

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R189-18

1. A clear and concise explanation of the need for the adopted regulation.

The United States Supreme Court ruled in *South Dakota v. Wayfair, Inc.* on June 21, 2018, that the states can require remote sellers to collect and remit the applicable sales or use tax on sales delivered to locations within their states regardless of whether the seller has a physical presence in the state.

The need and purpose of LCB File No. R189-18 is to establish the criteria for when a retailer must collect sales tax from sales delivered to locations within the state from remote sellers that do not have a physical presence within the State of Nevada.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

The Department of Taxation, as staff to the Nevada Tax Commission, solicited comment from the public by sending notice of workshops and hearings by email:

<u>Date of Notice</u>	<u>Workshop/ Hearing</u>	<u>Date of Workshop</u>	<u>Number Notified</u>
07/20/2018	Workshop	08/06/2018	228
08/10/2018	Adoption Hearing	09/13/2018	228

The mailing list included the interested parties list maintained by the Department. Notices were also posted at the Nevada State Library; various Department of Taxation locations throughout the state; and at the Main Public Libraries in counties where an office of the Department of Taxation is not located. Comments were also solicited by direct email to other interested parties list maintained by the Department.

See response to #5 for a summary of the public responses to the Regulation

A copy of the video record of proceedings may be obtained by calling the Nevada Department of Taxation at (775) 684-2030 or by writing to the Department of Taxation, 1550 East College Parkway, Carson City, Nevada 89706, or by e-mailing the Department at scrowley@tax.state.nv.us

3. **The number of persons who:**
 - (a) **Attended the hearing:** 5 people attended the Adoption Hearing.
 - (b) **Testified at the hearing:** 1 person testified at the Adoption Hearing.
 - (c) **Submitted written comments:** None of the attendees that attended the Adoption hearing submitted written comments.

4. **For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Testified at Workshop:

Josh Hicks

Telephone Number: 775-788-2000

Business address: 100 West Liberty Street, 10th Floor, Reno, NV 89501

Electronic mail address: jhicks@mcdonaldcarano.com

Name of entity or organization represented: Retail Association of Nevada

Philip Horwitz

Telephone number: 303-294-7734

Business address: Not Available

Electronic mail address: phil.horwitz@mossadams.com

Name of entity or organization represented: Moss Adams

Testified at Adoption Hearing:

Michael Pelham

Telephone number: 775-771-0828

Business address: 116 East 7th Street, Suite 202, Carson City, NV 89701

Electronic mail address: mpelham@nevadataxpayers.org

Name of entity or organization represented: Nevada Taxpayer's Association

5. **A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

See response to #2 for description of how comments were solicited from affected business and an explanation on how interested persons may obtain a copy of the summary.

Summary of written business responses:

No written responses were received.

Testimony given at the public workshop:

Joshua Hicks representing the Retail Association of Nevada had two comments. He stated that the policy behind this proposed regulation is supported by the Retail Association of Nevada due to many in-state brick and mortar retailers experiencing a significant competitive disadvantage against online retailers. The primary concern from the Retail Association of Nevada is that this regulation may be going further than a regulation can go. They want to ensure that this rule is put in place and stays in place so their suggestion is that the Department pursues legislation that mimics this proposed regulation. Josh's second comment was regarding the striking of the presumption language in Section 2. There could be an issue with the removal of that language specifically with respect to remote and affiliate nexus and it could be inconsistent with the statute itself. Josh suggested that maybe the language should be left in place to be consistent with the statute.

Philip Horwitz representing Moss Adams started with applauding the proposed regulation's handling of thresholds. His comment is regarding a renewal period when speaking about the calendar year and when the retailer makes a sale. He would like to see specific dates in regards to the calendar year. Philip's final comment was to applaud the State for making this effort through a regulatory body as he mentions there are some states that have tried to make similar rules in less binding ways.

Testimony given at the adoption hearing:

Michael Pelham with the Nevada Taxpayer's Association (NTA) testified that the NTA is in agreement with the regulation, but would rather see the regulation be done through legislation rather than the regulatory process to make it more binding.

The regulation was adopted as requested.

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6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Regulation was adopted as drafted because there was no sustained opposition to the language of the regulation as it was presented. The only opposition to the regulation was that some members of the public would like to see legislation passed that mimics the regulation.

7. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

(a) Estimated economic effect on the businesses which they are to regulate.

The proposed permanent regulation presents no reasonably foreseeable or anticipated adverse economic effects to retailers. The benefit of this regulation on retailers is that it will create a more even playing field between in-state brick and mortar establishments and online out-of-state retailers.

(b) Estimated economic effect on the public which they are to regulate.

The proposed permanent regulations present no reasonably foreseeable or anticipated adverse economic effects to public. The benefit of this regulation on the public is increased tax revenue.

8. The estimated cost to the agency for enforcement of the proposed regulation:

The anticipated cost for enforcement is to be determined.

9. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulations do not overlap or duplicate any regulation of other state or local governmental entities.

10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The Department is not aware of any similar federal regulations of the same activity in which the state regulations are more stringent.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulations do not include new or increases in existing fees.