

ASSEMBLY BILL NO. 380—ASSEMBLYWOMAN KIRKPATRICK

MARCH 17, 2015

Referred to Committee on Taxation

SUMMARY—Revises provisions relating to sales and use taxes. (BDR 32-964)

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

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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; enacting provisions relating to the imposition, collection and remittance of sales and use taxes by retailers located outside this State; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

The Commerce Clause of the United States Constitution prohibits a state from requiring a retailer to collect sales and use taxes unless the activities of the retailer have a substantial nexus with the taxing state. (Quill Corp. v. North Dakota, 504 U.S. 298 (1992)) Existing law requires every retailer whose activities create such a nexus with this State to impose, collect and remit the sales and use taxes imposed in this State. (NRS 372.724, 374.724) This bill provides that a retailer who engages in certain specified activities is required to collect and remit the sales and use taxes imposed in this State.

Sections 2 and 5 of this bill enact provisions based on a Colorado law which creates a presumption that a retailer is required to impose, collect and remit sales and use taxes if the retailer is: (1) part of a controlled group of business entities that has a component member who has physical presence in this State; and (2) the component member with such physical presence engages in certain activities in this State that relate to the ability of the retailer to make retail sales to residents of this State. (Ch. 364, Colo. Session Laws 2014, at p. 1740) Under sections 2 and 5, a retailer may rebut this presumption by providing proof that the component member with physical presence in this State did not engage in any activity in this State on behalf of the retailer that would constitute a sufficient nexus under the United States Constitution.

Sections 3 and 6 of this bill enact a provision based on a New York law which creates a presumption that a retailer is required to impose, collect and remit sales and use taxes if: (1) the retailer enters into an agreement with a resident of this State under which the resident receives certain consideration for referring potential customers to the retailer through a link on the resident’s Internet website or otherwise; and (2) the cumulative gross receipts from sales by the retailer to



26 customers in this State through all such referrals exceeds a certain amount during
27 the preceding four quarterly periods. A retailer may rebut this presumption by
28 providing proof that each resident with whom the retailer has an agreement did not
29 engage in any solicitation in this State on behalf of the retailer that would satisfy
30 the nexus requirement of the United States Constitution. In *Overstock.com v. New*
31 *York State Department of Taxation and Finance*, 987 N.E.2d 621 (2013), the New
32 York Court of Appeals held that the New York law is facially constitutional
33 because, through these agreements with New York residents, a retailer may
34 establish a sufficient nexus with the State of New York to satisfy the requirements
35 of the United States Constitution.

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

1 **Section 1.** Chapter 372 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *Except as otherwise provided in this section, it is*
4 *presumed that the provisions of this chapter relating to the*
5 *imposition, collection and remittance of the sales tax, and the*
6 *collection and remittance of the use tax, apply to a retailer if:*

7 *(a) The retailer is part of a controlled group of corporations*
8 *that has a component member, other than a common carrier, that*
9 *has physical presence in this State; and*

10 *(b) The component member with physical presence in this*
11 *State:*

12 *(1) Sells a similar line of products as the retailer and does*
13 *so under a business name that is the same or similar to that of the*
14 *retailer;*

15 *(2) Maintains an office, distribution facility, warehouse or*
16 *storage place or similar place of business in this State to facilitate*
17 *the delivery of tangible personal property sold by the retailer to the*
18 *retailer's customers;*

19 *(3) Uses trademarks, service marks or trade names in this*
20 *State that are the same or substantially similar to those used by the*
21 *retailer;*

22 *(4) Delivers, installs, assembles or performs maintenance*
23 *services for the retailer's customers within this State; or*

24 *(5) Facilitates the retailer's delivery of tangible personal*
25 *property to customers in this State by allowing the retailer's*
26 *customers to pick up tangible personal property sold by the retailer*
27 *at an office, distribution facility, warehouse, storage place or*
28 *similar place of business maintained by the component member in*
29 *this State.*

30 **2.** *A retailer may rebut the presumption set forth in*
31 *subsection 1 by providing proof satisfactory to the Department*
32 *that, during the calendar year in question, the component member*



1 *with physical presence in this State did not engage in any activity*
2 *in this State on behalf of the retailer that would constitute a*
3 *sufficient nexus to satisfy the requirements of the United States*
4 *Constitution. A retailer has the burden of establishing that the*
5 *requirements of this subsection are satisfied.*

6 *3. In administering the provisions of this chapter, the*
7 *Department shall construe the terms “seller,” “retailer” and*
8 *“retailer maintaining a place of business in this State” in*
9 *accordance with the provisions of this section.*

10 *4. As used in this section:*

11 *(a) “Component member” has the meaning ascribed to it in*
12 *section 1563(b) of the Internal Revenue Code, 26 U.S.C. §*
13 *1563(b), and includes any entity that, notwithstanding its form of*
14 *organization, bears the same ownership relationship to the retailer*
15 *as a corporation that would qualify as a component member of the*
16 *same controlled group of corporations as the retailer.*

17 *(b) “Controlled group of corporations” has the meaning*
18 *ascribed to it in section 1563(a) of the Internal Revenue Code, 26*
19 *U.S.C. § 1563(a), and includes any entity that, notwithstanding its*
20 *form of organization, bears the same ownership relationship to the*
21 *retailer as a corporation that would qualify as a component*
22 *member of the same controlled group of corporations as the*
23 *retailer.*

24 **Sec. 3. 1.** *Except as otherwise provided in this section, it is*
25 *presumed that the provisions of this chapter relating to:*

26 *(a) The imposition, collection and remittance of the sales tax;*
27 *and*

28 *(b) The collection and remittance of the use tax,*
29 *↪ apply to every retailer who enters into an agreement with a*
30 *resident of this State under which the resident, for a commission or*
31 *other consideration based upon the sale of tangible personal*
32 *property by the retailer, directly or indirectly refers potential*
33 *customers, whether by a link on an Internet website or otherwise,*
34 *to the retailer, if the cumulative gross receipts from sales by the*
35 *retailer to customers in this State who are referred to the retailer*
36 *by all residents with this type of an agreement with the retailer is*
37 *in excess of \$10,000 during the preceding four quarterly periods*
38 *ending on the last day of March, June, September and December.*

39 *2. A retailer may rebut the presumption set forth in*
40 *subsection 1 by providing proof satisfactory to the Department that*
41 *each resident with whom the retailer has an agreement did not*
42 *engage in any solicitation in this State on behalf of the retailer*
43 *that would constitute a sufficient nexus to satisfy the requirements*
44 *of the United States Constitution. A retailer has the burden of*
45 *establishing that the requirements of this subsection are satisfied.*



1 3. In administering the provisions of this chapter, the
2 Department shall construe the terms “seller,” “retailer” and
3 “retailer maintaining a place of business in this State” in
4 accordance with the provisions of this section.

5 **Sec. 4.** Chapter 374 of NRS is hereby amended by adding
6 thereto the provisions set forth as sections 5 and 6 of this act.

7 **Sec. 5. 1.** Except as otherwise provided in this section, it is
8 presumed that the provisions of this chapter relating to the
9 imposition, collection and remittance of the sales tax, and the
10 collection and remittance of the use tax, apply to a retailer if:

11 (a) The retailer is part of a controlled group of corporations
12 that has a component member, other than a common carrier, that
13 has physical presence in this State; and

14 (b) The component member with physical presence in this
15 State:

16 (1) Sells a similar line of products as the retailer and does
17 so under a business name that is the same or similar to that of the
18 retailer;

19 (2) Maintains an office, distribution facility, warehouse or
20 storage place or similar place of business in this State to facilitate
21 the delivery of tangible personal property sold by the retailer to the
22 retailer’s customers;

23 (3) Uses trademarks, service marks or trade names in this
24 State that are the same or substantially similar to those used by the
25 retailer;

26 (4) Delivers, installs, assembles or performs maintenance
27 services for the retailer’s customers within this State; or

28 (5) Facilitates the retailer’s delivery of tangible personal
29 property to customers in this State by allowing the retailer’s
30 customers to pick up tangible personal property sold by the retailer
31 at an office, distribution facility, warehouse, storage place or
32 similar place of business maintained by the component member in
33 this State.

34 2. A retailer may rebut the presumption set forth in
35 subsection 1 by providing proof satisfactory to the Department
36 that, during the calendar year in question, the component member
37 with physical presence in this State did not engage in any activity
38 in this State on behalf of the retailer that would constitute a
39 sufficient nexus to satisfy the requirements of the United States
40 Constitution. A retailer has the burden of establishing that the
41 requirements of this subsection are satisfied.

42 3. In administering the provisions of this chapter, the
43 Department shall construe the terms “seller,” “retailer” and
44 “retailer maintaining a place of business in this State” in
45 accordance with the provisions of this section.



1 4. *As used in this section:*

2 (a) *“Component member” has the meaning ascribed to it in*
3 *section 1563(b) of the Internal Revenue Code, 26 U.S.C. §*
4 *1563(b), and includes any entity that, notwithstanding its form of*
5 *organization, bears the same ownership relationship to the retailer*
6 *as a corporation that would qualify as a component member of the*
7 *same controlled group of corporations as the retailer.*

8 (b) *“Controlled group of corporations” has the meaning*
9 *ascribed to it in section 1563(a) of the Internal Revenue Code, 26*
10 *U.S.C. § 1563(a), and includes any entity that, notwithstanding its*
11 *form of organization, bears the same ownership relationship to the*
12 *retailer as a corporation that would qualify as a component*
13 *member of the same controlled group of corporations as the*
14 *retailer.*

15 **Sec. 6. 1.** *Except as otherwise provided in this section, it is*
16 *presumed that the provisions of this chapter relating to:*

17 (a) *The imposition, collection and remittance of the sales tax;*
18 *and*

19 (b) *The collection and remittance of the use tax,*
20 *↪ apply to every retailer who enters into an agreement with a*
21 *resident of this State under which the resident, for a commission*
22 *or other consideration based upon the sale of tangible personal*
23 *property by the retailer, directly or indirectly refers potential*
24 *customers, whether by a link on an Internet website or otherwise,*
25 *to the retailer, if the cumulative gross receipts from sales by the*
26 *retailer to customers in this State who are referred to the retailer*
27 *by all residents with this type of an agreement with the retailer is*
28 *in excess of \$10,000 during the preceding four quarterly periods*
29 *ending on the last day of March, June, September and December.*

30 2. *A retailer may rebut the presumption set forth in*
31 *subsection 1 by providing proof satisfactory to the Department that*
32 *each resident with whom the retailer has an agreement did not*
33 *engage in any solicitation in this State on behalf of the retailer*
34 *that would constitute a sufficient nexus to satisfy the requirements*
35 *of the United States Constitution. A retailer has the burden of*
36 *establishing that the requirements of this subsection are satisfied.*

37 3. *In administering the provisions of this chapter, the*
38 *Department shall construe the terms “seller,” “retailer” and*
39 *“retailer maintaining a place of business in this State” in*
40 *accordance with the provisions of this section.*

41 **Sec. 7.** *This act becomes effective on July 1, 2015.*

