

Amendment No. 810

Senate Amendment to Senate Bill No. 441 First Reprint	(BDR 32-1077)
Proposed by: Senator Neal	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from S.B. 441 R1.

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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

JFD/BJF



Date: 5/28/2021

S.B. No. 441—Revises provisions governing the issuance and renewal of a seller’s permit. (BDR 32-1077)



SENATE BILL NO. 441—COMMITTEE ON FINANCE

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MAY 10, 2021

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions governing the issuance and renewal of a seller's permit. (BDR 32-1077)

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

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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; ~~requiring a seller's permit issued by the Department of Taxation to be renewed annually;~~ revising provisions governing the issuance of permits for sellers of tangible personal property; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires every person who desires to engage in or conduct business as a seller of tangible personal property in this State to: (1) register with the Department of Taxation or file an application with the Department; and (2) pay a fee of \$5 for a permit for each of the taxes imposed by the Sales and Use Tax Act, the Local School Support Tax Law and the City-County Relief Tax Law and for each place of business ~~for~~, which results in a fee of \$15 for a permit. (NRS 372.125, 372.130, 374.130 ~~for~~, 377.040) Sections 5.5-10 and 21 of this bill maintain the existing fee and move the provisions of law governing the issuance, ~~renewal,~~ suspension and revocation of a seller's permit from the Sales and Use Tax Act and the Local School Support Tax Law, which are currently placed in chapters 372 and 374 of the Nevada Revised Statutes, and places those provisions in a single location in chapter 360 of the Nevada Revised Statutes. Section 5.5 of this bill defines terms relating to seller's permits. ~~Sections 7-10 of this bill: (1) provide that a permit issued to a seller expires on December 31 of each year; and (2) require a person who files an application for a seller's permit or for the renewal of a seller's permit to pay an annual fee of \$15 for each place of business. If an application and fee for renewal are not received by the Department on or before January 31 of each year, the Department is authorized to revoke the permit.~~

Sections 7 and 9 of this bill provide for the disposition of the fees collected for the issuance ~~and renewal~~ of seller's permits in the same manner as the existing fees are distributed.

Sections 11-19 of this bill make conforming changes to reflect the movement of the provisions of law governing the issuance of seller's permits to chapter 360 of the Nevada Revised Statutes.

Section 20 of this bill makes conforming changes to provide that the provisions of this bill do not affect permits issued before the effective date of this bill.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 5.5 to 10, inclusive, of this act.

Sec. 5.5. *As used in sections 5.5 to 10, inclusive, of this act, unless the context otherwise requires:*

1. *"Business" includes any activity engaged in by any person or caused to be engaged in by any person with the object of gain, benefit or advantage, either direct or indirect.*

2. *"Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee or any other group or combination acting as a unit, but shall not include the United States, this State or any agency thereof, or any city, county, district or other political subdivision of this State.*

3. *"Retail sale" has the meaning ascribed to it in NRS 372.050.*

4. *"Seller" includes every person engaged in the business of selling tangible personal property of any kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax imposed by NRS 372.105 or 372.185 or an ordinance enacted pursuant to NRS 377.030.*

5. *"Tangible personal property" has the meaning ascribed to it in NRS 372.085.*

Sec. 6. 1. *Every person desiring to engage in or conduct business as a seller within this State must:*

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

(b) *File with the Department an application for a permit for each place of business.*

2. *Every application for a permit must:*

(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 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. 7. 1. *At the time of making an application for a permit pursuant to section 6 of this act, ~~for an application for the renewal of a permit pursuant to section 8 of this act,~~ the applicant must pay to the Department a fee of \$15 for each permit ~~for renewal thereof.~~*

2. *From each fee collected pursuant to subsection 1:*

(a) *Five dollars of the fee shall be distributed in the same manner as fees are distributed pursuant to NRS 372.780;*

(b) *Five dollars of the fee shall be distributed in the same manner as fees are distributed pursuant to NRS 374.785; and*

(c) Five dollars of the fee shall be distributed in the same manner as fees which derive from the basic city-county relief tax collected in the same county in which the fee pursuant to subsection 1 was collected, as provided in NRS 377.050, 377.055 and 377.057.

Sec. 8. 1. Except as otherwise provided in NRS 360.205 and section 10 of this act, after compliance with sections 6 and 7 of this act and NRS 372.510 and 374.515 by an applicant for a permit, the Department shall:

(a) Grant and issue to the applicant a separate permit for each place of business within the county.

(b) Provide the applicant with a full, written explanation of the liability of the applicant for the collection and payment of the taxes imposed by chapters 372, 374 and 377 of NRS. The explanation required by this paragraph:

(I) Must include the procedures for the collection and payment of the taxes that are specifically applicable to the type of business conducted by the applicant, including, without limitation, and when appropriate:

(I) An explanation of the circumstances under which a service provided by the applicant is taxable;

(II) The procedures for administering exemptions; and

(III) The circumstances under which charges for freight are taxable.

(2) Is in addition to, and not in lieu of, the instructions and information required to be provided by NRS 360.2925.

2. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. A permit must at all times be conspicuously displayed at the place for which it is issued.

~~3. A permit issued pursuant to this section expires on December 31 of each year. A person who is required to hold a seller's permit may renew the permit by filing an application for renewal with the Department in such form and including such information and documentation as the Department may require by regulation. The application for renewal must be accompanied by the fee required by section 7 of this act. If the application and fee for renewal of a permit are not received by the Department on or before January 31 of each year, the Department may revoke the permit pursuant to section 10 of this act.~~

Sec. 9. A seller whose permit has been previously suspended or revoked shall pay the Department a fee of \$15 for the ~~renewal or~~ issuance of a permit. This fee shall be distributed in the same manner as the fees collected pursuant to section 7 of this act.

Sec. 10. 1. Whenever any person fails to comply with any provision of chapter 372, 374 or 377 of NRS relating to the taxes imposed by those chapters or any regulation of the Department relating to the taxes imposed by chapters 372, 374 and 377 of NRS, the Department, after a hearing of which the person was given prior notice of at least 10 days in writing specifying the time and place of the hearing and requiring the person to show cause as to why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

2. The Department shall give to the person written notice of the suspension or revocation of any of his or her permits.

3. The notices 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 it is satisfied that the former holder of the permit will comply with the provisions of chapters 372, 374 and 377 of NRS relating to the taxes imposed by those chapters and the regulations of the Department.

Sec. 11. NRS 372.123 is hereby amended to read as follows:

372.123 1. If the State or a political subdivision of the State enters into a contract pursuant to chapter 332 or 333 of NRS on or after June 5, 2001, with a person who:

(a) Sells tangible personal property in this State; and

(b) Has not obtained a permit pursuant to ~~NRS 372.125~~ *section 6 of this act* or registered pursuant to NRS 360B.200,

➤ the contract must include a provision requiring the person to obtain a permit pursuant to ~~NRS 372.125~~ *section 6 of this act* or to register pursuant to NRS 360B.200, and to collect and pay the taxes imposed pursuant to this chapter on the sale of tangible personal property in this State. For the purposes of a permit obtained pursuant to ~~NRS 372.125~~ *section 6 of this act*, the person shall be deemed to have a single place of business in this State.

2. The Department may require a state agency or local government to submit such documentation as is necessary to ensure compliance with this section.

Sec. 12. NRS 372.155 is hereby amended to read as follows:

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

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

(b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to ~~NRS 372.135~~ *section 8 of this act*; and

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

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

(a) The third-party vendor:

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

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

(b) His or her customer:

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

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

Sec. 13. NRS 372.225 is hereby amended to read as follows:

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

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

(b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to ~~NRS 372.135~~ *section 8 of this act*; and

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

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

(a) The third-party vendor:

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

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

(b) His or her customer:

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

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

Sec. 14. NRS 372.740 is hereby amended to read as follows:

372.740 1. The Department, or any person authorized in writing by it, may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax 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 tangible personal property in this State who:

(a) Is required to:

(1) Obtain a permit pursuant to ~~NRS 372.125~~ *section 6 of this act* or register pursuant to NRS 360B.200; or

(2) File a return pursuant to subsection 2 of NRS 372.360; 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 use tax 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. 15. NRS 372.751 is hereby amended to read as follows:

372.751 1. Except as otherwise provided in this section and NRS 372.752, the provisions of this chapter relating to the imposition, collection and remittance of the sales tax, and the collection and remittance of the use tax, apply to a marketplace facilitator during a calendar year in which or during a calendar year immediately following any calendar year in which:

(a) The cumulative gross receipts from retail sales made or facilitated by the marketplace facilitator on its own behalf or for one or more marketplace sellers to customers in this State exceed \$100,000; or

(b) The marketplace facilitator makes or facilitates 200 or more separate retail sales transactions on his or her own behalf or for one or more marketplace sellers to customers in this State.

2. The provisions of this chapter relating to the imposition, collection and remittance of sales tax and the collection and remittance of use tax do not apply to a marketplace facilitator described in subsection 1 if:

(a) The marketplace facilitator and the marketplace seller have entered into a written agreement whereby the marketplace seller assumes responsibility for the collection and remittance of the sales tax, and the collection and remittance of the use tax, for retail sales made by the marketplace seller through the marketplace facilitator; and

(b) The marketplace seller has obtained a permit pursuant to ~~NRS 372.125~~ *section 6 of this act* or registered pursuant to NRS 360B.200.

➤ Upon request of the Department, a marketplace facilitator shall provide to the Department a report containing the name of each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection and such other information as the Department determines is necessary to ensure that each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection has obtained a permit pursuant to ~~NRS 372.125~~ *section 6 of this act* or registered pursuant to NRS 360B.200.

3. Except as otherwise provided in this section and NRS 372.752, the provisions of subsection 1 apply regardless of whether:

(a) The marketplace seller for whom a marketplace facilitator makes or facilitates a retail sale would not have been required to collect and remit the sales tax or the use tax had the retail sale not been facilitated by the marketplace facilitator;

(b) The marketplace seller for whom a marketplace facilitator makes or facilitates a retail sale was required to register with the Department pursuant to NRS 360B.200 or obtain a permit pursuant to ~~NRS 372.125~~ *section 6 of this act*; or

(c) The amount of the sales price of a retail sale will ultimately accrue to or benefit the marketplace facilitator, the marketplace seller or any other person.

4. 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. 16. NRS 374.128 is hereby amended to read as follows:

374.128 1. If the State or a political subdivision of the State enters into a contract pursuant to chapter 332 or 333 of NRS on or after June 5, 2001, with a person who:

(a) Sells tangible personal property in this State; and

(b) Has not obtained a permit pursuant to ~~NRS 374.130~~ *section 6 of this act* or registered pursuant to NRS 360B.200,

➤ the contract must include a provision requiring the person to obtain a permit pursuant to ~~NRS 374.130~~ *section 6 of this act* or to register pursuant to NRS 360B.200, and to collect and pay the taxes imposed pursuant to this chapter on the sale of tangible personal property in any county in this State. For the purposes of a permit obtained pursuant to ~~NRS 374.130~~ *section 6 of this act*, the person shall be deemed to have a place of business in each county in this State, but shall pay the fee for a single permit.

2. The Department may require a state agency or local government to submit such documentation as is necessary to ensure compliance with this section.

Sec. 17. NRS 374.160 is hereby amended to read as follows:

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

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

(b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to ~~NRS 374.140~~ *and section 8 of this act*; and

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

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

(a) The third-party vendor:

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

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

(b) His or her customer:

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

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

Sec. 18. NRS 374.230 is hereby amended to read as follows:

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

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

(b) Is registered pursuant to NRS 360B.200 or holds a permit issued pursuant to ~~NRS 374.140;~~ **section 8 of this act;** and

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

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

(a) The third-party vendor:

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

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

(b) His or her customer:

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

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

Sec. 19. NRS 374.756 is hereby amended to read as follows:

374.756 1. Except as otherwise provided in this section and NRS 374.757, the provisions of this chapter relating to the imposition, collection and remittance of the sales tax, and the collection and remittance of the use tax, apply to a marketplace facilitator during a calendar year in which, or during a calendar year immediately following any calendar year in which:

(a) The cumulative gross receipts from retail sales made or facilitated by the marketplace facilitator on his or her own behalf or for one or more marketplace sellers to customers in this State exceed \$100,000; or

(b) The marketplace facilitator makes or facilitates 200 or more separate retail sales transactions on his or her own behalf or for one or more marketplace sellers to customers in this State.

2. The provisions of this chapter relating to the imposition, collection and remittance of the sales tax, and the collection and remittance of the use tax do not apply to a marketplace facilitator described in subsection 1 if:

(a) The marketplace facilitator and the marketplace seller have entered into a written agreement whereby the marketplace seller assumes responsibility for the

collection and remittance of the sales tax, and the collection and remittance of the use tax for retail sales made by the marketplace seller through the marketplace facilitator; and

(b) The marketplace seller has obtained a permit pursuant to ~~NRS 374.130~~ section 6 of this act or registered pursuant to NRS 360B.200.

➤ Upon request of the Department, a marketplace facilitator shall provide to the Department a report containing the name of each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection and such other information as the Department determines is necessary to ensure that each marketplace seller with whom the marketplace facilitator has entered into an agreement pursuant to this subsection has obtained a permit pursuant to ~~NRS 374.130~~ section 6 of this act or registered pursuant to NRS 360B.200.

3. Except as otherwise provided in this section and NRS 374.757, the provisions of subsection 1 apply regardless of whether:

(a) The marketplace seller for whom a marketplace facilitator makes or facilitates a retail sale would not have been required to collect and remit the sales tax or use tax had the retail sale not been facilitated by the marketplace facilitator.

(b) The marketplace seller for whom a marketplace facilitator makes or facilitates a retail sale was required to register with the Department pursuant to NRS 360B.200 or obtain a permit pursuant to ~~NRS 374.130~~ section 6 of this act.

(c) The amount of the sales price of a retail sale will ultimately accrue to or benefit the marketplace facilitator, the marketplace seller or any other person.

4. 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. 20. A permit issued pursuant to NRS 372.135 or 374.140 , or pursuant to an ordinance adopted pursuant to NRS 377.030, before October 1, 2021, remains in effect following October 1, 2021, and ~~expires on December 31, 2021.~~ is subject to the provisions of sections 5.5 to 10, inclusive, of this act, in the same manner as a permit issued pursuant to section 8 of this act.

Sec. 21. NRS 372.125, 372.130, 372.135, 372.140, 372.145, 374.130, 374.135, 374.140, 374.145 and 374.150 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

372.125 Registration or permit required to engage in or conduct business as seller; application for permit.

372.130 Fee for permit.

372.135 Issuance, assignability and display of permit; explanation of liability for collection and payment of taxes.

372.140 Fee for reinstatement of suspended or revoked permit.

372.145 Revocation or suspension of permit: Procedure; limitation on issuance of new permit.

374.130 Registration or permit required to engage in or conduct business as seller; application for permit.

374.135 Fee for permit.

374.140 Issuance, assignability and display of permit; explanation of liability for collection and payment of taxes.

374.145 Fee for reinstatement of suspended or revoked permit.

374.150 Revocation or suspension of permit: Procedure; limitation on issuance of new permit.