

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Eighty-first Session
February 25, 2021**

The Senate Committee on Revenue and Economic Development was called to order by Chair Dina Neal at 1:00 p.m. on Thursday, February 25, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dina Neal, Chair
Senator Julia Ratti, Vice Chair
Senator Moises Denis
Senator Ben Kieckhefer
Senator Heidi Seevers Gansert

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Joe Reel, Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Alex Polley, Committee Secretary

OTHERS PRESENT:

Melanie Young, Executive Director, Department of Taxation
Shellie Hughes, Chief Deputy, Department of Taxation
Bryan Wachter, Senior Vice President, Retail Association of Nevada

CHAIR NEAL:

We will open the hearing on Senate Bill (S.B.) 25.

SENATE BILL 25: Revises provisions governing the determination of whether food for human consumption is subject to sales and use taxes. (BDR 32-282)

MELANIE YOUNG (Executive Director, Department of Taxation):

We have a presentation ([Exhibit B](#)) on S.B. 25. The Department of Taxation requests to repeal *Nevada Revised Statutes* (NRS) 372.2841 and

NRS 374.2891 because the language is no longer relevant after joining the Streamlined Sales and Use Tax Agreement (SSUTA).

SHELLIE HUGHES (Chief Deputy, Department of Taxation):

Senate Bill 25 repeals NRS 372.2841 and NRS 374.2891. Currently, NRS 360B.110 requires that the Nevada Tax Commission enter the SSUTA, take any other actions reasonably required to implement the SSUTA provisions and adopt any necessary regulations. *Nevada Revised Statutes* 372.284 and the identical provision in NRS 374.289 exempt food for human consumption from sales and use taxes. However, prepared food intended for immediate consumption is excluded from this exemption. In other words, prepared food intended for immediate consumption is subject to sales and use tax. The definition of "prepared food" in NRS 360B.460 is consistent with the SSUTA. The Department has adopted *Nevada Administrative Code* (NAC) 372.605, which is consistent with the SSUTA and provides guidance on how to determine when food is considered prepared food and thus subject to tax.

This bill eliminates language that directs the Department not to look at the type of establishment where food is sold when determining the food's taxability. *Nevada Revised Statutes* 372.284 and NRS 374.289 would remain in place to provide that prepared food for immediate consumption is taxable. *Nevada Revised Statutes* 360B.460 will remain in place to provide the definition of prepared food, which provides guidance as to what food is subject to tax. Senate Bill 25 becomes effective upon passage and approval.

Nevada became a full member to the Governing Board of the SSUTA on April 1, 2008. The purpose of this agreement is to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance. This includes having uniformity and constancy in sales and use tax laws among the states. There are 23 full member states that have adopted the SSUTA measures that set sales and use tax provisions for food.

Nevada follows provisions in NRS 372.284, NRS 374.289 and NRS 360B.460. The Department has also adopted NAC 372.605 based on the Streamlined Sales Tax Governing Board (SSTGB) sourcing, issue papers and interpretations. Recently, the Department adopted the Legislative Counsel Bureau-approved regulation, File No. R056-18, which is based on SSTGB Interpretation 2006-04, April 18, 2006.

Nevada Revised Statutes 372.2841 and NRS 374.2891 predate SSUTA adoption and are no longer applicable when determining whether food is intended for immediate consumption. These provisions are no longer relevant. No other SSUTA member state has statutes with the same language as in NRS 372.2841 and NRS 374.2891.

Leaving these statutes in NRS leads to confusion within the industry because guidance cannot be provided to specific establishments as to when their food sales are taxable. These statutes prevent the Department from referring to the type of establishment when discussing what type of food is taxable.

We have researched SSUTA members and nonmembers that provide guidance for when food is subject to tax. Arkansas has a list of sample food items subject to the state's sales and use tax. This guide provides examples of when sales tax applies to common food transactions at grocery stores, convenience stores, concession stands and fast food restaurants. Indiana has a sales tax bulletin that indicates items classified as taxable and nontaxable foods. Maine—a nonmember state—has a publication with a quick answer chart that lists the type of retailers and items that are subject to tax. Washington has a publication for restaurants and bars that indicates which foods are subject to tax. Wisconsin provides sales and use tax training for grocers that includes determining which foods are taxable as prepared for immediate consumption.

If NRS 372.2841 and NRS 374.2891 are repealed, clarity can be provided to establishments to which food sales are taxable. Pursuant to NRS 372.284, NRS 374.289 and NRS 360B.460, we would determine when food is prepared food and therefore taxable. We could then replicate SSUTA members' guidance and training—making Nevada's operations consistent with other states.

Nevada Revised Statutes 372.2841 and NRS 374.2891 were added by S.B. No. 238 of the 70th Session. Determining when food was subject to tax was an issue. Restaurants served food for immediate consumption, which was taxed. However, grocery stores were not being taxed for food sales because the food purchased was taken home to be prepared at a later time. In the minutes report from the Assembly Committee on Taxation dated April 20, 1999, and Senate Committee on Taxation dated February 25, 1999, an owner of a pizza parlor who sold frozen pizzas testified he could not compete with grocery stores because his food sales were being taxed when grocery stores were not. The Legislature recognized the unfairness in tax application. This resulted in statutes

that required the Department to not look at the type of establishment when determining the taxability of food and to look at whether or not the food is intended for immediate consumption.

Since the enactment of NRS 372.2841 and NRS 374.2891, Nevada has joined the SSTGB. The Legislature has enacted NRS 360B.460, which defines what prepared food is. This statute contains requirements for when food is considered prepared food and subject to tax—pursuant to NRS 372.284 and NRS 374.259. *Nevada Revised Statutes* 372.2841 and NRS 374.2891 are no longer needed.

We request that NRS 372.2841 and NRS 374.2891 be repealed because these statutes predate Nevada's adoption of the SSUTA, which requires the Department to base the taxability of food on if it is intended for immediate consumption and not on the type of establishment where the food is sold.

CHAIR NEAL:

We will consider support for S.B. 25.

BRYAN WACHTER (Senior Vice President, Retail Association of Nevada):

We support S.B. 25. Remaining in compliance with the SSUTA is important to maximizing economic development and simplifies and modernizes tax code. This bill makes Nevada law easier to comply with, more efficient and clear.

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CHAIR NEAL:

Seeing no public comment, we will close the hearing on S.B. 25 and adjourn the meeting at 1:15 p.m.

RESPECTFULLY SUBMITTED:

Alex Polley,
Committee Secretary

APPROVED BY:

Senator Dina Neal, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 25	B	1	Department of Taxation	Presentation