

Assembly Bill No. 455—Assemblymen Goldwater,
Cegavske and Arberry

Joint Sponsors: Senators McGinness,
Coffin and Schneider

CHAPTER.....

AN ACT relating to taxation; authorizing the Nevada tax commission to enter into, under certain circumstances, the streamlined sales and use tax agreement, to act jointly with other states to simplify and modernize sales and use tax administration, take other actions reasonably required to implement the agreement and represent this state before the other states that are signatories to the agreement; allocating certain liabilities among certain participants in certain sales or services that involve more than one state; specifying that no provision of the agreement invalidates or amends any provision of Nevada law; requiring out-of-state retailers who contract with the state or a political subdivision to agree to collect sales tax on sales within this state; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *Sections 2 to 18, inclusive, of this act shall be known as the Simplified Sales and Use Tax Administration Act.*

Sec. 3. *The legislature hereby finds and declares that:*

1. A simplified sales and use tax system will reduce, and over time eliminate, the burden and cost for all vendors to collect this state's sales and use tax.

2. This state should enter into an agreement with one or more states to simplify and modernize sales and use tax administration to reduce substantially the burden of tax compliance for all sellers and for all types of commerce.

3. This state should participate in multistate discussions to review and, if necessary, amend the terms of the agreement to simplify and modernize sales and use tax administration to reduce substantially the burden of tax compliance for all sellers and for all types of commerce.

Sec. 4. *As used in sections 2 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 11, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 5. *“Agreement” means the streamlined sales and use tax agreement.*

Sec. 6. *“Certified automated system” means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.*

Sec. 7. *“Certified service provider” means an agent certified jointly by the states that are signatories to the agreement to perform all of a seller's sales tax functions.*

Sec. 8. *“Sales tax” means the tax levied by section 19 of chapter 397, Statutes of Nevada 1955, at page 766, and any similar tax authorized by specific statute.*

Sec. 9. *“Seller” means any person making sales, leases or rentals of personal property or services.*

Sec. 10. *“State” means any state of the United States and the District of Columbia.*

Sec. 11. *“Use tax” means the tax levied by section 34 of chapter 397, Statutes of Nevada 1955, at page 769, as amended by section 3 of chapter 513, Statutes of Nevada 1985, at page 1562, and any similar tax authorized by specific statute.*

Sec. 12. *The Nevada tax commission shall:*

1. Except as otherwise provided in section 13 of this act, enter into the agreement.

2. Act jointly with other states that are members of the agreement to establish standards for:

- (a) Certification of a certified service provider;*
- (b) A certified automated system; and*
- (c) Performance of multistate sellers.*

3. Take all other actions reasonably required to implement the provisions of sections 2 to 18, inclusive, of this act, including, without limitation:

(a) Adoption of regulations to carry out the provisions of sections 2 to 18, inclusive, of this act; and

(b) Procurement, jointly with other member states, of goods and services.

4. Represent, or have its designee represent, the state before the other states that are signatories to the agreement.

5. Designate not more than four delegates, who may be members of the commission, to represent the state for the purposes of reviewing or amending the agreement.

Sec. 13. *1. The Nevada tax commission shall not enter into the agreement unless the agreement:*

(a) Sets restrictions to limit over time the number of state rates.

(b) Establishes uniform standards for:

- (1) The sourcing of transactions to taxing jurisdictions;*
- (2) The administration of exempt sales; and*
- (3) Sales and use tax returns and remittances.*

(c) Provides a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(d) Provides that registration with the central, electronic registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(e) Provides for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting variances between the state and local tax bases;

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting

the taxes will not have to register or file returns with, remit funds to or be subject to independent audits from local taxing jurisdictions;

(3) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(4) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(f) Outlines any monetary allowances that are to be provided by the states to sellers or certified service providers and allows for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2002.

(g) Requires each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(h) Requires each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(i) Provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

2. The agreement must require each member state to abide by the requirements set forth in subsection 1.

Sec. 14. 1. A certified service provider is:

(a) The agent of each seller with whom the certified service provider has contracted for the collection and remittance of sales and use taxes; and

(b) Liable for sales and use taxes due each member state on all sales transactions it processes for a seller unless the seller misrepresents the type of items it sells or commits fraud.

2. A seller that contracts with a certified service provider is:

(a) Liable to this state for sales or use taxes due on transactions processed by the certified service provider if the seller misrepresents the type of items it sells or commits fraud;

(b) Subject to audit on the transactions processed by the certified service provider if there is probable cause to believe that the seller has committed fraud or made a material misrepresentation; and

(c) Subject to audit for transactions not processed by the certified service provider.

3. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

Sec. 15. 1. A person that provides a certified automated system is:

(a) Responsible for the proper functioning of that system; and

(b) Liable to this state for underpayments of tax attributable to errors in the functioning of the certified automated system.

2. *A seller that uses a certified automated system remains responsible and is liable to this state for reporting and remitting tax.*

3. *A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.*

Sec. 16. 1. *The agreement authorized by sections 2 to 18, inclusive, of this act binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.*

2. *No person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency or other instrumentality of this state, or any political subdivision of this state, on the ground that the action or inaction is inconsistent with the agreement.*

3. *No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.*

Sec. 17. *The agreement authorized by sections 2 to 18, inclusive, of this act is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the laws of each member state.*

Sec. 18. *No provision of the agreement authorized by sections 2 to 18, inclusive, of this act invalidates, in whole or part, or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at or after membership of this state in the agreement, must be by the action of this state.*

Sec. 19. Chapter 372 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *If the state or a political subdivision of the state enters into a contract pursuant to chapter 332 or 333 of NRS on or after the effective date of this section with a person who:*

(a) *Sells tangible personal property in this state; and*

(b) *Has not obtained a permit pursuant to NRS 372.125 because he does not maintain a place of business within this state, the contract must include a provision requiring the person to obtain a permit pursuant to NRS 372.125 and to agree to collect and pay the taxes imposed pursuant to this chapter on the sale of tangible personal property in this state. For the purposes of the permit obtained pursuant to NRS 372.125, the person shall be deemed to have a single place of business in this state.*

2. The department may require a state agency or local government to submit such documentation as is necessary to ensure compliance with this section.

Sec. 20. NRS 372.728 is hereby amended to read as follows:

372.728 In administering the provisions of this chapter, the department shall construe the term “retailer maintaining a place of business in this state” to include:

1. A retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or place of storage, or any other place of business, in this state.

2. A retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary to sell, deliver or take orders for tangible personal property.

3. With respect to a lease, a retailer deriving rentals from a lease of tangible personal property situated in this state.

4. A retailer soliciting orders for tangible personal property through a system for shopping by means of telecommunication or television, using toll-free telephone numbers, which is intended by the retailer to be broadcast by cable television or other means of broadcasting to persons located in this state ~~H~~ *or through a website on the Internet or other electronic means of communication to provide solicitations to persons in this state.*

5. A retailer who, pursuant to a contract with a broadcaster or publisher located in this state, solicits orders for tangible personal property by means of advertising which is disseminated primarily to persons located in this state and only secondarily to bordering jurisdictions.

6. A retailer soliciting orders for tangible personal property by mail or electronic facsimile if the solicitations are substantial and recurring and if the retailer benefits from any activities occurring in this state related to banking, financing, the collection of debts, telecommunication or marketing, or benefits from the location in this state of authorized facilities for installation, servicing or repairs.

7. A retailer owned or controlled by the same person who owns or controls a retailer who maintains a place of business in the same or a similar line of business in this state.

8. A retailer having a person operating under its trade name, pursuant to a franchise or license authorized by the retailer, if the person so operating is required to collect the tax pursuant to NRS 372.195.

9. A retailer who, pursuant to a contract with the operator of a system of cable television located in this state, solicits orders for tangible personal property by means of advertising which is transmitted or distributed over a system of cable television in this state.

Sec. 21. Chapter 374 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the state or a political subdivision of the state enters into a contract pursuant to chapter 332 or 333 of NRS on or after the effective date of this section with a person who:

(a) Sells tangible personal property in this state; and

(b) Has not obtained a permit pursuant to NRS 374.130 because he does not maintain a place of business within this state, the contract must include a provision requiring the person to obtain a permit pursuant to NRS 374.130 and to agree to collect and pay the taxes imposed pursuant to this chapter on the sale of tangible personal property in any county in this state. For the purposes of the permit obtained pursuant to NRS 374.130, the person shall be deemed to have a place of business in each county in this state, but shall pay the fee for a single permit.

2. The department may require a state agency or local government to submit such documentation as is necessary to ensure compliance with this section.

Sec. 22. NRS 374.728 is hereby amended to read as follows:

374.728 In administering the provisions of this chapter, the department shall construe the term “retailer maintaining a place of business in a county” to include:

1. A retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or place of storage, or any other place of business, in the county.

2. A retailer having any representative, agent, salesman, canvasser or solicitor operating in the county under the authority of the retailer or its subsidiary to sell, deliver or take orders for tangible personal property.

3. With respect to a lease, a retailer deriving rentals from a lease of tangible personal property situated in the county.

4. A retailer soliciting orders for tangible personal property through a system for shopping by means of telecommunication or television, using toll-free telephone numbers, which is intended by the retailer to be broadcast by cable television or other means of broadcasting to persons located in the county ~~or~~ *or through a website on the Internet or other electronic means of communication to provide solicitations to persons in this state.*

5. A retailer who, pursuant to a contract with a broadcaster or publisher located in the state, solicits orders for tangible personal property by means of advertising which is disseminated primarily to persons located in the state and only secondarily to bordering jurisdictions, and which is disseminated to persons located in the county.

6. A retailer soliciting orders for tangible personal property by mail or electronic facsimile if the solicitations are substantial and recurring and if the retailer benefits from any activities occurring in the county related to banking, financing, the collection of debts, telecommunication or marketing, or benefits from the location in the county of authorized facilities for installation, servicing or repairs.

7. A retailer owned or controlled by the same persons who own or control a retailer who maintains a place of business in the same or a similar line of business in the county.

8. A retailer having a person operating under its trade name, pursuant to a franchise or license authorized by the retailer, if the person so operating is required to collect the tax pursuant to NRS 374.200.

9. A retailer who, pursuant to a contract with the operator of a system of cable television located in the state, solicits orders for tangible personal property by means of advertising which is transmitted or distributed over a system of cable television in the county.

Sec. 23. The legislature hereby urges the department of taxation, to the extent practicable, to seek compliance with the sales and use tax laws of this state by persons and businesses that sell tangible personal property through a website on the Internet or other electronic means of communication to provide solicitations to persons in this state.

Sec. 24. 1. This section, sections 1 to 13, inclusive, and 17 to 23, inclusive, of this act become effective upon passage and approval.

2. Sections 14, 15 and 16 of this act become effective on the date this state becomes a member of the streamlined sales and use tax agreement.