

April 25, 2023
Nevada Department of Taxation
1550 College Pky
Carson City, Nevada 89706

Subj: City of Reno DRP/ Business Improvement District

Reference: Nevada Department of Taxation Letter (undated) ATTACHED

Note: As I presented this before and as I presented in person to the CLGF, no one has responded to me. The courtesy of a response is requested.

Summary: The Downtown Reno Partnership aka Reno Business Improvement District is a local government per your agency per NRS 354.474-1 and as such must report to your agency (see NRS 354.5965).

- So are you doing so? If not why? Is a formal complaint required?

NRS 354.595 is quite clear with the use of the word "shall" applying to the local government and the Department of Taxation.

Further in support of that finding that the DRP/BID is a local government, another state agency found as follows:

Nevada Commission on Ethics re: Jardon, Findings: (underline added)

"A. The Partnership is a unique entity. It was established by interested landowners specifically to work in support of the BID, which was created by the City. As such, it has no marketplace competitors for its services that are now at a disadvantage because of Jardon's employment. This nature of this type of public/private partnership means there are not open competitors for these contracts at this time.

B. The services provided are quasi-public such as city beautification and services of vulnerable populations"

Under IRS rules, to be a 501C6 Non-Profit, they must have membership and common business interests. The BID/DRP has no members nor such common interests. I believe there is an open IRS inquiry on this matter.

I take the liberty of assuming the Taxation letter was vetted through your Nevada Attorney General representative.

While Taxation has already so determined, if you need more please look at the Nevada A.G. opinions in "Mesquite", February 2013, AG file #13-021. The DRP/BID fails the non-profit test and the three prong local government test applies to the DRP/BID.

However, MRBI was created by the City of Mesquite City Council, it was funded by City of Mesquite, and the City of Mesquite City Council said it would control

MRBI. The City Council created and controls this nonprofit. By doing so, the local government implicated the open meeting laws of this state.

This office has interpreted the NRS 241.015(4) to mean that a public body must be a collegial body that: (1) owes its existence to and has some relationship with a state or local government; (2) be organized to act in an administrative, advisory, executive, or legislative capacity; and (3) performs a governmental function. A public body must also expend or disburse, or be supported in whole or in part by tax revenue, or advise or make recommendations to any entity which expends or disburses, or is supported in whole or in part by tax revenue. OMLO 99-05 (January 12, 1999).

As stated in their charter/ bylaws; two active elected government officials sit on the Board, one being a Reno City Council member clearly delineating them from an independent non-profit but rather as a tenacle of the City. Further, their Board of Advisors had 10 members, seven of whom are government employees and half- five of whom are City of Reno employees including the County Manager- the hand that feeds you!

The DRP/BID is subsidized by taxpayers Citywide as I can explain in detail including police training, equipment, OPEBs, liability, City Attorney, court costs, City administration, and many other areas. The money is allegedly allocated from Washoe taxes collections to the DRP/BID but is retained by Reno and paid to City departments/personnel with a fraction going to them.

As reflected in the DRP/BID (late) IRS 990 filing, \$2,696,657 appears to be from the City of Reno via collections from the Washoe County Tax Collector/ Treasurer vs approx. \$170,000 from other sources. Also noteworthy, per a separate agreement, it appears, de facto, that Reno retains most of that for services and the actual funds are never actually transferred to the DRP/BID.

While Taxation previously opined that the actual mandatory "fee" was not a tax, this updated info may chance that outlook coupled with recent court decisions and perhaps AG opinion elsewhere that need research.

FROM WASHOE SCHOOL DISTRICT (in part-edited) Referencing another proposed Reno fee)

Legal Concerns - Borough of West Chester v. Pennsylvania State System of Education (PSSE), 2023 WL 27942 (Comm. Ct. Pa. 2023), ... the local municipality sought to collect "fees" from all landowners with improved properties The Court reasoned that because the municipality did not base the "fee" on a direct or discreet benefit to the property owner, ... the stormwater utility "fee" was indeed a tax. See DeKalb County, Georgia v. United States, 108 Fed. Cl. 681 (Fed Cl. 2013) (Held that a county ordinance imposing a stormwater charge calculated according to impervious surface area of developed properties constituted a tax.)

See also Michigan Supreme Court, December 28, 1998, which declared, "We hold that the storm water service charge is a tax.

In re-looking at this issue consider that: (1) There is no "voluntary, contractual relationship" and that (2) tax laws, like others, should be strictly construed as to their plain meaning. The DRP/BID "fee" is levied against all property owners including vacant land, churches and non profits, based on size not benefit and with only a cursory appeal process.

So I ask Taxation/ CLGF to apply applicable oversight to the DRP/BID as required and perhaps review the tax issue in view of recent court cases.

Your guidance is sought if you need a formal complaint or other actions on my part.

Sincerely,

Jeffrey Church

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Mr. Church,

Please find enclosed various answers to questions posed in regards to the Reno Business Improvement District.

1. The main issues here: Is the BID Tax Assessment a tax?

No. The Reno BID assessments are special assessments, not general ad valorem taxes. The Reno Business Improvement District replaced two existing Special Assessment Districts.

2. May the Treasurer seize and sell property for nonpayment of the assessment portion of a tax bill?

Yes, NRS Chapter 271 specifically authorizes assessment lien sales by the municipal treasurer. *See NRS 271.545 through 271.630.*

NRS 271.410 states that any installment payment that is not paid in full on its due date shall cause the entire balance of the assessment (including unpaid interest) to come due and be payable immediately at the option of the municipality. If such action is taken by the municipality, it must be accompanied by foreclosure proceedings upon the property. (NRS 271.420 states that the payment of the assessment is secured by an assessment lien against the property.) If the unpaid installment is made prior to the day of the sale, however, foreclosure proceedings are stopped, and the right of the property owner to make annual installments on the remaining balance is restored as it was prior to the foreclosure action.

3. Do NRS 361.4724 and Nevada Constitution Art 10 restraints apply to the Assessment?

No, the partial abatements specified by NRS 361.4724 do not apply to the Reno BID assessments because the NRS 361.4724 only abates "the ad valorem taxes levied by a county" and the Reno BID is a municipal assessment.

No, Art. 10 Section 2 does not apply to directly to the Reno BID special assessments. However, as codified by NRS 271.270(2), bonds issued pursuant to NRS Chapter 271 are subject to the five cents per dollar limitation set forth in Art. 10 Section 2.

4. If it is a tax, then how can they tax exempt church property?

The Reno BID is a special assessment pursuant to NRS 271, not a tax pursuant to NRS 361. NRS Chapter 271 does not contain exemptions for churches and the exemption for churches set forth in NRS 361.125 does not apply.

5. As discussed today, the additional question if Taxation has jurisdiction is that the BID/DMO would then be subject to Nevada Taxation oversight as they are a public body making governmental decisions including the annual increase.

At a minimum, the Reno BID/DMO is subject to the jurisdiction of the Department pursuant to the Local Government Budget and Finance Act, pursuant to NRS 354.474(1). For instance, the creation of a special assessment/local improvement district pursuant to NRS 271 would appear to trigger budget reporting responsibilities for contracts associated with the expenditure of the special assessment levies pursuant to NRS 354.5965.

NRS 354.474 Applicability to local governments; “local government” defined.

1. Except as otherwise provided in subsections 2 and 3, the provisions of [NRS 354.470](#) to [354.626](#), inclusive, apply to all local governments. For the purpose of [NRS 354.470](#) to [354.626](#), inclusive:

(a) “Local government” means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to [chapters 244A, 318, 318A](#) and [379](#) of NRS, [NRS 450.550](#) to [450.750](#), inclusive, and [chapters 474, 541, 543](#) and [555](#) of NRS, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision.

(b) “Local government” includes:

(1) The Nevada Rural Housing Authority for the purpose of loans of money from a local government in a county whose population is less than 100,000 to the Nevada Rural Housing Authority in accordance with [NRS 354.6118](#). The term does not include the Nevada Rural Housing Authority for any other purpose.

(2) A regional authority formed pursuant to [NRS 315.7805](#) but, except as otherwise provided in subparagraph (1), does not include any other housing authority created by or pursuant to [chapter 315](#) of NRS.

2. An irrigation district organized pursuant to [chapter 539](#) of NRS shall fix rates and levy assessments as provided in [NRS 539.667](#) to [539.683](#), inclusive. The levy of such assessments and the posting and publication of claims and annual financial statements as required by [chapter 539](#) of NRS shall be deemed compliance with the budgeting, filing and publication requirements of [NRS 354.470](#) to [354.626](#), inclusive, but any such irrigation district which levies an ad valorem tax shall comply with the filing and publication requirements of [NRS 354.470](#) to [354.626](#), inclusive, in addition to the requirements of [chapter 539](#) of NRS.

3. An electric light and power district created pursuant to [chapter 318](#) of NRS shall be deemed to have fulfilled the requirements of [NRS 354.470](#) to [354.626](#), inclusive, for a year in which the district does not issue bonds or levy an assessment if the district files with the Department of Taxation a copy of all documents relating to its budget for that year which the district submitted to the Rural Utilities Service of the United States Department of Agriculture.

(Added to NRS by [1965, 726](#); A [1967, 937, 1387](#); [1969, 1390](#); [1971, 13, 1013, 1341](#); [1977, 539](#); [1979, 361](#); [1993, 1150](#); [1995, 815, 2553](#); [2005, 576](#); [2011, 1377, 1689, 2727](#); [2013, 2711](#); [2017, 1960, 2037, 2721](#))

Jeffrey Mitchell, Deputy Director