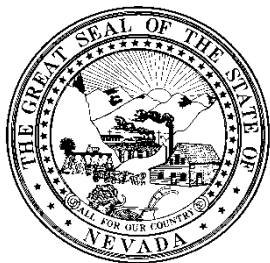


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# NEVADA DEPARTMENT OF TAXATION

<http://tax.nv.gov>



## Tax Bulletin SUT 17-0001 Issue Date: May 8, 2017 Private Party Transfers of Firearms

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### Statutes and/or Regulations References

NRS 202.254, NRS 372.025, NRS 372.035, NRS 372.055, NRS 372.060, NRS 372.105, NRS 372.125, NRS 372.320, NAC 372.160.

### Introduction

This bulletin provides information for retailers who perform background checks for private party transfers of firearms.

Approved by popular initiative in 2016, the Nevada Background Check Act (the "Act") states that a private party seller and a private party buyer must, in most circumstances, request a background check from a federally licensed firearms dealer ("FFL") in order to lawfully consummate the private sale or transfer of a firearm. *See* NRS 202.254, as amended by the Act. The Act expressly incorporates regulatory guidance issued by the U.S. Bureau of Alcohol Tobacco and Firearms concerning the manner in which the FFL must conduct the required background check. *See* ATF Proc. 2013-01. More specifically, the Act states that the FFL must take possession of the firearm from the seller and document it as an item of the FFL's inventory before requesting a background check on the prospective buyer. Once the transaction is approved through applicable background check protocols, the FFL may transfer the firearm from the FFL's inventory to the buyer.

In no event does the FFL have an obligation to collect sales tax unless, in addition to having performed the background check, the FFL has simultaneously brokered the sale by negotiating terms on behalf of the seller and/or charging a commission against the proceeds of the sale.

#### **1. The FFL does not make a retail sale simply by conducting the background check.**

For the privilege of selling tangible personal property at retail, a retailer is subject to a tax upon the retailer's gross receipts from retail sales. NRS 372.105. The term "gross receipts" includes amounts realized by the retailer from charges for services that are part of the retailer's sale of tangible personal property. NRS 372.025(2)(a). A "sale" is the transfer of title or possession of tangible personal property for a consideration. NRS 372.060(1). A "transfer of possession" is a sale only in transactions found by the Tax Commission to be in lieu of a transfer of title. NRS 372.060(2).

As an example of persons who are characterized as retailers even when they do not hold the title to tangible personal property in their possession, consignees are retailers when engaged in the business of selling the tangible personal property owned by others. NRS 372.055(1)(a) and NAC 372.160. In these situations, the consignee takes and transfers possession of the property for the purpose of negotiating the terms of the sale, transferring title on the seller's behalf, and/or sharing in the proceeds of the sale. Here, by contrast, the transfer of possession of the firearm to the FFL is for the purpose of providing the **service** of conducting a background check on the prospective buyer. When performed by someone other than the retailer of the tangible personal property that is the subject of the transaction, a service is not subject to the imposition of the sales tax.

Although the Act states that the FFL must document the firearm as an item of inventory, this is a technical requirement that enables the FFL to access the NICS data base under federal law. It does not alter the essential characteristics of the transaction such that the FFL may properly be characterized as the "retailer" of the firearm pursuant to Nevada's sales and use tax statutes. In this context, the FFL for a flat fee acts as an independent service provider to the private seller and the private buyer of the firearm.

The FFL's possession of the firearm for purposes of conducting the background check is distinguishable from the situation where the FFL acts as delivery agent for an out-of-state retailer in order to complete the interstate sale of a firearm between the out-of-state retailer and the in-state buyer. See NRS 372.050(2), SUT 15-0001. Under these circumstances, NRS 372.050(2) expressly characterizes the in-state FFL as the "retailer" of the firearm. However, when the FFL merely performs a background check for the purpose of facilitating an intrastate sale between private parties, the FFL takes possession of the firearm for the limited purpose of completing the mandatory background check for both parties to the transaction and not for the purpose of selling the firearm on the owner's behalf

## **2. Sellers who make only occasional sales are not retailers for purposes of sales tax.**

A "retailer" is a seller who makes more than two retail sales during any 12-month period. NRS 372.055. Upon making more than two sales in any 12-month period, a seller must register with the Department and obtain a seller's permit. NRS 372.125. Fewer than two sales are considered "occasional sales," and occasional sales are exempt from the sales tax. NRS 372.035, 372.320. Provided that the seller has not made more than two sales during any 12-month period, the seller has no obligation to collect sales tax from the buyer.

## **Conclusion**

This bulletin contains the following conclusions:

- When a seller of a firearm and a purchaser have negotiated the terms of the sale in advance and then bring the firearm to an FFL to meet the statutory requirement of the Act, the FFL is not a retailer and is not liable for collecting sales or use tax.
- A private party seller who makes fewer than two sales per calendar year is exempt from collecting sales tax as these are "occasional sales."