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Reply to: Reno

May 19, 2016

Deonne Contine
Director
Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706

Re: Comments on LCB File No. R137-15

Dear Director Contine,

Thank you for the opportunity to provide comment on the draft regulation LCB File No. R137-15. We hereby submit the following comments on behalf of the Retail Association of Nevada ("RAN").

Section 2(1)

This section uses several terms which are not defined, such as "brick and mortar retailers," "online retailers," and "domestic commercial entities." The Department may want to consider using terms like "retailer located inside/outside this State" to be more clear and consistent with other language in the proposed regulation. Additionally, AB 380 is not limited to online retail activities, it also applies to retail activities based out of state conducted by means such as phone or mail. This subsection seems to suggest that AB 380 is constrained to online retail sales. RAN believes this section is unnecessary as the legislative intent and purpose behind AB 380 is clear from the legislative record and need not be restated in a regulation.

Section 2(2)

This section states that it is the policy of the state to ensure that the "activities of the retailer establish a substantial nexus with the State." This seems confusing as the policy of the State, as set forth in AB 380, is to establish a means by which a retailer and the Department can determine whether there is nexus between the retailer and the State for sales and use tax purposes. The section also states that the policy of the State is to apportion the tax burden fairly among retailers, to not discriminate against interstate commerce, and to collect taxes that fairly relate to

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services of the State. Some of these propositions seem to go without saying and may not need to be restated in a regulation. The sentence regarding collecting taxes that fairly relate to services seems to be more the job of the Legislature than the Department. It seems this subsection can be deleted in its entirety without impacting the rest of the regulation.

Section 3

The regulation mirrors the language in AB 380 regarding whether a retailers activities are “significantly associated” with the retailers ability to maintain or establish a market in Nevada. However, the regulation doesn’t state what the phrase “significantly associated” means. This is an area that deserves some more attention and clarity.

Section 4

We have the same comment with respect to the use of the phrase “significantly associated” in this section. Also, Section 4(2)(b) states that a written certification of a retailer “must contain a statement that the resident did not engage in any solicitation activities in this State . . .” The standard of not engaging in “any solicitation activities” seems inconsistent with the “significantly associated” standard.

Section 5

The regulation states that AB 380(2), (3), (5) and (6) create a requirement that a retailer impose, collect or remit sales or use tax. However, that is not what those sections say. The obligation to impose, collect or remit sales or use tax is in other sections of Chapters 372 and 374. Instead, AB 380 establishes a nexus presumption and a way to rebut it. This section should probably say that a retailer who is making a taxable sale or use and who has not rebutted the presumptions set forth in AB 380 must register with the Department, and such a statement may be more appropriate at the beginning of the regulation than at the end.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Josh Hicks'.

JOSHUA J. HICKS