

NEVADA TAX COMMISSION MEETING

MINUTES

Nevada Legislative Building
401 S. Carson Street, Room 3137
Carson City, Nevada

Legislative Counsel Bureau
Grant Sawyer State Office Building
555 E. Washington Ave., Room 4412
Las Vegas, Nevada

September 13, 2018
10:00 a.m.

Members Present:

James DeVolld, Chairman
Tony Wren, Commissioner
Craig Witt, Commissioner
Randy Brown, Commissioner
Ann Bersi, Commissioner (Via Telephone)
Francine Lipman, Commissioner
Sharon Rigby, Commissioner (Via Telephone)
George Kelesis, Commissioner (Via Telephone)

Chairman DeVolld called the meeting to order at 10:00 a.m.

I. Public Comment:

Michael Pelham, in his capacity as Director of Government Affairs for the Nevada Taxpayer's Association (NTA), thanked Bill Anderson and staff for working with the NTA. He commented that the NTA agrees with the concept of economic nexus as established by the Supreme Court with the *Wayfair* decision, but the NTA does not agree with the execution of the concept by the Department of Taxation. Current statute doesn't include economic nexus and therefore doesn't define economic nexus; and because of this, the NTA believes that the only appropriate way to establish economic nexus is by statute.

II. Compliance Division:

A. Consideration for Approval of Adoption of LCB File No. R189-18:

- 1) Adoption of a Regulation relating to taxation; revising provisions relating to the imposition, collection and remittance of sales and use taxes by retailers located outside this State who have no physical presence in this State but who have a certain amount of retail sales or certain number of transactions of tangible personal property for delivery in this State; and providing other matters properly relating thereto.

Bill Anderson, the Executive Director of the Department of Taxation stated total taxable sales in Nevada have been on the rise for the past several years. Non-store retail sales have skyrocketed. Sales from traditional brick and mortar establishments have risen only marginally. The *Wayfair* decision dated June 21, 2018, eliminates a requirement that allowed states to only levy sales tax on entities that have a physical presence within a state. Nevada already has agreements with some large online retailers who collect and remit sales tax now. The *Wayfair* decision opens the door to require a potentially large group of out-of-state sellers to collect Nevada sales

tax. In terms of the impacts, we are looking at potentially \$30M dollars in tax revenue to the General Fund. The Department has worked hand in hand with the Legislative Counsel Bureau, sought input from the Attorney General's Office, and monitored what other states are doing, of which there are approximately 32 states trying to implement the *Wayfair* decision. Mr. Anderson thanked the Legislative Counsel Bureau for working with the Department.

Bill Anderson summarized LCB File No. R189-18 (the "Regulation") for the Commission.

Section 1 states the purpose of the Regulation which is to reduce the differing impacts as they pertain to the application of Sales and Use Tax between in-state and out-of-state retailers.

Section 2 does two main things. First it defines 'nexus' and offers the thresholds that online retailers will have to meet in order to be subject to Nevada Sales and Use Tax. The thresholds for retailers that sell tangible personal property delivered to this state with sales greater than \$100,000.00 or if the retailer made 200 or more sales of tangible personal property for delivery in this State. The second important piece of *Section 2* revolves around specifying when a business will have to start paying the tax. Once one or both of the thresholds are met, that business would then have to begin paying taxes at the beginning of the first month that is at least 30 days into the future.

Section 3 notes that the Department is responsible for publicizing when the Regulation will go into effect. An entity can voluntarily pay these taxes before the Regulation goes into effect but the Regulation itself will not be retroactive.

Should the Regulation be approved by the NTC, it would then have to go before the Legislative Commission. The Department's hope and plan is to implement this Regulation on October 1, 2018. When looking at the other 32 states that are pursuing this, the October 1st date is the most common target date for implementation

In regard to the issue of this being pursued through a regulation rather than legislation, the Department feels that a regulation will be acceptable but stands ready to cooperate should it be determined that legislation would be the preferred method for implementation.

Commissioner Brown asked for clarification as to whether the Legislative Counsel Bureau (LCB) or the Attorney General's office gave the Department a formal opinion in regard to the regulation versus legislation issue, or if it was collaboratively agreed upon.

Director Anderson responded by informing the Commissioner that there is not a formal Attorney General's opinion nor is there a formal LCB opinion. Director Anderson explained that the Department worked with LCB from a day or two following the June 21st *Wayfair* decision. Several meetings were held and the Department and LCB worked collaboratively to write the Regulation. LCB is comfortable approaching this from a regulatory standpoint.

Chairman DeVolld asked Director Anderson how many of the other 32 states are pursuing this matter through regulation compared to legislation.

Director Anderson stated he does not have an exact number, but a good number of states are pursuing this through regulation.

Chairman DeVolld asked Michael Pelham of the Nevada Tax Association if it would be disagreeable to level the playing field before one of the largest shopping periods begin in the fourth quarter, or if the NTA

felt as though we would be usurping something by not using the legislative process. The Chairman asked if somebody within the NTA would be willing to give up a bill draft to get it where they want it to be.

Michael Pelham stated that the NTA is searching for a bill draft. When the decision was first rendered from the Supreme Court there were no members of the NTA that opposed it. Multiple big box retailers within the NTA have commented that this would level the playing field and were not opposed to this decision.

Commissioner Lipman asked for clarification about how this will be implemented. Specifically, will the look back period be 12 months or based on the calendar year.

Director Anderson answered by saying that the Regulation is not retroactive, so there would be no look back. The Department intends to view this on a calendar year basis as opposed to a fiscal year basis to make it easier for businesses.

Commissioner Lipman asked when the first time period that a business is subject to this tax.

Director Anderson stated large online retailers would probably hit the threshold pretty quickly and would likely begin paying tax beginning on December 1, 2018.

Commissioner Kelesis was prepared to make a motion to adopt the Regulation. Chairman DeVolld gave the floor to Commissioner Rigby who had a question.

Commissioner Rigby stated Page 4 Paragraph D seems to be a vague catch-all that would serve to muddy rather than to clarify whether or not this Regulation would apply to a large retailer.

Shellie Hughes, Chief Deputy Executive Director for the Department of Taxation, responded that the language in question was borrowed from NRS 372.724 which gives the authority for the Regulation.

Chairman DeVolld mentioned that Paragraph D states "... engages in any other activity" and he believes that is the important component because he is not sure that we can grab every individual situation.

Commissioner Rigby asked what difference it would make if paragraph D was completely removed.

Chairman DeVolld said that he is comfortable with paragraph D because he is unable to tell what the future will hold and the catch-all is welcome.

Commissioner Kelesis can see both Chairman DeVolld's and Commissioner Rigby's points in this matter but he stated that he would opt for the catch-all.

Commissioner Kelesis reinstated his motion to adopt LCB File No. R189-18. Commissioner Bersi seconds the motion. Chairman DeVolld acknowledges the motion and second and asks if there are any more questions.

Commissioner Wren asked who the retailers are that we are trying to pick up and how will we track them.

Director Anderson stated that the Department will be doing that on a number of fronts. First, the Department of Taxation's website will have educational material to help taxpayers understand the Regulation and who it applies to. He also said that being a member of the Streamlined Sales Tax group will also help. He said that some businesses will come forward voluntarily and some will be found through the Department's normal auditing process.

Chairman DeVolld stated there is a motion from Commissioner Kelesis and a second by Commissioner Bersi. All in favor. Motion carries.

III. BRIEFING:

- A. Briefing to/from the Commission and the Executive Director.

No items were discussed.

IV. Next Meeting Date: October 1, 2018

V. Public Comment.

There was no public comment.

VI. Meeting adjourned at 10:36 a.m.