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# NEVADA DEPARTMENT OF TAXATION

<http://tax.nv.gov>



## **Tax Bulletin SUT 15-0001** **Issue Date: January 26, 2015** **Taxation of Interstate Retail Sales of Firearms**

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### **Statutes and/or Regulations referenced**

NRS 372.105; NRS 372.055; NRS 372.025; NRS 372.110; NRS 372.065; NRS 372.050

### **Introduction**

This Technical Bulletin addresses the scenario when a Nevada resident purchases a firearm from an out of state retailer who has it shipped to an in state retailer for completion of the background check and for delivery to the consumer in Nevada.

The retail sale of firearms requires a background check under federal law. In Nevada, the background check is handled by the Department of Public Safety ("DPS") which manages the Central Repository for Nevada Records of Criminal History. DPS charges \$25 for the completion of the background check.<sup>1</sup>

If a Nevada consumer purchases a firearm from an out-of-state seller, the seller must ship the firearm to a federal firearms licensee (FFL) in Nevada. The FFL completes the background check and may charge a fee for facilitating the transfer of the firearm. If the background check results in a "proceed" determination, the Nevada consumer may legally possess the firearm. The Nevada FFL prepares the records that are required pursuant to federal law, and the Nevada consumer receives the firearm.

#### **1. Delivery of the Firearm in Nevada Is A Retail Sale and the Nevada Retailer Must Collect and Remit Sales Tax on the Purchase of the Firearm.**

For the privilege of selling tangible personal property at retail, a retailer is subject to a tax upon his gross receipts. A "retailer" is a seller who makes more than two retail sales annually. "Gross receipts" is the total amount of the sale price.

NRS 372.050(2) provides:

The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for

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<sup>1</sup> See NRS Chapter 179A for provisions related to background checks in Nevada. See 18 U.S.C. §922(a)(3) and (b)(3) federal rules on the shipment of firearms across state lines.

redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State, is a retail sale in this State by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

When a Nevada consumer purchases a firearm from an out of state retailer not licensed to do business in Nevada, the Nevada FFL receives the delivery of tangible personal property, presumptively shipped by "an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor," for "redelivery to a consumer." As the "person making the delivery," the FFL must include the retail selling price of the property in his gross receipts, and must collect the sales tax due from the consumer.

**A. Out of State Retailers Licensed In Nevada**

If the out of state retailer is licensed to do business in Nevada, that retailer would be responsible for remitting the sales tax to the Department. NRS 360B.200, 372.105.

**B. Taxability When Person Making the Sale is Not a Retailer**

The statute provides an exemption for a sale by a person that is not a retailer. If the firearm is obtained from a person making an occasional sale there are no sales or use taxes due. An occasional sale is a sale by a person who has made two or fewer retail sales of tangible personal property during any 12-month period. NRS 372.320.

**2. The Background Check Fee is a Government Regulatory Fee and Not Subject to Sales Tax.**

The background check fee required by DPS is regulatory in nature, intended to provide a public service and regulate legal possession of firearms. Under federal law, in the transfer of a firearm in interstate commerce, the seller must perform a background check on the consumer to ensure that the consumer may legally possess a firearm. Because the \$25 background fee is required by law it is not a service as part of the sale and is therefore not included in the sale price.

**3. Fees or Service Charges By The Firearms Dealer Are Subject to Taxation.**

On the other hand, a fee or service charge assessed by the FFL or the out of state dealer to cover costs, including costs incurred for the delivery of the firearm is subject to sales tax because "sales price" includes the cost of materials used, labor or service cost. The retail selling price is the total consideration for which the property is sold: the amount paid to the out of state seller and any fee by the FFL to process the transfer.

**4. Firearm Repair Services Are Not Taxable.**

When a Nevada Resident sends his firearm out of state for repair and the firearm is returned to the consumer by a Nevada FFL, because repair services are not subject to taxation in Nevada, the FFL does not have to collect any tax from the consumer when the firearm is returned to the consumer in Nevada.

**Conclusion**

This bulletin contains the following conclusions:

- When a FFL delivers a firearm purchased from an out of state retailer to a Nevada consumer, the Nevada FFL must collect and remit sales tax on the purchase price of the firearm unless the consumer can show that tax has been paid or that the sale is an occasional sale.
- The sales price does not include the mandatory background check fee required by DPS but does include any fees assessed by the firearm retailer(s).
- Nevada dealers are not required to collect sales tax on firearm repair services.

Email from Davidson's Firearms re: tax issue

From: [phd@davidsonfirearms.com](mailto:phd@davidsonfirearms.com)<<mailto:phd@davidsonfirearms.com>>  
[<mailto:phd@davidsonfirearms.com>]

Sent: Wednesday, May 17, 2017 3:48 PM

To: Don Turner

Subject: Nevada Dept of Taxation wants to collect sales tax on transfers prior to notice  
Importance: High

Don,

I had an audit by the Nevada Dept of taxation and they are claiming that transfers that were done prior to the bulletin they issued in 2015 should have had sales tax collected.

During their audit they determined the average sales price for transfers that have been done since the bulletin was issued and used that to get an average value of transfers.

They then have gone back and calculated the number of transfers that we had done and assessed us a sales tax due based from the average they came up with times the number of firearms transferred. They have also assessed penalties and interest due on that amount.

**The bill they gave me was for \$435K.** I tried to argue the fact that no dealer was collecting sales tax prior to the bulletin and they told me that is why they intend to audit every dealer in the state so they can all be fairly assessed the tax that is due for sales tax that should have been collected. I explained that the money for transfers prior to the bulletin was not collected as it was never required. They told me it was required just never enforced and they are now going to audit everyone to make sure it is enforced.

Have you been made aware of this? This will cause me to have to BK the company as I can't afford to pay other people's taxes that they state just decided they were going to make us pay. They of course told me that I could be put on a payment plan, but that would take forever to payoff.

Any chance you can provide any help with this issue? It appears they will be going after EVERY dealer in the state of Nevada.

Thanks,  
Paul Davidson

Davidson's Firearms  
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Suite 103  
Henderson, NV 89052  
(702) 456-6600

## **Impact of new background check bill (SB143) on gun sales tax**

Now that private party sales will have to be done at a Federally licensed firearms dealer, the gun store will have to file a Federal Form 4473.

In order for them to file that form the store has to take possession of the gun into their inventory. The "acquisition" and "disposition", or A&D Book, has to list the fair market value of the gun. This is what is required by Federal law to transfer a gun.

The store is then supposed to collect the sales tax on that transaction.

The retail value of the gun is then considered to be a sale, and thus it will count **towards a store's gross receipts**. That means they have to pay the commerce tax on an item they didn't sell!

When a gun store is audited, they are audited on every transaction, and they are charged a fee for every transaction in that audit. So now they are hit with:

- Collecting the sales tax on a sale they didn't make**
- Paying the commerce tax on an item they didn't sell**
- Paying an audit fee on an item they didn't sell**
- Paying staff time to conduct the transfer and background check, on an item they didn't sell.**

EXECUTIVE AGENCY  
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: February 21, 2019

Agency Submitting: Department of Taxation

Items of Revenue or Expense, or Both	Fiscal Year 2018-19	Fiscal Year 2019-20	Fiscal Year 2020-21	Effect on Future Biennia
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

The Department of Taxation has reviewed the bill and determined potential impact on general fund revenues cannot be calculated. Regulation R189-18 is effective as of October 1, 2018 and requires out-of-state retailers to collect and remit sales tax if they meet a threshold of \$100,000 in taxable sales or 200 transactions into Nevada. This regulation would require any out of state licensed firearms dealers that meet one of these thresholds to collect and remit sales tax on the transfers pursuant to this bill but the department cannot determine which of these out of state licensed firearms dealers would meet the thresholds. It is anticipated that the Department of Taxation can absorb the cost of implementing the provisions of the bill but requests the ability to return to the Legislature's Interim Finance Committee in the 2020-2021 biennium should workload increases occur.

Name Kile M. Porter

Title Deputy Executive Director

GOVERNOR'S OFFICE OF FINANCE COMMENTS

The agency's response appears reasonable.

Date Thursday, February 21, 2019

Name Laura E. Freed

Title Executive Branch Budget Officer

LOCAL GOVERNMENT  
 FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: February 21, 2019

Agency Submitting: Local Government

Items of Revenue or Expense, or Both	Fiscal Year 2018-19	Fiscal Year 2019-20	Fiscal Year 2020-21	Effect on Future Biennia
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

See attached.

Name Michael Nakamoto

Title Deputy Fiscal Analyst

The following responses from local governments were compiled by the Fiscal Analysis Division. The Fiscal Analysis Division can neither verify nor comment on the figures provided by the individual local governments.

Local Government Responses  
**A.B. 113 / BDR 32 - 659**

City/County: <b>City of Henderson</b> Approved by: Mike Cathcart, Business Operations Manager Comment: No significant fiscal impact to the City of Henderson.				
Impact	FY 2018-19	FY 2019-20	FY 2020-21	Future Biennia
No Impact	\$0	\$0	\$0	\$0

City/County: <b>City of Las Vegas</b> Approved by: Nicole Rourke, Deputy Director Comment: More information is needed to determine the impact.				
Impact	FY 2018-19	FY 2019-20	FY 2020-21	Future Biennia
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: <b>City of Reno</b> Approved by: Amber Drlik, Senior Management Analyst Comment: This would have a negative impact on the C-Tax collections to the City simply because less sales tax is collected and remitted. The overall impact is difficult to determine because the amount of firearm sales occurring outside the State of Nevada is not know. While we do not believe this would be a material impact to the City, it would be negative.				
Impact	FY 2018-19	FY 2019-20	FY 2020-21	Future Biennia
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: <b>City of Sparks</b> Approved by: Jeff Cronk, Financial Services Director Comment: If I understand this bill correctly, it looks like sales taxes will not be charged by a firearm dealer when facilitating a sale from outside the state in certain circumstances. However, the purchaser would still be required to report and pay use taxes. So, theoretically, this bill should have no impact on sales & use tax revenues -- yet, common sense suggests that most purchasers will fail to report the purchase and pay the use tax, so it's likely to end up as a negative impact on tax revenues. The extent of the impact is impossible to determine however.				
Impact	FY 2018-19	FY 2019-20	FY 2020-21	Future Biennia
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: **Carson City**

Approved by: Sheri Russell, CFO

Comment: No financial impact to Carson City.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

City/County: **Churchill County**

Approved by: Jim R. Barbee, County Manager

Comment: If BDR 32-659 were to pass, there would be some fiscal impact to Churchill county's sales tax income on firearms coming in from out of state sales. However, it is difficult to determine an estimate of the impact at this time.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: **Clark County**

Approved by: Edward M. Zagalo, Manager of Financial Planning

Comment: Clark County was unable to determine if this BDR would have a fiscal impact because no data about the number of gun sales from out of state could be found.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: **Douglas County**

Approved by: Terri A Willoughby, Chief Financial Officer

Comment: This seems to overly complicate sales tax rules. If a sale occurs within the State, the State where the sale occurs should receive the sales tax, and should be collected at the time of the sale. Use tax is more difficult to administer.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: **Humboldt County**

Approved by: Gina Rackley, Comptroller

Comment: Although this may have a fiscal impact on Humboldt County, the amount is unable to be determined because we currently do not know the sales of firearms from outside of this State in to our County.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: **Pershing County**

Approved by: Karen T. Wesner, Administrative Assistant/HR Rep

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

City/County: **Washoe County**

Approved by: Jamie Rodriguez, Government Affairs Manager

Comment: It is difficult to determine what the impact of this bill will be since it is changing the process of how firearms sales will be handled when the firearm comes from out of State and there is no data to support how often or what the value of these sales would be.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

City/County: **White Pine County**

Approved by: Elizabeth Frances, Finance Director

Comment: By not allowing the collection of sales tax for firearms transferred into this State, sales tax revenues will decrease. In addition, if people are given the incentive of not having to pay sales tax if they purchase a firearm out-of-state, in-state sales could decrease. The overall result will be adverse impact to the County in the form of decreased revenues. An accurate estimate cannot be determined at this time.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Has Impact	\$0	\$0	\$0	\$0

School District: **Churchill County School District**

Approved by: Phyllis Dowd, Director of Business Services

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Douglas County School District**

Approved by: Teri White, Superintendent

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Eureka County School District**

Approved by: Dan Wold, Superintendent

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Humboldt County School District**

Approved by: David Jensen, Superintendent

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Lincoln County School District**

Approved by: Pam Teel, Superintendent

Comment: unclear on impact on education

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

School District: **Mineral County School District**

Approved by: Karen S. Watson, Superintendent

Comment: This bill would have no negative impact on Mineral County School District. If implemented school districts receive benefit from sales and use taxes.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Nye County School District**

Approved by: Kelly Wood, Executive Secretary

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Pershing County School District**

Approved by: Russell D. Fecht, Superintendent

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Storey County School District**

Approved by: Kristen Chandler, Business Manager

Comment:

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **Washoe County School District**

Approved by: Lindsay Anderson, Government Affairs Director

Comment: WCSD does not expect a fiscal impact because the reduction in LSST would be made up by the state through the DSA.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
No Impact	\$0	\$0	\$0	\$0

School District: **White Pine County School District**

Approved by: Paul Johnson, CFO

Comment: The proposed changes may have an impact on sales tax but the impact can not be determined.

<b>Impact</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>Future Biennia</b>
Cannot Be Determined	\$0	\$0	\$0	\$0

**The following cities, counties and school districts did not provide a response:** Boulder City, City of Elko, City of North Las Vegas, Elko County, Esmeralda County, Eureka County, Lander County, Lincoln County, Lyon County, Mineral County, Nye County, Storey County, Carson City School District, Clark County School District, Elko County School District, Esmeralda County School District, Lander County School District, and Lyon County School District.