

AAA Team Sales Tax, LLC

December 4, 2023

Nevada Tax Commission
1550 College Parkway, Suite 115
Carson City, NV 89706

Hello Commissioners,

Enclosed, you will find the following:

1. Public comment on NAC 372.938- Collection and payment of sales tax on lease or rental of tangible personal property.

Questioning the **Accuracy** and **Validity** of Nevada Administrative Code (NAC) 372.938-
Collection and payment of sales tax on lease or rental of tangible personal property.

2. Public comment on the Federally Mandated Background Check Fee collected by the local Federal Firearm Licensees (FFL).

Tax Bulletin SUT 15-0001 and Tax Bulletin SUT 17-000 are incorrect.

Thank You and Be Safe!

Ron Voigt
702-321-9245

AAA Team Sales Tax, LLC

December 4, 2023

Nevada Tax Commission
1550 College Parkway, Suite 115
Carson City, NV 89706

Subject: Nevada Revised Statute (NRS) 372.050 "Retail Sale" and "Sale at Retail" defined CANNOT be amended or repealed by the Nevada Legislature or Nevada Tax Commission.

Questioning the **Accuracy** and **Validity** of Nevada Administrative Code (NAC) 372.938-
Collection and payment of sales tax on lease or rental of tangible personal property.

Hello Commissioners,

I can just see the big eyes from some folks in the Nevada Department of Taxation and saying to themselves "What is Ron talking about? Well, here is my answer:

Background:

Existing law includes various provisions of the Sales and Use Tax Act of 1955. (NRS 372.010-372.115, 372.185-372.205, 372.260-372.284, 372.285-372.325, 372.327-372.345, 372.350). Under existing law, the provisions of that Act, which was submitted to and approved by the voters at the 1956 General Election, cannot be amended or repealed without additional voter approval. (Nevada Constitution, Article 19-Initiative and Referendum, Section 1)

In early 2009, the Nevada Legislature passed Senate Bill 502 Sections 39-47 to provide for the submission to the voters of an amendment to that Act to authorize the Legislature to amend that Act without any additional voter approval as necessary to carry out any federal law or interstate agreement (Example: Streamlined Sales and Use Tax Agreement) for the administration of sales and use taxes, unless the amendment would increase the rate of a tax imposed pursuant to that Act, and to repeal a section of that Act that was declared unconstitutional by the Nevada Supreme Court in *Worldcorp v. State*, Department of Taxation, 113 Nev. 1032 (1997).

On November 2, 2010, the citizens of Nevada rejected giving the Nevada Legislature such authorization. (see enclosed)

Conclusion

Existing law prohibits the Nevada Legislature or NTC amending or repealing NRS 372.050 "Retail Sale" and "Sale at Retail" defined with NAC 372.030/NRS 360B.067.

Because NAC 372.030/NRS 360B.067 are the key components behind NAC 372.938, the **Accuracy** and **Validity** of NAC 372.938 that allows the taxpayer (retailer) to consider a rental charge as a retail sale and report on the rental stream is a violation of law and, therefore, the only option is for the taxpayer (retailer) to pay use tax on the cost of the rental property to the retailer. Since it is a use tax issue, nothing stops the NTC to return to the past NAC that allowed the taxpayer to report use tax off the rental stream.

The question to ask "Is a rental equipment charge considered a retail sale and my answer is NO. For this reason, it because a use tax issue based on NRS 372.185. Since the option to report use tax off the rental stream has been taken out of NAC 372, the only choice the Taxpayer has is to report use tax based on the cost of the rental equipment.

Thank You and Be Safe!

Ron Voigt
702-321-9245

THE FACTS

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Sales and Use Tax Amendment

Nevada Ballot Measure - Question No.

3

Election: Nov. 2, 2010 (General)

Outcome: Failed

Categories:

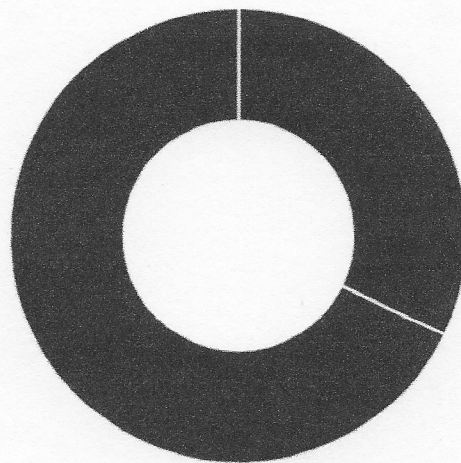
[Government Budget and Spending](#)

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[Arguments For](#)

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VOTES



YES: 213,759

NO: 451,186

Summary

This proposed amendment to the Sales and Use Tax Act of 1955 would authorize the Nevada Legislature to enact legislation amending or repealing any provision of this Act without obtaining voter approval whenever such legislation is necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection, or enforcement of sales and use taxes. The proposed amendment would not authorize the Legislature, without obtaining voter approval, to enact any legislation that increases the rate of any tax imposed pursuant to this Act, or to narrow the scope of any exemption under the Act.

Nevada has enacted laws providing for the administration of sales and use taxes in accordance with the interstate Streamlined Sales and Use Tax Agreement to which Nevada is a member. The purpose of this Agreement is to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and types of commerce within and across state lines. To avoid a conflict with the provisions of the Agreement, the Legislature may be required to enact legislation amending the Sales and Use Tax Act of 1955 in response to federal legislation approved by Congress affecting the Agreement or in response to interstate actions amending the Agreement. The Legislature has the authority to amend

local sales taxes without voter approval, but the Sales and Use Tax Act, which was enacted by referendum, cannot be amended without voter approval. Passage of this question would grant limited authority to amend the Sales and Use Tax Act to resolve certain conflicts.

A **"Yes" vote** would authorize the Legislature to amend or repeal any provision of the Sales and Use Tax Act of 1955 without voter approval in order to resolve a conflict with federal law or interstate agreements for the administration, collection, or enforcement of the sales and use tax, except for legislation that would increase the rate of tax imposed pursuant to the Act or narrow the scope of any exemption under the Act.

A **"No" vote** would continue to require the Legislature to obtain voter approval before enacting any legislation amending or repealing any provision of the Sales and Use Tax Act of 1955.

Measure Text

Shall the Sales and Use Tax Act of 1955 be amended to authorize the Legislature to amend or repeal any provision of this Act only if necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection, or enforcement of sales and use taxes?

Yes No

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December 4, 2023

Nevada Tax Commission
1550 College Parkway, Suite 115
Carson City, NV 89706

Subject: Public comment on the Federally Mandated Background Check Fee collected by the local Federal Firearm Licensees (FFL).

Tax Bulletin SUT 15-0001 and Tax Bulletin SUT 17-0001 (see enclosures) are incorrect.

Hello Commissioners,

Errors in Tax Bulletins

1. The Department misquoted NRS 372.105 with the following phrase:
"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."

Correct phrase taken directly from NRS 372.105 is as follows:

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this State.

Errors: The retailer is not subject to a tax; the tax is imposed. They are trying to it sound like the FFL is responsible for the sales tax liability or use tax liability of the Nevada resident who purchase the firearm from online out of state vendor. The Wayfair decision put any sales tax responsibility of collecting sales tax on the online out of state vendor. If use tax is due by the Nevada Resident, then NRS 372.185 is the reference statute.

2. The Department misquoted NRS 372.025 (2)(a) with the following phrase:
" 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)."

Correct phrase taken directly from NRS 372.025(2)(a) is as follows:

Any services that are a part of the sale.

Errors: The Nevada Supreme Court defines NRS 372.025 as Gross Receipts/Total Retail Sales Price. The Background Check fee is not part of the sale of the firearm. The fee is not recorded on the same sale invoice for the firearm. the firearm sales transaction is between the Nevada Resident and the Online out of state vendor. The background fee is between the FFL and the Nevada Resident on a totally separate sales invoice, Now, I ask the Commissioners to think about how it is recorded according to FASB (Financial Accounting Standard Board). These are two totally different sales transactions recorded on separate sales invoices. One sales transaction (firearm) is recorded on the online out of state vendor's detailed general ledger/financial statement. The other sales transaction (background check fee) is recorded on the FFL's detailed general ledger/financial.

3. The Department misquotes NRS 372.060 (1) with the following phrase:
A “sale” is the transfer of title or possession of tangible personal property for a consideration.”

Correct phrase taken directly from NRS 372.060 (1) is as follows:

“Sale” means and includes any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

Error: Since NRS 372.060 defines manufacturer’s price, it is not used in determining what is subject to sales tax or in the calculation of sales tax due to the State.

NRS 372.105 states “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.”

4. The Department misquotes NRS 372.060 (1) with the following phrase:
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).”

Correct phrase taken directly from NRS 372.060 (2) is as follows:

“Transfer of possession,” “lease,” or “rental” includes only transactions found by the Tax Commission to be in lieu of a transfer of title, exchange or barter.

Error: Since NRS 372.060 defines manufacturer’s price, it is not used in determining what is subject to sales tax or in the calculation of sales tax due to the State.

NRS 372.105 states “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.”

Comment on Government Regulatory Fee

The Background Check Fee is a Government Regulatory Fee and Not Subject to Sales Tax. The background check fee required by DPS is regulatory in nature, intended to provide a public service and regulate legal possession of firearms. Under federal law, in the transfer of a firearm in interstate commerce, the seller must perform a background check on the consumer to ensure that the consumer may legally possess a firearm. Because the \$25 background check fee is required by law it is not a service as part of the sale and is therefore not included in the sale price.

Comment on Department trying to treat the FFL as a consignee

Very simple answer. The local FFL had nothing to do or any association with the sale of the tangible personal property. All the FFL is doing is collecting Federally Mandated Background Check Fee and forward it on to the federal government. The firearm is never recorded as inventory in the FFL’s detailed general ledger/financial statement. The local FFL never receives a commission. The FFL never advertises the firearm for sale such as putting it in public view in the store. The local FFL never mentions to customers coming into the store that the applicable firearm is for sale. Now, there will be folks in the audit section that believe if the local FFL makes a profit on the Federal Mandated Background Check Fee that the profit is subject sales tax. I would disagree; you have to have a taxable sale before the service can be subject to sales tax. In this case, the Federal Mandated Background Check is not subject to Nevada Sales Tax.

Wayfair vs South Dakota decision by the United States Supreme Court

If the out-of-state online vendor who sold the firearm to the Nevada Resident had \$100,000 sale or 200 or more separate or more separate transactions, then that out-of-state online vendor is responsible for collecting any sales tax owed and forwarding it on to the Department.

This decision changes the whole ballgame on how out-of-state online companies are handled by the Nevada Department of Taxation. It makes a major impact.

Nevada Revised Statute (NRS) 372.185 Imposition and rate

NRS 372.185 Imposition and rate.

1. An excise tax is hereby imposed on the storage, use or other consumption in this State of tangible personal property purchased from any retailer on or after July 1, 1955, for storage, use or other consumption in this State at the rate of 2 percent of the sales price of the property.

2. The tax is imposed with respect to all property which was acquired out of state in a transaction that would have been a taxable sale if it had occurred within this State.

Purchases made in Nevada from out-of-state retailers are subject to Nevada's use tax, which the purchaser is liable for remitting to the Department when no sales tax was collected by the retailer. Now I know there will be folks in the audit section that believe the Nevada Resident or local FFL is responsible to make sure the retailer. I disagree. Ask yourself, that is asking a lot from the Nevada Resident or local FFL. Simple answer is if there is no sales tax charged on the sales invoice issued to the Nevada Resident by the out of state online vendor, then the Nevada Resident is responsible for paying any applicable use tax to the Department. To require the local FFL to paid the use tax defies any logically accounting method. In plain talk, it makes no sense.

In closing, I will mention the Nevada Taxpayers' Bill of Rights (NRS 360.291):

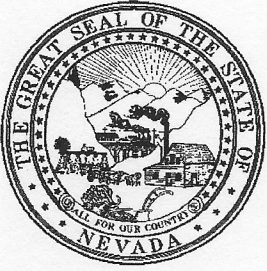
“To have statutes imposing taxes and any regulations adopted pursuant thereto construed in favor of the taxpayer if those statutes or regulations are of doubtful validity or effect, unless there is a specific statutory provision that is applicable.”

Thank You and Be Safe!

Ron Voigt
702-321-9245

NEVADA DEPARTMENT OF TAXATION

<http://tax.nv.gov>



Tax Bulletin SUT 15-0001 **Issue Date: January 26, 2015** **Taxation of Interstate Retail Sales of Firearms**

Statutes and/or Regulations referenced

NRS 372.105; NRS 372.055; NRS 372.025; NRS 372.110; NRS 372.065; NRS 372.050

Introduction

This Technical Bulletin addresses the scenario when a Nevada resident purchases a firearm from an out of state retailer who has it shipped to an in state retailer for completion of the background check and for delivery to the consumer in Nevada.

The retail sale of firearms requires a background check under federal law. In Nevada, the background check is handled by the Department of Public Safety ("DPS") which manages the Central Repository for Nevada Records of Criminal History. DPS charges \$25 for the completion of the background check.¹

If a Nevada consumer purchases a firearm from an out-of-state seller, the seller must ship the firearm to a federal firearms licensee (FFL) in Nevada. The FFL completes the background check and may charge a fee for facilitating the transfer of the firearm. If the background check results in a "proceed" determination, the Nevada consumer may legally possess the firearm. The Nevada FFL prepares the records that are required pursuant to federal law, and the Nevada consumer receives the firearm.

1. Delivery of the Firearm in Nevada Is A Retail Sale and the Nevada Retailer Must Collect and Remit Sales Tax on the Purchase of the Firearm.

For the privilege of selling tangible personal property at retail, a retailer is subject to a tax upon his gross receipts. A "retailer" is a seller who makes more than two retail sales annually. "Gross receipts" is the total amount of the sale price.

NRS 372.050(2) provides:

The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for

¹ See NRS Chapter 179A for provisions related to background checks in Nevada. See 18 U.S.C. §922(a)(3) and (b)(3) federal rules on the shipment of firearms across state lines.

redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State, is a retail sale in this State by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

When a Nevada consumer purchases a firearm from an out of state retailer not licensed to do business in Nevada, the Nevada FFL receives the delivery of tangible personal property, presumptively shipped by "an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor," for "redelivery to a consumer." As the "person making the delivery," the FFL must include the retail selling price of the property in his gross receipts, and must collect the sales tax due from the consumer.

A. Out of State Retailers Licensed In Nevada

If the out of state retailer is licensed to do business in Nevada, that retailer would be responsible for remitting the sales tax to the Department. NRS 360B.200, 372.105.

B. Taxability When Person Making the Sale is Not a Retailer

The statute provides an exemption for a sale by a person that is not a retailer. If the firearm is obtained from a person making an occasional sale there are no sales or use taxes due. An occasional sale is a sale by a person who has made two or fewer retail sales of tangible personal property during any 12-month period. NRS 372.320.

2. The Background Check Fee is a Government Regulatory Fee and Not Subject to Sales Tax.

The background check fee required by DPS is regulatory in nature, intended to provide a public service and regulate legal possession of firearms. Under federal law, in the transfer of a firearm in interstate commerce, the seller must perform a background check on the consumer to ensure that the consumer may legally possess a firearm. Because the \$25 background fee is required by law it is not a service as part of the sale and is therefore not included in the sale price.

3. Fees or Service Charges By The Firearms Dealer Are Subject to Taxation.

On the other hand, a fee or service charge assessed by the FFL or the out of state dealer to cover costs, including costs incurred for the delivery of the firearm is subject to sales tax because "sales price" includes the cost of materials used, labor or service cost. The retail selling price is the total consideration for which the property is sold: the amount paid to the out of state seller and any fee by the FFL to process the transfer.

4. Firearm Repair Services Are Not Taxable.

When a Nevada Resident sends his firearm out of state for repair and the firearm is returned to the consumer by a Nevada FFL, because repair services are not subject to taxation in Nevada, the FFL does not have to collect any tax from the consumer when the firearm is returned to the consumer in Nevada.

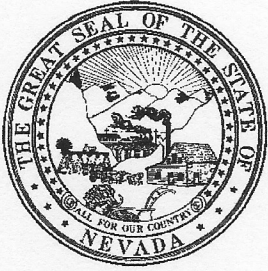
Conclusion

This bulletin contains the following conclusions:

- When a FFL delivers a firearm purchased from an out of state retailer to a Nevada consumer, the Nevada FFL must collect and remit sales tax on the purchase price of the firearm unless the consumer can show that tax has been paid or that the sale is an occasional sale.
- The sales price does not include the mandatory background check fee required by DPS but does include any fees assessed by the firearm retailer(s).
- Nevada dealers are not required to collect sales tax on firearm repair services.

NEVADA DEPARTMENT OF TAXATION

<http://tax.nv.gov>



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

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."