

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB FILE NO. R189-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 07/17/2018**

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R____-18

July 9, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-2, NRS 360.090, 372.724, 372.725, 374.724 and 374.725.

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; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law ...

Section 1. Section 7 of LCB File No. R137-15 is hereby amended to read as follows:

1. For the purpose of determining whether the activities of a retailer located outside this State have a sufficient nexus with this State to satisfy the requirements of the United States Constitution, ~~If the activities of~~ except as otherwise provided in NRS 372.7243, 372.7247, 374.7243 or 3724.7247 or section 5 or 6 of LCB File No. R137-15, a retailer ~~are presumed to have a~~ has sufficient nexus with this State if the retailer is making a sale of tangible personal property, whether at retail or for storage, use or other consumption in this State, and the retailer:

(a) Is part of a controlled group of corporations that has a component member with physical presence in this State and the activities performed in this State by the component member are:

(1) Listed in paragraph (b) of subsection 1 of NRS 372.7243 or paragraph (b) of subsection 1 of NRS 374.7243; or

(2) Significantly associated with the retailer's ability to establish or maintain a market in this State for the retailer's products or services ***and: [; or]***

(b) Enters into an agreement with a resident of this State under which the resident, for a commission or other consideration based upon the sale of tangible personal property by the retailer, directly or indirectly refers potential customers to the retailer, and the cumulative gross receipts from sales by the retailer to customers in this State who are referred to the retailer by all residents with such an agreement with the retailer is in excess of \$10,000 during the preceding four quarterly periods ending on the last day of March, June, September and December **H**; **or**

(c) Does not have a physical presence in this State, does not have sufficient nexus with this State pursuant to paragraph (a) or (b), and in the immediately preceding calendar year or the current calendar year:

(1) The gross revenue of the retailer from the retail sale of tangible personal property delivered in this State is greater than \$100,000; or

(2) The retailer made 200 or more retail sales of tangible personal property for delivery into this State; or

(d) Engages in any other activity that establishes sufficient nexus with this State to satisfy the requirements of the United States Constitution.

2. If a retailer is unable to determine which sales to customers in this State were the result of an agreement with a resident of this State as described in paragraph (b) of subsection 1, all gross receipts from sales by the retailer to customers in this State will be considered for purposes of establishing **[the presumption]** that the activities of a retailer have a sufficient nexus with this State.

3. If ~~the activities of~~ a retailer located outside this State ~~are presumed to have~~ **has** a sufficient nexus with this State ~~is~~ **pursuant to subsection 1**, the retailer shall:
- (a) Impose, collect ~~for~~ **and** remit the sales ~~for~~ **tax and collect and remit the** use tax ~~pursuant to NRS 372.7243, 372.7247, 374.7243 or 374.7247;~~ **in accordance with the provisions of chapters 360B, 372 and 374 of NRS;** and
 - (b) Register with the Department pursuant to NRS 360B.200 before, or at the time of, making ~~the~~ **a retail sale of tangible personal property for delivery in this State.**

4. As used in this section, “commission or other consideration based upon the sale of tangible personal property” includes, without limitation, an agreement to pay an amount of money based on the level of sales completed, cost per mille advertising, the payment of a flat fee in exchange for a referral, the payment of a fixed price in exchange for providing a referral link, or any other item of value given in exchange for a referral.

Sec. 2. This regulation, LCB File No. R____-18, is hereby amended by adding thereto the following transitory language which has the force and effect of law but which will not be codified in the Nevada Administrative Code:

- 1. The Department shall establish the date by which each retailer who satisfies the criteria set forth in paragraph (c) of subsection 1 of section 7 of R137-15, as amended by section 1 of this regulation, is required to:
 - (a) Begin to impose, collect and remit sales tax and collect and remit use tax in accordance with the provisions of chapters 360B, 372 and 374 of NRS; and
 - (b) Register with the Department pursuant to NRS 360B.200.
- 2. Notwithstanding the provisions of section 7 of R137-15, as amended by section 1 of this regulation, and except as otherwise provided in subsection 3, before the date established by the

Department pursuant to subsection 1, the Department shall not require a retailer who satisfies the criteria set forth in paragraph (c) of subsection 1 of section 7 of R137-15, as amended by section 1 of this regulation to:

- (a) Impose, collect and remit sales tax and collect and remit use tax in accordance with the provisions of chapters 360B, 372 and 374 of NRS; or
- (b) Register with the Department pursuant to NRS 360B.200.

3. The provisions of this section do not prohibit a retailer who satisfies the criteria set forth in paragraph (c) of subsection 1 of section 7 of R137-15, as amended by section 1 of this regulation, from voluntarily consenting to:

- (a) Impose, collect and remit sales tax and collect and remit use tax in accordance with the provisions of chapters 360B, 372 and 374 of NRS; and
- (b) Register with the Department pursuant to NRS 360B.200.