, overtime is not paid unless an employee works more than 40 hours in a week. In Nevada, overtime is based on what is called a "rolling 24 hour rule." In other words and employee's work period starts the hour of the employee's shift and "rolls" for 24 hours. Although the federal Fair Labor Standards Act (FLSA) allows the employer to define their 24 hour period, in Nevada, the period is defined by the employee's shift start time. For example, if an employee works a late shift from 6:00 p.m. to 11:00 p.m. on Monday, and then is scheduled to work an afternoon shift on Tuesday from noon to 5:00 p.m., the employee has worked 10 hours in his 24 hour shift entitling the employee to 2 hours of overtime. Imagine if you are a small retailer with limited staff or a restaurant. You are put into a position of forced overtime.

continued next column

The 43 states that follow federal law provide their employers greater flexibility in scheduling employees. Not following federal law in Nevada has had a negative impact on hiring, particularly in hospitality and related industries.

[Note: The following three Recommendations (4, 5 and 6) require voter approval as they are amendments to Nevada's constitution.]

4. *Amend the State minimum wage constitutional provision to provide that anytime the State-wide unemployment rate in Nevada exceeds 6 percent for two consecutive quarters. The requirement to provide the minimum wage would be suspended beginning the following quarter. The minimum wage provision would remain suspended until the unemployment rate fell to less than 6 percent for two consecutive quarters.*

Reason: Economic recovery requires that the percentage of unemployed workers be reduced. Increasing the State minimum wage during periods of high employments just adds another impediment to businesses who are trying to survive and might otherwise consider hiring. Note: Businesses would still have to comply with the federal minimum wage requirements.

5. *Amend the State minimum wage constitutional provision to delete the tiered rate based on whether or not an employer provides health insurance coverage.*

Reason: In addition to the reason provided in Recommendation 4, the provisions of the new federal health care law require that all businesses must provide health insurance or face fines. Additionally, many individuals (including those receiving minimum wage) will qualify for subsidized health care. With the new requirements for employers under the new federal health care bill, maintaining a health care provision in the State's minimum wage law represents a double whammy on the State's employers.

6. *Allow tips to be used in calculating the wage paid by a business.*

Reason: Tips are part of an employee's compensation. They are considered as such for reporting by the employer for purposes of calculating the payment due for unemployment insurance. In addition they are required to be reported by the employer on the W-2 form with federal tax payments made by both the employer and employee.

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Increasing Employment continued from page 3

7. *Where multiple local governments in the same county require business licenses, they need to establish a working group to look at: (1) consolidating the function, through an inter-local agreement; (2) regionalizing the function, which would require legislation; or (3) at the very least, coordinating their categories and definitions of business.*

Reason: Not only is compliance improved, but both compliance and administrative costs are reduced. The latter cannot be ignored in this economy.

Comments from Business continued from page 1

7. Why doesn't Nevada follow the federal overtime rule of a 40 hour work week, like 43 other states? Not having the flexibility to have an employee work more than 8 hours in a 24 hour time period adds sufficient additional costs that I cannot even consider hiring part-time employees.

8. If the "Cap and Trade" legislation is passed by Congress, can anyone tell me what will be the cost to my auto repair business? How can I hire employees when I have no idea what my costs will be?

9. I understand (at some level) the requirement by local government to issue business licenses to do business in their jurisdiction. However, why should it take so long (three weeks) to get a license to open my business? You would think the government would want to help businesses get opened as soon as possible by streamlining and expediting the process. *Can you say hiring and generating tax revenue?*

10. I do business in Washoe County/Clark County and the cities within the county. Why do I have to go to each entity to get my license? Why can't I get one license or at least go on-line to register and pay my fee with each entity? Better yet, why can't I just apply for one license?

Note: The "Business Portal," under development by the Secretary of State, will eventually allow one-stop access to business for required filings and payments of taxes and fees. It will also be available for utilization by local government entities.

Assault on Business continued from page 2

- Effective July 1, 2010, a 10 percent tax was imposed on all tanning salons.
 - There is a new 3.8% tax on investment income that includes dividends, interest, capital gains and royalties. This tax applies to the lesser of the amount of investment income or the amount by which a single person's income exceeds \$200,000 (\$250,000 for a married couple). Notes: If you sell a personal residence and exceed the reporting threshold, the sale price becomes part of the investment income subject to the tax. Also, like the AMT, the wage thresholds for this tax are not indexed to inflation.
 - Effective for 2012, all businesses will have to report all business-to-business transactions. While the reporting is effective for 2012, the forms will be submitted in 2013. If Congress does not repeal or change this reporting requirement, businesses should start to prepare now for changes that will be needed to their accounting and computer systems. The reporting is for businesses with transactions to a business that total more than \$600 in the calendar year. This will increase the compliance burden for all businesses, but particularly for smaller and some medium size businesses which tend to use outside bookkeepers and accountants. Just imagine the impact of getting federal tax ID numbers for the office supply companies, equipment companies, airlines, rental car companies, hotels, etc. that you do business with.
- If as an individual you have a rental property for which you expense your costs to maintain the property, you are considered a business and will have to issue a 1099-K for any transactions associated with maintaining the property.
- Payment processors (financial firms that process credit cards) that process at least 200 transactions a year with a total dollar value over \$200,000 will be required to file a 1099-K with the business and IRS. The business will be required to segregate its credit/debit card sales from cash sales. It appears these reports will cover calendar year 2011 and be filed in 2012. (Note: According to a speech delivered by IRS Commissioner Shulman, "We plan to use our administrative authority to exempt from this new requirement business transactions conducted using payment cards such as credit and debit cards.")

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ELECTION RESULTS

The Constitutional Officers

On January 3, 2011, Brian Sandoval will be sworn in as Nevada's 30th Governor. He will deliver his State of the State Address on January 24. To date he has named former Assemblywoman Heidi Gansert Chief of Staff, Dale Erquiaga Deputy Chief of Staff, and Terri Janison as Director of Community Relations. Janison will also run the Governor's Las Vegas office. Governor Gibbons appointed Steve Robinson as the Transition Director to work with Governor Elect Sandoval.

Re-elected to their offices were Lieutenant Governor Brian Krolicki, Secretary of State Ross Miller, Treasurer Kate Marshall, Controller Kim Wallin and Attorney General Catherine Masto.

The 2011 Legislature

Commencing on February 7, 2011, the Legislature will have 30 "new" faces in the Senate and Assembly. Eight of the "new" members came from the other house; one from the Senate to the Assembly and seven to the Senate from the Assembly. While the Democrats hoped to obtain a 2/3's majority in the Senate and retain their 2/3's majority in the Assembly, they lost one seat in the Senate, and two seats in the Assembly, which cost them their veto-proof majority. Term limits with a dose of politics have resulted in numerous leadership changes for both parties in both houses.

Assembly Democratic Leadership

Speaker - John Ocegüera ◇ Speaker Pro Tempore - Debbie Smith ◇ Majority Floor Leader - Marcus Conklin ◇ Assistant Majority Floor Leader - Marilyn Kirkpatrick ◇ Majority Whip - William Horne ◇ Senior Chief Deputy Whip - Kelvin Atkinson ◇ Chief Deputy Whip - Peggy Pierce ◇ Chief Deputy Whip - David Bobzien.

Assembly Republican Leadership

Minority Floor Leader - Pete Goicoechea ◇ Assistant Minority Floor Leader - Lynn Stewart ◇ Minority Whip - Tom Grady ◇ Minority Whip - Mark Sherwood

Senate Democratic Leadership

Majority Leader - Steven Horsford ◇ President Pro Tem - Michael Schneider ◇ Assistant Floor Leader - Valerie Wiener ◇ Majority Whip - John Lee ◇ Assistant Whip - Mo Denis

Senate Republican Leadership

Minority Floor Leader - Mike McGinness ◇ Assistant Minority Floor Leader - Barbara Cegavske ◇ Minority Whip - James Settelmeyer

Save the Date . . .

February 23, 2011

for NTA's Legislative Dinner at the Carson Nugget. Invitations will be sent in January.

COMMITTEE	DAYS	TIME
ASSEMBLY		
Commerce & Labor	M, W, F	1:30 pm
Education	M, W, F	3:15 pm
Government Affairs	M, W, F	8:00 am ^①
Health & Human Services	M, W, F	1:30 pm
Judiciary	M-F	8:00 am
Leg. Operations & Elections	T, W	1:30 pm
Nat'l Resources, Ag & Mining	T, W	1:30 pm
Taxation	T, Th	8:00 am
Transportation	T, Th	3:15 pm
Ways & Means	M-F	8:00 am
SENATE		
Finance	M-F	8:00 a.m
Commerce Labor & Energy	M, T, W	1:00 pm
Education	W, F	3:30 pm
Government Affairs	M, W, F	8:00 am
Health & Human Services	M, T, Th	3:30 pm
Judiciary	M-F	8:00 am
Leg. Operations & Elections	T, Th	3:30 pm
Natural Resources	W, F	3:30 pm
Revenue	T, Th	1:00 pm
Transportation	T, Th	3:30 pm
Select Committee ^②	M, W, F	1:00 pm

^① 9:00 am on Monday

^② Select Committee on Economic Growth & Employment

ASSEMBLY MEMBERS & COMMITTEES	
NAME/PARTY/DISTRICT	COMMITTEE
PAUL AIZLEY (D/41)	Education - Natural Resources Agriculture & Mining - Way & Means
ELLIOT ANDERSON (D/15)	Education - Government Affairs - Natural Resources Agriculture & Mining, Tax
KELVIN ATKINSON (D/17)	Commerce & Labor (C) - Transportation - Ways & Means
TERESA BENITEZ - THOMPSON (D/27)	Government Affairs - Health & Human Services - Tax - Transportation
DAVID BOBZIEN (D/24)	Education (C) - Natural Resources Agriculture & Mining - Ways & Means
STEVEN BROOKS (D/19)	Health & Human Services - Judiciary - Transportation
IRENE BUSTAMANTE ADAMS (D/42)	Gov't Affairs (V.C.) - Commerce & Labor - Nat'l Resources Agriculture & Mining - Tax
MAGGIE CARLTON (D/14)	Natural Resources Agriculture & Mining (C) - Commerce & Labor - Ways & Means
RICHARD CARRILLO (D/18)	Health & Human Services - Judiciary - Transportation
MARCUS CONKLIN (D/37)	Commerce & Labor (V.C.) - Ways & Means (V.C.) - Legislative Operations & Elections
SKIP DALY (D/31)	Commerce & Labor - Legislative Operations & Elections - Judiciary
OLIVIA DIAZ (D/11)	Education - Judiciary - Transportation
MARILYN DONDERO LOOP (D/5)	Transportation (C) - Education (VC) - Judiciary
JOHN ELLISON (R/33)	Commerce & Labor - Government Affairs - Natural Resources Agriculture & Mining - Tax
LUCY FLORES (D/28)	Leg. Operations & Elections (V.C.) Educ.- Gov't Affairs - Health & Human Services - Tax
JASON FRIERSON (D/8)	Transportation (V.C.) - Health & Human Services - Judiciary
ED GOEDHART (R/36)	Commerce & Labor - Government Affairs - Natural Resources Agriculture & Mining - Tax
PETE GOICOECHEA (R/35)	Legislative Operations & Elections - Health & Human Services - Ways & Means
TOM GRADY (R/38)	Commerce & Labor - Ways & Means - Legislative Operations & Elections
JOHN HAMBRICK (R/2)	Health & Human Services - Transportation - Ways & Means
SCOTT HAMMOND (R/13)	Health & Human Services - Judiciary - Transportation
IRA HANSEN (R/32)	Education - Judiciary - Natural Resources Agriculture & Mining
CRESSENT HARDY (R/20)	Commerce & Labor - Legislative Operations & Elections - Ways & Means
PAT HICKEY (R/25)	Commerce & Labor - Legislative Operations & Elections - Ways & Means
JOSEPH HOGAN (D/10)	Nat'l Resources Ag. & Mining (V.C.) Health & Human Services - Trans. - Ways & Means
WILLIAM HORNE (D/34)	Judiciary (C) Commerce & Labor - Legislative Operations & Elections
MARILYN KIRKPARTICK (D/1)	Government Affairs (C) - Tax (C) - Commerce & Labor - Leg. Operations & Elections
RANDY KIRNER (R/26)	Education - Transportation - Ways & Means
KELLY KITE (R/39)	Commerce & Labor - Judiciary - Natural Resources Agriculture & Mining
PETE LIVERMORE (R/40)	Gov't Affairs - Health & Human Services - Natural Resources Agriculture & Mining - Tax
APRIL MASTROLUCA (D/29)	Health & Human Services (C) - Education - Ways & Means
RICHARD MCARTHUR (R/4)	Education - Legislative Operations & Elections - Judiciary
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DINA NEAL (D/7)	Education - Government Affairs - Tax - Transportation
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LYNN STEWART (R/22)	Education - Legislative Operations & Elections - Government Affairs - Tax
MELISSA WOODBURY (R/23)	Education - Government Affairs - Tax - Transportation

SENATE MEMBERS	
NAME/PARTY/DISTRICT	COMMITTEE
SHIRLEY BREEDEN (D/CL 5)	Transportation (C) - Commerce Labor & Energy (VC) - Judiciary
BARBARA CEGAVSKE (R/CL 8)	Finance - Education - Legislative Operations & Elections
ALLISON COPENING (D/CL 6)	Health & Human Services (C)- Judiciary (VC) - Commerce Labor & Energy
MO DENIS (D/CL2)	Education (C) - Legislative Operations & Elections (VC) - Finance - Revenue ^①
DON GUSTAVSON (R/W 2)	Judiciary - Education - Select Committee ^②
ELIZABETH HALSETH (R/CL 9)	Commerce Labor & Energy - Revenue ^① - Transportation
JOSEPH HARDY (R/CL 12)	Health & Human Services - Revenue ^① - Select Committee ^②
STEVEN HORSFORD (D/CL 4)	Finance (C) - Revenue (VC) ^① - Legislative Operations & Elections
BEN KIECKHEFER (R/W 4)	Finance - Health & Human Services - Select Committee ^②
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DEAN RHOADS (R/Rural)	Finance - Health & Human Services - Natural Resources
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MICHAEL SCHNEIDER (D/CL11)	Commerce Labor & Energy (C) - Transportation (VC) - Gov't Affairs - Revenue ^①
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VALERIE WIENER (D/CL 3)	Judiciary (C) - Health & Human Services (VC) - Education - Select Committee ^②

^① Formerly the Taxation Committee

^② Select Committee on Economic Growth and Employment

Assault on business continued from page 4

Note: The filing of the 1099-K form is supposed to provide IRS the ability to validate expenses deducted by business. This is known as "Tax Gap" legislation (the difference between what is reported as an expense on federal forms and what a business actually spends).

You can't help but wonder, *did anyone calculate the cost of administration to the federal government for processing and storing what promises to be millions of 1099-K forms, or more importantly the cost of compliance for business.*

Sources:

www.thomas.gov - In the search box enter HR 3590, then go to CRS Summary.

www.irs.gov - various publications and press releases, and prepared remarks of Douglas H. Shulman Commission of Internal Revenue before the American Payroll Association and the American Accounts Payable Association 28th Annual Congress May 27, 2010.

Heritage Foundation - "The Rollout of Taxes for Obamacare"
CNNMoney.com "Stealth IRS changes mean millions of new tax forms", by Neil de Mause, contributing writer May 21, 2010

Small Business Definitions

In Nevada

The State Business Impact Statement, fewer than 150 full-time or part-time employees.

The Modified Business Tax, less than \$50,000 in wages paid in a reporting quarter.

On a Federal Level

The Small Business Administration defines small business on an industry by industry basis. For example, a manufacturing facility has fewer than 500 employees is a small business.

Federal Cobra Act - 25 or fewer employees.

Health Care Act - 25 or fewer employees. However the Act also defines medium-size businesses as 50-199 workers. What is the definition of a business that employs between 26 and 49 workers?

Securities and Exchange Commission defines small business as a domestic company with revenues under \$25 million.



*Wishing you a wonderful
Holiday Season
and a
New Year
of
Peace, Happiness
and
Prosperity*

TAX TOPICS

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