

CHAPTER.....

AN ACT relating to taxation; revising provisions governing the taxation of purchases of direct mail to ensure continued compliance with the Streamlined Sales and Use Tax Agreement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement and take any other actions reasonably required to implement the provisions of the Agreement. (NRS 360B.110) Existing law also provides for the payment of sales and use taxes due on a sale of direct mail. In certain circumstances under existing law, if a seller of direct mail does not maintain a place of business in this State, the purchaser is required to report and pay any applicable sales and use taxes due and the seller, in the absence of bad faith, is relieved of any obligation to collect, pay or remit any sales or use taxes which are applicable. Conversely, if the seller maintains a place of business in this State, the seller is required to collect and remit any sales or use taxes which are due in this State, while the purchaser is required to report and pay any applicable sales due in any other state. (NRS 360B.281) Consistently with the Agreement, this bill removes the distinction between a seller who maintains a place of business in this State and one who does not. In circumstances where the distinction has been relevant, this bill requires the purchaser to report and pay any applicable sales or use taxes, and relieves the seller, in the absence of bad faith, from any obligation to collect, pay or remit any sales or use tax applicable to the transaction.

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

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

Section 1. NRS 360B.281 is hereby amended to read as follows:

360B.281 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 to 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.



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

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

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

~~(II) (2) The seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any sales or use taxes applicable to any transaction involving the advertising and promotional direct mail to which the documentation, certificate or statement applies. I; or~~

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

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

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

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

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

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

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

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

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

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



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

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

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

(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.

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

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

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

~~(II)~~ (2) The seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any sales or use taxes applicable to any transaction involving the other direct mail to which the documentation, certificate or statement applies. ~~or~~

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

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

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

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

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

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

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



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

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

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

6. As used in this section:

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

(b) "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.

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

(1) Includes, but is not limited to:

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

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

(III) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees or agents, including, but not limited to, 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. 2. This act becomes effective on July 1, 2015.

