

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

**Eighty-second Session
February 14, 2023**

The Senate Committee on Revenue and Economic Development was called to order by Chair Dina Neal at 1:02 p.m. on Tuesday, February 14, 2023, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dina Neal, Chair
Senator Fabian Doñate, Vice Chair
Senator Pat Spearman
Senator Carrie A. Buck

COMMITTEE MEMBERS ABSENT:

Senator Heidi Seevers Gansert (Excused)

STAFF MEMBERS PRESENT:

Michael Nakamoto, Chief Principal Deputy Fiscal Analyst
Christian Thauer, Deputy Fiscal Analyst
Connie Summers, Committee Secretary

OTHERS PRESENT:

Shellie Hughes, Executive Director, Executive Division, Nevada Department of Taxation
Jennifer Roebuck, Deputy Executive Director, Compliance Division, Nevada Department of Taxation
Yvonne Nevarez-Goodson, Chief Deputy Executive Director, Executive Division, Nevada Department of Taxation
Andy LePeilbet, United Veterans Legislative Council
George Hritz, Nevada Taxpayers Association
J.R. Stafford, Vietnam Veterans of America Chapter 989

Andrew MacKay, Nevada Franchised Auto Dealers Association
Bryan Wachter, Retail Association of Nevada

CHAIR NEAL:

We will start today's meeting with an overview from the Nevada Department of Taxation regarding sales and use tax ([Exhibit C](#)) and the hearing on [Senate Bill \(S.B.\) 50](#).

[SENATE BILL 50](#): Revises provisions governing the sales tax holiday for certain members of the Nevada National Guard and certain relatives of such members. (BDR 32-253)

SHELLIE HUGHES (Executive Director, Executive Division, Nevada Department of Taxation):

Sales and use taxes comprise the largest revenue category in our state. Sales and use tax collections made up \$6.6 billion or 69.4 percent of the \$9.5 billion collected by the Department in fiscal year (FY) 2021-2022.

The Department demonstrates the sales and use tax implementation timeline with historical references. The first sales and use tax enacted in Nevada was the Sales and Use Tax Act of 1955 with the passage of S.B. No. 171 of the 47th Session. As noted on Slide 2, [Exhibit C](#), the Act imposed a 2 percent sales tax on sales of tangible personal property at retail and a 2 percent use tax on the storage, use or other consumption of tangible personal property on which sales tax has not been paid.

After the passage of S.B. No. 171 of the 47th Session, a petition for a referendum to submit the Act to the vote of the people was circulated pursuant to Article 19, Section 1, of the Nevada Constitution. The Act was approved at a referendum of voters, which means the Act cannot be amended or repealed by action of the Legislature. The Legislature can propose changes to the Act, but the changes must be submitted to the voters for approval. Any increase in the 2 percent tax rate or any reduction in the 2 percent tax rate, including an exemption of the 2 percent tax rate, must go to the vote of the people before those changes can be made legislatively. This requirement only applies to the 2 percent portion of the sales tax provisions contained in *Nevada Revised Statutes* (NRS) 372. However, it also does not apply to any administrative provisions in the sales and use tax law of NRS 372.

In 1967, the Local School Support Tax law was established and imposed a 1 percent sales tax on sales of tangible personal property at retail and a 1 percent use tax on the storage, use or other consumption of tangible personal property on which sales tax was not paid. The percentage has increased throughout the years and has been 2.6 percent since 2009 as seen on Slide 2.

The city-county relief tax was established in 1969 and imposed a sales tax at the rate of 0.5 percent when effected by county ordinance. The Basic City-County Relief Tax (BCCRT) and the Supplemental City-County Relief Tax (SCCRT) stemmed from the city-county relief tax and were established in 1981. The BCCRT imposes a 0.5 percent sales tax and 0.5 percent use tax. The SCCRT imposes a 1.75 percent sales tax and a 1.75 percent use tax as seen on Slide 2.

Sales tax is one of 21 tax types the Department oversees. Chapter 372 of NRS governs sales and use tax. Sales tax is imposed on the gross receipts from the retail sales of tangible personal property. Gross receipts are defined as the sales price of tangible personal property (TPP) which is defined as personal property that may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The retailer is required to collect the sales tax from customers on the gross receipts of the sale of TPP. The sales tax is not imposed on the property itself but on the retail sale transaction. The tax is the obligation of the retailer, and it must be collected from the consumer, Slide 3.

Regarding use tax, NRS 372.185 specifically addresses purchases from out of state that would have been taxable if purchased in Nevada. Use tax must be paid on these purchases. On Slide 4, note that NRS 372.190 extinguishes the use tax liability if the purchaser pays sales tax and possesses a receipt showing sales tax was paid. Sales tax is imposed on the retailer, and the retailer reports and pays the sales tax to the State while use tax is paid by the consumer directly to the State in situations when the sales tax was not paid. For example, if you buy something from out of state and have it delivered to your home here in Nevada, it is possible the retailer did not charge sales tax because the retailer was not registered to do so in Nevada. In this case, you would be required to remit the use tax directly to the State, Slide 4.

The sales and use tax rate is comprised of four allocations of the tax plus any local options taxes, Slide 5. The base tax rate is 6.85 percent, which has an allocation of 2 percent that goes to the State General Fund; 2.6 percent to the

Local School Support Tax (LSST); 0.5 percent to the Basic City-County Relief Tax; and 1.75 percent to the Supplemental City-County Relief Tax. Local governments have the option to adopt local options taxes ranging anywhere from 0.10 percent to 0.54 percent, which would add to the 6.85 percent minimum State tax rate.

The State portion of sales and use tax as outlined in NRS 372 is a 2 percent tax rate since 1955, Slide 6. The most recent exemption was approved by the voters on November 6, 2018, which provides an exemption for feminine hygiene products effective January 1, 2019. The funding for the State portion is distributed to the State General Fund.

The 2.6 percent LSST outlined in NRS 374 was implemented in 1967. The current rate of 2.6 percent has been in place since July 1, 2009, Slide 7.

There have been some historical distribution changes to the BCCRT. The distribution used today has not changed since 2009, Slide 8.

Supplemental City-County Relief Tax is outlined in NRS 354 and 377. The rate is 1.75 percent and was enacted in the 1981 Legislative Session. The Consolidated Tax Distribution (CTX), is noted when two of the components of the sales tax rate, the SCCRT and the BCCRT, are discussed, Slide 9.

I want to address a previous question raised by Senator Buck regarding the CTX formula—when it was calculated last, has it ever been recalculated and what is the process for recalculation. Consolidated Tax Distribution (CTX) to Nevada counties includes Cigarette Tax, Intoxicating Liquor Tax, BCCRT, SCCRT, Real Property Transfer Tax and the Governmental Services Tax. The CTX was formulated in 1997 driven by statute, and the formula was last adjusted in 2013 with A.B. No. 68 of the 77th Session which revised the base and excess distribution formulas. The provisions of NRS 360.600 through 360.740 governed the formula calculations. Base allocations are recalculated annually at the start of every fiscal year. The last update was completed and provided to local governments on September 6, 2022. The process for recalculation can be found in NRS 360.680 and NRS 360.690.

The last component that makes up the sales tax rate is the local options sales tax, Slide 10. Counties have the option to increase their sales and use tax rates for specific purposes by ordinance. Most of the counties have additional

components in their sales tax rates for a variety of initiatives. The authority for the options taxes can be found in NRS 374A, NRS 377A through 377D and NRS 543.

The counties that have local options taxes include Carson City, Churchill, Clark, Douglas, Elko, Lincoln, Lyon, Nye, Pershing, Storey, Washoe and White Pine, Slide 11.

The county sales and use tax rates map shows the rates by location. Clark County has the highest sales tax rate of 8.375 percent, and Humboldt, Eureka, Mineral and Esmeralda Counties have the lowest sales tax rate of 6.85 percent, Slide 12.

JENNIFER ROEBUCK (Deputy Executive Director, Compliance Division, Nevada Department of Taxation):

Whether a sale is subject to sales tax is one of the most common questions. All gross receipts are taxable until the contrary is established pursuant to NRS 372.155, Slide 13. Section 1 says the burden of proof is on the seller. All sales are taxable unless specifically exempted by statute. The exempted transaction must be sufficiently supported in case of audit.

Some consumers may be tempted to purchase property in a state that does not have a sales tax to avoid sales tax in their home state. This is addressed in NRS 372.250 and 372.255 by stating that tangible personal property is presumed to be for storage, use or consumption in Nevada if it is brought to the State or even if it is delivered outside the State to residents of Nevada, Slide 13. All purchases for storage or use in Nevada are taxable unless specifically exempted by statute. The exempted transaction must be sufficiently supported.

For discussion purposes, exemptions have been categorized into three categories for transactions when sales or use tax does not apply: transaction-based, property-based, and customer- or entity-based exemptions.

For transaction-based exemptions, regular cash discounts on sales reduce the taxable sales price. This does not include manufacturer rebates because the seller is compensated for the total sales price by both the customer and the manufacturer. Repair and installation labor are not taxable if the seller itemizes the property separately from the labor. Some labor is taxable as part of a taxable sale, so these transactions need to be examined carefully. Sometimes a

retailer accepts a trade-in as a partial payment in a retail sale. Generally, the amount of a trade-in does not reduce the taxable sales price because the value of that trade is payment. There is a specific exemption for vehicle trades, and there is a partial tax credit for vessels that are traded in, Slide 14.

Occasional sales are exempt from sales tax. A retailer is defined as a person making more than two retail sales in a 12-month period. There is no mention of exempting private party sales. It is based on the number of sales. As long as an individual is not selling more than two cars, the seller does not need to register as a retailer and collect sales tax.

Sales for resale are not retail sales as seen on Slide 14. When a business makes a purchase for the purpose of resale, it presents a resale certificate. The seller does not charge sales tax and keeps a certificate on file in case of audit. By presenting the completed resale certificate, the purchaser is taking the responsibility for the sales tax on the subsequent sale of the specific property on the certificate or the use tax if the property is later used instead of resold. The retailer who purchases property for resale and then gives it away must remit the use tax on the untaxed cost of that property.

Deducting bad debt from taxable sales is complex, as noted on Slide 14. If a retailer makes a sale on credit, the full sales price is reported for sales tax to the Department when the property is delivered to the customer even though the retailer has not necessarily collected the full sales tax at the time of the sale. If the purchaser defaults, the seller is entitled to a deduction equal to the unrealized portion of the taxable sales price.

The type of property sold can also determine the tax ability of the retail sale. More commonly misunderstood exemptions include food for human consumption which is exempt from sales tax, Slide 15. Food for human consumption does not include prepared food intended for immediate consumption. For example, groceries are food, which is generally exempt. The food you purchase in a restaurant is taxable. If food is purchased to go, more than likely the food is prepared in some form and is taxable.

Medicine is exempt under certain circumstances. For example, if aspirin is prescribed or provided by a physician, it is exempt. When aspirin is purchased at a convenience store, sales tax applies.

Domestic fuels mean any matter used to produce domestic heat. This is another example where the same item may be exempt or taxable depending on the nature of the sale. Propane purchased to heat a home is exempt whereas propane used to cook is taxable. Gas, electricity and water are exempt if delivered to consumers through main lines or pipes.

Sales made to the federal government, State of Nevada or local government within Nevada are exempt as noted on Slide 16. Construction contractors are the consumers of all materials used to fill a contract. Such a purchase is taxable, even if the contract is with an exempt client. The noted exemption is only for those contractors that are a constituent part of an exempt entity, and great care must be taken in these circumstances, Slide 16.

Some nonprofit organizations created for religious, charitable or educational (RCE) purposes must go through an application review process before receiving approval for an exemption from sales and use tax. A copy of the RCE approval letters must be kept by the retailer to support the exempt sale. The letters expire, and an RCE organization must renew an exempt status. Retailers are expected to keep reliable, complete records as assurance that the actual customer is exempt.

Businesses that make purchases for resale are not included in the customer-based exempt sales. The businesses themselves are not exempt, only the sales to these businesses specifically for resale are exempt. Businesses that are awarded an abatement or deferral of the tax agreement provide exemption letters and then report the agreed-upon portion of tax on special tax returns.

Much like visiting customers from another state, tribal members pay Nevada sales tax unless the sale occurs on tribal land. The tribes have their own sales tax on tribal land, Slide 16.

Various factors are considered when determining if an item is exempt from sales tax, Slide 17. The Department is prohibited from sharing any taxpayer reporting information and must protect the identity of individual taxpayers even in the case of reported statistics. We accept leads or referrals as to whether a particular taxpayer may not have collected and remitted sales tax; however, we cannot release the results of any leads or referrals.

Regarding changes in the sales and use tax base, Slide 18, some significant common types of retail sales have evolved substantially during the past decades. Many types of tangible personal property have been converted to a digital or electronic format. Streamed or downloaded games, music, reading materials, movies and other programs were originally considered to be tangible media and subject to sales tax. The sales of digital or electronically transmitted entertainment are not tangible personal property and are not taxable in our current structure in Nevada. Consumers who purchase from remote or online retailers who are not registered to collect Nevada sales tax have been difficult to identify for payment of use tax. Becoming a full member of the Streamline Sales and Use Tax Agreement (SSUTA) was instrumental in receiving sales tax due to Nevada by way of central service provider reporting. The *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018) decision by the U.S. Supreme Court and the passage of remote sellers and marketplace facilitators laws have helped Nevada make enormous strides in closing this gap.

The Taxpayer Bill of Rights, Slide 19, includes an expanded explanation of each tenet of the Bill of Rights set forth in NRS 360.291. Most people want to pay what they owe on time and in full, and an important part of our job is to explain the taxpayer's rights and responsibilities as clearly as possible.

Certain taxes are collected from the customer and held in trust by a taxpayer who functions as a conduit between the customer and the State, Slide 20. If a taxpayer finds an overreporting of tax to the Department, the taxpayer must submit the claim for refund, typically in the form of amended returns within the statutory time period of three years. If a retailer requests a refund, it must be verified that the tax is refunded or not collected in the first place from the customer. This is to prevent sales tax, both collected and refunded, from enriching the retailer by that amount. The retailer must demonstrate that overcollected sales tax was refunded to the customer. Further, if a retailer overcollects sales tax and does not refund it to the customer, the overcollected tax must still be remitted to the State.

The Department is required to pay interest on refunds of sales tax to taxpayers unless the overpayment was intentional or due to carelessness pursuant to NRS 360.2935. In those situations, when the Department refunds overcollected tax, paying interest on the money taxpayers have had in their control constitutes an undue enrichment. Senate Bill 29, which has yet to be introduced, proposes to disallow interest in these specific situations. The bill

would enable the Department to disallow interest on refunds resulting from taxpayer overcollection. Taxpayers would not benefit from earning interest resulting from the overcollection of taxes.

SENATE BILL 29: Revises provisions related to refunds of overpayments of taxes. (BDR 32-216)

CHAIR NEAL:

If the Department of Taxation is delayed in issuing the refund, does interest apply?

MS. ROEBUCK:

The Department is required to add interest to any refunds unless there is some reason the taxpayer was found to be careless or if it was intentional disregard. The Department has a regulation that helps to define the issue.

CHAIR NEAL:

What is the rate of interest?

MS. ROEBUCK:

The rate of interest is 0.25 percent per month.

In 2021, S.B. No. 441 of the 81st Session moved the seller's permit provision from NRS 372, 374 and 377 into a single location in NRS 360, simplifying the requirements for any future changes to the seller's permit. Taxpayers who are registered for a seller's permit, Slide 21, also known as a sales tax permit are required by law to file tax returns by the end of the month following the reporting period. The filing frequency may be monthly, quarterly or annually depending upon sales volume. The total gross receipts, total exempt sales and total taxable sales for the reporting period must be reported in each county in which the sales took place. There is also a column to report purchases for use tax. Businesses that operate solely as consumers report similarly. However, they only report the total amount of purchases reportable for use tax in the appropriate county on a consumer use tax return. The Department has 162,000 businesses registered for sales and use tax, and 105,000 of those businesses pay the seller's permit fee to collect the sales tax.

Should a taxpayer fail to report timely or correctly, penalties and interest are imposed. Authority to assess penalties and interest on the amount of unpaid tax

is outlined in NRS 360.417, as noted on Slide 21. Authority is provided in NRS 360.300 to estimate the amount of tax unfiled periods and to assess penalties and interest on the unpaid estimated tax. This is used for delinquent periods when no return was filed at all. Authority to impose an additional penalty in cases where the Department finds negligence or additional disregard is provided in NRS 360.330. Authority to assess 25 percent of the tax due to fraud or evasion is provided in NRS 360.340. If the fraud or evasion involves vehicles, vessels or aircraft, the penalty is three times the tax. Sales tax collected from the consumer must be held in a separate account in trust for the State pursuant to NRS 372.354. Taxpayers should not be using the collected sales tax for other purposes. Taxpayers are required to keep sufficient records for at least four years and as long as eight years pursuant to NRS 372.735. This statute is particularly important in case of audit.

The Department has authority to investigate or audit the books of taxpayers to ensure compliance, as noted on Slide 22. Auditors do not collect any tax money as part of their duties. Audit selection usually occurs by random. The audit case is assigned to an auditor who contacts the taxpayer by telephone. They discuss the audit scope and necessary records, and they schedule a date and time for the audit to start. A confirmation letter allows the taxpayer to properly prepare for the audit. The audit period is generally three years but can be as long as eight years if the taxpayer did not file returns.

Auditors may test the reporting by selecting a sample of transactions to review. They compare the taxpayer's activities and books with what was reported to the Department and make adjustments if errors are identified. The auditor concludes with an exit interview to explain findings, advise of any penalties and interest if applicable and explain the appeal process. The auditor mails an audit report that explains adjustments, authority and recommendations along with schedules detailing any adjustments, Slide 22.

Enforcement tools encourage voluntary compliance while assuring honest and conscientious taxpayers they are not shouldering an unfair burden. Forms, instructions and regulations must be brief and easy to understand as noted in NRS 360.095. Once a form and straightforward instructions are provided, they should not change unless there is some compelling reason. This statute also requires that exemptions or waivers must be equitable and, while being consistent with legislative intent, retain the broadest base for the affected tax. Audits and collection activity must be equitable and uniform. This is intended to

ensure every taxpayer pays the full amount imposed. Pursuant to NRS 360.145, Department employees cannot be evaluated on assessment or collection amounts.

Statute provides the Nevada Tax Commission (NTC) and the Department several options to assist taxpayers with their payment and reporting obligations. The NTC has authority to enter into a compromise of taxpayer liability under limited conditions pursuant to NRS 360.263. The Department is permitted to waive or reduce interest or penalty as long as the tax is paid and under specific conditions pursuant to NRS 360.419, Slide 22.

Provisions for the Department to adopt regulations for payment plans is provided in NRS 360.2915, Slide 22. *Nevada Administrative Code* 360.440 includes the application process for voluntary disclosures by taxpayers who have not registered or filed returns and who have not been contacted or investigated by the Department. The taxpayer comes forward voluntarily, files returns, pays the tax due and applies for waiver of penalty and interest under this program.

YVONNE NEVAREZ-GOODSON (Chief Deputy Executive Director, Executive Division, Nevada Department of Taxation):

The Streamlined Sales and Use Tax Agreement is an agreement among member states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of sales tax compliance systems, Slide 23. The agreement focuses on improved sales and use tax administration for all sellers and for all types of commerce, including through collections, definitions, registrations, exemptions, returns and remittances.

Nevada became a full member to the Governing Board of SSUTA on April 1, 2008. State laws are not overridden by SSUTA; however, states must comply with the requirements contained in SSUTA to be a member state. Twenty-three states are full members of SSUTA. Costs and administrative burdens on retailers who collect sales tax, particularly retailers operating in multiple states, are minimized by SSUTA. It encourages remote sellers selling over the Internet and by mail order to collect tax on sales to customers living in the member states. It levels the playing field so that local brick-and-mortar stores and remote sellers operate under the same rules, and SSUTA ensures that all retailers can conduct their business in a fair and level competitive environment.

Nevada Revised Statutes 360B is known as the Simplified Sales and Use Tax Administration Act, and the provisions of this chapter implement SSUTA which contains sourcing rules. In Nevada, NRS 360B.360 provides sourcing to take place where the sale takes place or where the delivery occurs. Where the sale is sourced is important for sales tax purposes in order to know what tax rate applies and what state or local government entity receives the distribution of the sales tax, Slide 23.

Nevada implemented a sales tax holiday in 2021. The Department discovered that Nevada was out of compliance with SSUTA after S.B. No. 440 of the 81st Session was signed into law, Slide 23. A letter of exemption for sales or use tax was allowed during the Nevada Day holiday weekend to be issued to a member of the Nevada National Guard on active duty who resided in Nevada and any family members who resided in the same household and were related to the Guard member within the first degree of consanguinity or affinity. In order to receive the letter of exemption, the member of the National Guard would apply through his or her commanding officer no later than 30 days before the date on which Nevada Day is observed. If eligible, the Department would issue a letter of exemption to the Guard member, and the Guard member or family member would present the letter of exemption to a retailer for exemption from the applicable sales tax on the purchase of tangible personal property. The retailer can then seek a refund from the Department for the amount of sales tax collected and remit it to the Department. This exemption only applies to Nevada sales and use tax and does not provide an exemption from any other tax.

For the sales tax holiday in 2022, the Department issued a total of 2,330 exemption letters—1,003 to the Air National Guard and 1,327 to the Army National Guard. Unfortunately, we are unable to determine the total number of exemptions claimed. Taxpayers report total exemptions as a lump sum by county regardless of the type of exemption. There are multiple exemptions that can be included in the number reported in the exemption column on a return so that information from any one exemption cannot be compiled. Senate Bill 50 will help with this problem—not only will it bring us into compliance with SSUTA, it will also allow us to track the number of exemptions claimed.

When a business has a physical presence or nexus in Nevada, the business is required to remit sales tax on its sales to Nevada residents. *Nevada Administrative Code* 372.856 provides two factors that determine

whether a retailer or a seller has sufficient nexus with the State of Nevada, Slide 24.

The first factor is whether a retailer is part of a controlled group of corporations that has a component member with physical presence in this State and the retailer and component member have activities that are related, such as they both sell a similar line of products or services that have the same or a similar name; they both maintain an office, distribution facility, warehouse or storage place in Nevada to facilitate the delivery of tangible personal property sold by the retailer; they both use trademarks or trade names in this state that are substantially similar; they both deliver, install, assemble or perform maintenance services for the retailer's customers within this State; or the component member facilitates the retailer's delivery of tangible personal property to customers in this State or allow for the retailer's customers to pick up the tangible personal property sold by the retailer at the business owned by the component member in this State.

Another option would be that the retailer or component member performs activities in Nevada that are significantly associated with the retailer's ability to establish or maintain a market in this State for the retailer's products or services.

The second factor, Slide 24, to determine whether a retailer or seller has sufficient nexus with Nevada is whether the seller enters into an agreement with the residents of this State under which the resident for a commission or other consideration based upon the sale of tangible personal property by the retailer either directly or indirectly refers potential customers to the retailer. The cumulative gross receipts from sales by the retailer to the customers in this State, who are referred to the retailer by all residents with such an agreement with the retailer, must be in excess of \$10,000 during the preceding four quarterly periods.

Nevada's journey to impose tax on out-of-state businesses that sell into Nevada without a physical presence here started in 2018. Many states including Nevada had trouble collecting sales tax on out-of-state sellers who sold tangible property into their states but otherwise had no physical presence. This put an out-of-state seller in a better position than an in-state seller because the seller did not have to impose tax on sales while the in-state sellers were required to impose the same tax. As a result, in-state sellers had to sell the same product at

a higher price to in-state customers; therefore, most in-state customers would purchase from the out-of-state sellers giving the sellers an unfair advantage in the market.

Prior to 2018, for a state to be able to collect tax from these out-of-state sellers, the seller had to have physical presence or nexus in the state. This made it difficult for those states to collect from online retailers. Many states had to get creative and expand the definition of physical presence so the state could impose the sales tax on those out-of-state sellers, Slide 24.

The *Wayfair* decision in 2018 provided states with the ability to collect sales tax from out-of-state sellers regardless of physical presence. The U.S. Supreme Court found that the economic presence or economic nexus with the state was sufficient. An economic nexus is defined as a connection between a state and a business when annual sales, revenue and/or transaction quantity reach a threshold set by the state required to make them register for sales tax, Slide 24.

In the *Wayfair* decision, the U.S. Supreme Court ruling emphasized South Dakota in that case did three important things to protect against any undue burden. The first was that the state determined the sales tax would not be retroactively applied; South Dakota put limits to protect small businesses; and South Dakota was a member of SSUTA as is Nevada.

On October 1, 2018, Nevada adopted remote seller rules, otherwise known as the *Wayfair* decision. This was a change from how Nevada imposed sales tax such that a seller was no longer required to have a physical presence or any other legal requirement to register or collect sales or use tax on the seller's sales. Nevada adopted a small seller exception, mirroring the South Dakota exception, which required sellers to have more than \$100,000 in retail sales or 200 or more retail transactions in Nevada in order to be required to collect and remit the sales tax. Small sellers may still register to collect and remit sales tax in Nevada as a benefit to their Nevada customers.

Once a remote seller reaches the threshold to collect sales and use tax, the seller must register by the first day of the calendar month beginning at least 30 calendar days after that threshold has been met. Remote sellers can also register with SSUTA sales tax or directly with the Department. Remote sellers that do not meet the small seller exception are required to remit sales tax on

retail sales delivered to Nevada including those made over the Internet. These sellers are required to collect both state and local sales taxes. The Department continues to make contact with known Internet retailers to advise them of this regulation and the need to potentially register with SSUTA or through the Nevada registration process with the Department.

In 2019, Senator Neal and the Assembly Committee on Taxation sponsored A.B. No. 445 of the 80th Session to require marketplace facilitators to collect and remit both state and local sales taxes owed on retail sales they facilitate in Nevada including those made over the Internet. The provisions of this bill were codified in NRS 372.746 through 372.754, Slide 24.

A marketplace is any physical or electronic presence including but not limited to a store, booth, Internet website, catalog, television, radio broadcast, or other dedicated sales software application where a marketplace seller sells or offers the sale of tangible personal property. Examples of this include platforms such as online sellers, online auction sites, auction houses, trade shows and conventions. Like remote sellers, marketplace facilitators can register with SSUTA or directly with the Department. In 2022, the Department estimates there were 34 registered marketplace facilitators who remitted estimated total sales tax revenue of approximately \$232 million. These are only estimated figures because when the Department began implementing the marketplace facilitator filing requirement, many businesses erroneously registered as marketplace facilitators. The Department has been manually reviewing these accounts to determine a list of verified marketplace facilitators. This information comes from verified marketplace facilitator accounts.

Under the marketplace facilitator statutes, there are two types of sellers. We have a marketplace facilitator that generally facilitates retail sales by providing the infrastructure or the support for the retail sales to occur and collects the sales price, processes payments or receives compensation for the retail sale. If a marketplace facilitator facilitates a sale on behalf of a marketplace seller and meets the threshold of \$100,000 or 200 separate transactions in the preceding or current calendar year, then the facilitator is responsible for imposing, collecting and remitting the taxes on the marketplace seller's sales made through the marketplace, Slide 24.

The other type of seller is the marketplace seller, a person who has an agreement with the marketplace facilitator and makes retail sales of tangible

merchandise through the marketplace owned, operated or controlled by the marketplace facilitator. The marketplace seller can also be a remote seller if the seller makes direct sales into Nevada. If the marketplace seller makes direct sales into Nevada without the use of a marketplace facilitator, the seller will be responsible for the imposition, collection and remittance of taxes on those sales, Slide 24. It is possible a marketplace facilitator also has a physical presence in Nevada. If that is the case and the marketplace facilitator has those direct Nevada retail sales, the marketplace facilitator must collect and remit the tax on those sales. When a business has a physical presence, the small business threshold does not apply. Tax is due on all sales in Nevada.

The Department has broad confidentiality requirements, Slide 25, regarding taxpayer information including the administration or collection of any tax, fee, assessment or the imposition of disciplinary actions taken against taxpayers under most circumstances. The Department and its employees are bound under NRS 360.255, which protects taxpayer information with specific limited exceptions as detailed in the full statute. These include the need to share information for proper oversight, budgeting, auditing and legal representation of the Department.

The first stage in the Department's appeals process, Slide 26, is the petition for redetermination. If a taxpayer disputes an audit assessment or deficiency determination, the taxpayer can file a petition for redetermination with the Department to reevaluate the assessment or deficiency. The petition for redetermination form must be submitted within 45 days from the date of the deficiency determination or notice of credit. This 45-day due date is clearly stated on all notices sent to the taxpayer. If a taxpayer fails to timely file the petition for redetermination, the determination may become final and the taxpayer may be considered to have waived appeal rights. The petition for redetermination sets forth the amount of the determination being contested and the grounds for seeking it pursuant to NRS 360.360 and 360.365. Department staff will review the petition for redetermination and the underlying facts of the case. If there is additional documentation not previously presented to staff, the matter will be referred back to the original staff member for reconsideration.

If there is a disagreement with the assessment or deficiency and/or the taxpayer does not provide sufficient additional information for reconsideration, the matter may be forwarded for an evidentiary hearing known as an administrative hearing

before an administrative law judge pursuant to NRS 360.370. This is the second stage of the appeals process.

Administrative hearings are scheduled in Las Vegas, Carson City or Reno, whichever is appropriate for the taxpayer's business; if a taxpayer disagrees with the decision of the administrative law judge, Slide 26, the taxpayer may then appeal the decision to the Nevada Tax Commission pursuant to NRS 360.390. The taxpayer must file a notice of appeal within 30 days of the issuance of a hearing decision. Department policy requires a representative from the Attorney General's Office represent the Department, and a taxpayer may represent itself or seek outside representation. Throughout the appeals process, the Department strives to keep the taxpayer informed of its rights and responsibilities and the times, dates and locations of all meetings and deadlines. Pursuant to NRS 360.360 and NRS 360.390 and any associated regulations, there are mandated time limits for responses at each level of the appeal.

If the taxpayer is not satisfied with the decision of the Nevada Tax Commission, the taxpayer may appeal the decision through a petition for judicial review to the appropriate district court in the State of Nevada. The petition must be filed within 30 days of the Commission's written decision. As a prerequisite to filing the petition, the taxpayer must either pay the amount of the determination or enter into a payment plan agreement with the Department.

The Department's website includes reports and publications with information about sales tax collection and distribution by the Department, Slide 27.

The Consolidated Tax Distribution Report, Slide 27, provides information regarding Nevada county distributions of Cigarette Tax, Intoxicating Liquor Tax, Real Property Transfer Tax and Generation Skipping Transfer Tax together with the two components of the sales tax—Basic City-County Relief Tax and the Supplemental City-County Relief Tax. The General Distribution Statistics Report includes distribution statistics for a variety of taxes including our sales tax. The Local Government Tax Act Distribution Report provides distribution information by county which includes the counties portion of the sales tax revenue. The Annual Taxable Sales Statistics Report includes the sales tax statistics for the previous fiscal years. The Monthly Taxable Sales Statistics Report provides sales tax statistics for previous months. The Taxable Revenue Statistics is a monthly report that provides taxable sales by county and industry sector and provides monthly sales tax revenue collections.

The Department has several opportunities to assist and educate taxpayers and members of the public. We are in the process of reintroducing our Ask the Advisor training both in person and virtually as options for taxpayers who are new to the Department and new to their reporting requirements. The Department also publishes what are referred to as tax notes, technical bulletins and frequently asked questions on a wide variety of topics. This is the Department's effort to explain plain language explanations and enable taxpayers to report correctly and on time. We also have a call center and district offices located in Reno, Carson City and Las Vegas, Slide 28.

When a taxpayer has a specific question as to how a tax type might apply to specific circumstances, the taxpayer can request an advisory opinion. The process of requesting and issuing an advisory opinion includes a written petition to the Director outlining the specific request and circumstances. In most cases when an advisory opinion is provided by the Department, the taxpayer can rely on that information pursuant to NRS 360.294. If the taxpayer has relied on the advisory opinion to his or her detriment, the Department may waive any tax penalty and interest owed by the taxpayer if there is a determination contrary to the advisory opinion. Advisory opinions are confidential.

CHAIR NEAL:

What was the origin of the resale statute, and how long has it been in existence?

Ms. HUGHES:

I do not know the origin or how long that statute has been in existence.

CHAIR NEAL:

Have you ever had to engage with an online ticket retailer on ticket resales?

Ms. HUGHES:

It is my understanding that with any type of ticket sales, there is no resale certificate provided when a ticket is resold.

CHAIR NEAL:

Would it be complicated to do so?

Ms. HUGHES:

We would probably implement it the same as we do with sales tax, so I am not sure if it would be that complicated.

CHAIR NEAL:

Having no questions on the sales and use tax presentation, we will move to the hearing on Senate Bill 50.

Ms. HUGHES:

Nevada has been a member of the Streamlined Sales and Use Tax Agreement Governing Board since April 1, 2008. States must comply with the requirements contained in SSUTA to be a member state. The agreement applies to the state sales and use taxes collected by retailers, and NRS 360B contains provisions for implementation of the agreement in Nevada.

The purpose of SSUTA is to simplify and modernize the administration of the sales and use tax laws of the member states in order to facilitate multistate tax administration and reduce the burden of compliance. If a member state is found to be out of compliance with any provision in the agreement, the member state can be sanctioned and even risk not maintaining the status of a member state.

Last Session, S.B. No. 440 of the 81st Session was signed by the Governor and amended NRS 372.7281 and NRS 372.7282. The law created a sales tax holiday and provided an exemption for Nevada sales tax on the sale of tangible personal property to certain Nevada National Guard members and their qualifying dependents in Nevada. The period of tax exemption is on the day Nevada Day is observed and the Saturday and Sunday immediately following. Members of the National Guard are required to apply for a letter of exemption with the Department 30 days before the date on which Nevada Day is observed. If eligible, the Department will issue a letter of exemption.

The bill requires that when the National Guard member or qualified dependent makes a retail purchase during the sales tax holiday, the letter of exemption is provided to the seller. The seller then is authorized to sell to the member or qualified dependent without imposing sales tax on the sale. The seller then is required to retain the copy of the letter of exemption for audit purposes. The sales tax holiday provisions expire on June 30, 2031.

After this bill became effective and the law was in place, it was determined that the bill violated SSUTA, Section 322. The section provides four requirements that must be met if a member state allows for temporary exemption periods commonly referred to as sales tax holidays. Senate Bill No. 440 of the 81st Session did not meet two of those requirements. To implement a sales tax holiday, Nevada could not apply an entity-based exemption to items and could not require the seller to obtain a letter of exemption from a purchaser for items to be exempted during the sales tax holiday. Senate Bill No. 440 of the 81st Session did both. The Nevada sales tax holiday applies only to qualified members of the Nevada National Guard, and it requires the National Guard member to provide the letter of exemption to the seller when the member purchases items to be exempted.

Nevada was sanctioned for a violation of the agreement in May 2022, and our Governing Board delegate is prevented from voting on any other state's compliance issues. If we fail to come back into compliance in 2023, we will not be able to use our voting rights on any amendments to SSUTA.

Senate Bill 50 is the result of discussions with members of the Governing Board and is an attempt to bring us back into compliance with SSUTA. A different approach to the sales tax holiday is outlined in S.B. 50. Instead of exempting purchases by qualified National Guard members during the sales tax holiday period, the seller would collect the tax on the purchase. The National Guard member would then remit any receipts from this period along with a copy of the member's letter of exemption to the Department within 30 days of purchase. After confirming the sales tax was paid, the Department would refund the sales tax on any qualifying purchases made during the sales tax holiday period to the National Guard member or qualifying dependents. Not only does S.B. 50 carry the same intent as S.B. No. 440 of the 81st Session to allow a period of time for National Guard members to purchase tangible personal property exempt from sales tax, it also brings us back into compliance with SSUTA.

Ms. NEVAREZ-GOODSON:

My presentation of S.B. 50 ([Exhibit D](#)) includes a brief history of the existing provisions and the need for the proposed amendment ([Exhibit E](#)) set forth in the bill.

I would like to offer a clearer understanding of the existing sales tax exemptions that apply to the National Guard under existing law. Under NRS 372.7281 and

NRS 372.7282 and the counterpart provision in NRS 374, which are applicable to the Local School Support Tax, there are five exemptions applicable to the National Guard as noted on Slide 2 of [Exhibit D](#). These five exemptions appear consecutively in NRS 372.7281, subsections 1 through 5.

The first exemption applies to an active-duty member who is on active-duty status for more than 30 days outside of the United States. The second exemption applies to certain relatives of an active-duty member who is on active duty for over 30 days outside of the United States. The third exemption is for certain relatives of deceased members of the National Guard who were killed in the line of duty while in active service. The fourth exemption is an active-duty member who is a resident of the State of Nevada during the sales tax holiday, the Nevada Day weekend. The fifth exemption is for a relative of the member during the same holiday weekend.

The first exemption applies to a member of the National Guard engaged full-time on active-duty status outside of the U.S. The Guard member would apply for a letter of exemption from the Department of Taxation through the commanding officer. The exemption would expire 30 days after the member returns to the United States. The member would provide the letter of exemption to the retailer, and the retailer would present it to the Department for a refund, Slide 3.

For the second exemption pertaining to the relatives of those active Guard members outside of the U.S., the same provision would apply, but the defined dependents or family members include those who reside in the same residence in Nevada as the Guard member and who are related to the Guard member within the first degree of consanguinity or affinity. This is defined to include a spouse, parent or child, Slide 4.

The third exemption applies to those certain relatives of active-duty Guard members who are killed in the line of duty. These family members include those who resided in the same residence in Nevada as the Guard member and who are related within the first degree of consanguinity or affinity. These family members must file an application with the Department of Taxation for the letter of exemption. The exemption will expire three years after the date of death of the member. The member will provide the letter of exemption to the retailer, and the retailer will retain the letter and present it to the Department for a refund. The Department issues the refund to the retailer, Slide 5.

The fourth and fifth exemptions taken together include the active National Guard member and the same family members during the Nevada Day holiday weekend. This is the sales tax holiday provision adopted in S.B. No. 440 of the 81st Session, Slide 6.

The Nevada Legislature created an additional temporary exemption known as the sales tax holiday for the Nevada Day weekend. This exemption applied specifically to members who were on active status and residents of the State of Nevada and those family members who reside in the same residence as the member in Nevada and are related within the first degree of consanguinity or affinity. Under the existing law as set forth in S.B. No. 440 of the 81st Session, the member would apply through the commanding officer and obtain a letter of exemption from the Department of Taxation. The exemption lasts for three days—the Friday on which Nevada Day is observed and the following Saturday and Sunday. That provision sunsets in 2031, Slide 6.

Under existing law, the practice is that the members or their relatives will provide the letter of exemption to the retailer. The retailer will retain the letter and present it to the Department for a refund. The Department issues the refund to the retailer. These are the specific provisions determined to violate SSUTA, and this is what we seek to amend in S.B. 50, Slide 6.

Senate Bill 50 amends the exemption available under the sales tax holiday for the Nevada Day weekend and does not alter the other existing exemptions available to the National Guard and their families. The exemption will remain available, but the mechanism for receiving the benefit will change. Members will continue to apply through their commanding officer to obtain the letter of exemption through the Department of Taxation. This exemption will continue to exist for the three days during the Nevada Day holiday weekend, the Friday on which the holiday is observed and the following Saturday and Sunday, Slide 7.

The changes in S.B. 50 to these provisions indicate that under the new circumstances, the National Guard member or the family member will pay the applicable taxes to the retailer. However, the Guard member may then present a receipt from the retailer and the letter of exemption to the Department within 30 days of the purchase for a refund, Slide 7.

We submitted a proposed amendment to S.B. 50, [Exhibit E](#), to satisfy a request made by SSUTA to confirm in statute the role of the retailer. As limited to the

sales tax holiday for the Nevada Day holiday weekend, the Guard member or the family member will not present the letter of exemption to the retailer. Instead, the retailer will charge and collect the tax and remit it to the Department. The Member will then present the receipt from the purchase along with the letter of exemption to the Department for a refund, [Exhibit D](#), Slide 7.

The provisions of SSUTA, Section 322, were deemed to have been in violation. The two provisions were the requirement that it applied to a specific entity and required, on a temporary basis, to provide the letter of exemption to the retailer. These are the two provisions we are changing in [S.B. 50](#), [Exhibit D](#), Slide 8.

CHAIR NEAL:

Does the Committee have any questions?

SENATOR SPEARMAN:

I respect SSUTA, but I have served overseas, have also been a company commander and know the difficulty many people in the service face when restrictions such as this are applied. Requiring the paper trail seems to be an undue burden. My concern is always that we should make it as easy as possible on the service member and on the families. One of the things we cannot brag about is that most people who serve in the military, especially the lower enlisted, receive SNAP benefits. The reason the law was written like this was to make sure the service member was not disadvantaged. This amendment is probably going to pass because we have to comport with SSUTA. I would ask that SSUTA be reminded that freedom is not free, and we are the land of the free because of the home of the brave.

MS. HUGHES:

I want to clarify that those members out of state can still use the other process of presenting the letter of exemption to the retailer. It is only for the sales tax holiday that we have to adjust the process. We are working with Major General Ondra Berry, Adjutant General of Nevada, to help ease the burden on members of the National Guard.

SENATOR SPEARMAN:

I want put on record that as someone who knows the difficulty of this process, my sentiments are that whoever at SSUTA who has said that this is an acceptable process because it is something that other states have or have not

done or that it is not in line with what other states have or have not done, then maybe SSUTA should reconsider.

CHAIR NEAL:

Regarding the marketplace facilitator information provided, what is the process if someone is buying the tangible goods online through a marketplace facilitator, and how is the facilitator administering the process?

MS. HUGHES:

I know there are certain marketplace facilitators that have a process to accept letters of exemptions. I am not sure if all marketplace facilitators do, but they are required to exempt the sale. That is part of the reason SSUTA finds it could be a burden on retailers because it is hard for an online retailer to know the law of 50 different states and what sales taxes are exempt.

CHAIR NEAL:

When you go to an online retailer's payment page, I do not recall seeing anything that enables someone to identify who they are. I do not know if that is the point of burden or point of the audit. But since there are only 34 of them, it might be worth considering.

For the record, I am an executive member of the SSUTA Governing Board, and I was prevented from voting because of our noncompliance. I asked for the sanction so we understand we are a member state for a reason, and we cannot pass policy that that does not make sense for Nevada. Your point is well taken, Senator Spearman, about the burden because that is something on which SSUTA focuses.

ANDY LEPEILBET (United Veterans Legislative Council):

I have been the Chairman of the United Veterans Legislative Council since 2019. I represent the 279,000 veterans in our State based on the 2020 census which had us at 8.9 percent of the population and places the State as having the seventh-largest veteran concentration in the Nation. When you consider our veterans at approximately 9 percent and their immediate family members, that is about a half a million Nevadans or 16 percent of our population. I applaud Senator Spearman's comments. The burden has been passed from the retailer to the National Guard member, creating significant difficulties.

In the last 20 years, the National Guard has become an active component of our military. We understand the need to comply. We are deeply saddened that we have placed the burden from the retailer to the veteran National Guard member, but we are in support of this bill because we do not want to lose what the Guard is more than due. We support the bill.

GEORGE HRITZ (Nevada Taxpayers Association):

As you just heard in today's brief, Nevada was 1 of 23 full members of the Streamlined Sales and Use Tax Agreement. I also believe we are one of the founding members of SSUTA. It is good policy to bring Nevada into substantial compliance with SSUTA and why the Nevada Taxpayers Association supports this bill as written.

J.R. STAFFORD (Vietnam Veterans of America Chapter 989):

I represent 242 members of a much larger body of Vietnam veterans throughout the Country. I would like to thank Senator Spearman for her germane comments. Having been deployed myself on numerous occasions, I know any burden we can eliminate for our deployed members would be most appreciated. I am firmly in support.

ANDREW MACKAY (Nevada Franchised Auto Dealers Association):

We support this measure. I echo Senator Spearman's thoughts and concerns. However, we want to thank the Department because when this sales tax holiday comes up, service members may want to be able to take advantage of big-ticket items such as automobiles. It may be more cumbersome, but at least members are going to be able to take advantage of the benefit. From that standpoint, we enthusiastically support the measure.

BRYAN WACHTER (Retail Association of Nevada):

The SSUTA organization levels the playing field between Nevada brick-and-mortar retailers and online companies from other states. We have a competitive disadvantage when State law requires us to pay sales tax—the more entities that are exempt, the more competitively disadvantaged the Nevada retailers become. Easier compliance for laws equals more taxpayers who are providing more revenue, and it allows smaller retailers in Nevada to be able to compete with retailers who have the staff and the expertise to be able to operate in 50 states. For most of our small retailers, their ability to expand in Nevada is reliant upon them to be able to export their goods out of state. When

they are following one consistent set of laws as opposed to possibly 50 different laws, they can succeed. We strongly urge the passage of S.B. 50.

I want to address Senator Spearman's comments. What we have in the bill that passed in 2021 does not consider how retail sales are transacted in the State. To have to physically present a letter to a retailer and then leave the letter with the retailer means every Guard member or family member transaction over the three day period requires its own letter, which can be cumbersome in and of itself. You also must deal with other situations like how to deal with exemptions online. Oftentimes, the infrastructure is not set up and even having an item delivered to your house would not offer you the ability to present the physical letter to the retailer. By doing it this way, it was our hope that those service members will be able to utilize far more services with more retailers over the weekend and be able to maximize the benefits that the Legislature is proposing. For all those reasons, we are in favor of S.B. 50 and urge its passage.

SENATOR SPEARMAN:

I am sensitive to the cumbersome nature of the current law, and I am not indifferent to the testimony about large ticket items, but the average lower enlisted member has a base pay from \$1,917.60 per month to \$2,547 per month. It is difficult to exist on that pay. I will vote for the amendment, but I want to emphasize the plight of our service members. My comments are designed to point out the burdens placed on our service members. Consideration could be given to a way to use technology that would not be cumbersome on the retailer who may pass the burden along to service members or their families. I would appreciate any discussion about how technology might be able to lessen the burden on the service members and their families.

CHAIR NEAL:

The proposed amendment, [Exhibit E](#), before us today is the second amendment in 72 hours. We are trying to ensure that the amendment makes sense and present the bill. We will now close the hearing on S.B. 50. Mr. Nakamoto has information to share with the members on tax policy.

MICHAEL NAKAMOTO (Chief Principal Deputy Fiscal Analyst):

I refer to the exhibit titled "Overview of State and Local Sales Tax Rates in Nevada" ([Exhibit F](#)) which was written by the Fiscal Analysis Division. This is

supplemental to the information that Director Hughes and her staff presented relating to the various sales and use tax rates imposed in Nevada.

Table 1 of the exhibit is an overview of those state rates as well as the local rates broken out by county. The statutory authority is expanded in the tables; footnotes relating to the legislative history on the authorities and actual collections as reported by the Department of Taxation in FY 2021-2022 are provided.

Table 2 lays out the information in Table 1 for each county by the component rate, including the State General Fund 2 percent rate, the BCCRT, the SCCRT, the LSST and some local options rates previously mentioned. Also provided in the table is a chart reflecting the above information in a bar graph.

The remaining two exhibit pages, Table 3, reflect the various sales and use tax rates codified but not currently imposed. This was information we prepared for the Joint Interim Standing Committee on Revenue meeting in February 2022 and has been updated for this meeting.

Remainder of page intentionally left blank; signature page to follow.

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CHAIR NEAL:

Having no questions or public comment, we will adjourn the meeting at
2:36 p.m.

RESPECTFULLY SUBMITTED:

Connie Summers,
Committee Secretary

APPROVED BY:

Senator Dina Neal, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
	C	2	Shellie Hughes, Yvonne Nevarez-Goodson, Jennifer Roebuck / Nevada Department of Taxation	Overview of Sales and Use Tax
S.B. 50	D	20	Shellie Hughes, Yvonne Nevarez-Goodson, Jennifer Roebuck / Nevada Department of Taxation	Presentation
S.B. 50	E	20	Shellie Hughes, Yvonne Nevarez-Goodson, Jennifer Roebuck / Nevada Department of Taxation	Proposed Amendment
	F	26	Michael Nakamoto/ Fiscal Analysis Division	Overview of State and Local Sales Tax Rates Imposed Under Current Law in Nevada