STATE QUESTION NO. 3

Amendment to Titles 7, 32, 52, 53, 54, 55, 56, 57 of the *Nevada Revised Statutes*

Shall the *Nevada Revised Statutes* be amended to create a 2% tax to be imposed on a margin of the gross revenue of entities doing business in Nevada whose total revenue for any taxable year exceeds $1 million, with the proceeds of the tax going to the State Distributive School Account to be apportioned among Nevada's school districts and charter schools?

Yes .... ❑
No .... ❑

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to impose a two-percent (2%) margin tax on business entities in Nevada with total revenue in excess of $1,000,000, and it requires that the proceeds of the tax be used to fund the operation of the public schools in this State for kindergarten through grade 12. If this ballot measure is approved by the voters in the 2014 General Election, the applicable margins tax would take effect January 1, 2015.

The ballot measure includes an exemption from the tax for natural persons not engaged in business, passive entities, governmental entities, tax exempt organizations and credit unions authorized to do business in Nevada. Also, any business entities with total revenue of $1 million or less are not subject to margin tax. The tax would apply to all *other* businesses and organizations with total revenue in excess of $1 million in any taxable year.

The ballot measure would impose the 2% tax rate on the entity's taxable margin. Under the ballot measure, a business entity's taxable margin is determined by taking the *lesser* of:

(i) 70% of the entity's total revenue; or

(ii) the entity's total revenue minus either: (a) the cost of goods sold; or (b) the amount of compensation paid to its owners and employees.

The 2% tax would be imposed on the percentage of this margin that corresponds to the percentage of the entity's total business that is done in Nevada. A business entity that pays the existing tax on payroll, commonly referred to as the modified business tax, would be credited for that amount against the amount it would owe under this measure.

If approved by the voters, proceeds from the tax would be deposited in the State's Distributive School Account (DSA) in the State General Fund and will be apportioned among the county school districts and charter schools in the manner provided by state law to fund K-12 public education. The DSA provides the primary source of public education funding for Nevada's 17 county school districts and its various charter schools. The DSA is funded by legislative appropriations from the State General Fund and other revenues. The ballot measure does not change how funds in the DSA can be spent or allocated.

A "Yes" vote would impose a 2% margins tax on Nevada businesses with revenue in excess of $1 million with the tax proceeds being deposited in the State Distributive School Account in the State General Fund and used to fund K-12 public education.

A "No" vote would retain the existing tax liability for businesses in Nevada and retain the existing sources of K-12 education funding.

DIGEST— This ballot measure creates, generates and increases public revenue. Existing law provides for the collection and enforcement of various taxes by the Department of Taxation. This ballot measure would amend and add to these existing laws by creating a new tax. The new law would impose a 2% tax on a margin of the total revenue of certain businesses in Nevada whose total revenue exceeds $1 million in any taxable year.

This measure would require that the tax be administered and collected by the Nevada Department of Taxation. To cover the cost of administering the tax before proceeds are collected, this measure would require a temporary increase in the modified business tax assessed to and paid by financial institutions in Nevada. The existing 2% modified business tax currently paid by financial institutions would temporarily be increased to 2.29% percent effective January 1, 2015. A second temporary increase to 2.42% would become effective on July 1, 2015. On July 1, 2016, the modified business tax rate on financial institutions will return to its current rate of 2%.

If approved, the following amount of funds will be appropriated from the State General Fund to the Department of Taxation for the initial costs of administering the tax: (i) $1,400,000 for fiscal year 2014-2015; and (ii) $4,200,000 for fiscal year 2015-2016. If the revenue raised by the increase in the modified business tax rate for financial institutions is not sufficient to cover the full amount of either appropriation, that appropriation will be reduced so that there is no deficiency.

ARGUMENTS FOR PASSAGE

The Education Initiative

A "Yes" vote for Question 3 – the Education Initiative – will give our schools a predictable funding source needed to provide a better education for Nevada's children. Experts report that a better funded education system results in better jobs and higher wages. A quality education for our children will ensure their success and the success of Nevada's economy.

The money from this tax will go directly to K-12 education. The initiative "requires that the proceeds of the tax be used to fund the operation of the public schools in this state." This tax will provide money to pay for smaller class sizes, textbooks, technology, classroom materials, and programs resulting in increased student success and higher graduation rates.

Nevada is one of only three states that do not require big corporations to pay a corporate income or gross receipts tax. Big out-of-state corporations that operate in Nevada *do not pay taxes on their income in Nevada!* These big corporations pay corporate taxes in other states. Approval of Question 3 will require these big corporations -*fewer than 14% of Nevada's businesses*- to pay a 2% tax on a certain portion of their total revenue which will go directly toward funding public and charter schools.

Approval of Question 3 will not hurt small businesses! A business with a total revenue less than or equal to $1 Million would not pay this tax. Businesses that pay the tax can take generous deductions. Any tax paid under the Education Initiative can be deducted from federal taxes.

Voting "Yes" on Question 3 is a vote to require the biggest corporations in Nevada to pay a 2% tax, after deductions, to fund Nevada's K-12 public and charter schools. Students and Nevada's economy will benefit greatly from payment of this modest 2% tax by the biggest corporations operating in Nevada, which have long avoided paying their fair share.

Business leaders like MGM Resorts Chairman Jim Murren, Republicans like Governor Brian Sandoval, and Democrats like U.S. Senator Harry Reid have stated that Nevada needs more money for K-12 education. The Education Initiative is the way to solve this problem. A better funded K-12 system will create opportunities for every Nevada student and prepare them for the better high-wage jobs of the future.

Please vote *yes* on Question 3 – the Education Initiative – to give our kids and our state a brighter future.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252.

REBUTTAL TO ARGUMENTS FOR PASSAGE

The claims made to promote Question 3 are deceptive. Even the sponsors' own lawyer admitted in testimony to the Nevada Supreme Court that the measure doesn't guarantee more education funding and said that, if it passes, *"the legislature could decrease funding for education."*

Question 3 is opposed by Nevada's leading employers, including MGM Resorts Chairman Jim Murren, by top Democrats, like Lieutenant Governor candidate Lucy Flores, and top Republicans, like Governor Sandoval. Sandoval has warned Question 3 *"would be devastating for not only existing businesses but for bringing businesses to this state"* and would *"jeopardize Nevada's recovery."*

Nevada already has an existing business tax: the Modified Business Tax. The proposed "Margin Tax" would impose the equivalent of a 15% business tax on employers, the fourth highest tax rate in the country – and it wouldn't just affect major employers. *It would be imposed on thousands of small business owners.* That's why it's opposed by the National Federation of Independent Business – Nevada, representing 2,000 small businesses statewide.

Because Question 3 would cause the loss of thousands of existing and future jobs and increase living costs for Nevadans, *it's also opposed by the Nevada AFL-CIO, representing working people throughout the state.*

Vote *no*.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252.

ARGUMENTS AGAINST PASSAGE

Question 3 is a deeply flawed tax measure that would damage Nevada's economy, cause the loss of thousands of jobs, and force consumers to pay more for food, housing, utilities and healthcare – without guaranteeing more funds for education.

No Accountability, No Guarantee of More Funds for Schools
Promoters claim the tax is for education. But Nevada law lets the legislature divert education funds to other uses. Moreover, Question 3 contains no guidelines on how its "education" funds might be spent. Question 3 gives politicians and bureaucrats a blank check to spend money with no plan, no oversight, no accountability and no guarantee for more money in the classroom.

It's Worse Than It Seems
"This 2% 'Margin Tax' would be on gross revenues, not profits, so it's the equivalent of a nearly 15% business tax. That would make Nevada one of the five highest taxed states in the country for businesses." Carole Vilardo, President Nevada Taxpayers Association

Flawed, Unfair
Employers would have to pay the tax even if they have no profits and are losing money. And, the tax would be imposed on the businesses that provide most of the jobs in Nevada: major employers and thousands of small businesses with gross revenues above the threshold, including farms, restaurants, grocery stores and local retailers. The "businesses" exempted by the measure are mostly one-person operations with no employees.

Lost Jobs
Question 3 would increase the tax burden on Nevada employers by hundreds of millions of dollars annually. Economic studies show that it would cause the loss of thousands of existing jobs and make it extremely hard to attract new businesses and jobs to Nevada.

Higher Consumer Costs
Increased costs imposed on businesses providing goods and services in Nevada would ultimately be passed on to consumers. This would force Nevadans to pay higher prices for everything from food, clothing, gas, water and electricity to housing, insurance and healthcare – hurting those who can least afford it.

Everyone cares about education. But this costly, deeply flawed measure doesn't ensure a better education for our kids. What it would do is hurt Nevada employers and our economy, put thousands of Nevadans out of work, discourage businesses from growing, and increase consumer prices for food, shelter, utilities, healthcare, and other vital goods and services.

That's why a coalition representing tens of thousands of small and large employers, community leaders, educators, parents and consumers urges *no* on 3.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252.

REBUTTAL TO ARGUMENTS AGAINST PASSAGE

The opponent's argument urges you to protect CEO's, corporations and their shareholders at the expense of schools, students, and families. Question 3 was put on the ballot by Nevadans to provide the resources necessary to help students succeed and be prepared for the jobs of the 21st century.

This proposal is on the ballot because Nevadans are concerned about their children's future and the health of our state's economy. It does not give anyone a "blank check" as opponents claim. It requires that the money from the tax go directly into the existing account for K-12 public education. Under existing guidelines, the money can provide for smaller class sizes and programs that help students graduate to produce a better economic future for Nevada.

The opponents know every dime collected from this tax will go directly to K-12 education. The funding of the opposition is primarily from big businesses that are not paying their fair share of taxes to invest in education. For decades, Nevada has supported these big businesses by providing them with infrastructure, employees and customers. Now is the time for big businesses to make a long-term commitment to Nevada's education system. Vote "yes" on Question 3.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 3 proposes to amend Title 32 of the *Nevada Revised Statutes* to impose a new margin tax on the taxable margin of specified business entities in the state. The proceeds of the tax, less administrative costs incurred by the Department of Taxation, would be deposited in the State Distributive School Account. Question 3 requires that appropriations be made from the State General Fund to the Department of Taxation for the initial costs of administering the margin tax. Question 3 also proposes a temporary increase in the rate of the Modified Business Tax on Financial Institutions to generate revenue to support the appropriations made to the Department.

FINANCIAL IMPACT OF QUESTION 3

The provisions of Question 3 would require specified business entities in the state whose total revenue exceeds $1 million to pay an annual tax at a rate of 2 percent of the taxable margin of the business entity (margin tax). The provisions of Question 3 require that the proceeds from the margin tax be deposited in the State Distributive School Account (DSA). An amount that is necessary to defray the cost of the administration of the margin tax may be withheld from these proceeds by the Department of Taxation, for deposit in the State General Fund.

The provisions of Question 3 also require a temporary increase in the rate of the current Modified Business Tax on Financial Institutions (MBT-FI), from the current rate of 2 percent to a rate of 2.29 percent in the last six months of Fiscal Year 2015 and 2.42 percent in Fiscal Year 2016. The revenue generated from this temporary increase in the MBT-FI is intended to raise the revenue necessary to support the appropriations made from the State General Fund to the Department of Taxation for the initial costs of administering the margin tax. If the revenue raised from the increase in the MBT-FI is not sufficient to support the full amount of the appropriation in either fiscal year, the appropriation for that fiscal year is reduced to the extent of the deficiency.

If approved by the voters, the provisions of Question 3 would become effective on January 1, 2015, but would not result in additional revenue for the DSA until the last three months of Fiscal Year 2016. However, the Fiscal Analysis Division cannot predict what regulations or other actions may be taken by the Department of Taxation to implement and administer the margin tax that may affect a taxpayer's taxable margin or tax liability, nor can it predict the timing by which revenue would be received due to the ability of taxpayers to file extensions. Thus, while additional revenue will be generated for the DSA in Fiscal Years 2016 and 2017 and in future fiscal years, the Fiscal Analysis Division has not prepared an estimate of the amount of revenue that would be generated for the DSA during these years due to the multitude of assumptions that would need to be made and the uncertainty regarding how the assumptions made would impact the revenue estimates.

Question 3 requires appropriations to be made from the State General Fund to the Department of Taxation in the amount of $1.4 million for the last six months of Fiscal Year 2015 and $4.2 million for Fiscal Year 2016, if Question 3 is approved by the voters.

Question 3 specifies that the proceeds from the temporary increase in the MBT-FI rate are intended to raise the revenue necessary to support the appropriations made from the State General Fund to the Department of Taxation for the initial costs of administering the margin tax. The Fiscal Analysis Division cannot state with certainty whether the rate increase for the MBT-FI would generate sufficient revenue to support the required appropriations. However, it is reasonable to conclude that the appropriation amounts required would be supported by the 0.29 percent and 0.42 percent increase in the MBT-FI rate, based on an analysis of the historical actual tax collections from FY 2005 to FY 2013.

The Fiscal Analysis Division has determined that imposition of the margin tax would increase state government expenditures, due to increased costs of administration and enforcement that would be borne by the Department of Taxation. The Department of Taxation, based on a request made by the Fiscal Analysis Division, has estimated that its initial costs of administration would be approximately $1.4 million in Fiscal Year 2015 and $3.9 million in Fiscal Year 2016, for a two-year total of approximately $5.3 million. The Department estimated that future ongoing costs of enforcement and administration of the margin tax would be approximately $12.1 million per biennium.

Based on the estimate of $5.3 million for the initial costs of administration provided by the Department of Taxation, the $5.6 million in appropriations from the State General Fund included in Question 3 would be sufficient to support the initial costs of administering the margin tax.

Question 3 may result in a negative impact on the State General Fund from the initial costs of administration of the margin tax if: 1) The actual proceeds generated from the temporary increase in the MBT-FI are not sufficient to fund the General Fund appropriations included in Question 3; 2) The actual costs for the initial administration of the margin tax are greater than the amount of the appropriations specified in Question 3; or 3) The actual costs for the initial administration of the margin tax are greater than the amount of revenue generated from the temporary increase in the MBT-FI.

Question 3 may result in a positive impact on the State General Fund if the amount of revenue generated from the temporary increase in the MBT-FI is greater than the actual costs for the initial administration of the margin tax incurred by the Department of Taxation.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 1, 2014