

# TAX TOPICS

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## NEVADA SUPREME COURT RULES ON LIVE ENTERTAINMENT TAX, FIRST AMENDMENT CASE

The Nevada Supreme Court has made a ruling on a case involving adult entertainment facilities and the First Amendment. The Nevada Supreme Court considered whether or not the district court erred in denying the appellants' petitions for judicial review challenging a decision made by the Nevada Tax Commission. The adult entertainment facilities claim the Nevada Live Entertainment Tax is unconstitutional, violating the dancers' right to free speech. They argue this tax creates a burden to protected speech.

This case was initially filed by the appellants in 2006 (Case 1). The appellants were seeking refunds of Live Entertainment tax paid claiming the tax was unconstitutionally collected. Those claims were denied both by the Department of Taxation and then affirmed by the Nevada Tax Commission in 2007. The appellants appealed this decision, but did not do so within the time frame allowed by statute (Case 2). The district court then granted the appellant an additional 30 days in order to refile the action as a petition for judicial review. The appellant refiled, presented additional evidence, and the district court remanded the case back to the Nevada Tax Commission (Case 3). The Tax Commission in turn remanded the case to an Administrative Law Judge (ALJ) to "determine whether the findings of fact, conclusions of law, and final decision issued in 2007 should be amended, reversed, or affirmed." The ALJ affirmed the Tax Commission decision denying the appellants refund request. This was appealed (Case 4).

The Nevada Supreme Court concluded the district court lacked jurisdiction to consider the appellants' Case 3 petition for judicial review, and thus lacked the authority to consider the merits of the appellants' Case 4 petition, and therefore vacate the district court's order denying appellants' consolidated petitions for judicial review and remand the matter to the district court with directions to dismiss the petitions for lack of jurisdiction.

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## **BUREAU OF LABOR STATISTICS RELEASE FEBRUARY 2018 EMPLOYMENT SITUATION SUMMARY**

The Bureau of Labor Statistics released the February 2018 Employment Situation Report on Friday, March 9. The report shows the number of Americans employed has reached an all-time high of 155 million. The number of Americans employed in February 2018 rose by 785 thousand the previous month. The unemployment rate has stayed the same for the last five months at 4.1%. 313 thousand jobs were added to the economy in February, bringing the 3 month average of jobs added to 242 thousand. Wages have also continued to rise. Over the past year, wages have increased by 68 cents, with a 4 cent rise from January to February.

For more information on the Employment Situation Report for February 2018, click [here](#).

### **SMALL BUSINESS REGULATION WORKSHOP**

The Employment Security Division of the Department of Employment, Training, and Rehabilitation (DETR) will hold a Small Business Workshop at the Legislative Building, conducted by the Administrator, to present and solicit public comment on a proposed amendment of a regulation pertaining to Chapter 612 of the Nevada Administrative Code (NAC) pursuant to Nevada Revised Statute (NRS) 233B.061. The proposed amendment will establish the Electronic Filing of Unemployment Insurance Contribution and Wage Reports for Nevada Employers effective July 1, 2018.

DETR is looking to add NAC 612.640. This regulation will require Nevada Employers to file electronically, all reports required by NRS 612.535- 612.580. Employers who fail to file electronically shall be subject to penalties set forth in NRS 612.740. An employer may request a waiver from the electronic filing requirements. DETR may grant the waiver when the employer has established to the satisfaction of the Administrator that there is a lack of automation, a severe economic hardship, or other good cause.

DETR started gathering responses from Nevada employers on July 18, 2017. At this open session, DETR received one public comment, which was in regards to the capturing of electronic signatures. This new regulation will affect all Nevada employers subject to unemployment contribution and wage reports. DETR reports that as of the 4<sup>th</sup> quarter of 2017, 67 percent of Nevada's employers are already filing reports electronically. Options for employers to file electronically include using the UINV system or hiring a payroll service to file on the employers behalf. If an employer finds these options create or cause a hardship, a waiver may be requested.

DETR states that 84 percent of all manual filers have ten or fewer employees and are likely unaware of the overall efficiency gains the UINV system will provide. Once an employer has created an account in the UINV system, they have three options to report their data; manual data entry, electronic filing W-2-EFW2, or upload a spreadsheet.

## 2018 NEVADA ELECTIONS

Elections for State Senate and Assembly will take place in November 2018. The candidate filing deadline is March 16, 2018. A closed primary election will be held on June 12, 2018. There are a total of 11 seats out of the Senate chamber's 21 that are up for election. Nevada State Senators serve staggered 4 year terms with half of the Senate up for election every 2 years. All 42 Assembly seats are up for election. Nevada Assembly members serve two year terms with all seats up for election every two years.

In the 2016 elections, Democrats won control of the Senate from Republicans. The Democrats held a majority in the Senate of 11-10 after the elections. Shortly after the election, Patricia Farley changed her party affiliation from Republican to Independent and caucus with the Democrats. This brought the majority to 11-9 for Democrats. Of the 11 seats that are up for election, Trump won 5 of those districts, and Clinton won 6 in the 2016 election. During the last session, Republicans held 6 seats of the 11 seats up for election, Democrats held 4, and 1 seat is held by an Independent. 1 of the 6 seats held by Republicans was left vacant by Becky Harris who was appointed by the governor as Chairwoman of the Gaming Control Board.

A list of judicial candidates who have filed with the Secretary of State can be found [here](#).

A list of non-judicial candidates who have filed with the Secretary of State can be found [here](#).

### Petitions

The deadline to submit to the County Clerk or Registrar of Voters for signature verification a petition to have any statute or resolution enacted by the Legislature submitted to a referendum vote of the people is June 19, 2018. This is also the deadline to submit a petition proposing an amendment to the Nevada Constitution. A referendum seeks to approve or disapprove an existing state or local law. All statewide referendum petitions must be filed with the Secretary of State's office prior to circulating. There must be 112,544 valid signatures to qualify a petition. Of those 112,544 signatures, 28,136 must be collected in each of Petition Districts 1, 2, 3, and 4. If the law subject to the referendum is approved by the voters, the law remains as is and cannot be changed in the future except by a direct vote of the people. If the law subject to the referendum is disapproved, the law becomes void and of no effect.

You can find more information on 2018 Petitions [here](#).

## **COMMITTEE ON LOCAL GOVERNMENT FINANCE SUBCOMMITTEE**

A subcommittee for the Committee on Local Government Finance (CLGF) met on March 8, 2018 to discuss issues revolving around NRS 354.410, NRS 354.624, and NRS 354.626. Auditors were seeking guidance on how to deal with expenditures for local governments. The Department of Taxation's Local Government Finance division will issue a guidance letter in the near future. The guidance letter will address an "audit conclusion" as management discussion and analysis must be concluded, available resources for augmentation, and guidance on operating transfers. Operating transfers are not expenditures. The subcommittee also instructed auditors not to state "potential violations" in their audits. Including "potential violations" in audits makes it appear to the general public that a violation has been committed, when in reality there is no audit violation. Auditors have been instructed to state "Not a violation due to NRS XXX". The subcommittee did not say when they would send out the guidance letter.

## **ODDS AND ENDS**

### **More Strong Revenue Growth**

The Federation of Tax Administrators' monthly revenue report shows total tax collections grew at a median rate of 10.8 percent over the last year with 38 states reporting for January. The total growth rate was 5.1 percent and 9.8 percent during the past 12 and 3 months, respectively. The growth was largely driven by individual income tax collections, which increased at a median rate of 14.1 percent during the past 3 months. Withholding collections were strong, growing at a median rate of 6.5 percent during the past 3 months.

### **Criminal Franchisee**

A taxpayer's lawsuit against Jackson Hewitt has been cleared for further legal activity, and is being split into two class action suits. A district court has ruled that the taxpayer has sufficiently pleaded claims of direct fraud, vicarious liability, wrongful disclosure and negligence. The argument is against a Jackson Hewitt franchisee that is accused of preparing fraudulent returns, including adding fake business expenses to the return and opening a bank account in the taxpayer's name to receive the fake refund. The taxpayer says Jackson Hewitt itself reviewed and approved the return, knew it was fraudulent and knew that the return sent to the IRS was different from the one authorized by the taxpayer. The taxpayer also says he was unknowingly enrolled in an "Assisted Refund" program that charged him additional fees. The class actions are based on these two separate accusations. The taxpayer says Jackson Hewitt is directly liable for fraudulent statements made to consumers about the accuracy of tax preparation services, and that Jackson Hewitt is also responsible for fraud perpetrated by the franchisee because the parent firm had control over the franchisee.

## **Dirty Dozen Tax Scam Series**

The IRS has reprised its Dirty Dozen tax scam series, releasing a new taxpayer alert about a new scam every day through March 20<sup>th</sup>. These will be posted each day [here](#). This year's Dirty Dozen list includes Phishing, Phone Scams, Identity Theft, Return Preparer Fraud, Fake Charities, Inflated Refund Claims, Excessive Claims for Business Credits, and Falsely Padding Deductions on Returns, Falsifying Income to Claim Credits, Abusive Tax Shelters, Frivolous Tax Arguments and Offshore Tax Avoidance.

### **TAX TOPICS**

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