

**MINUTES OF THE  
SENATE COMMITTEE ON REVENUE**

**Seventy-sixth Session  
March 1, 2011**

The Senate Committee on Revenue was called to order by Chair Sheila Leslie at 1:09 p.m. on Tuesday, March 1, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Sheila Leslie, Chair  
Senator Steven A. Horsford, Vice Chair  
Senator Michael A. Schneider  
Senator Moises (Mo) Denis  
Senator Mike McGinness  
Senator Joseph (Joe) P. Hardy  
Senator Elizabeth Halseth

**STAFF MEMBERS PRESENT:**

Russell Guindon, Principal Deputy Fiscal Analyst  
Joe Reel, Deputy Fiscal Analyst  
Mike Wiley, Committee Secretary

**OTHERS PRESENT:**

Dino DiCianno, Executive Director, Department of Taxation  
Ray Bacon, Nevada Manufacturers Association  
John Wagner, State Chairman, Independent American Party  
Tray Abney, Reno Sparks Chamber of Commerce  
Carole Vilardo, President, Nevada Taxpayers Association  
Bryan Wachter, Retail Association of Nevada  
Samuel P. McMullen, Las Vegas Chamber of Commerce  
John Griffin, Amazon.com

CHAIR LESLIE:

I will call to order the Senate Committee on Revenue.

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DINO DICIANNO (Executive Director, Department of Taxation):

As the Executive Director of the Department of Taxation, I am the State Delegate for Nevada on the Streamlined Sales Tax Governing Board. I have submitted a copy of my presentation today on the Streamlined Sales and Use Tax Agreement ([Exhibit C](#)), which is the result of the cooperative efforts of 44 states. The Agreement minimizes costs and administrative burdens on retailers who collect sales tax. We are trying to level the playing field between brick and mortar retailers and e-commerce retailers—the rules would be the same for both. The Streamlined Sales Tax Project was created by the National Governors Association and the National Conference of State Legislatures in 1999 to simplify tax collection. Twenty-four states have passed conforming legislation representing 33 percent of the U.S. population. The charge from Congress was to have 20 percent of the population and ten states with language conforming to the Agreement. Conforming legislation was introduced in Texas, New York and California.

Sales tax administration is improved through tax law simplification, efficient administration and emerging technologies. New legislation conforming to the Agreement allows revenue to be collected from e-commerce. Businesses would have the same rules, regulations, exemptions and exclusions in all states. The federal solution highlights the Main Street Fairness Act ([Exhibit D](#)) which is the ultimate goal of the legislation.

House of Representatives Resolution 5660 of the 111th Congress, Main Street Fairness Act, grants the consent of Congress to the Streamlined Sales and Use Tax Agreement, the multistate agreement on sales and use tax collection and administration adopted on November 12, 2002. The U.S. Supreme Court in 1992 ruled in *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992), that Congress has the power under the Commerce Clause, Article I, Section 8, Clause 3, of the U.S. Constitution, to create a level playing field for local merchants. Federal legislation has to pass for states to conform to the Agreement and be able to collect taxes from remote sellers or e-commerce retailers. Remote sellers are not businesses like Wal-Mart, Target or Best Buy, but businesses that sell their products to customers in a state using the Internet, mail order or telephone without having a physical presence in that state.

CHAIR LESLIE:

Some have both store fronts and Websites?

MR. DICIANNO:

Cabela's is the best example of retailers with store fronts and kiosks that allow customers to shop the Internet to purchase merchandise. By having a physical presence in the State, they do pay sales and use tax. We are not creating a new tax for the Internet because the State does not have a sales tax on Internet services. The Internet Tax Freedom Act and the Main Street Fairness Act have a provision that would make the moratorium permanent on e-commerce taxes for services. The discussions centered on technology as a way of enticing business to be part of the Agreement. We need to provide the technology to enable reporting and paying through Certified Service Providers (CSP). There are six CSPs allowing e-commerce to file and pay taxes for every state by using the provider. It is the responsibility of the CSP to transmit to all the different states a return and payment or the payment alone.

To reduce administrative expenses, the CSP provides the ability to prevent differences on requirements for each state. The objective of having consistency, conformity and ease of administration are bound by the requirements of the CSP. One of the conditions of the Agreement requires states to have one state tax rate, Nevada's is 2 percent to the General Fund, and one local rate with exceptions—counties can have different rates, but the rate has to be used countywide.

CHAIR LESLIE:

Do we have counties that have different rates within the county?

MR. DICIANNO:

We do not have any at this time. Counties have to create a rate and boundary database. The State provides a database that matches the local tax rate with each zip code in the State. It allows the CSP to match the return and the payment to a specific zip code, which is transferred to the Department of Taxation, simplifying the distribution of the monies to the proper location. The CSP is allowed compensation for acting as the agent of the State. The rates are being developed and will be part of the Main Street Fairness Act if Congress passes the legislation. It is important to understand this is not a new tax, it is a tax already owed.

The states are prohibited from collecting the tax because of the *Quill* decision. If Congress adopts the Main Street Fairness Act, it changes the nexus rule from physical presence to economic presence. This is the best solution because

audits under the Main Street Fairness Act will be limited by auditing the CSP to ensure its reports are accurate. A cooperative agreement would allow combined efforts by states within the Agreement to conduct one audit.

CHAIR LESLIE:

Nevada's Ballot Question No. 3 for the 2010 general election, an amendment to the Sales and Use Tax Act of 1955, was voted down. How does it relate to this?

MR. DICIANNO:

The Agreement is a living document and the reason for Question No. 3 was to give the Legislature the ability to change the language in statute to comply with the Agreement. If we are out of compliance with the Agreement and the Main Street Fairness Act is adopted by Congress, we will not receive the revenue associated with e-commerce.

CHAIR LESLIE:

That is the consequence of not passing Question No. 3. The Legislature has the right to enact administrative changes.

MR. DICIANNO:

That is correct.

CHAIR LESLIE:

The voter sees sales tax exemption and thinks something is up. It is hard to explain in a way the average person can understand.

MR. DICIANNO:

The issue with Amazon.com is legislation introduced in a number of different states dealing with "click-through nexus." It is defined as a change in the definition of what constitutes a retail business by removing the word retail. The reason is to capture affiliates because Amazon only has affiliates. We have distribution centers in Fernley and North Las Vegas, affiliated with Amazon. They are not required to collect, report and pay sales tax on purchases by consumers in the State. I would caution this body on the legislation because the state controller in Texas billed Amazon, which is now in the process of shutting down its distribution center and putting people out of work. I would suggest working with the State's Congressional Delegation to work through the Main Street Fairness Act.

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CHAIR LESLIE:

The Fernley Amazon plant provides a lot of jobs; those jobs would be at risk.

MR. DICIANNO:

I believe e-commerce is outstripping brick and mortar retailer sales.

CHAIR LESLIE:

I will open the hearing on Senate Bill (S.B.) 34.

**SENATE BILL 34**: Makes various changes regarding the administration of sales and use taxes. (BDR 32-432)

MR. DICIANNO:

Nevada is a governing board member for the Streamlined Sales and Use Tax Agreement; in 2010, we were found to be out of compliance. Senate Bill 34 will bring the State into compliance. We need to maintain compliance because if the Agreement passes, we will not be allowed to share in the collection of the taxes. Our playing field will not be leveled between e-commerce and brick and mortar retailers.

Section 2, subsection 1 of the bill explanation ([Exhibit E](#)) deals with advertising and promotional direct mail to attract public attention to a product, person, business or organization. In the bill, "product" means tangible personal property, a product transferred electronically or a service. "Direct mail" means printed material delivered or distributed by the United States Postal Service. The "other direct mail" language in chapter 360B of the *Nevada Revised Statutes* (NRS) does not conform with the Agreement, and S.B. 34 will update that language. The example has to do with "other direct mail." Part of the change to the Agreement addresses providers that sell billing services, not tangible personal property but a service to a customer. Without these changes, Nevada will not be in compliance with the Agreement.

CHAIR LESLIE:

All of section 2 of S.B. 34 falls under the compliance language?

MR. DICIANNO:

Yes. Section 3 establishes requirement in NRS 360B.200 for the CSPs to electronically remit the return and payment of the tax to the State. Section 4 updates compliance issues by replacing "must" with "may" with regard to items on a nontaxable invoice NRS 360B.290. Postage and handling are not part of the price of the sale of tangible personal property.

CHAIR LESLIE:

Why the change from "must" to "may"?

MR. DICIANNO:

It allows e-commerce and brick and mortar retailers to comply if they so desire.

Section 5 clarifies the definition of what it means to "receive" tangible personal property in NRS 360B.350 to 360B.375 inclusive. It means taking possession of tangible personal property and strikes the provision of "making the first use of."

Section 6 amends NRS 360B.360, which governs where the retail sale of tangible personal property, excluding lease or rental, is deemed to take place. For e-commerce, it is the location on the receipt by the purchaser as to where they live, which ties back to the CSP database for zip codes. We will have the correct rate applied and the correct amount of tax remitted by the CSP.

Section 7 amends various sections of NRS 360B.480 which clarifies the terms "sales price" and "retail price."

Section 8 does not relate to the Agreement. The amendment changes chapter 372 of NRS, which governs the State 2 percent portion of sales and use tax as follows: subsection 1 changes the provisions of this chapter relating to collection and remittance of the sales tax that apply to every retailer whose activities have a sufficient nexus with the State and satisfies the requirements of the United States Constitution. The change is designed to tie the nexus criteria to the federal requirements of physical presence. I am open to suggestions on the term "sufficient nexus" which provides the ability for someone to say: I do or do not have sufficient nexus in this State in order to pay sales tax.

CHAIR LESLIE:

Give us a real-world example of how you could not have sufficient nexus.

MR. DICIANNO:

It is not a matter of having the ability to provide the sale of tangible personal property in the State. A substantial or physical nexus is needed, which requires the State to prove the retailer has a storefront. It has to be substantial in the State in which the retailer is selling goods to a customer in this State.

CHAIR LESLIE:

You said substantial.

MR. DICIANNO:

That is the federal rule.

CHAIR LESLIE:

Here we are saying sufficient nexus. What would be insufficient nexus?

MR. DICIANNO:

It could relate to the purchase and use of mobile equipment, like aircraft. Depending on where it is purchased, housed or located through the Federal Aviation Administration and where is it stationed because it is mobile equipment. Sections 9 and 10 deal with being in compliance with the Agreement. There are no good-faith requirements in the Streamlined Sales and Use Tax Agreement. The Amendment puts the burden of the tax on the purchaser and not the vendor. The vendor could receive an affidavit by a purchaser indicating exemption; then the burden of proof shifts from the vendor to the purchaser on the tax liability.

Sections 11 and 12 deal with rebuttable presumptions. Tangible personal property shipped or brought to the State by the purchaser and for the purchaser is presumed to be used and consumed in this State and liable for the payment of use tax. The change in allowing for rebuttable presumption is: the vendor or purchaser can prove to the Department of Taxation the property was stored or used exclusively outside the State during the initial 30 days after purchase and for a majority of the time during the initial 12 months after purchase.

CHAIR LESLIE:

If I purchase something but intend to use it in California, with proof, I would not be liable for the tax.

MR. DICIANNO:

That is correct. Section 13 deals with entity-based exemptions. The amendment is to treat entity-based exemptions uniformly and equally, regardless of the entity, to conform with the Agreement. Section 14 deals with the filing of monthly returns on the form prescribed by the Department of Taxation unless filed electronically. Section 15 deals with the contents of the returns and the violations associated with not providing proper documentation in compliance with the Agreement. Section 16 deals with the filing of the return and how it is delivered to the Department.

Sections 17 through 25 reflect amendments to chapter 374 of NRS, which govern the Local School Support Tax portion of sales tax. By changing NRS 372 we have to change chapter 374 of NRS. Section 26 repeals NRS 360B.280, purchases of direct mail. Nevada Revised Statute 372.258 is the presumption that certain property delivered outside this State was not purchased for use in this State, and NRS 374.263 is the presumption that certain property delivered outside this State was not purchased for use in this State. Section 27 states this act becomes effective upon passage and approval. We ask for your support in passing this legislation to not only maintain Nevada as a governing member of the Agreement but to level the playing field between brick and mortar retailers and e-commerce retailers.

CHAIR LESLIE:

Is section 8 the only section that does not relate to the Agreement?

MR. DICIANNO:

That is correct.

CHAIR LESLIE:

We will go on to the amendment for S.B. 34.

MR. DICIANNO:

From the time of bill draft request and the prefiling of the bill, the Nevada Tax Commission made additional changes to the language within the Agreement ([Exhibit F](#)). The change in section 4, paragraph (f) of [Exhibit F](#) allows that when

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the due date for a return falls on a Saturday, Sunday or legal holiday, the return shall be due on the next succeeding business day. I put the amendatory language in specific provisions within NRS 360B.300. If I made a mistake, I will rely on your Legal Division to correct them. If the Federal Reserve Bank is closed on a due date and that prohibits a person from making a payment, the payment shall be accepted the next day the Federal Reserve Bank is open.

CHAIR LESLIE:  
Is there any public testimony?

RAY BACON (Nevada Manufacturers Association):  
I have supplied written testimony ([Exhibit G](#)). This Committee deals with revenue. About \$350 million in revenue a year is unavailable because we have not passed this legislation. We have pushed the legislation for years with no success. In the State's current economic situation, it is time to put some heat on Congress. We support the bill as written.

CHAIR LESLIE:  
What is your view on why Congress has not acted?

MR. BACON:  
We have failed to ask. If passed, it helps 44 states solve their problems with revenue streams, and the other states will come aboard when it starts to move.

JOHN WAGNER (State Chairman, Independent American Party):  
We do not favor this bill. This sounds like a new tax, and if so, it needs a two-thirds vote in both Houses of the Legislature to pass.

CHAIR LESLIE:  
It is not indicated that way on the bill.

MR. WAGNER:  
I see that it is not, but maybe it should be. It may come to that because if the Governor vetoes S.B. 34, it will require a two-thirds vote to override the veto.

TRAY ABNEY (Reno Sparks Chamber of Commerce):  
We support the bill. This is not a new tax; people purchasing on the Internet are supposed to complete the Department of Taxation Combined Sales and Use Tax return.

CAROLE VILARDO (President, Nevada Taxpayers Association):

I do support the bill. Section 8 of the bill addresses having sufficient nexus. I have worked on this for over 20 years. Before the Internet, nexus was defined in the *Quill* decision as having a physical presence in the state. You either have presence or you do not. Why do you need sufficient or substantial nexus? I suggest taking it out. When Congress acts, the nexus issue will be addressed, so the simpler we keep it, the easier it will be.

CHAIR LESLIE:

We will have staff take a look at it before the work session.

MS. VILARDO:

I would like to answer your questions on why Question No. 3 was defeated and why Congress failed to act on this legislation. Voters in the states with a sales and use tax do not understand the use tax is reciprocating for sales tax. That would be merchandise shipped to states. In 1955, this was catalog sales. The company sent a catalog, the company shipped merchandise, and the retailer had the obligation to collect and remit the tax and send it to the states. Because the *Quill* decision requires a physical presence in the state, remote sellers could no longer collect and remit the tax due. The burden still exists, but the burden falls to the consumer. It is not a tax issue but a collection issue. The tax is the obligation of the taxpayer, and by not paying it, the consumer is in violation of the law.

Congress is reacting to its constituents who do not understand sales and use tax, and this prevents the legislation from moving forward. The Nevada Taxpayers Association has always maintained the tax policies have to reflect the economy and the way business is done in the State. Retail sales in 2011 are much different than 1955. When we put a question on the ballot which involves sales and use tax, and the wording indicates the Sales and Use Tax Act of 1955 is to be amended, it always fails. Should we have Legal Division write a question in plain English, saying we have the opportunity to change collection from the individual to the person who is selling the goods?

CHAIR LESLIE:

Your comments are well-taken. The problem is that people who are avoiding the tax want to continue avoiding the tax. We could frame it as a collection issue and develop a question to say, "Do we want to put Internet sales on the same

level playing field as brick and mortar retailers?" Maybe it would be easier to understand if the language was easier to understand.

MS. VILARDO:

Whatever you do with taxes, remember taxpayers have to comply; keep the provisions less complicated.

BRYAN WACHTER (Retail Association of Nevada):

Remote sales for the State increased by 11.5 percent for the last reporting period. Cyber Monday is becoming one of the largest sales days of the year; we are now determining the economic loss from shoppers going online to purchase on Cyber Monday. Internet sales are a huge part of not only holiday sales but regular sales as well and will continue to grow. Small businesses are struggling because of losing 8 percent off the top. They will not be able to compete and will eventually go out of business. We support the bill.

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce):

We have always supported the Streamlined Sales and Use Tax of 1955 at the election and ballot level as well as with the Legislature. We have supported the Department of Taxation in its efforts to make sure everything is administered as effectively as possible. We support S.B. 34 and the amendments. We would also support making the language on ballot questions simpler and more understandable.

JOHN W. GRIFFIN (Amazon.com):

I also represent TechAmerica, which is eBay, Facebook, Google, Apple, Overstock and other Internet companies. Amazon supports the Streamlined Sales and Use Tax, but a federal solution is the best way for Internet sales transactions to be taxed. Internet companies facing sales tax at the state level then have to apply sales tax on an Internet transaction with thousands of jurisdictions. This is why Amazon supports the Streamlined Sales and Use Tax Act. We are neutral on the bill and have the same issues on sections 8 and 17 as Ms. Vilardo mentioned. Our concern is the language in the bill describing nexus could be read broadly.

CHAIR LESLIE:

Would you take out the word "sufficient," or is it more complicated?

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MR. GRIFFIN:

Our concern with section 8 is not what it says but what it does not say. Nexus within the requirements of the U.S. Constitution is really a broad statement. It needs to be narrower or have a more tailored definition. In the statutes of the State, it is understood that it complies with the U.S. Constitution.

CHAIR LESLIE:

I will close the hearing on S.B. 34 and review the letter ([Exhibit H](#)) we are sending to U.S. Senator Harry Reid.

JOE REEL (Deputy Fiscal Analyst):

This letter from Chair Leslie to U.S. Senator Harry Reid and the rest of the Nevada Congressional Delegation reinforces passage of the federal legislation. A study from the Center for Business and Economic Research at the University of Tennessee estimates the amount of sales tax dollars not being collected by states. The report indicates the State of Nevada is losing \$169 million per year in revenue.

CHAIR LESLIE:

We are going to send the letter, and I will follow up with the Congressional Delegation.

MR. DICIANNO:

I recommend changing the word "collect" to "receive" in section 2, subsection 1, paragraph (b), subparagraph (1), sub-subparagraph (II) in S.B. 34. I would like to submit my presentation backup material to the Committee ([Exhibit I](#)).

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CHAIR LESLIE:

I agree, and we will adjourn the Senate Committee on Revenue at 2:13 p.m.

RESPECTFULLY SUBMITTED:

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Mike Wiley,  
Committee Secretary

APPROVED BY:

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Senator Sheila Leslie, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Dino DiCianno	Streamlined Sales and Use Tax Agreement
	D	Dino DiCianno	Main Street Fairness Act
S.B. 34	E	Dino DiCianno	Bill explanation
S.B. 34	F	Dino DiCianno	Proposed Amendments to Senate Bill 34
S.B. 34	G	Ray Bacon	Testimony
S.B. 34	H	Senator Sheila Leslie	Letter to U.S. Senator Harry Reid
S.B. 34	I	Dino DiCianno	Presentation Background Material