
ASSEMBLY BILL NO. 447—COMMITTEE ON TAXATION

MARCH 25, 2019

Referred to Committee on Taxation

SUMMARY—Imposes a tax on the retail sale of certain digital products. (BDR 32-1101)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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; providing for the imposition, administration, collection and enforcement of a tax on certain digital products electronically transferred to a purchaser; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 23 and 32 of this bill impose a tax on a retail sale in this State of specified digital products electronically transferred to a person and on the use of specified digital products electronically transferred to a person in a transaction in this State for which the tax was not collected at the time of sale. Under **section 22** of this bill, a retail sale of specified digital products is deemed to take place in this State: (1) if the business records of the seller that are maintained in the ordinary course of the seller's business indicate that the purchaser's address is in this State, unless the use of that address would constitute bad faith; or (2) if the business records of the seller do not indicate such an address, the address of the purchaser obtained during the consummation of the sale, including, without limitation, the address of the purchaser's instrument of payment, unless the use of that address would constitute bad faith. Under **sections 23 and 32**, the rate of the tax is the same as the sales and use tax rate imposed in the county determined pursuant to **section 23**. Under **section 91** of this bill, the requirement to impose, collect and remit the tax is imposed on a retailer if, in the immediately preceding calendar year or the current calendar year, the retailer had more than a \$100,000 of gross revenue from certain transactions that took place in this State or 200 or more such transactions that took place in this State. **Sections 1-21, 24-31, 33-90 and 92-108** of this bill provide for the administration, collection and enforcement of the tax in the same manner as the sales and use tax.

Sections 109-121 of this bill make conforming changes.



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

Section 1. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 108, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 21, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Business” includes any activity engaged in by any person or caused to be engaged in by him or her with the object of gain, benefit or advantage, either direct or indirect.*

Sec. 4. *“Digital audio works” means works that result from the fixation of a series of musical, spoken or other sounds, including, without limitation, ringtones.*

Sec. 5. *“Digital audio-visual works” means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.*

Sec. 6. *“Digital books” means works that are generally recognized in the ordinary and usual sense as “books.”*

Sec. 7. *“Electronically transferred” means obtained by the purchaser by means other than tangible storage media.*

Sec. 8. *“End user” means any person other than a person who receives by contract a specified digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the specified digital product, in whole or in part, to another person or persons.*

Sec. 9. 1. *“Gross receipts” means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of specified digital products of retailers of specified digital products, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:*

(a) The cost of the specified digital products sold except that, in accordance with such rules and regulations as the Department may prescribe, a deduction may be taken if the retailer has purchased specified digital products for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the State or has paid the use tax with respect to the specified digital products, and has resold the specified digital products before making any use of the specified digital products other than the broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distributing, redistributing



1 or exhibition in the regular course of business. If such a deduction
2 is taken by the retailer, no refund or credit will be allowed to his or
3 her vendor with respect to the sale of the specified digital products.

4 (b) The cost of the materials used, labor or service cost,
5 interest paid, losses or any other expense.

6 2. The total amount of the sales or lease or rental price
7 includes all of the following:

8 (a) Any services that are a part of the sale.

9 (b) All receipts, cash, credits and property of any kind.

10 (c) Any amount for which credit is allowed by the seller to the
11 purchaser.

12 3. "Gross receipts" does not include any of the following:

13 (a) Cash discounts allowed and taken on sales.

14 (b) The sales price of specified digital products returned by
15 customers when the full sales price is refunded either in cash or
16 credit, but this exclusion does not apply in any instance when the
17 customer, in order to obtain the refund, is required to purchase
18 other specified digital products at a price greater than the amount
19 charged for the specified digital products that are returned.

20 (c) The price received for labor or services used in installing or
21 applying the specified digital products sold.

22 (d) The amount of any tax imposed by the United States upon
23 or with respect to retail sales, whether imposed upon the retailer or
24 the end user.

25 4. For purposes of the tax imposed by section 23 of this act, if
26 the retailers establish to the satisfaction of the Department that the
27 tax has been added to the total amount of the sales price and has
28 not been absorbed by them, the total amount of the sales price
29 shall be deemed to be the amount received exclusive of the tax
30 imposed.

31 **Sec. 10.** "In this State" or "in the State" means within the
32 exterior limits of the State of Nevada and includes all territory
33 within these limits owned by or ceded to the United States of
34 America.

35 **Sec. 11.** 1. "Occasional sale" includes:

36 (a) A sale of specified digital products not held or used by a
37 seller in the course of an activity for which he is required to hold a
38 seller's permit, if the sale is not one of a series of sales sufficient
39 in number, scope and character to constitute an activity requiring
40 the holding of a seller's permit.

41 (b) Any transfer of all or substantially all the specified digital
42 products held or used by a person in the course of such an activity
43 when after such transfer the real or ultimate ownership of such
44 property is substantially similar to that which existed before such
45 transfer.



2. For the purposes of this section, stockholders, bondholders, partners or other persons holding an interest in a corporation or other entity are regarded as having the “real or ultimate ownership” of the specified digital products of the corporation or other entity.

Sec. 12. “Other digital products” means greeting cards, images, video or electronic games or entertainment, news or information products and computer software applications.

Sec. 13. “Purchase” means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of specified digital products for a consideration.

Sec. 14. “Retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business of specified digital products.

Sec. 15. 1. “Retailer” includes:

(a) Every seller who makes any retail sale or sales of specified digital products.

(b) Every person engaged in the business of making sales of specified digital products for use.

(c) Every person making more than two retail sales of specified digital products during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors or a receiver or trustee in bankruptcy.

2. When the Nevada Tax Commission determines that it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the specified digital products sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Nevada Tax Commission may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter.

Sec. 16. “Ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

Sec. 17. “Sale” means and includes any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of specified digital products for a consideration, including, without limitation, any such transfer, exchange or barter on a subscription basis.

Sec. 18. 1. “Sales price” means the total amount for which specified digital products are sold, valued in money, whether paid



1 in money or otherwise, without any deduction on account of any
2 of the following:

3 (a) The cost of the specified digital products sold.

4 (b) The cost of materials used, labor or service cost, interest
5 charged, losses or any other expenses.

6 (c) The cost of transmitting the specified digital products
7 before purchase.

8 2. The total amount for which specified digital products are
9 sold includes all of the following:

10 (a) Any services that are a part of the sale.

11 (b) Any amount for which credit is given to the purchaser by
12 the seller.

13 3. "Sales price" does not include any of the following:

14 (a) Cash discounts allowed and taken on sales.

15 (b) The amount charged for specified digital products returned
16 by customers when the entire amount charged therefor is refunded
17 either in cash or credit, except that this exclusion does not apply in
18 any instance when the customer, in order to obtain the refund, is
19 required to purchase other specified digital products at a price
20 greater than the amount charged for the specified digital products
21 that are returned.

22 (c) The amount charged for labor or services rendered in
23 installing or applying the specified digital products sold.

24 (d) The amount of any tax, not including any manufacturers'
25 or importers' excise tax, imposed by the United States upon or
26 with respect to retail sales, whether imposed upon the retailer or
27 the consumer.

28 **Sec. 19.** "Seller" includes every person engaged in the
29 business of selling specified digital products of a kind, the gross
30 receipts from the retail sale of which are required to be included in
31 the measure of the tax imposed by section 23 of this act.

32 **Sec. 20.** 1. "Specified digital products" means
33 electronically transferred:

34 (a) Digital audio works;

35 (b) Digital audio-visual works;

36 (c) Digital books;

37 (d) Digital code; and

38 (e) Other digital products.

39 2. As used in this section, "digital code" means a method that
40 permits a purchaser to obtain or access at a later date a specified
41 digital product.

42 **Sec. 21.** "Subscription" means any arrangement in which a
43 person has the right or ability to access, receive, use, obtain,
44 purchase or otherwise acquire specified digital products on a
45 permanent or less than permanent basis, regardless of whether the



1 *person actually accesses, receives, uses, obtains, purchases or*
2 *otherwise acquires such specified digital product.*

3 **Sec. 22.** *For the purposes of this chapter, a retail sale of*
4 *specified digital products shall be deemed to take place:*

5 1. *At the address of the purchaser indicated in the business*
6 *records of the seller that are maintained in the ordinary course of*
7 *the seller's business, unless the use of that address would*
8 *constitute bad faith.*

9 2. *If subsection 1 does not apply, at the address of the*
10 *purchaser obtained during the consummation of the sale,*
11 *including, if no other address is available, the address of the*
12 *purchaser's instrument of payment, unless the use of an address*
13 *pursuant to this subsection would constitute bad faith.*

14 **Sec. 23.** 1. *An excise tax is hereby imposed upon the retail*
15 *sale of specified digital products to an end user in this State, in an*
16 *amount equal to the rate equal to the sum of the rates of all taxes*
17 *imposed upon sales at retail of tangible personal property in the*
18 *county in which the purchaser resides multiplied by the gross*
19 *receipts of the retailer of the specified digital products.*

20 2. *The tax imposed by subsection 1 applies whether the*
21 *purchaser obtains permanent use or less than permanent use of*
22 *the specified digital product, whether the sale is conditioned or not*
23 *conditioned upon continued payment from the purchaser and*
24 *whether the sale is on a subscription basis or is not on a*
25 *subscription basis.*

26 **Sec. 24.** *The tax imposed by section 23 of this act shall be*
27 *collected by the retailer from the end user insofar as it can be*
28 *done.*

29 **Sec. 25.** 1. *It is unlawful for any retailer to advertise or*
30 *hold out or state to the public or to any customer, directly or*
31 *indirectly, that the tax or any part thereof will be assumed*
32 *or absorbed by the retailer or that it will not be added to the selling*
33 *price of the specified digital products sold or that, if added, it or*
34 *any part thereof will be refunded.*

35 2. *Any person violating any provision of this section is guilty*
36 *of a misdemeanor.*

37 **Sec. 26.** 1. *A person shall not engage in or conduct*
38 *business as a seller in this State unless the person has:*

39 (a) *Registered with the Department pursuant to NRS*
40 *360B.200; or*

41 (b) *Obtained a permit issued by the Department.*

42 2. *Every application for a permit must:*

43 (a) *Be made upon a form prescribed by the Department.*



(b) Set forth the name under which the applicant transacts or intends to transact business and the location of the applicant's place or places of business.

(c) Set forth any other information which the Department may require.

(d) Be accompanied by a fee of \$5.

(e) Be signed by:

(1) The owner if he or she is a natural person;

(2) A member or partner if the seller is an association or partnership; or

(3) An executive officer or some person specifically authorized to sign the application if the seller is a corporation. Written evidence of the signer's authority must be attached to the application.

Sec. 27. 1. If the holder of a permit issued pursuant to this chapter fails to comply with any provision of this chapter or any regulation adopted pursuant thereto, the Department may revoke or suspend any one or more of the permits held by the person. Before doing so, the Department must hold a hearing after giving 10 days' written notice to the holder of the permit. The notice must specify the time and place of the hearing and require the holder of the permit to show cause why the permit should not be suspended or revoked.

2. If a permit is suspended or revoked, the Department must give written notice of the action to the holder of the permit.

3. The notices required by this section may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

4. The Department shall not issue a new permit after the revocation of a permit unless the Department is satisfied that the former holder of the permit will comply with the provisions of this chapter and the regulations of the Department adopted pursuant thereto.

5. A retailer whose permit has been suspended or revoked must pay the Department a fee of \$5 for the reinstatement of the permit or the issuance of a new permit.

Sec. 28. For the purpose of the proper administration of this chapter and to prevent evasion of the tax imposed by section 23 of this act, 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 specified digital products is not a sale at retail is upon the person who makes the sale unless the person takes from the purchaser a certificate to the effect that the specified digital product purchased by an end user and the purchaser:



1 1. Is engaged in the business of commercial broadcasting,
2 rebroadcasting, transmitting, retransmitting, licensing,
3 relicensing, distributing, redistributing or exhibiting specified
4 digital products, in whole or in part, to another person or persons;

5 2. Is registered pursuant to NRS 360B.200 or holds a permit
6 issued pursuant to section 26 of this act, if required; and

7 3. At the time of purchasing the specified digital product,
8 intends to broadcast, rebroadcast, transmit, retransmit, license,
9 relicense, distribute, redistribute or exhibit the specified digital
10 product in the regular course of business or is unable to ascertain
11 at the time of purchase whether the specified digital product will
12 be used for such a purpose or will be used for some other purpose.

13 **Sec. 29.** A resale certificate must:

14 1. Be substantially in such form and include such
15 information as the Department may prescribe; and

16 2. Unless submitted in electronic form, be signed by the
17 purchaser.

18 **Sec. 30.** 1. If a purchaser who gives a resale certificate
19 makes any use of specified digital products other than the
20 commercial broadcasting, rebroadcasting, transmitting,
21 retransmitting, licensing, relicensing, distributing, redistributing
22 or exhibiting of the specified digital products, in whole or in part,
23 to another person or persons in the regular course of business:

24 (a) The use is taxable to the purchaser as of the time one of the
25 specified digital products is first so used by him or her, and the
26 sales price of the specified digital products to the purchaser is
27 the measure of the tax.

28 (b) The seller is liable for the tax with respect to the sale of the
29 specified digital products to the purchaser only if:

30 (1) There is an unsatisfied use tax liability pursuant to
31 paragraph (a); and

32 (2) The seller fraudulently failed to collect the tax or
33 solicited the purchaser to provide the resale certificate unlawfully.

34 2. As used in this section, "seller" includes a certified service
35 provider, as that term is defined in NRS 360B.060, acting on
36 behalf of a seller who is registered pursuant to NRS 360B.200.

37 **Sec. 31.** Any person who gives a resale certificate for
38 specified digital products which the person knows at the time of
39 purchase is not to be further broadcast, rebroadcast, transmitted,
40 retransmitted, licensed, relicensed, distributed, redistributed or
41 exhibited by the person in the regular course of business for the
42 purpose of evading payment to the seller of the amount of the tax
43 applicable to the transaction is guilty of a misdemeanor.

44 **Sec. 32.** 1. An excise tax is hereby imposed on the use in
45 this State of specified digital products purchased and



electronically transferred from any retailer on or after January 1, 2020, in a retail sale that takes place in this State, as set forth in section 22 of this act, for use in this State at a rate equal to the sum of the rates of all taxes imposed upon the storage, use or other consumption of tangible personal property in the county in which the retail sale takes place, as set forth in section 22 of this act.

2. The tax is imposed with respect to all specified digital products which were electronically transferred in a transaction that is taxable pursuant to this chapter but for which the tax imposed by section 23 of this act was not collected.

Sec. 33. Every person storing, using or otherwise consuming in this State specified digital products purchased from a retailer is liable for the tax. His or her liability is not extinguished until the tax has been paid to this State, except that a receipt from a retailer given to the purchaser pursuant to section 34 of this act is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

Sec. 34. Every retailer maintaining a place of business in this State and making sales of specified digital products for use in this State, not exempted by this chapter, shall, at the time of making the sales or, if the use of the specified digital products is not then taxable hereunder, at the time the use becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the Nevada Tax Commission.

Sec. 35. The tax required to be collected by the retailer constitutes a debt owed by the retailer to this State.

Sec. 36. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the specified digital products sold or that, if added, it or any part thereof will be refunded.

Sec. 37. The tax required to be collected by the retailer from the purchaser must be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

Sec. 38. Any person who violates section 34, 36 or 37 of this act is guilty of a misdemeanor.

Sec. 39. 1. Every retailer who sells specified digital products for use in this State shall register with the Department and give:

(a) The name and address of all agents operating in this State.



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(b) The location of all offices or other places of business in this State.

(c) Such other information as the Department may require.

2. Every business that purchases specified digital products for use in this State shall, at the time the business obtains a state business license pursuant to chapter 76 of NRS, register with the Department on a form prescribed by the Department. As used in this subsection, "business" has the meaning ascribed to it in NRS 76.020.

Sec. 40. 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 specified digital products sold by any person for delivery in this State are sold for use in this State until the contrary is established. The burden of proving that a sale of specified digital products is not a sale at retail is upon the person who makes the sale unless the person takes from the purchaser a certificate to the effect that the specified digital products were purchased by an end user and the purchaser:

1. Is engaged in the business of commercial broadcasting, rebroadcasting, transmitting, retransmitting, licensing, relicensing, distributing, redistributing or exhibiting specified digital products, in whole or in part, to another person or persons;

2. Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to section 26 of this act, if required; and

3. At the time of purchasing the specified digital products, intends to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute or exhibit the specified digital products in the regular course of business or is unable to ascertain at the time of purchase whether the specified digital products will be used for such a purpose or will be used for some other purpose.

Sec. 41. A resale certificate must:

1. Be substantially in such form and include such information as the Department may prescribe; and

2. Unless submitted in electronic form, be signed by the purchaser.

Sec. 42. If a purchaser who gives a certificate makes any use of the specified digital products other than the commercial broadcasting, rebroadcasting, transmitting, retransmitting, licensing, relicensing, distributing, redistributing or exhibiting of the specified digital products, in whole or in part, to another person or persons in the regular course of business, the use is taxable as of the time any of the specified digital products is first so stored or used.



1 **Sec. 43.** *As used in sections 43 to 55, inclusive, of this act,*
2 *“exempted from the taxes imposed by this chapter” means*
3 *exempted from the computation of the amount of taxes imposed.*

4 **Sec. 44.** *There are exempted from the taxes imposed by this*
5 *chapter the gross receipts from the sale of, and the use in this*
6 *State of, specified digital products the gross receipts from the sale*
7 *of which, or the use of which, this State is prohibited from taxing*
8 *under the Constitution or laws of the United States or under the*
9 *Constitution of this State.*

10 **Sec. 45.** *There are exempted from the taxes imposed by this*
11 *chapter the gross receipts from the sale of specified digital*
12 *products that are textbooks sold within the Nevada System of*
13 *Higher Education.*

14 **Sec. 46.** *There are exempted from the taxes imposed by this*
15 *chapter the gross receipts from the sale of, and the use in this*
16 *State of, specified digital products which is a newspaper regularly*
17 *issued at average intervals not exceeding 1 week and any such*
18 *newspaper.*

19 **Sec. 47.** *There are exempted from the taxes imposed by this*
20 *chapter the gross receipts from occasional sales of specified digital*
21 *products and the use in this State of specified digital products, the*
22 *transfer of which to the purchaser is an occasional sale.*

23 **Sec. 48.** *There are exempted from the taxes imposed by this*
24 *chapter the gross receipts from the sale of any specified digital*
25 *products to:*

26 1. *The United States, its unincorporated agencies and*
27 *instrumentalities.*

28 2. *Any incorporated agency or instrumentality of the United*
29 *States wholly owned by the United States or by a corporation*
30 *wholly owned by the United States.*

31 3. *The State of Nevada, its unincorporated agencies and*
32 *instrumentalities.*

33 4. *Any county, city, district or other political subdivision of*
34 *this State.*

35 **Sec. 49.** *There are exempted from the taxes imposed by this*
36 *chapter the gross receipts from the sale of, and the use in this*
37 *State of, any specified digital products sold by or to a nonprofit*
38 *organization created for religious, charitable or educational*
39 *purposes. The Legislature shall establish:*

40 1. *Standards for determining whether an organization is*
41 *created for religious, charitable or educational purposes.*

42 2. *Procedures for administering the provisions of this section.*

43 **Sec. 50.** 1. *For the purposes of section 49 of this act, an*
44 *organization is created for religious, charitable or educational*
45 *purposes if it complies with the provisions of this section.*



2. An organization is created for religious purposes if:
- (a) It complies with the requirements set forth in subsection 5; and
- (b) The sole or primary purpose of the organization is the operation of a church, synagogue or other place of religious worship at which nonprofit religious services and activities are regularly conducted. Such an organization includes, without limitation, an integrated auxiliary or affiliate of the organization, men's, women's or youth groups established by the organization, a school or mission society operated by the organization, an organization of local units of a church and a convention or association of churches.
3. An organization is created for charitable purposes if:
- (a) It complies with the requirements set forth in subsection 5;
- (b) The sole or primary purpose of the organization is to:
- (1) Advance a public purpose, donate or render gratuitously or at a reduced rate a substantial portion of its services to the persons who are the subjects of its charitable services, and benefit a substantial and indefinite class of persons who are the legitimate subjects of charity;
- (2) Provide services that are otherwise required to be provided by a local government, this State or the Federal Government; or
- (3) Operate a hospital or medical facility licensed pursuant to chapter 449 or 450 of NRS; and
- (c) The organization is operating in this State.
4. An organization is created for educational purposes if:
- (a) It complies with the requirements set forth in subsection 5; and
- (b) The sole or primary purpose of the organization is to:
- (1) Provide athletic, cultural or social activities for children;
- (2) Provide displays or performances of the visual or performing arts to members of the general public;
- (3) Provide instruction and disseminate information on subjects beneficial to the community;
- (4) Operate a school, college or university located in this State that conducts regular classes and provides courses of study required for accreditation or licensing by the State Board of Education or the Commission on Postsecondary Education, or for membership in the Northwest Association of Accredited Schools or accreditation by the Northwest Commission on Colleges and Universities;
- (5) Serve as a local or state apprenticeship committee to advance programs of apprenticeship in this State; or



(6) Sponsor programs of apprenticeship in this State through a trust created pursuant to 29 U.S.C. § 186.

5. In addition to the requirements set forth in subsection 2, 3 or 4, an organization is created for religious, charitable or educational purposes if:

(a) No part of the net earnings of any such organization inures to the benefit of a private shareholder, individual or entity;

(b) The business of the organization is not conducted for profit;

(c) No substantial part of the business of the organization is devoted to the advocacy of any political principle or the defeat or passage of any state or federal legislation;

(d) The organization does not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office; and

(e) Any property sold to the organization for which an exemption is claimed is used by the organization in this State in furtherance of the religious, charitable or educational purposes of the organization.

Sec. 51. There are exempted from the taxes imposed by this chapter on the use of specified digital products any such products loaned or donated to:

1. The United States, its unincorporated agencies and instrumentalities.

2. Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

3. The State of Nevada, its unincorporated agencies and instrumentalities.

4. Any county, city, district or other political subdivision of this State.

5. Any organization created for religious, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

Sec. 52. The use in this State of specified digital products, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by section 23 of this act, is exempted from the tax imposed by section 32 of this act.

Sec. 53. 1. If a purchaser wishes to claim an exemption from the taxes imposed by this chapter, the retailer shall obtain such information from the purchaser 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



1 purchaser is not required to provide a signature to claim an
2 exemption if the request is submitted electronically.

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

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

10 5. Except as otherwise provided in this subsection, a retailer
11 who complies with the provisions of this section is not liable for
12 the payment of any tax imposed by this chapter if the purchaser
13 improperly claims an exemption. If the purchaser improperly
14 claims an exemption, the purchaser is liable for the payment of the
15 tax. The provisions of this subsection do not apply if the retailer:

16 (a) Fraudulently fails to collect the tax;

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

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

27 6. As used in this section:

28 (a) "Entity-based exemption" means an exemption based on
29 who purchases the product or who sells the product, and which is
30 not available to all.

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

34 **Sec. 54.** 1. Any nonprofit organization created for
35 religious, charitable or educational purposes that wishes to claim
36 an exemption pursuant to section 49 of this act, must file an
37 application with the Department to obtain a letter of exemption.
38 The application must be on a form and contain such information
39 as is required by the Department.

40 2. If the Department determines that the organization is
41 created for religious, charitable or educational purposes, it shall
42 issue a letter of exemption to the organization. The letter of
43 exemption expires 5 years after the date on which it is issued by
44 the Department. At least 90 days before the expiration of the letter
45 of exemption, the Department shall notify the organization to



1 whom the letter was issued of the date on which the letter will
2 expire. The organization may renew its letter of exemption for an
3 additional 5 years by filing an application for renewal with the
4 Department. The application for renewal must be on a form and
5 contain such information as is required by the Department.

6 3. To claim an exemption pursuant to section 49 of this act
7 for the sale of specified digital products to such an organization:

8 (a) The organization must give a copy of its letter of exemption
9 to the retailer from whom the organization purchases the product;
10 and

11 (b) The retailer must retain and present upon request a copy of
12 the letter of exemption.

13 4. The Department shall adopt such regulations as are
14 necessary to carry out the provisions of this section.

15 **Sec. 55.** If a purchaser certifies in writing to a seller that the
16 specified digital products purchased will be used in a manner or
17 for a purpose entitling the seller to regard the gross receipts from
18 the sale as exempted by this chapter from the computation of the
19 amount of the taxes imposed by this chapter, and uses the
20 specified digital products in some other manner or for some other
21 purpose, the purchaser shall be liable for payment of the tax as if
22 he or she were a retailer making a retail sale of the specified
23 digital products at the time of such use, and the cost of the
24 specified digital products to him or her shall be deemed the gross
25 receipts from such retail sale.

26 **Sec. 56.** A retailer shall hold the amount of all taxes
27 collected pursuant to this chapter in a separate account in trust for
28 the State.

29 **Sec. 57.** Except as otherwise provided in section 64 of this act
30 or required by the Department pursuant to NRS 360B.200, the
31 taxes imposed by this chapter are due and payable to the
32 Department monthly on or before the last day of the month next
33 succeeding each month.

34 **Sec. 58.** Except as otherwise required by the Department
35 pursuant to NRS 360B.200:

36 1. On or before the last day of the month following each
37 reporting period, a return for the preceding period must be filed
38 with the Department in such form and manner as the Department
39 may prescribe. Any return required to be filed by this section must
40 be combined with any return required to be filed pursuant to the
41 provisions of chapters 372 and 374 of NRS.

42 2. For purposes of:

43 (a) The tax imposed by section 23 of this act, a return must be
44 filed by each seller.



(b) The tax imposed by section 32 of this act, a return must be filed by each retailer maintaining a place of business in the State and by each person purchasing specified digital products, the use of which is subject to the use tax, who has not paid the use tax due.

3. 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. 59. 1. Except as otherwise required by the Department pursuant to NRS 360B.200:

(a) For the purposes of the tax imposed by section 23 of this act:

(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 specified digital products pertains.

(3) A sale pertains to the county in this State in which the retail sale of specified digital products takes place as determined pursuant to section 22 of this act.

(b) For purposes of the tax imposed by section 32 of this act:

(1) In the case of a return filed by a retailer, the return must show the total sales price of the specified digital products purchased by him or her, the use of which specified digital products 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 specified digital products pertains.

(3) If the specified digital products were:

(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 specified digital products purchased by him or her, the use of which became subject to the tax imposed by section 23 of this act during the preceding reporting period and indicate the county in this State in which the specified digital products were 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. 60. In determining the amount of taxes due pursuant to this chapter:

1. 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.

2. 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.

Sec. 61. 1. If a retailer is unable to collect all or part of the sales price of a sale, the retailer is entitled to receive a deduction from his or her taxable sales for that bad debt.

2. Any deduction that is claimed pursuant to this section may not include interest.

3. The amount of any deduction claimed must equal the amount of a deduction that may be claimed pursuant to section



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166 of the Internal Revenue Code, 26 U.S.C. § 166, for that sale minus:

- (a) Any finance charge or interest charged as part of the sale;
- (b) Any tax imposed by this chapter charged on the sales price;
- (c) Any amount not paid on the sales price because the specified digital product that was sold was not delivered until the full sales price is paid; and
- (d) Any expense incurred in attempting to collect the bad debt.

4. A bad debt may be claimed as a deduction on the return that covers the period during which the bad debt is written off in the business records of the retailer that are maintained in the ordinary course of the retailer's business and is eligible to be claimed as a deduction pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166, or if the retailer is not required to file a federal income tax return, would be eligible to be claimed as a deduction pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166.

5. If a bad debt for which a deduction has been claimed is subsequently collected in whole or in part, the tax on the amount so collected must be reported on the return that covers the period in which the collection is made.

6. If the amount of the bad debt is greater than the amount of the taxable sales reported for the period during which the bad debt is claimed as a deduction, a claim for a refund may be filed pursuant to NRS 372.630 to 372.720, inclusive, except that the time within which the claim may be filed begins on the date on which the return that included the deduction was filed.

7. If the retailer has contracted with a certified service provider for the remittance of the tax due under this chapter, the service provider may, on behalf of the retailer, claim any deduction to which the retailer is entitled pursuant to this section. The service provider shall credit or refund the full amount of any deduction or refund received pursuant to this section to the retailer.

8. For the purposes of reporting a payment received on a bad debt for which a deduction has been claimed, the payment must first be applied to the sales price of the specified digital products sold and the tax due thereon, and then to any interest, service charge or other charge that was charged as part of the sale.

9. If the records of a retailer indicate that a bad debt may be allocated among other states that are members of the Streamlined Sales and Use Tax Agreement, the retailer may allocate the bad debt among those states.

10. A retailer who assigns a debt to an entity which is part of an affiliated group that includes the retailer may claim any



deduction or refund to which the retailer would otherwise be entitled pursuant to this section, notwithstanding:

(a) The assignment of the debt to the entity;

(b) That the debt is written off as a bad debt in the business records of the entity which are maintained in the ordinary course of the entity's business; and

(c) That the bad debt is or would be eligible to be claimed by the entity as a deduction pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166.

11. Except as otherwise provided in subsection 12, 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 deduction claimed 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 deduction claimed or \$3,000, whichever is less.

12. For the purposes of subsection 11, 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 11.

13. As used in this section:

(a) "Affiliated group" means:

(1) An affiliated group as defined in section 1504(a) of the Internal Revenue Code, 26 U.S.C. § 1504(a); or

(2) A controlled group of corporations as described in section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. § 1563(a)(2).

(b) "Bad debt" means a debt that may be deducted pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166.

(c) "Certified service provider" has the meaning ascribed to it in NRS 360B.060.

Sec. 62. 1. Except as otherwise provided in subsection 2, if the taxes imposed by this chapter are paid in accordance with



1 *section 57 of this act, a taxpayer may deduct and withhold from*
2 *the taxes otherwise due from him or her 0.25 percent of those*
3 *taxes as reimbursement for the cost of collecting the tax.*

4 *2. The regulations adopted by the Nevada Tax Commission*
5 *pursuant to NRS 360B.110 may authorize the deduction and*
6 *withholding from the taxes otherwise due from a taxpayer such*
7 *other amounts as are required to carry out the Streamlined Sales*
8 *and Use Tax Agreement.*

9 **Sec. 63.** *1. Except as otherwise authorized or required by*
10 *the Department, the person required to file a return shall deliver*
11 *the return together with a remittance of the amount of the tax due*
12 *to the Department.*

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

16 **Sec. 64.** *1. Except as otherwise provided in this section or*
17 *required by the Department pursuant to NRS 360B.200, the*
18 *reporting and payment period of:*

19 *(a) A taxpayer whose taxable sales do not exceed \$10,000 per*
20 *month is a calendar quarter.*

21 *(b) A taxpayer who files reports on a quarterly basis in*
22 *accordance with paragraph (a) and:*

23 *(1) From whom no tax is due pursuant to this chapter for*
24 *the immediately preceding three quarterly reporting periods; or*

25 *(2) Whose taxable sales do not exceed a total amount of*
26 *\$1,500 for the immediately preceding four quarterly reporting*
27 *periods,*

28 *↪ is 12 calendar months, unless the taxable sales of the taxpayer*
29 *exceed a total amount of \$1,500 for such a 12-month reporting*
30 *and payment period or \$10,000 for a calendar month.*

31 *2. The Department, if it deems this action necessary to ensure*
32 *payment to or facilitate the collection by the State of the amount of*
33 *taxes, may require returns and payment of the amount of taxes for*
34 *periods other than calendar months or quarters, depending upon*
35 *the principal place of business of the seller, retailer or purchaser,*
36 *as the case may be, or for other than monthly, quarterly or annual*
37 *periods.*

38 **Sec. 65.** *For the purposes of the tax imposed by section 23 of*
39 *this act, gross receipts from rentals or leases of specified digital*
40 *products must be reported and the tax paid in accordance with*
41 *such regulations as the Department may prescribe.*

42 **Sec. 66.** *The Department for good cause may extend for not*
43 *to exceed 1 month the time for making any return or paying any*
44 *amount required to be paid under this chapter.*



1 **Sec. 67. 1.** *The Department, whenever it deems it necessary*
2 *to ensure compliance with this chapter, may require any person*
3 *subject to the chapter to place with it such security as the*
4 *Department may determine. The Department shall fix the amount*
5 *of the security which, except as otherwise provided in subsection 2,*
6 *may not be greater than twice the estimated average tax due*
7 *quarterly of persons filing returns for quarterly periods, three*
8 *times the estimated average tax due monthly of persons filing*
9 *returns for monthly periods or four times the estimated average*
10 *tax due annually of persons filing returns for annual periods,*
11 *determined in such a manner as the Department deems proper.*

12 2. *In the case of persons who are habitually delinquent in*
13 *their obligations under this chapter, the amount of the security*
14 *may not be greater than three times the average actual tax due*
15 *quarterly of persons filing returns for quarterly periods, five times*
16 *the average actual tax due monthly of persons filing returns for*
17 *monthly periods or seven times the average actual tax due*
18 *annually of persons filing returns for annual periods.*

19 3. *The limitations provided in this section apply regardless of*
20 *the type of security placed with the Department.*

21 4. *The amount of the security may be increased or decreased*
22 *by the Department subject to the limitations provided in this*
23 *section.*

24 5. *The Department may sell the security at public auction if it*
25 *becomes necessary to recover any tax or any amount required to*
26 *be collected, or interest or penalty due. Notice of the sale may be*
27 *served upon the person who placed the security personally or by*
28 *mail. If the notice is served by mail, service must be made in the*
29 *manner prescribed for service of a notice of a deficiency*
30 *determination and must be addressed to the person at his or her*
31 *address as it appears in the records of the Department. Security in*
32 *the form of a bearer bond issued by the United States or the State*
33 *of Nevada which has a prevailing market price may be sold by the*
34 *Department at a private sale at a price not lower than the*
35 *prevailing market price.*

36 6. *Upon any sale any surplus above the amounts due must be*
37 *returned to the person who placed the security.*

38 **Sec. 68. 1.** *If the Department determines that any amount,*
39 *penalty or interest has been paid more than once or has been*
40 *erroneously or illegally collected or computed, the Department*
41 *shall set forth that fact in the records of the Department and*
42 *certify to the State Board of Examiners the amount collected in*
43 *excess of the amount legally due and the person from whom it was*
44 *collected or by whom paid. If approved by the State Board of*
45 *Examiners, the excess amount collected or paid must, after being*



1 credited against any amount then due from the person in
2 accordance with NRS 360.236, be refunded to the person, or his or
3 her successors, administrators or executors.

4 2. Any overpayment of the tax imposed by section 32 of this
5 act by a purchaser to a retailer who is required to collect the tax
6 and who gives the purchaser a receipt therefor pursuant to
7 sections 32 to 42, inclusive, of this act must be credited or
8 refunded by the State to the purchaser, subject to the requirements
9 of NRS 360.236.

10 **Sec. 69.** Except as otherwise provided in NRS 360.235 and
11 360.395 and section 61 of this act:

12 1. No refund may be allowed unless a claim for it is filed with
13 the Department within 3 years after the last day of the month
14 following the close of the period for which the overpayment was
15 made.

16 2. No credit may be allowed after the expiration of the period
17 specified for filing claims for refund unless a claim for credit is
18 filed with the Department within that period, or unless the credit
19 relates to a period for which a waiver is given pursuant to
20 NRS 360.355.

21 **Sec. 70.** No credit or refund of any amount paid pursuant to
22 sections 32 to 42, inclusive, of this act may be allowed on the
23 ground that the use of the specified digital products is exempted
24 pursuant to section 52 of this act, unless the person who paid the
25 amount reimburses his or her vendor for the amount of the tax
26 imposed by section 23 of this act upon his or her vendor with
27 respect to the sale of the specified digital products and paid by the
28 vendor to the State.

29 **Sec. 71.** Every claim shall be in writing and shall state the
30 specific grounds upon which the claim is founded.

31 **Sec. 72.** Failure to file a claim within the time prescribed in
32 section 69 of this act constitutes a waiver of any demand against
33 the State on account of overpayment.

34 **Sec. 73.** Within 30 days after disallowing any claim in whole
35 or in part, the Department shall serve notice of its action on the
36 claimant in the manner prescribed for service of notice of a
37 deficiency determination.

38 **Sec. 74.** Except as otherwise provided in NRS 360.320 or any
39 other specific statute, interest must be paid upon any overpayment
40 of any amount of tax at the rate set forth in, and in accordance
41 with the provisions of, NRS 360.2937.

42 **Sec. 75.** If the Department determines that any overpayment
43 has been made intentionally or by reason of carelessness, it shall
44 not allow any interest thereon.



1 **Sec. 76.** *No injunction or writ of mandate or other legal or*
2 *equitable process shall issue in any suit, action or proceeding in*
3 *any court against the State, a county, any officer thereof to*
4 *prevent or enjoin the collection under this chapter of any tax or*
5 *any amount of tax required to be collected.*

6 **Sec. 77.** *No suit or proceeding shall be maintained in any*
7 *court for the recovery of any amount alleged to have been*
8 *erroneously or illegally determined or collected unless a claim for*
9 *refund or credit has been duly filed.*

10 **Sec. 78. 1.** *Within 90 days after a final decision upon a*
11 *claim filed pursuant to this chapter is rendered by the Nevada Tax*
12 *Commission, the claimant may bring an action against the*
13 *Department on the grounds set forth in the claim in a court of*
14 *competent jurisdiction in Carson City, the county of this State*
15 *where the claimant resides or maintains his or her principal place*
16 *of business or a county in which any relevant proceedings were*
17 *conducted by the Department, for the recovery of the whole or any*
18 *part of the amount with respect to which the claim has been*
19 *disallowed.*

20 **2.** *Failure to bring an action within the time specified*
21 *constitutes a waiver of any demand against the State on account of*
22 *alleged overpayments.*

23 **Sec. 79.** *If the Department fails to mail notice of action on a*
24 *claim within 6 months after the claim is filed, the claimant may*
25 *consider the claim disallowed and file an appeal with a hearing*
26 *officer within 45 days after the last day of the 6-month period. If*
27 *the claimant is aggrieved by the decision of the hearing officer on*
28 *appeal, the claimant may, pursuant to the provisions of NRS*
29 *360.245, appeal the decision to the Nevada Tax Commission. If*
30 *the claimant is aggrieved by the decision of the Commission on*
31 *appeal, the claimant may, within 45 days after the decision is*
32 *rendered, bring an action against the Department on the grounds*
33 *set forth in the claim for the recovery of the whole or any part of*
34 *the amount claimed as an overpayment.*

35 **Sec. 80. 1.** *If judgment is rendered for the plaintiff, the*
36 *amount of the judgment must first be credited as follows:*

37 **(a)** *If the judgment is for a refund of tax imposed by section 23*
38 *of this act, it must be credited on any amount of tax due from the*
39 *plaintiff pursuant to this chapter.*

40 **(b)** *If the judgment is for a refund of the tax imposed by*
41 *section 32 of this act, it must be credited on any amount of that tax*
42 *due from the plaintiff pursuant to this chapter.*

43 **2.** *The balance of the judgment must be refunded to the*
44 *plaintiff.*



1 **Sec. 81.** *In any judgment, interest shall be allowed at the rate*
2 *of 3 percent per annum upon the amount found to have been*
3 *illegally collected from the date of payment of the amount to the*
4 *date of allowance of credit on account of the judgment, or to a*
5 *date preceding the date of the refund warrant by not more than 30*
6 *days, the date to be determined by the Department.*

7 **Sec. 82.** *A judgment shall not be rendered in favor of the*
8 *plaintiff in any action brought against the Department to recover*
9 *any amount paid when the action is brought by or in the name of*
10 *an assignee of the person paying the amount or by any person*
11 *other than the person who paid the amount.*

12 **Sec. 83.** *The Department may recover any refund or part of it*
13 *which is erroneously made and any credit or part of it which is*
14 *erroneously allowed in an action brought in a court of competent*
15 *jurisdiction in Carson City or Clark County in the name of the*
16 *State of Nevada.*

17 **Sec. 84.** *The action must be tried in Carson City or Clark*
18 *County unless the court, with the consent of the Attorney General,*
19 *orders a change of place of trial.*

20 **Sec. 85.** *The Attorney General shall prosecute the action,*
21 *and the provisions of NRS, the Nevada Rules of Civil Procedure*
22 *and the Nevada Rules of Appellate Procedure relating to service of*
23 *summons, pleadings, proofs, trials and appeals are applicable to*
24 *the proceedings.*

25 **Sec. 86. 1.** *If any amount in excess of \$25 has been*
26 *illegally determined, either by the person filing the return or by the*
27 *Department, the Department shall certify this fact to the State*
28 *Board of Examiners, and the latter shall authorize the*
29 *cancellation of the amount upon the records of the Department.*

30 **2.** *If an amount not exceeding \$25 has been illegally*
31 *determined, either by the person filing a return or by the*
32 *Department, the Department, without certifying this fact to the*
33 *State Board of Examiners, shall authorize the cancellation of*
34 *the amount upon the records of the Department.*

35 **Sec. 87.** *This chapter must be administered in accordance*
36 *with the provisions of chapter 360B of NRS.*

37 **Sec. 88. 1.** *The provisions of this chapter relating to:*

38 **(a)** *The imposition, collection and remittance of the tax*
39 *imposed by section 23 of this act apply to every retailer whose*
40 *activities have a sufficient nexus with this State to satisfy the*
41 *requirements of the United States Constitution.*

42 **(b)** *The collection and remittance of the tax imposed by section*
43 *32 of this act apply to every retailer whose activities have a*
44 *sufficient nexus with this State to satisfy the requirements of the*
45 *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 this State" in accordance with the provisions of subsection 1.

Sec. 89. 1. Except as otherwise provided in this section, it is presumed that the provisions of this chapter relating to the imposition, collection and remittance of the tax imposed by section 23 of this act, and the collection and remittance of the tax imposed by section 32 of this act, apply to a retailer if:

(a) The retailer is part of a controlled group of corporations that has a component member, other than a common carrier acting in its capacity as such, that has physical presence in this State; and

(b) The component member with physical presence in this State:

(1) Sells a similar line of products or services as the retailer and does so under a business name that is the same or similar to that of the retailer;

(2) Maintains an office, distribution facility, warehouse or storage place or similar place of business in this State to facilitate the delivery of products or services sold by the retailer to the retailer's customers;

(3) Uses trademarks, service marks or trade names in this State that are the same or substantially similar to those used by the retailer;

(4) Delivers, installs, assembles or performs maintenance services for the retailer's customers within this State;

(5) Facilitates the retailer's delivery of products or services to customers in this State by allowing the retailer's customers to pick up or receive products or services sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the component member in this State; or

(6) Conducts any other activities in this State that are significantly associated with the retailer's ability to establish and maintain a market in this State for the retailer's products or services.

2. A retailer may rebut the presumption set forth in subsection 1 by providing proof satisfactory to the Department that, during the calendar year in question, the activities of the component member with physical presence in this State are not significantly associated with the retailer's ability to establish or maintain a market in this State for the retailer's products or services.



3. In administering the provisions of this chapter, the Department shall construe the terms “seller,” “retailer” and “retailer maintaining a place of business in this State” in accordance with the provisions of this section.

4. As used in this section:

(a) “Component member” has the meaning ascribed to it in section 1563(b) of the Internal Revenue Code, 26 U.S.C. § 1563(b), and includes any entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that would qualify as a component member of the same controlled group of corporations as the retailer.

(b) “Controlled group of corporations” has the meaning ascribed to it in section 1563(a) of the Internal Revenue Code, 26 U.S.C. § 1563(a), and includes any entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that would qualify as a component member of the same controlled group of corporations as the retailer.

Sec. 90. 1. Except as otherwise provided in this section, it is presumed that the provisions of this chapter relating to:

(a) The imposition, collection and remittance of the tax imposed by section 23 of this act; and

(b) The collection and remittance of the tax imposed by section 32 of this act,

↪ apply to every retailer who enters into an agreement with a resident of this State under which the resident, for a commission or other consideration based upon the sale of specified digital products by the retailer, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the retailer, if the cumulative gross receipts from sales by the retailer to customers in this State who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of \$10,000 during the preceding four quarterly periods ending on the last day of March, June, September and December.

2. A retailer may rebut the presumption set forth in subsection 1 by providing proof satisfactory to the Department that each resident with whom the retailer has an agreement did not engage in any activity in this State that was significantly associated with the retailer’s ability to establish or maintain a market in this State for the retailer’s products or services during the preceding four quarterly periods ending on the last day of March, June, September and December. Such proof may consist of the sworn written statements of each resident with whom the retailer has an agreement stating that the resident did not engage in any solicitation in this State on behalf of the retailer during the



preceding four quarterly periods ending on the last day of March, June, September and December, if the statements were obtained from each resident and provided to the Department in good faith.

3. In administering the provisions of this chapter, the Department shall construe the terms "seller," "retailer" and "retailer maintaining a place of business in this State" in accordance with the provisions of this section.

Sec. 91. 1. The provisions of this chapter relating to the imposition, collection and remittance of the tax imposed by section 23 of this act, and the collection and remittance of the tax imposed by section 32 of this act apply to a retailer if, in the immediately preceding calendar year or the current calendar year:

(a) The gross revenue of the retailer from the retail sale of tangible personal property or specified digital products, or the total gross revenue of the retailer from the retail sale of tangible personal property and specified digital products, in transactions that took place in this State, as determined pursuant to NRS 360B.350 to 360B.375, inclusive, or section 22 of this act, as applicable, is greater than \$100,000.

(b) The retailer had 200 or more transactions that took place in this State, as determined pursuant to NRS 360B.350 to 360B.375, inclusive, or section 22 of this act, as applicable, in which tangible personal property or specified digital products were sold at retail.

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

Sec. 92. 1. The Department shall enforce the provisions of this chapter and may adopt regulations relating to the administration and enforcement of this chapter.

2. The Department may prescribe the extent to which any regulation may be applied without retroactive effect.

Sec. 93. In administering the provisions of section 48 of this act, the Department shall apply the exemption for the sale of specified digital products to the State of Nevada, its unincorporated agencies and instrumentalities to include all specified digital products that are sold to:

1. A member of the Nevada National Guard who is engaged in full-time National Guard duty, as defined in 10 U.S.C. § 101(d)(5) and has been called into active service.

2. A relative of a member of the Nevada National Guard eligible for the exemption pursuant to subsection 1 who:

(a) Resides in the same home or dwelling in this State as the member; and



(b) Is related by blood, adoption or marriage within the first degree of consanguinity or affinity to the member.

3. A relative of a deceased member of the Nevada National Guard who was engaged in full-time National Guard duty, as defined in 10 U.S.C. § 101(d)(5), and who was killed while performing his or her duties as a member of the Nevada National Guard during a period when the member was called into active service. To be eligible under this subsection, the relative must be a person who:

(a) Resided in the same house or dwelling in this State as the deceased member; and

(b) Was related by blood, adoption or marriage within the first degree of consanguinity or affinity to the deceased member.

Sec. 94. 1. A person who wishes to claim an exemption pursuant to section 93 of this act must file an application with the Department to obtain a letter of exemption. The application must be on a form and contain such information as is required by the Department.

2. If the Department determines that a person is eligible for the exemption provided pursuant to section 93 of this act, the Department shall issue a letter of exemption to the person. A letter of exemption issued to a member of the Nevada National Guard described in subsection 1 of section 93 of this act or a relative of a member described in subsection 2 of section 93 of this act expires on the date on which the person no longer meets the qualifications for eligibility. A letter of exemption issued to a relative of a deceased member of the Nevada National Guard described in subsection 3 of section 93 of this act expires on the date 3 years after the date of the death of the member.

3. To claim an exemption pursuant to section 93 of this act for the sale of specified digital products to such a person:

(a) The person must provide a copy of the letter of exemption to the retailer from whom the person purchases the specified digital products; and

(b) The retailer must retain and present upon request a copy of the letter of exemption to the Department.

4. The Department shall adopt such regulations as are necessary to carry out the provisions of this section.

Sec. 95. The Department may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this chapter, and may delegate authority to its representatives to conduct hearings, adopt regulations or perform any other duties imposed by this chapter.

Sec. 96. 1. Notwithstanding any other provision of law, any broadcaster, printer, outdoor advertising firm, advertising



distributor or publisher which broadcasts, publishes, displays or distributes paid commercial advertising in this State which is intended to be disseminated primarily to persons located in this State and is only secondarily disseminated to bordering jurisdictions, including advertising appearing exclusively in a Nevada edition or section of a national publication, must be regarded, for the purposes set forth in subsection 2 only, as the agent of the person or entity placing the advertisement, and as a retailer maintaining a place of business in this State.

2. The agency created by this section is solely for the purpose of the proper administration of this chapter, to prevent evasion of the tax imposed by section 32 of this act and the duty to collect that tax, and to provide a presence in Nevada for the collection of the tax imposed by section 32 of this act by and from advertisers and sellers who do not otherwise maintain a place of business in this State. The agent has no responsibility to report, or liability to pay, any tax imposed under this chapter and is not restricted by the provisions of this chapter from accepting advertisements from advertisers or sellers who do not otherwise maintain a place of business in this State.

Sec. 97. 1. Every seller, every retailer, and every person storing, using or otherwise consuming in this State specified digital products purchased from a retailer shall keep records, receipts, invoices and other pertinent papers in such form as the Department may require.

2. Every seller, retailer or person who files the returns required under this chapter shall keep the records for not less than 4 years from their making unless the Department in writing sooner authorizes their destruction.

3. Every seller, retailer or person who fails to file the returns required under this chapter shall keep the records for not less than 8 years from their making unless the Department in writing sooner authorizes their destruction.

Sec. 98. 1. The Department, or any person authorized in writing by it, may examine the books, papers, records and equipment of any person selling specified digital products and any person liable for the tax imposed by section 32 of this act and may investigate the character of the business of the person to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

2. Any person selling or purchasing specified digital products in this State who:

(a) Is required to:

(1) Obtain a permit pursuant to section 26 of this act or register pursuant to NRS 360B.200; or



(2) File a return pursuant to subsection 2 of section 58 of this act; and

(b) Keeps outside of this State his or her records, receipts, invoices and other documents relating to sales the person has made or the tax imposed by section 32 of this act due this State, ➤ shall pay to the Department an amount equal to the allowance provided for state officers and employees generally while traveling outside of the State for each day or fraction thereof during which an employee of the Department is engaged in examining those documents, plus any other actual expenses incurred by the employee while he or she is absent from his or her regular place of employment to examine those documents.

Sec. 99. In its administration of the tax imposed by section 32 of this act, the Department may require the filing of reports by any person or class of persons having in their possession or custody information relating to sales of specified digital products, the use of which is subject to the tax. The report must:

1. Be filed when the Department requires.

2. Set forth the names and addresses of purchasers of the specified digital products, the sales price of the specified digital products, the date of sale, and such other information as the Department may require.

Sec. 100. Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Department, or who renders a false or fraudulent return shall be fined not more than \$500 for each offense.

Sec. 101. Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made, is guilty of a gross misdemeanor and shall for each offense be fined not less than \$300 nor more than \$5,000, or be imprisoned for not more than 364 days in the county jail, or be punished by both fine and imprisonment.

Sec. 102. Any violation of this chapter, except as otherwise provided, is a misdemeanor.

Sec. 103. Any prosecution for violation of any of the penal provisions of this chapter must be instituted within 3 years after the commission of the offense.

Sec. 104. In the determination of any case arising under this chapter, the rule of res judicata is applicable only if the liability involved is for the same period as was involved in another case previously determined.

Sec. 105. 1. All fees, taxes, interest and penalties imposed and all amounts of tax required to be paid to the State under this



chapter must be paid to the Department in the form of remittances payable to the Department.

2. The Department shall deposit the payments in the State Treasury to the credit of each account in the State General Fund to which is credited a tax imposed upon sales at retail of tangible personal property and use tax due on the purchase of tangible personal property for use in this State, in the proportion that would be credited to each account if the fees, taxes, interest and penalties imposed or required to be paid to the State under this chapter were a tax upon sales at retail of tangible personal property or use tax due on the purchase of tangible personal property for use in this State.

Sec. 106. The money in the accounts described in subsection 2 of section 105 of this act may, upon order of the State Controller, be used for refunds under this chapter.

Sec. 107. The remedies of the State provided for in this chapter are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this chapter.

Sec. 108. The imposition of taxes by this chapter, the categories of transactions upon which taxes are imposed and the specification of exemptions are exclusive. The Nevada Tax Commission and the Department shall not construe any provision of this chapter to authorize the imposition of a tax imposed by this chapter upon any transaction not expressly made taxable by this chapter.

Sec. 109. NRS 360.261 is hereby amended to read as follows:
360.261 Not later than 30 days after the Department or the Nevada Tax Commission makes a finding or ruling, or enters into an agreement with a retailer providing, that the provisions of chapters 372 and 374 of NRS *and sections 2 to 108, inclusive, of this act* relating to the imposition, collection and remittance of ~~the sales~~ a tax ~~[-, and the collection and remittance of the use tax,]~~ do not apply to the retailer, despite the presence in this State of an office, distribution facility, warehouse or storage place or similar place of business which is owned or operated by the retailer or an affiliate of the retailer, whether the finding, ruling or agreement is written or oral and whether the finding, ruling or agreement is express or implied, the Department shall submit a report of the finding, ruling or agreement to the Director of the Legislative Counsel Bureau for transmittal to:

1. If the Legislature is in session, the Legislature; or
2. If the Legislature is not in session, the Legislative Commission.



Sec. 110. NRS 360.2937 is hereby amended to read as follows:

360.2937 1. Except as otherwise provided in this section, NRS 360.320 or any other specific statute, and notwithstanding the provisions of NRS 360.2935, interest must be paid upon an overpayment of any tax provided for in chapter 362, 363A, 363B, 363C, 369, 370, 372, 372B, 374, 377, 377A or 377C of NRS ~~or~~ **sections 2 to 108, inclusive, of this act**, any of the taxes provided for in NRS 372A.290, any fee provided for in NRS 444A.090 or 482.313, or any assessment provided for in NRS 585.497, at the rate of 0.25 percent per month from the last day of the calendar month following the period for which the overpayment was made.

2. No refund or credit may be made of any interest imposed on the person making the overpayment with respect to the amount being refunded or credited.

3. The interest must be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if the person has not already filed a claim, is notified by the Department that a claim may be filed or the date upon which the claim is certified to the State Board of Examiners, whichever is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or the amount against which the credit is applied.

Sec. 111. NRS 360.300 is hereby amended to read as follows:

360.300 1. If a person fails to file a return or the Department is not satisfied with the return or returns of any tax, contribution or premium or amount of tax, contribution or premium required to be paid to the State by any person, in accordance with the applicable provisions of this chapter, chapter 360B, 362, 363A, 363B, 363C, 369, 370, 372, 372A, 372B, 374, 377, 377A, 377C or 444A of NRS, NRS 482.313, or chapter 585 or 680B of NRS ~~or~~ **sections 2 to 108, inclusive, of this act**, as administered or audited by the Department, it may compute and determine the amount required to be paid upon the basis of:

(a) The facts contained in the return;

(b) Any information within its possession or that may come into its possession; or

(c) Reasonable estimates of the amount.

2. One or more deficiency determinations may be made with respect to the amount due for one or for more than one period.

3. In making its determination of the amount required to be paid, the Department shall impose interest on the amount of tax determined to be due, calculated at the rate and in the manner set



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1 forth in NRS 360.417, unless a different rate of interest is
2 specifically provided by statute.

3 4. The Department shall impose a penalty of 10 percent in
4 addition to the amount of a determination that is made in the case of
5 the failure of a person to file a return with the Department.

6 5. When a business is discontinued, a determination may be
7 made at any time thereafter within the time prescribed in NRS
8 360.355 as to liability arising out of that business, irrespective of
9 whether the determination is issued before the due date of the
10 liability.

11 **Sec. 112.** NRS 360.417 is hereby amended to read as follows:

12 360.417 Except as otherwise provided in NRS 360.232 and
13 360.320, and unless a different penalty or rate of interest is
14 specifically provided by statute, any person who fails to pay any tax
15 provided for in chapter 362, 363A, 363B, 363C, 369, 370, 372,
16 372B, 374, 377, 377A, 377C, 444A or 585 of NRS ~~§~~ **or sections 2**
17 **to 108, inclusive, of this act**, any of the taxes provided for in NRS
18 372A.290, or any fee provided for in NRS 482.313, and any person
19 or governmental entity that fails to pay any fee provided for in NRS
20 360.787, to the State or a county within the time required, shall pay
21 a penalty of not more than 10 percent of the amount of the tax or fee
22 which is owed, as determined by the Department, in addition to the
23 tax or fee, plus interest at the rate of 0.75 percent per month, or
24 fraction of a month, from the last day of the month following the
25 period for which the amount or any portion of the amount should
26 have been reported until the date of payment. The amount of any
27 penalty imposed must be based on a graduated schedule adopted by
28 the Nevada Tax Commission which takes into consideration the
29 length of time the tax or fee remained unpaid.

30 **Sec. 113.** NRS 360.510 is hereby amended to read as follows:

31 360.510 1. If any person is delinquent in the payment of any
32 tax or fee administered by the Department or if a determination has
33 been made against the person which remains unpaid, the
34 Department may:

35 (a) Not later than 3 years after the payment became delinquent
36 or the determination became final; or

37 (b) Not later than 6 years after the last recording of an abstract
38 of judgment or of a certificate constituting a lien for tax owed,
39 ➤ give a notice of the delinquency and a demand to transmit
40 personally or by registered or certified mail to any person,
41 including, without limitation, any officer or department of this State
42 or any political subdivision or agency of this State, who has in his or
43 her possession or under his or her control any credits or other
44 personal property belonging to the delinquent, or owing any debts to
45 the delinquent or person against whom a determination has been



1 made which remains unpaid, or owing any debts to the delinquent or
2 that person. In the case of any state officer, department or agency,
3 the notice must be given to the officer, department or agency before
4 the Department presents the claim of the delinquent taxpayer to the
5 State Controller.

6 2. A state officer, department or agency which receives such a
7 notice may satisfy any debt owed to it by that person before it
8 honors the notice of the Department.

9 3. After receiving the demand to transmit, the person notified
10 by the demand may not transfer or otherwise dispose of the credits,
11 other personal property, or debts in his or her possession or under
12 his or her control at the time the person received the notice until the
13 Department consents to a transfer or other disposition.

14 4. Every person notified by a demand to transmit shall, within
15 10 days after receipt of the demand to transmit, inform the
16 Department of and transmit to the Department all such credits, other
17 personal property or debts in his or her possession, under his or her
18 control or owing by that person within the time and in the manner
19 requested by the Department. Except as otherwise provided in
20 subsection 5, no further notice is required to be served to that
21 person.

22 5. If the property of the delinquent taxpayer consists of a series
23 of payments owed to him or her, the person who owes or controls
24 the payments shall transmit the payments to the Department until
25 otherwise notified by the Department. If the debt of the delinquent
26 taxpayer is not paid within 1 year after the Department issued the
27 original demand to transmit, the Department shall issue another
28 demand to transmit to the person responsible for making the
29 payments informing him or her to continue to transmit payments to
30 the Department or that his or her duty to transmit the payments to
31 the Department has ceased.

32 6. If the notice of the delinquency seeks to prevent the transfer
33 or other disposition of a deposit in a bank or credit union or other
34 credits or personal property in the possession or under the control of
35 a bank, credit union or other depository institution, the notice must
36 be delivered or mailed to any branch or office of the bank, credit
37 union or other depository institution at which the deposit is carried
38 or at which the credits or personal property is held.

39 7. If any person notified by the notice of the delinquency
40 makes any transfer or other disposition of the property or debts
41 required to be withheld or transmitted, to the extent of the value of
42 the property or the amount of the debts thus transferred or paid, that
43 person is liable to the State for any indebtedness due pursuant to this
44 chapter, chapter 360B, 362, 363A, 363B, 363C, 369, 370, 372,
45 372A, 372B, 374, 377, 377A, 377C or 444A of NRS, NRS 482.313,



or chapter 585 or 680B of NRS *or sections 2 to 108, inclusive, of this act* from the person with respect to whose obligation the notice was given if solely by reason of the transfer or other disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Sec. 114. Chapter 360B of NRS is hereby amended by adding thereto a new section to read as follows:

“Specified digital products” has the meaning ascribed to it in section 20 of this act.

Sec. 115. NRS 360B.030 is hereby amended to read as follows:

360B.030 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 360B.040 to 360B.100, inclusive, *and section 114 of this act* have the meanings ascribed to them in those sections.

Sec. 116. NRS 360B.063 is hereby amended to read as follows:

360B.063 “Purchaser” means a person to whom a sale of tangible personal property *or specified digital products* is made.

Sec. 117. NRS 360B.080 is hereby amended to read as follows:

360B.080 “Seller” means any person making sales, leases or rentals of tangible personal property ~~or~~ *or specified digital products.*

Sec. 118. 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 *or specified digital products* is sold:

1. May state separately any amount received by the seller for 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;

(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;

(c) Any interest, financing and carrying charges from credit extended on the sale; and

(d) Any taxes legally imposed directly on the consumer.

Sec. 119. NRS 360B.320 is hereby amended to read as follows:

360B.320 1. The Department shall provide public notification to consumers of tangible personal property ~~or~~ *or specified digital products*, including purchasers who are exempt



1 from any sales and use taxes, of the practices of this State relating to
2 the collection, use and retention of any personally identifiable
3 information.

4 2. The Department shall not retain any personally identifiable
5 information if the information is no longer required to ensure the
6 validity of exemptions from sales and use taxes.

7 3. When any personally identifiable information that identifies
8 a natural person is retained by or on behalf of the State, that person
9 is entitled to reasonable access to that information to correct any
10 portion thereof which has been inaccurately recorded.

11 4. If any person or other entity, except a state which is a
12 member of the Agreement or any person or other entity who is
13 entitled to such information pursuant to any state law or the
14 Agreement, requests any personally identifiable information
15 maintained by the Department, the Department shall make a
16 reasonable and timely effort to notify any person who is identified
17 by the requested information.

18 5. The Attorney General shall enforce the provisions of this
19 section.

20 6. As used in this section, "personally identifiable information"
21 means information that identifies:

22 (a) A participant in the system created pursuant to the
23 Agreement; or

24 (b) A consumer of tangible personal property *or specified*
25 *digital products* who deals with a registered seller that elects to use
26 a certified service provider as its agent to perform all the functions
27 of the seller relating to sales and use taxes, other than the obligation
28 of the seller to remit the taxes on its own purchases.

29 **Sec. 120.** The provisions of subsection 1 of NRS 218D.380 do
30 not apply to any provision of this act which adds or revises a
31 requirement to submit a report to the Legislature.

32 **Sec. 121.** NRS 360B.483 is hereby repealed.

33 **Sec. 122.** This act becomes effective upon passage and
34 approval for the purposes of adopting regulations and taking such
35 other actions as are necessary to carry out the provisions of this act
36 and on January 1, 2020.

TEXT OF REPEALED SECTION

360B.483 "Specified digital products" construed.

1. "Specified digital products" means electronically transferred digital audio works, digital audiovisual works and digital books.



2. As used in this section:

(a) “Digital audio works” means works that result from the fixation of a series of musical, spoken or other sounds, including ringtones.

(b) “Digital audiovisual works” means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(c) “Digital books” means works that are generally recognized in the ordinary and usual sense as books.

(d) “Electronically transferred” means obtained by a purchaser by means other than tangible storage media.

(e) “Ringtones” means digitized sound files that are downloaded onto a device and may be used to alert the customer with respect to a communication.

