
NEVADA DEPARTMENT OF TAXATION

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Taxation of Interstate Retail Sales of Firearms

Statutes and/or Regulations Referenced

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

Introduction

This Technical Bulletin addresses the scenario when a Nevada resident purchases a firearm from an out-of-state or in-state retailer (hereinafter "Retailer") who has it shipped to an in-state Federal Firearm Licensee ("FFL") for completion of the background check, including completion of Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Form 4473, and for delivery to the consumer in Nevada.

The retail sale of firearms requires a background check and the completion of Form 4473 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 Form 4473 is retained by the licensed gun dealer as required by ATF regulations.

If a Nevada consumer purchases a firearm from an out-of-state Retailer, the Retailer must ship the firearm to a FFL in Nevada. The FFL completes the background check and the Form 4473. The FFL may charge a fee for the background check and completion of ATF 4473, facilitating the delivery 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.

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.

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 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. Retailers Licensed in Nevada

If the 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 Retailer 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 To Handle And Process The Delivery Are Not Subject to Sales Tax.

A fee or service charge assessed by the FFL or the Retailer to cover costs associated with the background check, including costs incurred for the delivery of the firearm is not subject to sales tax if the fee is separately stated and not included in the retail selling price or gross receipts of the FFL. A Nevada consumer can only take possession of a firearm purchased out of state if the firearm is shipped to a Nevada FFL and the FFL completes a background check and the ATF Form 4473 before delivery to the consumer. The FFL may charge a fee or service charge to handle and process the transfer. The fee is not subject to tax because it is required by law that a Retailer transfer the firearm to a Nevada FFL and requires the FFL to run a background check, complete the ATF Form 4473, and inspect the firearm to verify that the serial number on the firearm matches the Retailer's paperwork.

4. Firearm Repair Services Are Not Taxable.

When a Nevada Resident sends his firearm to a Retailer 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 a 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 or any fees assessed by the firearm retailer(s) to process the delivery.
- Nevada dealers are not required to collect sales tax on firearm repair services.