

Amendment No. 107

Senate Amendment to Senate Bill No. 34

(BDR 32-432)

Proposed by: Senate Committee on Revenue**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	☐	Lost	☐	_____		Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____		Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____		Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

SJC/BJE



Date: 3/31/2011

S.B. No. 34—Makes various changes regarding the administration of sales and use taxes. (BDR 32-432)



SENATE BILL NO. 34—COMMITTEE ON REVENUE

(ON BEHALF OF THE DEPARTMENT OF TAXATION)

PREFILED DECEMBER 14, 2010

Referred to Committee on Revenue

SUMMARY—Makes various changes regarding the administration of sales and use taxes. (BDR 32-432)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; revising the provisions governing the administration of sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement, apply the taxes to retailers whose activities have a sufficient nexus with this State and provide for the rebuttal of certain presumptions regarding the application of use taxes to property delivered outside of or brought into this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the administration of sales and use taxes in this State pursuant to the Simplified Sales and Use Tax Administration Act, the Sales and Use Tax Act and the Local School Support Tax Law. (Chapters 360B, 372 and 374 of NRS) Under existing law, the Legislature has found and declared that this State should enter into an interstate agreement to simplify and modernize sales and use tax administration to reduce the burden of tax compliance for all sellers and types of commerce. (NRS 360B.020) Existing law requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement and take all other actions reasonably required to implement the provisions of the Agreement. (NRS 360B.110)

This bill carries out various requirements of the Streamlined Sales and Use Tax Agreement. **Sections 2 and 26** of this bill replace superseded requirements for purchases of direct mail with new requirements regarding the sourcing of those transactions to various jurisdictions and the respective responsibilities of sellers and purchasers for the collection, reporting and payment of the applicable taxes. **Section 3** of this bill sets forth a new requirement regarding the registration of certain sellers who anticipate making no sales into certain states. **Sections 3, 14 and 23** of this bill carry out a new requirement to allow the electronic filing of simplified tax returns. **Sections 4 and 7** of this bill carry out a recent amendment to the Agreement governing the taxation of delivery charges. ***Section 4.5 of this bill carries out a recent amendment to the Agreement regarding the due dates for tax returns and payments.*** **Sections 13 and 22** of this bill set forth new requirements regarding the liability of a seller for accepting certain certificates of exemption which indicate that the claimed exemption is not available. **Sections 5 and 6** of this bill delete certain provisions of the Agreement that do not apply in this State. **Sections 9, 10, 18 and 19** of this bill delete a requirement for good faith which is not allowed by the Agreement.

Under existing law, the Commerce Clause of the United States Constitution prohibits a state from requiring a retailer to collect sales and use taxes unless the activities of the retailer have a substantial nexus with the taxing state. (*Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904 (1992)) **Sections 8 and 17** of this bill apply the sales and use taxes imposed in this State to every retailer whose activities have such a nexus.

Existing law creates various presumptions regarding the application of the use taxes imposed in this State to property which is delivered outside of this State to a purchaser or brought into this State by a purchaser. (NRS 372.250, 372.255, 372.258, 374.255, 374.260, 374.263) **Sections 11, 12, 20, 21 and 26** of this bill revise that law to specify the methods for controverting a presumption that those taxes apply.

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

Section 1. NRS 360.299 is hereby amended to read as follows:

360.299 1. In determining the amount of:

(a) Sales tax due on a sale at retail, the rate of tax used must be the sum of the rates of all taxes imposed upon sales at retail in:

(1) The county determined pursuant to the provisions of NRS 360B.350 to 360B.375, inclusive ~~§~~, *or section 2 of this act*; or

(2) If those provisions do not apply to the sale, the county in which the property is or will be delivered to the purchaser or the agent or designee of the purchaser.

(b) Use tax due on the purchase of tangible personal property for use, storage or other consumption in this state, the rate of tax used must be the sum of the rates of all taxes imposed upon the use, storage or other consumption of property in:

(1) The county determined pursuant to the provisions of NRS 360B.350 to 360B.375, inclusive ~~§~~, *or section 2 of this act*; or

(2) If those provisions do not apply to the purchase, the county in which the property is first used, stored or consumed.

2. In determining the amount of taxes due pursuant to subsection 1:

(a) The amount due must be computed to the third decimal place and rounded to a whole cent using a method that rounds up to the next cent if the numeral in the third decimal place is greater than 4.

(b) A retailer may compute the amount due on a transaction on the basis of each item involved in the transaction or a single invoice for the entire transaction.

3. On or before January 1 of each year, the Department shall transmit to each retailer to whom a permit has been issued a notice which contains the provisions of subsections 1 and 2 and NRS 372.365.

Sec. 2. Chapter 360B of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding the provisions of NRS 360B.350 to 360B.375, inclusive:

(a) A purchaser of advertising and promotional direct mail may provide the seller with:

(1) Documentation of the direct pay permit of the purchaser issued pursuant NRS 360B.260;

(2) A certificate or written statement, in a form approved by the Department in accordance with the provisions of the Agreement, claiming the direct mail; or

(3) An informational statement of the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients.

1 (b) If the purchaser provides the documentation, certificate or statement
2 pursuant to subparagraph (1) or (2) of paragraph (a), the sale shall be deemed to
3 take place in the jurisdictions to which the advertising and promotional direct
4 mail is to be delivered to the recipients and:

5 (1) If the seller does not maintain a place of business in this State:

6 (I) The purchaser shall report and pay any applicable sales or use
7 taxes due; and

8 (II) The seller, in the absence of bad faith, is relieved of all
9 obligations to collect, pay or remit any sales or use taxes applicable to any
10 transaction involving the advertising and promotional direct mail to which the
11 documentation, certificate or statement applies; or

12 (2) If the seller maintains a place of business in this State:

13 (I) The seller shall collect and remit any applicable sales or use taxes
14 due in this State;

15 (II) The purchaser shall report and pay any applicable sales or use
16 taxes due in any other state; and

17 (III) The seller, in the absence of bad faith, is relieved of all
18 obligations to collect, pay or remit any sales or use taxes applicable to any
19 transaction involving the advertising and promotional direct mail to which the
20 documentation, certificate or statement applies which are due in any other state.

21 (c) If the purchaser provides the informational statement pursuant to
22 subparagraph (3) of paragraph (a):

23 (1) The sale shall be deemed to take place in the jurisdictions to which
24 the advertising and promotional direct mail is to be delivered;

25 (2) The seller shall collect and remit any applicable sales or use taxes
26 due to those jurisdictions; and

27 (3) If the seller complies with subparagraph (2) in accordance with the
28 delivery information provided by the purchaser, the seller, in the absence of bad
29 faith, is relieved of any further obligation to collect any additional sales or use
30 taxes on the sale.

31 (d) If the purchaser does not provide the seller with any of the items listed in
32 paragraph (a), the sale shall be deemed to take place at the location described in
33 subsection 5 of NRS 360B.360. The state to which the advertising and
34 promotional direct mail is delivered may disallow credit for any sales or use taxes
35 paid in accordance with this paragraph.

36 2. Notwithstanding the provisions of NRS 360B.350 to 360B.375, inclusive:

37 (a) Except as otherwise provided in this subsection, the sale of other direct
38 mail shall be deemed to take place at the location described in subsection 3 of
39 NRS 360B.360.

40 (b) A purchaser of other direct mail may provide the seller with:

41 (1) Documentation of the direct pay permit of the purchaser issued
42 pursuant NRS 360B.260; or

43 (2) A certificate or written statement, in a form approved by the
44 Department in accordance with the provisions of the Agreement, claiming the
45 direct mail.

46 (c) If the purchaser provides the documentation, certificate or statement
47 pursuant to paragraph (b), the sale shall be deemed to take place in the
48 jurisdictions to which the other direct mail is to be delivered to the recipients and:

49 (1) If the seller does not maintain a place of business in this State:

50 (I) The purchaser shall report and pay any applicable sales or use
51 taxes due; and

52 (II) The seller, in the absence of bad faith, is relieved of all
53 obligations to collect, pay or remit any sales or use taxes applicable to any

1 transaction involving the other direct mail to which the documentation,
2 certificate or statement applies; or

3 (2) If the seller maintains a place of business in this State:

4 (I) The seller shall collect and remit any applicable sales or use taxes
5 due in this State;

6 (II) The purchaser shall report and pay any applicable sales or use
7 taxes due in any other state; and

8 (III) The seller, in the absence of bad faith, is relieved of all
9 obligations to collect, pay or remit any sales or use taxes applicable to any
10 transaction involving the other direct mail to which the documentation,
11 certificate or statement applies which are due in any other state.

12 3. This section does not apply to any transaction that includes the
13 development of billing information or the provision of any data processing
14 service that is more than incidental, regardless of whether any advertising and
15 promotional direct mail is included in the same mailing.

16 4. If a transaction is a bundled transaction, as defined by a regulation of
17 the Department in accordance with the provisions of the Agreement, that includes
18 advertising and promotional direct mail, this section applies only if the primary
19 purpose of the transaction is the sale of products that meet the definition set forth
20 in paragraph (a) of subsection 6.

21 5. The provisions of this section do not limit any purchaser's:

22 (a) Liability for any sales or use taxes to any states to which the direct mail is
23 delivered;

24 (b) Rights under local, state, federal or constitutional law, to a credit for
25 sales or use taxes due and paid to other jurisdictions; or

26 (c) Right to a refund of any sales or use taxes overpaid to any jurisdiction.

27 6. As used in this section:

28 (a) "Advertising and promotional direct mail" means direct mail, the primary
29 purpose of which is to attract public attention to a product, person, business or
30 organization, or to attempt to sell, popularize or secure financial support for a
31 product, person, business or organization. As used in this paragraph, "product"
32 means tangible personal property, a product transferred electronically or a
33 service.

34 (b) "Direct mail" means printed material delivered or distributed by the
35 United States Postal Service or another delivery service to a mass audience or to
36 addresses contained on a mailing list provided by a purchaser or at the direction
37 of a purchaser when the cost of the items purchased is not billed directly to the
38 recipients. The term includes tangible personal property supplied directly or
39 indirectly by the purchaser to the seller of the direct mail for inclusion in the
40 package containing the printed material. The term does not include multiple
41 items of printed material delivered to a single address.

42 (c) "Other direct mail" means any direct mail that is not advertising and
43 promotional direct mail, regardless of whether any advertising and promotional
44 direct mail is included in the same mailing. The term:

45 (1) Includes, but is not limited to:

46 (I) Transactional direct mail that contains personal information
47 specific to the addressee, including, but not limited to, invoices, bills, statements
48 of account and payroll advices;

49 (II) Any legally required mailings, including, but not limited to,
50 privacy notices, tax reports and stockholder reports; and

51 (III) Other nonpromotional direct mail delivered to existing or
52 former shareholders, customers, employees or agents, including, but not limited to,
53 newsletters and informational pieces; and

(2) Does not include the development of billing information or the provision of any data processing service that is more than incidental.

Sec. 3. NRS 360B.200 is hereby amended to read as follows:

360B.200 1. The Department shall, in cooperation with any other states that are members of the Agreement, establish and maintain a central, electronic registration system that allows a seller to register to collect and remit the sales and use taxes imposed in this State and in the other states that are members of the Agreement.

2. A seller who registers pursuant to this section agrees to collect and remit sales and use taxes in accordance with the provisions of this chapter, the regulations of the Department and the applicable law of each state that is a member of the Agreement, including any state that becomes a member of the Agreement after the registration of the seller pursuant to this section. The cancellation or revocation of the registration of a seller pursuant to this section, the withdrawal of a state from the Agreement or the revocation of the Agreement does not relieve a seller from liability pursuant to this subsection to remit any taxes previously or subsequently collected on behalf of a state.

3. When registering pursuant to this section, a seller may:

(a) Elect to use a certified service provider as its agent to perform all the functions of the seller relating to sales and use taxes, other than the obligation of the seller to remit the taxes on its own purchases;

(b) Elect to use a certified automated system to calculate the amount of sales or use taxes due on its sales transactions;

(c) Under such conditions as the Department deems appropriate in accordance with the Agreement, elect to use its own proprietary automated system to calculate the amount of sales or use taxes due on its sales transactions; or

(d) Elect to use any other method authorized by the Department for performing the functions of the seller relating to sales and use taxes.

4. *A seller who registers pursuant to this section and does not make the election allowed pursuant to paragraph (a) of subsection 3 may elect to be registered in any state that:*

(a) Is a member of the Agreement at the time of that registration, as a seller who anticipates making no sales into that state if the seller has not had any sales into that state for the preceding 12 months; and

(b) Becomes a member of the Agreement after that registration, as a seller who anticipates making no sales into that state.

5. A seller who registers pursuant to this section agrees to submit its sales and use tax returns, and to remit any sales and use taxes due, to the Department at such times and in such a manner and format as the Department prescribes by regulation. Those regulations must:

(a) Require from each seller who registers pursuant to this section:

(1) Only ~~one~~ *a single* tax return for each taxing period for all the sales and use taxes collected on behalf of this State and each local government in this State; and

(2) Only one remittance of taxes for each tax return, except that the Department may require additional remittances of taxes if the seller:

(I) Collects more than \$30,000 in sales and use taxes on behalf of this State and the local governments in this State during the preceding calendar year;

(II) Is allowed to determine the amount of any additional remittance by a method of calculation instead of by the actual amount collected; and

(III) Is not required to file any tax returns in addition to those otherwise required in accordance with this subsection.

(b) Allow any seller who registers pursuant to this section ~~and makes an election pursuant to paragraph (a), (b) or (c) of subsection 3~~ to submit tax returns electronically in a simplified format. ~~{that does not include any more data fields than are permitted in accordance with the Agreement.}~~

(c) Allow any seller who registers pursuant to this section, does not maintain a place of business in this State and has not made an election pursuant to paragraph (a), (b) or (c) of subsection 3, to file tax returns at a frequency that does not exceed once per year unless the seller accumulates more than \$1,000 in the collection of sales and use taxes on behalf of this State and the local governments in this State.

(d) Provide an alternative method for a seller who registers pursuant to this section to make tax payments the same day as the seller intends if an electronic transfer of money fails.

(e) Require any data that accompanies the remittance of a tax payment by or on behalf of a seller who registers pursuant to this section to be formatted using uniform codes for the type of tax and payment in accordance with the Agreement.

~~{5-}~~ 6. The registration of a seller and the collection and remission of sales and use taxes pursuant to this section may not be considered as a factor in determining whether a seller has a nexus with this State for the purposes of determining the liability of the seller to pay any tax imposed by this State.

Sec. 4. NRS 360B.290 is hereby amended to read as follows:

360B.290 Any invoice, billing or other document given to a purchaser that indicates the sales price for which tangible personal property is sold ~~{must}~~ :

1. May state separately any amount received by the seller for ~~{~~
~~— 1. Any~~ any transportation, shipping or postage charges for the delivery of the property to a location designated by the purchaser ~~{; and~~

2. Must state separately any amount received by the seller for:

(a) Any installation charges for the property;

~~{3-}~~ (b) Any credit for any trade-in which is specifically exempted from the sales price of the property pursuant to chapter 372 or 374 of NRS;

~~{4-}~~ (c) Any interest, financing and carrying charges from credit extended on the sale; and

~~{5-}~~ (d) Any taxes legally imposed directly on the consumer.

Sec. 4.5. NRS 360B.300 is hereby amended to read as follows:

360B.300 Notwithstanding the provisions of any other specific statute ~~{, it}~~ :

1. If any sales or use tax is due and payable on ~~{it}~~ :

(a) A Saturday, Sunday or legal holiday, the tax may be paid on the next succeeding business day ~~{, or~~

(b) A day on which a Federal Reserve bank is closed and, as a result of that closure, the taxpayer is not able to remit the tax electronically in accordance with the regulations adopted by the Department pursuant to NRS 360.092, the tax may be paid on the next succeeding day on which the Federal Reserve bank is open.

2. If any sales or use tax return is:

(a) Due on a Saturday, Sunday or legal holiday, the return may be filed on the next succeeding business day; or

(b) Required to be filed in conjunction with a remittance of the tax and paragraph (b) of subsection 1 applies to that remittance, the return may be filed on the same day as the tax may be paid in accordance with that paragraph.

Sec. 5. NRS 360B.350 is hereby amended to read as follows:

360B.350 As used in NRS 360B.350 to 360B.375, inclusive:

1. "Receive" means taking possession of ~~for making the first use of~~ tangible personal property. ~~{, whichever occurs first.}~~ The term does not include possession by a shipping company on behalf of a purchaser.

2. "Transportation equipment" means:

(a) Locomotives and railcars used for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors having a manufacturer's gross vehicle weight rating of more than 10,000 pounds, and trailers, semitrailers and passenger buses that are:

(1) Registered pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(2) Operated under the authority of a carrier who is authorized by the Federal Government to engage in the carriage of persons or property in interstate commerce.

(c) Aircraft operated by an air carrier who is authorized by the Federal Government or a foreign government to engage in the carriage of persons or property in interstate or foreign commerce.

(d) Containers designed for use on and component parts attached or secured to any of the items described in paragraph (a), (b) or (c).

Sec. 5.5. NRS 360B.355 is hereby amended to read as follows:

360B.355 1. Except as otherwise provided in this section ~~and~~ and section 2 of this act, for the purpose of determining the liability of a seller for sales and use taxes, a retail sale shall be deemed to take place at the location determined pursuant to NRS 360B.350 to 360B.375, inclusive.

2. NRS 360B.350 to 360B.375, inclusive, do not:

(a) Affect any liability of a purchaser or lessee for a use tax.

(b) Apply to:

(1) The retail sale or transfer of watercraft, modular homes, manufactured homes or mobile homes.

(2) The retail sale, other than the lease or rental, of motor vehicles, trailers, semitrailers or aircraft that do not constitute transportation equipment.

Sec. 6. NRS 360B.360 is hereby amended to read as follows:

360B.360 Except as otherwise provided in NRS 360B.350 to 360B.375, inclusive, the retail sale, excluding the lease or rental, of tangible personal property shall be deemed to take place:

1. If the property is received by the purchaser at a place of business of the seller, at that place of business.

2. If the property is not received by the purchaser at a place of business of the seller:

(a) At the location indicated to the seller pursuant to any instructions provided for the delivery of the property to the purchaser or to another recipient who is designated by the purchaser as his or her donee; or

(b) If no such instructions are provided and if known by the seller, at the location where the purchaser or another recipient who is designated by the purchaser as his or her donee, receives the property.

3. If subsections 1 and 2 do not apply, at the address of the purchaser indicated in the business records of the seller that are maintained in the ordinary course of the seller's business, unless the use of that address would constitute bad faith.

4. If subsections 1, 2 and 3 do not apply, at the address of the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of the purchaser's instrument of payment, unless the use of an address pursuant to this subsection would constitute bad faith.

5. In all other circumstances, at the address from which the property was shipped. ~~for, if it was delivered electronically, at the address from which it was first available for transmission by the seller.~~

1 **Sec. 7.** NRS 360B.480 is hereby amended to read as follows:

2 360B.480 1. "Sales price" means the total amount of consideration,
3 including cash, credit, property and services, for which personal property is sold,
4 leased or rented, valued in money, whether received in money or otherwise, and
5 without any deduction for:

6 (a) The seller's cost of the property sold;

7 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
8 transportation to the seller, all taxes imposed on the seller, and any other expense of
9 the seller;

10 (c) Any charges by the seller for any services necessary to complete the sale,
11 including any delivery charges which are not stated separately pursuant to
12 **subsection 1 of** NRS 360B.290 and excluding any installation charges which are
13 stated separately pursuant to **subsection 2 of** NRS 360B.290; and

14 (d) Except as otherwise provided in subsection 2, any credit for any trade-in.

15 2. The term does not include:

16 (a) Any delivery charges which are stated separately pursuant to **subsection 1**
17 **of** NRS 360B.290;

18 (b) Any installation charges which are stated separately pursuant to **subsection**
19 **2 of** NRS 360B.290;

20 (c) Any credit for any trade-in which is:

21 (1) Specifically exempted from the sales price pursuant to chapter 372 or
22 374 of NRS; and

23 (2) Stated separately pursuant to **subsection 2 of** NRS 360B.290;

24 (d) Any discounts, including those in the form of cash, term or coupons that are
25 not reimbursed by a third party, which are allowed by a seller and taken by the
26 purchaser on a sale;

27 (e) Any interest, financing and carrying charges from credit extended on the
28 sale of personal property, if stated separately pursuant to **subsection 2 of** NRS
29 360B.290; and

30 (f) Any taxes legally imposed directly on the consumer which are stated
31 separately pursuant to **subsection 2 of** NRS 360B.290.

32 3. The term includes consideration received by a seller from a third party if:

33 (a) The seller actually receives consideration from a person other than the
34 purchaser and the consideration is directly related to a price reduction or discount
35 on the sale;

36 (b) The seller has an obligation to pass the price reduction or discount through
37 to the purchaser;

38 (c) The amount of the consideration attributable to the sale is fixed and
39 determinable by the seller at the time of the sale of the item to the purchaser; and

40 (d) Any of the following criteria is satisfied:

41 (1) The purchaser presents a coupon, certificate or other documentation to
42 the seller to claim a price reduction or discount, and the coupon, certificate or other
43 documentation is authorized, distributed or granted by a third party with the
44 understanding that the third party will reimburse any seller to whom the coupon,
45 certificate or other documentation is presented.

46 (2) The purchaser identifies himself or herself to the seller as a member of
47 a group or organization entitled to a price reduction or discount. For the purposes of
48 this subparagraph, a preferred customer card that is available to any patron does not
49 constitute membership in such a group.

50 (3) The price reduction or discount is identified as a third-party price
51 reduction or discount on the invoice received by the purchaser or on a coupon,
52 certificate or other documentation presented by the purchaser.

1 **Sec. 8.** Chapter 372 of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 **1. The provisions of this chapter relating to:**

4 **(a) The imposition, collection and remittance of the sales tax apply to every**
5 **retailer whose activities have a sufficient nexus with this State to satisfy the**
6 **requirements of the United States Constitution.**

7 **(b) The collection and remittance of the use tax apply to every retailer whose**
8 **activities have a sufficient nexus with this State to satisfy the requirements of the**
9 **United States Constitution.**

10 **2. In administering the provisions of this chapter, the Department shall**
11 **construe the terms “seller,” “retailer” and “retailer maintaining a place of**
12 **business in this State” in accordance with the provisions of subsection 1.**

13 **Sec. 9.** NRS 372.155 is hereby amended to read as follows:

14 372.155 1. For the purpose of the proper administration of this chapter and
15 to prevent evasion of the sales tax, it is presumed that all gross receipts are subject
16 to the tax until the contrary is established. The burden of proving that a sale of
17 tangible personal property is not a sale at retail is upon the person who makes the
18 sale unless the person takes ~~in good faith~~ from the purchaser a certificate to the
19 effect that the property is purchased for resale and the purchaser:

20 (a) Is engaged in the business of selling tangible personal property;

21 (b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant
22 to NRS 372.135; and

23 (c) At the time of purchasing the property, intends to sell it in the regular
24 course of business or is unable to ascertain at the time of purchase whether the
25 property will be sold or will be used for some other purpose.

26 2. If a sale of tangible personal property is transacted by drop shipment, the
27 third-party vendor is relieved of the burden of proving that the sale is not a sale at
28 retail if:

29 (a) The third-party vendor:

30 (1) Takes ~~in good faith~~ from his or her customer a certificate to the effect
31 that the property is purchased for resale; or

32 (2) Obtains any other evidence acceptable to the Department that the
33 property is purchased for resale; and

34 (b) His or her customer:

35 (1) Is engaged in the business of selling tangible personal property; and

36 (2) Is selling the property in the regular course of business.

37 **Sec. 10.** NRS 372.225 is hereby amended to read as follows:

38 372.225 1. For the purpose of the proper administration of this chapter and
39 to prevent evasion of the use tax and the duty to collect the use tax, it is presumed
40 that tangible personal property sold by any person for delivery in this State is sold
41 for storage, use or other consumption in this State until the contrary is established.
42 The burden of proving the contrary is upon the person who makes the sale unless
43 the person takes ~~in good faith~~ from the purchaser a certificate to the effect that the
44 property is purchased for resale and the purchaser:

45 (a) Is engaged in the business of selling tangible personal property;

46 (b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant
47 to NRS 372.135; and

48 (c) At the time of purchasing the property, intends to sell it in the regular
49 course of business or is unable to ascertain at the time of purchase whether the
50 property will be sold or will be used for some other purpose.

51 2. If a sale of tangible personal property is transacted by drop shipment, the
52 third-party vendor is relieved of the burden of proving that the property is sold for
53 storage, use or other consumption in this State if:

(a) The third-party vendor:

(1) Takes ~~in good faith~~ from his or her customer a certificate to the effect that the property is purchased for resale; or

(2) Obtains any other evidence acceptable to the Department that the property is purchased for resale; and

(b) His or her customer:

(1) Is engaged in the business of selling tangible personal property; and

(2) Is selling the property in the regular course of business.

Sec. 11. NRS 372.250 is hereby amended to read as follows:

372.250 1. It is presumed that tangible personal property shipped or brought to this State by the purchaser on or after July 1, 1979, was purchased from a retailer on or after July 1, 1979, for storage, use or other consumption in this State.

2. *This presumption may be controverted by the vendor or purchaser by evidence showing that the property was stored or used:*

(a) Exclusively outside of this State during the initial 30 days after its purchase; and

(b) Outside of this State for a majority of the time during the initial 12 months after its purchase.

Sec. 12. NRS 372.255 is hereby amended to read as follows:

372.255 1. ~~Except as otherwise provided in NRS 372.258, on~~ On and after July 1, 1979, it is presumed that tangible personal property delivered outside this State to a purchaser known by the retailer to be a resident of this State was purchased from a retailer for storage, use or other consumption in this State and stored, used or otherwise consumed in this State.

2. This presumption may be controverted by:

(a) ~~[A] The vendor by a written statement in writing, signed by the purchaser or his or her authorized representative, and retained by the vendor;~~ that the property was purchased for use at a designated point or points outside this State ~~[-~~

~~(b) Other evidence satisfactory to the Department that the property was not purchased for storage, use or other consumption in this State.], if the statement is:~~

(1) Signed by the purchaser or his or her authorized representative; and

(2) Taken and retained by the vendor in good faith; or

(b) The vendor or purchaser by evidence showing that the property was stored or used:

(1) Exclusively outside of this State during the initial 30 days after its purchase; and

(2) Outside of this State for a majority of the time during the initial 12 months after its purchase.

Sec. 13. NRS 372.347 is hereby amended to read as follows:

372.347 1. If a purchaser wishes to claim an exemption from the taxes imposed by this chapter, the retailer shall obtain such ~~identifying~~ information from the purchaser ~~at the time of sale~~ as is required by the Department.

2. The Department shall, to the extent feasible, establish an electronic system for submitting a request for an exemption. A purchaser is not required to provide a signature to claim an exemption if the request is submitted electronically.

3. The Department may establish a system whereby a purchaser who is exempt from the payment of the taxes imposed by this chapter is issued an identification number that can be presented to the retailer at the time of sale.

4. A retailer shall maintain such records of exempt transactions as are required by the Department and provide those records to the Department upon request.

5. Except as otherwise provided in this subsection, a retailer who complies with the provisions of this section is not liable for the payment of any tax imposed

by this chapter if the purchaser improperly claims an exemption. If the purchaser improperly claims an exemption, the purchaser is liable for the payment of the tax. The provisions of this subsection do not apply if the retailer ~~fraudulently~~ :

(a) ~~Fraudulently~~ fails to collect the tax ~~for solicits~~ ;

(b) ~~Solicits~~ a purchaser to participate in an unlawful claim of an exemption ~~+~~ ;
or

(c) *Accepts a certificate of exemption from a purchaser who claims an entity-based exemption, the subject of the transaction sought to be covered by the certificate is actually received by the purchaser at a location operated by the seller, and the Department provides, and posts on a website or other Internet site that is operated or administered by or on behalf of the Department, a certificate of exemption which clearly and affirmatively indicates that the claimed exemption is not available.*

6. As used in this section ~~+~~ *“retailer”* :

(a) *“Entity-based exemption” means an exemption based on who purchases the product or who sells the product, and which is not available to all.*

(b) *“Retailer”* includes a certified service provider, as that term is defined in NRS 360B.060, acting on behalf of a retailer who is registered pursuant to NRS 360B.200.

Sec. 14. NRS 372.360 is hereby amended to read as follows:

372.360 Except as otherwise required by the Department pursuant to NRS 360B.200:

1. On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Department in such form *and manner* as the Department may prescribe. Any return required to be filed by this section must be combined with any return required to be filed pursuant to the provisions of chapter 374 of NRS.

2. For purposes of:

(a) The sales tax, a return must be filed by each seller.

(b) The use tax, a return must be filed by each retailer maintaining a place of business in the State and by each person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due.

3. ~~Returns~~ *Unless filed electronically, returns* must be signed by the person required to file the return or by his or her authorized agent but need not be verified by oath.

Sec. 15. NRS 372.365 is hereby amended to read as follows:

372.365 1. Except as otherwise required by the Department pursuant to NRS 360B.200 or provided in NRS 360B.350 to 360B.375, inclusive ~~+~~ , *or section 2 of this act*:

(a) For the purposes of the sales tax:

(1) The return must show the gross receipts of the seller during the preceding reporting period.

(2) The gross receipts must be segregated and reported separately for each county to which a sale of tangible personal property pertains.

(3) A sale pertains to the county in this State in which the tangible personal property is or will be delivered to the purchaser or his or her agent or designee.

(b) For purposes of the use tax:

(1) In the case of a return filed by a retailer, the return must show the total sales price of the property purchased by him or her, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period.

(2) The sales price must be segregated and reported separately for each county to which a purchase of tangible personal property pertains.

(3) If the property was:

(I) Brought into this State by the purchaser or his or her agent or designee, the sale pertains to the county in this State in which the property is or will be first used, stored or otherwise consumed.

(II) Not brought into this State by the purchaser or his or her agent or designee, the sale pertains to the county in this State in which the property was delivered to the purchaser or his or her agent or designee.

2. In case of a return filed by a purchaser, the return must show the total sales price of the property purchased by him or her, the storage, use or consumption of which became subject to the use tax during the preceding reporting period and indicate the county in this State in which the property was first used, stored or consumed.

3. The return must also show the amount of the taxes for the period covered by the return and such other information as the Department deems necessary for the proper administration of this chapter.

4. Except as otherwise provided in subsection 5, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:

(a) For the first return of any retailer which contains one or more violations, issue a letter of warning to the retailer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported or was reported for the wrong county or \$1,000, whichever is less.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported or was reported for the wrong county or \$3,000, whichever is less.

5. For the purposes of subsection 4, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

Sec. 16. NRS 372.375 is hereby amended to read as follows:

372.375 1. Except as otherwise *authorized or* required by the Department , ~~{pursuant to NRS 360B.200,}~~ the person required to file a return shall deliver the return together with a remittance of the amount of the tax due to the Department.

2. The Department shall provide for the acceptance of credit cards, debit cards or electronic transfers of money for the payment of the tax due in the manner prescribed pursuant to NRS 360.092.

Sec. 17. Chapter 374 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The provisions of this chapter relating to:

(a) The imposition, collection and remittance of the sales tax apply to every retailer whose activities have a sufficient nexus with a county to satisfy the requirements of the United States Constitution.

(b) The collection and remittance of the use tax apply to every retailer whose activities have a sufficient nexus with a county to satisfy the requirements of the United States Constitution.

2. *In administering the provisions of this chapter, the Department shall construe the terms “seller,” “retailer” and “retailer maintaining a place of business in a county” in accordance with the provisions of subsection 1.*

Sec. 18. NRS 374.160 is hereby amended to read as follows:

374.160 1. For the purpose of the proper administration of this chapter and to prevent evasion of the sales tax it is presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless the person takes ~~in good faith~~ from the purchaser a certificate to the effect that the property is purchased for resale and the purchaser:

(a) Is engaged in the business of selling tangible personal property;

(b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to NRS 374.140; and

(c) At the time of purchasing the property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

2. If a sale of tangible personal property is transacted by drop shipment, the third-party vendor is relieved of the burden of proving that the sale is not a sale at retail if:

(a) The third-party vendor:

(1) Takes ~~in good faith~~ from his or her customer a certificate to the effect that the property is purchased for resale; or

(2) Obtains any other evidence acceptable to the Department that the property is purchased for resale; and

(b) His or her customer:

(1) Is engaged in the business of selling tangible personal property; and

(2) Is selling the property in the regular course of business.

Sec. 19. NRS 374.230 is hereby amended to read as follows:

374.230 1. For the purpose of the proper administration of this chapter and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property sold by any person for delivery in a county is sold for storage, use or other consumption in the county until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless the person takes ~~in good faith~~ from the purchaser a certificate to the effect that the property is purchased for resale and the purchaser:

(a) Is engaged in the business of selling tangible personal property;

(b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to NRS 374.140; and

(c) At the time of purchasing the property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

2. If a sale of tangible personal property is transacted by drop shipment, the third-party vendor is relieved of the burden of proving that the property is sold for storage, use or other consumption in this State if:

(a) The third-party vendor:

(1) Takes ~~in good faith~~ from his or her customer a certificate to the effect that the property is purchased for resale; or

(2) Obtains any other evidence acceptable to the Department that the property is purchased for resale; and

(b) His or her customer:

(1) Is engaged in the business of selling tangible personal property; and

(2) Is selling the property in the regular course of business.

1 **Sec. 20.** NRS 374.255 is hereby amended to read as follows:

2 374.255 1. It ~~{shall be further}~~ **is** presumed that tangible personal property
3 shipped or brought to a county by the purchaser after July 1, 1967, was purchased
4 from a retailer on or after July 1, 1967, for storage, use or other consumption in the
5 county.

6 2. *This presumption may be controverted by the vendor or purchaser by*
7 *evidence showing that the property was stored or used:*

8 (a) *Exclusively outside of a county during the initial 30 days after its*
9 *purchase; and*

10 (b) *Outside of a county for a majority of the time during the initial 12 months*
11 *after its purchase.*

12 **Sec. 21.** NRS 374.260 is hereby amended to read as follows:

13 374.260 1. ~~{Except as otherwise provided in NRS 374.263, on}~~ **On** and after
14 July 1, 1967, it is ~~{further}~~ presumed that tangible personal property delivered
15 outside this State to a purchaser known by the retailer to be a resident of the county
16 was purchased from a retailer for storage, use or other consumption in the county
17 and stored, used or otherwise consumed in the county.

18 2. This presumption may be controverted by:

19 (a) ~~{A}~~ **The vendor by a written** statement ~~{in writing, signed by the purchaser~~
20 ~~or his or her authorized representative, and retained by the vendor,}~~ that the
21 property was purchased for use at a designated point or points outside this State ~~+~~.

22 ~~(b) Other evidence satisfactory to the Department that the property was not~~
23 ~~purchased for storage, use or other consumption in this State.}, if the statement is:~~

24 (1) **Signed by the purchaser or his or her authorized representative; and**

25 (2) **Taken and retained by the vendor in good faith; or**

26 (b) **The vendor or purchaser by evidence showing that the property was**
27 **stored or used:**

28 (1) **Exclusively outside of this State during the initial 30 days after its**
29 **purchase; and**

30 (2) **Outside of this State for a majority of the time during the initial 12**
31 **months after its purchase.**

32 **Sec. 22.** NRS 374.352 is hereby amended to read as follows:

33 374.352 1. If a purchaser wishes to claim an exemption from the taxes
34 imposed by this chapter, the retailer shall obtain such ~~{identifying}~~ information
35 from the purchaser ~~{at the time of sale}~~ as is required by the Department.

36 2. The Department shall, to the extent feasible, establish an electronic system
37 for submitting a request for an exemption. A purchaser is not required to provide a
38 signature to claim an exemption if the request is submitted electronically.

39 3. The Department may establish a system whereby a purchaser who is
40 exempt from the payment of the taxes imposed by this chapter is issued an
41 identification number that can be presented to the retailer at the time of sale.

42 4. A retailer shall maintain such records of exempt transactions as are
43 required by the Department and provide those records to the Department upon
44 request.

45 5. Except as otherwise provided in this subsection, a retailer who complies
46 with the provisions of this section is not liable for the payment of any tax imposed
47 by this chapter if the purchaser improperly claims an exemption. If the purchaser
48 improperly claims an exemption, the purchaser is liable for the payment of the tax.
49 The provisions of this subsection do not apply if the retailer ~~{fraudulently}~~ :

50 (a) **Fraudulently** fails to collect the tax ~~{or solicits}~~ ;

51 (b) **Solicits** a purchaser to participate in an unlawful claim of an exemption ~~{+}~~ ;
52 **or**

(c) *Accepts a certificate of exemption from a purchaser who claims an entity-based exemption, the subject of the transaction sought to be covered by the certificate is actually received by the purchaser at a location operated by the seller, and the Department provides, and posts on a website or other Internet site that is operated or administered by or on behalf of the Department, a certificate of exemption which clearly and affirmatively indicates that the claimed exemption is not available.*

6. As used in this section ~~[-“retailer”-]~~:

(a) *“Entity-based exemption” means an exemption based on who purchases the product or who sells the product, and which is not available to all.*

(b) *“Retailer”* includes a certified service provider, as that term is defined in NRS 360B.060, acting on behalf of a retailer who is registered pursuant to NRS 360B.200.

Sec. 23. NRS 374.365 is hereby amended to read as follows:

374.365 Except as otherwise required by the Department pursuant to NRS 360B.200:

1. On or before the last day of the month following each reporting period, a return for the preceding period must be filed with the Department in such form *and manner* as the Department may prescribe. Any return required to be filed by this section must be combined with any return required to be filed pursuant to the provisions of chapter 372 of NRS.

2. For purposes of:

(a) The sales tax, a return must be filed by every seller.

(b) The use tax, a return must be filed by every retailer maintaining a place of business in the county and by every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due.

3. ~~[-Returns-]~~ *Unless filed electronically, returns* must be signed by the person required to file the return or by his or her authorized agent but need not be verified by oath.

Sec. 24. NRS 374.370 is hereby amended to read as follows:

374.370 1. Except as otherwise required by the Department pursuant to NRS 360B.200 or provided in NRS 360B.350 to 360B.375, inclusive ~~[-§-]~~, *or section 2 of this act:*

(a) For the purposes of the sales tax:

(1) The return must show the gross receipts of the seller during the preceding reporting period.

(2) The gross receipts must be segregated and reported separately for each county to which a sale of tangible personal property pertains.

(3) A sale pertains to the county in this State in which the tangible personal property is or will be delivered to the purchaser or his or her agent or designee.

(b) For purposes of the use tax:

(1) In the case of a return filed by a retailer, the return must show the total sales price of the property purchased by him or her, the storage, use or consumption of which property became subject to the use tax during the preceding reporting period.

(2) The sales price must be segregated and reported separately for each county to which a purchase of tangible personal property pertains.

(3) If the property was:

(I) Brought into this State by the purchaser or his or her agent or designee, the sale pertains to the county in this State in which the property is or will be first used, stored or otherwise consumed.

(II) Not brought into this State by the purchaser or his or her agent or designee, the sale pertains to the county in this State in which the property was delivered to the purchaser or his or her agent or designee.

2. In case of a return filed by a purchaser, the return must show the total sales price of the property purchased by him or her, the storage, use or consumption of which became subject to the use tax during the preceding reporting period and indicate the county in this State in which the property was first used, stored or consumed.

3. The return must also show the amount of the taxes for the period covered by the return and such other information as the Department deems necessary for the proper administration of this chapter.

4. Except as otherwise provided in subsection 5, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:

(a) For the first return of any retailer which contains one or more violations, issue a letter of warning to the retailer which provides an explanation of the violation or violations contained in the return.

(b) For the first or second return, other than a return described in paragraph (a), in any calendar year which contains one or more violations, assess a penalty equal to the amount of the tax which was not reported or was reported for the wrong county or \$1,000, whichever is less.

(c) For the third and each subsequent return in any calendar year which contains one or more violations, assess a penalty of three times the amount of the tax which was not reported or was reported for the wrong county or \$3,000, whichever is less.

5. For the purposes of subsection 4, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection 4.

Sec. 25. NRS 374.380 is hereby amended to read as follows:

374.380 1. Except as otherwise **authorized or** required by the Department , ~~pursuant to NRS 360B.200,~~ the person required to file a return shall deliver the return together with a remittance of the amount of the tax due to the Department.

2. The Department shall provide for the acceptance of credit cards, debit cards or electronic transfers of money for the payment of the tax due in the manner prescribed pursuant to NRS 360.092.

Sec. 26. NRS 360B.280, 372.258 and 374.263 are hereby repealed.

Sec. 27. This act becomes effective upon passage and approval.

TEXT OF REPEALED SECTIONS

360B.280 Purchases of direct mail.

1. A purchaser of direct mail must provide to the seller at the time of the purchase:

(a) If the seller does not maintain a place of business in this State:

(1) A form for direct mail approved by the Department;

(2) An informational statement of the jurisdictions to which the direct mail will be delivered to recipients; or

(3) Documentation of the direct pay permit of the purchaser issued pursuant to NRS 360B.260; or

(b) If the seller maintains a place of business in this State, an informational statement of the jurisdictions to which the direct mail will be delivered to recipients.

➤ If a purchaser of direct mail provides documentation of a direct pay permit to a seller in accordance with subparagraph (3) of paragraph (a), the seller shall not require the purchaser to comply with any other provision of that paragraph.

2. Notwithstanding the provisions of NRS 360B.350 to 360B.375, inclusive:

(a) Upon the receipt pursuant to subsection 1 of:

(1) A form for direct mail by a seller who does not maintain a place of business in this State:

(I) The seller is relieved of any liability for the collection, payment or remission of any sales or use taxes applicable to the purchase of direct mail by that purchaser from that seller; and

(II) The purchaser is liable for any sales or use taxes applicable to the purchase of direct mail by that purchaser from that seller.

➤ Any form for direct mail provided to a seller pursuant to this subparagraph applies to all future sales of direct mail made by that seller to that purchaser until the purchaser delivers a written notice of revocation to the seller.

(2) An informational statement by any seller, the seller shall collect, pay or remit any applicable sales and use taxes in accordance with the information contained in that statement. In the absence of bad faith, the seller is relieved of any liability to collect, pay or remit any sales and use taxes other than in accordance with that information received.

(b) If a purchaser of direct mail does not comply with subsection 1, the seller shall determine the location of the sale pursuant to subsection 5 of NRS 360B.360 and collect, pay or remit any applicable sales and use taxes. This paragraph does not limit the liability of the purchaser for the payment of any of those taxes.

3. As used in this section, "direct mail" means printed material delivered or distributed by the United States Postal Service or another delivery service to a mass audience or to addresses contained on a mailing list provided by a purchaser or at the direction of a purchaser when the cost of the items purchased is not billed directly to the recipients. The term includes tangible personal property supplied directly or indirectly by the purchaser to the seller of the direct mail for inclusion in the package containing the printed material. The term does not include multiple items of printed material delivered to a single address.

372.258 Presumption that certain property delivered outside this State was not purchased for use in this State.

1. It is presumed that tangible personal property delivered outside this State to a purchaser was not purchased from a retailer for storage, use or other consumption in this State if the property:

(a) Was first used in interstate or foreign commerce outside this State; and

(b) Is used continuously in interstate or foreign commerce, but not exclusively in this State, for at least 12 months after the date that the property was first used pursuant to paragraph (a).

2. As used in this section:

(a) "Interstate or foreign commerce" means the transportation of passengers or property between:

(1) A point in one state and a point in:

(I) Another state;

(II) A possession or territory of the United States; or

(III) A foreign country; or

(2) Points in the same state when such transportation consists of one or more segments of transportation that immediately follow movement of the property into the state from a point beyond its borders or immediately precede movement of the property from within the state to a point outside its borders.

(b) "State" includes the District of Columbia.

374.263 Presumption that certain property delivered outside this State was not purchased for use in this State.

1. It is presumed that tangible personal property delivered outside this State to a purchaser was not purchased from a retailer for storage, use or other consumption in this State if the property:

(a) Was first used in interstate or foreign commerce outside this State; and

(b) Is used continuously in interstate or foreign commerce, but not exclusively in this State, for at least 12 months after the date that the property was first used pursuant to paragraph (a).

2. As used in this section:

(a) "Interstate or foreign commerce" means the transportation of passengers or property between:

(1) A point in one state and a point in:

(I) Another state;

(II) A possession or territory of the United States; or

(III) A foreign country; or

(2) Points in the same state when such transportation consists of one or more segments of transportation that immediately follow movement of the property into the state from a point beyond its borders or immediately precede movement of the property from within the state to a point outside its borders.

(b) "State" includes the District of Columbia.