

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB FILE NO. R014-201

**The following document is the initial draft regulation proposed
by the agency submitted on 01/28/2020**

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[Date]

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

AUTHORITY: §1, NRS 360.090, 372.724, 372.725, 374.724, 374.725 and Assembly Bill 445.

A REGULATION relating to taxation; implementing sales tax collection requirements imposed on remote sellers, marketplace sellers and marketplace facilitators. The proposed regulation provides information about how and when remote sellers, marketplace sellers and marketplace facilitators are required to register, collect, remit and report sales tax and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law imposes upon each retailer a sales tax measured by the gross receipts of the retailer from the retail sale of tangible personal property in this State. (NRS 372.105, 374.110, 374.111) Under existing law, a retailer is required to collect the sales tax from the purchaser in a transaction to which the sales tax applies. (NRS 372.110, 374.115)

Existing law also imposes a use tax on the storage, use or other consumption in this State of tangible personal property purchased outside of this State from a retailer in a transaction that would have been subject to the sales tax in this State if it had occurred within this State. (NRS 372.185, 374.190, 374.191) Under existing law, the use tax is required to be paid by the purchaser who stores, uses or consumes the tangible personal property in this State, but any retailer maintaining a place of business in this State is required to collect the use tax from the purchaser at the time of the sale. (NRS 372.190, 372.195, 374.195, 374.200)

The provisions of existing law relating to the imposition, collection and remittance of sales and use taxes apply to every retailer who has a sufficient nexus with this State to satisfy the requirements of the United States Constitution, including certain retailers who do not maintain a physical presence in this State. (NRS 372.724, 374.724; LCB File No. 189-18)

Section 1. Chapter 372 of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 40, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 40, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 25, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Affiliate” has the meaning ascribed to it in Assembly Bill (AB) 445, section 2.5.*

Sec. 4. *“Automated Clearing House Debit” means any completed or attempted debit to an account at a financial institution that is processed electronically through the Automated Clearing House Network (ACH Network).*

Sec. 5. *“Brands sales as those of a marketplace facilitator” means using any means, including, but not limited to a name, logo, sign, symbol, or a combination of these to identify the marketplace facilitator as the person selling a marketplace seller’s product.*

Sec. 6. *“Delivery Network Company” means a business entity that maintains an Internet website or mobile application used to facilitate delivery services for the sale of local products.*

Sec. 7. *“Delivery services” means the pickup of one or more local products from a local merchant and delivery of the local products to a customer.*

Sec. 7.5 *“Direct Sales” means any sales made by the seller directly to Nevada consumers. The term does not include Nevada retail sales made through a marketplace facilitator.*

Sec. 8. *“Facilitate” for the purpose of this regulation means for a person to agree to do anything directly or indirectly, through one or more affiliates, for a consideration that makes it easy or easier for a marketplace seller to sell its products through a marketplace operated by a person or an affiliate, including, but not limited to, communicating the offer or acceptance between the buyer and seller, taking orders for merchandise, or providing payment processing or fulfillment services.*

Sec. 9. *“Gross receipts” has the meaning ascribed to it in NRS 372.025.*

Sec. 10. *“Internet advertising service” means a service in which a person or business connects a prospective customer with a retailer through internet advertising.*

Sec. 11. *“Listing of products for sale” means a written, verbal, pictorial, graphic, etc., announcement of goods for sale.*

Sec. 12. *“Local merchant” means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with a delivery network company.*

Sec. 13. *“Local product” means any item, including food, other than freight or mail to which postage has been affixed.*

Sec. 14. *“Marketplace” means any physical or electronic presence, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property.*

Sec. 15. *“Marketplace Facilitator” has the meaning ascribed to it in AB 445 section 3. “Marketplace facilitators” can include consignment stores, auctions and online marketplaces.*

Sec. 16. *“Marketplace seller” has the meaning ascribed to it in AB 445 section 4.*

Sec. 17. *“Nevada sales” means all retail sales, whether taxable or exempt, and other sales of tangible personal property otherwise sold into Nevada or for delivery into Nevada, including wholesale or sale for resale. “Nevada sales” includes sales made through a marketplace.*

Sec. 18. *“Payment Processing Services” means providing a person, directly or indirectly, with the means used to charge or debit accounts through the use of any payment method or mechanism, including, but not limited to, credit cards, debit cards, prepaid cards, stored value cards, Automated Clearing House (ACH) debits, and payment orders, whether accomplished through the use of software or otherwise.*

Sec. 19. *“Retailer” has the meaning ascribed to it in NRS 372.055 and includes a remote seller, marketplace seller or marketplace facilitator that meets or exceeds the Nevada sales threshold pursuant to AB 445 section 5 subsections 1(a) and 1(b).*

Sec. 20. *“Remote Seller” means a retailer that does not have a physical presence in Nevada, but which makes retail sales of tangible personal property that are delivered into Nevada.*

Sec. 21. *“Sales” has the meaning ascribed to it in NRS 372.060 and includes sales made through a marketplace.*

Sec. 22. *“Sales threshold” means the receipts or transaction levels that trigger collection and remittance obligations for sales tax as provided in AB 445 section 5.1(a): \$100,000 or more in gross receipts from Nevada retail sales or AB 445 section 5.1(b): 200 or more separate retail sales transactions into Nevada in either the current or immediately preceding calendar year.*

Sec. 23. *“Separate transaction” means each invoice that is generated from a Nevada sale, including a single invoice that accounts for multiple products. For leases and rentals, each required periodic payment is a separate transaction. “Separate transaction” does not include any deposits made in advance of a sale.*

Sec. 24. *“Setting prices” means establishing a price or prices at which an item is offered for sale or sold to customers and includes establishing a price at which an item must be sold or a minimum or maximum price, below or above which an item cannot be sold.*

Sec. 25. *“Virtual Currency” is a digital representation of value that functions as a medium of exchange, a unit of account, or a store of value, but which does not have legal tender status in any jurisdiction. Virtual currency does not include retailer coupons or gift cards.*

Sec. 26. *The sales threshold does not apply to a retailer, remote seller, marketplace seller or marketplace facilitator that has a physical presence in this State. All retailers with a physical presence in this State must register, collect, remit and report all sales tax even if the Nevada retail sales threshold is not met.*

Sec. 27. *A delivery network company will be deemed a marketplace facilitator if it meets one of the qualifications of subsection 1(a) and one of the qualifications of subsection 1(b) in section 3 of AB 445.*

Sec. 28. *1. A retailer with physical presence in this state who makes both marketplace and non-marketplace retail sales must do the following:*

(a) Register, collect, remit and report Nevada sales tax on any taxable sales on which the marketplace facilitator does not collect Nevada sales tax;

i. EXAMPLE: Seller X is a Nevada-based business, with property and personnel located in Nevada. Seller X has \$80,000 in gross receipts from Nevada retail sales. Seller X makes \$10,000 in gross receipts from Nevada retail sales through a marketplace facilitator that collects Nevada sales tax. The remaining \$70,000 in gross receipts comes from Nevada retail sales made at Seller X’s storefront in Nevada. Seller X must collect, remit and report Nevada sales tax on the \$70,000 in non-marketplace retail sales on its Nevada sales tax return.

(b) Report the retailer’s direct Nevada sales to the Department on the retailer’s Nevada sales tax return for all sales, regardless of whether the sales threshold is met; and

(c) Report the retailer’s exempt Nevada sales.

Sec. 29. *A remote seller's or marketplace seller's combined Nevada retail sales are used to determine if the sales threshold is met through all sources, to include marketplace and non-marketplace Nevada retail sales.*

Sec. 30. *1. If a marketplace seller that has no physical presence in Nevada meets or exceeds the Nevada retail sales threshold but only makes retail sales in Nevada through marketplaces, the registration and collection obligations of the marketplace seller depends on whether all the marketplace facilitators through which the marketplace seller makes Nevada retail sales are registered to collect Nevada sales tax.*

2. If all marketplace facilitators used by the marketplace seller are registered with Nevada to collect Nevada sales tax, the marketplace seller does not have to collect the Nevada sales tax but is still required to be registered with Nevada pursuant to NRS 372.125 and NRS 374.130 if they make non-marketplace sales into Nevada and meet the Nevada retail sales threshold.

(a) EXAMPLE: Seller X has \$200,000 in gross receipts from Nevada retail sales. Seller X has \$2,000 in gross receipts from retail sales on Marketplace Y and \$198,000 in gross receipts from retail sales on Marketplace Z. Marketplace Z meets the Nevada retail sales threshold and is registered to collect, remit and report Nevada sales tax. Marketplace Y, however, has very few retail sales, and does not meet the Nevada retail sales threshold and is therefore not required to register and does not collect sales tax on Nevada sales. Seller X must register with Nevada and collect, remit and report Nevada sales tax on the \$2,000 in Nevada retail sales that are made on Marketplace Y.

3. The marketplace facilitator will collect, remit and report the sales tax on the Nevada retail sales made by the marketplace seller, on the Nevada sales tax return filed by the marketplace facilitator.

(a) A marketplace facilitator must file a separate Nevada sales tax return under a subaccount with a separate location code for all marketplace sellers for any third-party Nevada retail sales it facilitates.

i. EXAMPLE: Seller X has \$200,000 in gross receipts from Nevada retail sales. Seller X makes all its Nevada sales through a marketplace facilitator that collects Nevada sales tax on the retail sales. Seller X does not need to register for a Nevada sales tax permit or file a Nevada sales tax return. The marketplace facilitator will collect, remit and report the Nevada sales tax on the marketplace facilitator's Nevada sales tax return.

(b) A marketplace facilitator must issue a certificate prescribed by the Department to all marketplace sellers stating that the marketplace facilitator will register, collect, remit and report all Nevada sales tax, and be responsible for being audited on such facilitated Nevada sales.

4. If a marketplace facilitator does not meet or exceed the Nevada retail sales threshold, then the marketplace facilitator is not required to register, collect, remit or report Nevada sales tax. The marketplace facilitator must notify the marketplace seller that it does not meet the Nevada retail sales threshold.

5. If a marketplace facilitator meets or exceeds the Nevada retail sales threshold but fails to register and collect Nevada sales tax, the marketplace seller who meets or exceeds the Nevada retail sales threshold must register and obtain a Nevada sales tax permit and collect, remit and report Nevada sales tax and file a Nevada sales tax return for Nevada retail sales made on that marketplace.

(a) A marketplace facilitator that meets or exceeds the Nevada retail sales threshold but fails to register, collect, remit and report their Nevada marketplace retail sales may be subject to a penalty for failure to pay tax pursuant to NRS 360.417.

6. A marketplace seller that meets or exceeds the Nevada retail sales threshold from both marketplace and non-marketplace retail sales must register with the Department pursuant to NRS 372.125 and NRS 374.130 and obtain a Nevada sales tax permit to allow the marketplace seller to collect, remit and report all Nevada retail sales not reported by the marketplace facilitator, on its own Nevada sales tax return.

(a) A marketplace seller that meets or exceeds the Nevada retail sales threshold but fails to register, collect, remit and report their Nevada retail sales may be subject to a penalty for failure to pay tax pursuant to NRS 360.417.

Sec. 31. 1. *If a remote seller, marketplace seller or marketplace facilitator does not have a physical presence in Nevada and does not meet or exceed the Nevada retail sales threshold for the prior year, and therefore does not collect Nevada sales tax in the current year, but meets or exceeds the Nevada retail sales threshold in the current year, the remote seller, marketplace seller or marketplace facilitator must register to collect Nevada sales tax pursuant to NRS 372.125 and NRS 374.130.*

(a) *The remote seller, marketplace seller or marketplace facilitator must collect Nevada sales tax starting on the first day of the first calendar month that begins at least 30 calendar days after the remote seller, marketplace seller or marketplace facilitator met or exceeded the Nevada retail sales threshold.*

(b) *The remote seller, marketplace seller or marketplace facilitator must collect the Nevada sales tax through the end of the calendar year in which the Nevada retail sales threshold was met or exceeded as well as the entire next calendar year.*

(c) *A remote seller, marketplace seller or marketplace facilitator that meets or exceeds the Nevada retail sales threshold but fails to register, collect, remit and report their Nevada sales may be subject to a penalty for failure to pay tax pursuant to NRS 360.417.*

2. Consumers in Nevada will be liable for any use tax that accrues prior to the date the remote seller, marketplace seller or marketplace facilitator without physical presence in Nevada became registered to collect, remit and report Nevada sales tax.

Sec. 32. *1. If a remote seller, marketplace seller or marketplace facilitator who is registered to collect Nevada sales tax, fails to meet or exceed the Nevada retail sales threshold at any point in year 2, the remote seller, marketplace seller or marketplace facilitator is not required to collect, remit or report the Nevada sales tax in year 3 unless the remote seller, marketplace seller or marketplace facilitator meets or exceeds the Nevada retail sales threshold at any point during year 3.*

2. In year 3 the remote seller, marketplace seller or marketplace facilitator that falls under the Nevada retail sales threshold and does not have a physical presence in Nevada may either continue to collect, remit and report the Nevada sales tax and submit Nevada sales tax returns or cease collection and file a Nevada sales tax return even though no liability exists. If the remote seller, marketplace seller or marketplace facilitator meets or exceeds the Nevada retail sales threshold at any point thereafter, the remote seller, marketplace seller or marketplace facilitator must begin collecting Nevada sales tax on the first day of the first calendar month that begins at least 30 calendar days after the remote seller, marketplace seller or marketplace facilitator met or exceeded the Nevada retail sales threshold and remit the Nevada sales tax.

(a) *If a marketplace facilitator does not have a physical presence in Nevada and does not meet the Nevada retail sales threshold for its marketplace sales, the marketplace*

facilitator must notify the marketplace seller so that the marketplace seller can register, collect, remit and report the Nevada sales tax on its Nevada retail sales if the marketplace seller meets or exceeds the Nevada retail sales threshold.

(b) EXAMPLE: Company S, a remote seller, meets or exceeds the Nevada retail sales threshold on June 25, 2019. Company S must register and collect Nevada sales tax beginning August 1, 2019 and must collect for all of 2020. If Company S does not meet or exceed the Nevada retail sales threshold in 2020, it is not obligated to collect Nevada sales tax beginning on January 1, 2021. Company S may cease collection but must still file a Nevada sales tax return which shows the total retail sales made to Nevada in column A and exempt those retail sales out in column B resulting in a zero liability Nevada sales tax return.

Sec. 33. *1. As provided in AB 445 section 5 subsection 2(a), a marketplace seller and marketplace facilitator may enter into a written agreement whereby the marketplace seller assumes responsibility for the collection and remittance of the Nevada sales tax for all Nevada retail sales made by the marketplace seller through the marketplace facilitator if all of the following conditions are satisfied:*

(a) The marketplace facilitator enters into this agreement with all marketplace sellers that the marketplace facilitator makes or facilitates Nevada retail sales transactions on behalf of those marketplace sellers;

(b) All marketplace sellers are currently registered with Nevada and hold a Nevada sales tax permit;

(c) The agreement specifies that the marketplace seller is responsible for collecting, remitting and reporting the Nevada sales tax on all Nevada retail sales made through the marketplace facilitator;

(d) The marketplace facilitator maintains notification on its website that Nevada sales tax is being collected, remitted and reported by the marketplace seller; and

(e) The marketplace facilitator provides the agreement to the Department prior to facilitating Nevada retail sales on behalf of the marketplace seller.

Sec. 34. *1. Except as otherwise provided in AB 445 Section 6 subsection 2 and 3, if a marketplace facilitator collects, remits and reports the Nevada sales tax on behalf of the marketplace seller and any underpayment of Nevada sales tax has been found after an audit has been conducted, the marketplace facilitator will ultimately be held liable as provided in AB*

445 section 6 subsection 1 unless:

(a) The marketplace facilitator provides proof satisfactory to the Department that the marketplace facilitator has made a reasonable effort to obtain accurate information from the marketplace seller about the Nevada retail sale; and

(b) The failure to collect, remit and report the correct Nevada sales tax on the retail sale was due to incorrect information provided to the marketplace facilitator by the marketplace seller.

2. If the marketplace facilitator is relieved from the liability pursuant to subsection 1, the marketplace seller is liable for the underpayment.

Sec. 35. Coupons and other discounts offered by remote sellers, marketplace sellers and marketplace facilitators are retailer discounts, which reduce the sales price as provided in NRS 372.065 and thus the taxable amount of the sale.

Sec. 36. 1. When a customer returns tangible personal property to a remote seller, marketplace seller or marketplace facilitator, the customer must seek a credit or refund of the Nevada sales tax from the remote seller, marketplace seller or marketplace facilitator.

(a) If a marketplace facilitator collects Nevada sales tax on the sale and allows for the customer to return the item directly to the marketplace seller and the marketplace seller accepts the return, either the marketplace seller or marketplace facilitator shall refund the full price paid by the customer including all the Nevada sales tax collected by the marketplace facilitator upon acknowledgement of receipt of the returned item by the marketplace seller.

(b) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the customer including all the Nevada sales tax collected by the marketplace facilitator. The marketplace seller shall then seek reimbursement of the Nevada sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the Nevada sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the Nevada sales tax to the customer in conjunction with the return made directly to the marketplace seller. The marketplace facilitator may claim a credit on their future Nevada sales tax return for the period in which the refund occurred if the sales tax rates in the two periods are the same. If the sales tax rates are not the same, the marketplace facilitator must submit an amended return for the period in which the original sale occurred.

(c) Nothing in this section requires a remote seller, marketplace seller or marketplace facilitator to accept a return or requires a marketplace facilitator to allow returns made directly to a marketplace seller.

2. If the customer has erroneously paid Nevada sales tax to the remote seller, marketplace seller or marketplace facilitator, the customer must first seek a credit or refund of the Nevada sales tax from the remote seller, marketplace seller or marketplace facilitator.

3. If the customer attempts but is unable to receive a credit or refund from the remote seller, marketplace seller or marketplace facilitator, the customer may apply for the credit or refund directly from the Department. When applicable, the Department shall deduct from the credit or refund to be paid to the customer an amount equal to the amount deducted and withheld by the retailer for reimbursement pursuant to NRS 372.370 or 374.375, as appropriate, for the cost of collecting the Nevada sales tax being credited or refunded.

Sec. 37. 1. A retailer required to collect, remit and report Nevada sales tax is responsible for correctly applying exemptions for tangible personal property as provided in NRS 372.260 to 372.350.

2. The marketplace facilitator is responsible for obtaining and maintaining exemption certificates when the marketplace facilitator makes or facilitates a Nevada retail sale on behalf of a marketplace seller.

Sec. 38. When a properly executed resale certificate as described in NAC 372.730 is submitted to a remote seller, marketplace seller or marketplace facilitator the retailer is relieved from the obligation to collect Nevada sales tax on the Nevada sales transaction.

Sec. 39. 1. Except as otherwise stated in this section, the filing and permit requirements of Chapter 360 and 372 shall apply to all retailers, including remote sellers, marketplace sellers and marketplace facilitators who meet or exceed the Nevada retail sales threshold and are required to register, collect, remit and report Nevada sales tax under this section.

2. Except as otherwise stated in this section, the penalties in Chapter 360 and 372 shall apply to all retailers, including remote sellers, marketplace sellers and marketplace facilitators who are required to register with the Department to collect, remit and report Nevada sales tax under this section but fail to do so.

Sec. 40. *A remote seller, marketplace seller or marketplace facilitator who is selling items that may include any other tax other than or in addition to Nevada sales tax is encouraged to contact the Department for guidance.*