

NEVADA SALES AND USE TAX ISSUES FOR ADMINISTRATIVE LAW PRACTITIONERS

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Nevada, like most other states, imposes a tax on the retail sale of tangible personal property to consumers. In the absence of a state income tax or other broad-based tax, Nevada continues to rely on the sales tax to generate about one-third of all general fund revenues.¹ Nearly all Nevada businesses either pay or collect sales and use taxes. Consequently, as Nevada lawyers we should not be surprised if our clients have questions related to the administration of sales and use tax. While those rules might appear simple enough – the tax is triggered by a “sale,” right? – in reality, the sales and use tax system in Nevada is a minefield of complex issues. This article provides an overview of Nevada sales and use tax issues for administrative lawyers – addressing the complex Nevada statutory scheme as well as the procedural rules that apply.

Nevada’s unique statutory scheme

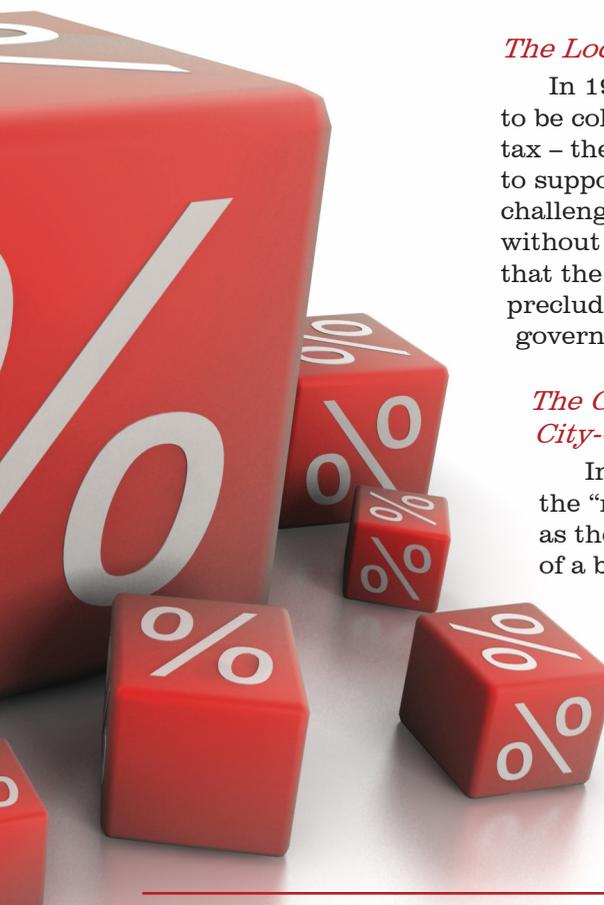
The sales and use tax in Nevada is comprised of several different taxes: the state sales and use tax (NRS 372), the local school support tax (NRS 374), and the miscellaneous city/county relief taxes (NRS 377). The revenues generated from the state

sales tax go to the state general fund. The local school support tax revenue is distributed to appropriate county school districts, and the city/county relief tax revenue is distributed to counties and cities on the basis of origin of sales and a legislative formula. The first thing that jumps out is that the provisions of NRS 372 and 374 appear to be identical; and the provisions of NRS 377 cross-reference the other two chapters. Added to this are the provisions in NRS 360B, which contain other sales tax provisions. Why? Well, there is actually a complex constitutional and legislative background for each of these measures.

The Sales and Use Tax (SUT) Act of 1956

The original sales and use tax was adopted by referendum approved by voters in 1956. The Nevada Constitution provides that such a referendum law may not be amended except by the direct vote of the people.² Accordingly, the provisions of the SUT law, codified in NRS 372, may only be amended by the Nevada voters. The sales and use tax rate is 2 percent.





The Local School Support Tax (LSST)

In 1967, the legislature passed a 1 percent tax for local school support to be collected at the same time and in the same manner as the sales and use tax – the only substantive difference being that the revenue was earmarked to support public schools. The provisions of the LSST were immediately challenged as an improper legislative attempt to indirectly amend the 1956 act without voter approval. In a split decision, the Nevada Supreme Court ruled that the constitutional prohibition against amending a referred law does not preclude legislative power to enact a “separate but identical tax for a different governmental purpose.”

The City/County Relief Tax (BCCRT) and the Supplemental City-County Relief Tax (SCCRT)

In 1969, the legislature passed an optional 0.5 percent tax, to be used for the “relief” of the local governments that decided to adopt it; it was known as the Basic City-County Relief Tax (BCCRT). A decade later, in 1981, as part of a broader “tax shift” in Nevada, the legislature enacted the Supplemental City-County Relief Tax (SCCRT), at a rate of 1.75 percent, and added another optional 0.25 percent to the BCCRT earmarked for transportation. At that same time, the LSST was increased to 1.5 percent. In 1991, these rates were increased again – the LSST was increased to 2.25 percent (and a new 0.25 optional tax increase was approved for Clark County).

Following other increases in optional tax rates, and including the “temporary” increase in the LSST approved by the 2009

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legislature (from 2.25 to 2.6 percent),³ the effective sales and use tax rate in Nevada currently varies from a high of 8.1 percent in Clark County (and 7.725 in Washoe County), to the lows of 6.85 percent in the counties of Elko, Esmeralda, Humboldt and Mineral (with the other counties falling in between that range).⁴

The Streamlined Sales and Use Tax Agreement (SSUTA)

Nevada has also adopted provisions to carry out the Streamlined Sales and Use Tax Agreement (SSUTA), codified in NRS 360B. The SSUTA is an effort on behalf of several states to respond to rulings of the U.S. Supreme Court which hold that, given the divergence among the existing sales and use tax systems in the various states, it is an unreasonable burden for a state to require a seller without a physical presence in the state to collect tax on sales it makes into the state.⁵ While Congress does have authority to allow states to require such “remote sellers” to collect a sales tax, to date it has declined to act. In the interim, Nevada (along with 24 other states) has enacted the SSUTA to standardize the various tax systems, with the goal of eventually being able to legally collect taxes from Internet sellers.

Administration

Nevada’s tax system is administered and enforced by the Nevada Tax Commission and the Department of Taxation. The commission oversees the department, and is responsible for adopting regulations, hearing tax appeals from hearing decisions by the department, and approving forms and procedures of the department. All retail sellers are required to register with the department and obtain a sellers permit. All businesses that use, store or otherwise consume tangible personal property (TPP) should also register with department. Individuals should also be completing use tax returns on purchases for which a sales tax was not paid (such as purchases from Internet sellers).

The department’s primary enforcement mechanism is the audit process. An auditor will contact a taxpayer to schedule a time and location for an audit. Usually the audit will cover the previous three years (but can go back as far as eight years if the taxpayer has not filed its sales and use tax returns returns).⁶ The auditor will review the taxpayer’s records, and if the auditor concludes there is a deficiency the taxpayer will be

provided with a written determination including an explanation of the taxpayer’s rights and responsibilities.

If the taxpayer wishes to challenge the audit results it must timely file a petition for redetermination setting forth the amount at issue and the grounds.⁷ The matter will then be forwarded for an evidentiary hearing before a hearing officer.⁸ The taxpayer bears the burden of proof to show that administrative determination is incorrect. If the taxpayer disagrees with the hearing officer’s decision, it may appeal to the commission. If the taxpayer disagrees with the Tax Commission decision, it may appeal to District Court.⁹

Unique challenges

Reliance on Advice from the Department

Although it would seem that good-faith reliance on the advice of an employee of the department is a defense for the failure to collect a sales tax, such a defense is limited to proof of good-faith reliance on written advice only.¹⁰ In addition to the writing, there must be proof that the taxpayer relied on the advice to his or her detriment.

Availability of Precedent (Taxpayer Confidentiality)

While taxpayers are entitled to uniform and consistent treatment, the past decisions of the commission or department, which reflect the agency’s application of statutes and regulations, are not always easy to locate or obtain. In contrast to some other administrative agencies, such materials are not made available on any public website. In addition, the commission continues to maintain the records of many sales tax decisions as confidential records that are not even available under a public records request. Historically, the commission had operated under the assumption that it could close any session at which it would hear a taxpayer’s appeal if the taxpayer requested closure. In *Chanos v. Nevada Tax Comm’n*,¹¹ however, the Nevada Supreme Court overruled this past practice holding that the commission could close only those portions of a meeting in which the commission received confidential information and evidence. Notwithstanding this ruling, the commission continues to maintain as confidential the records of decisions that it has previously made under the pre-*Chanos* standard.

Conclusion

Nevada's SUT laws provide complex issues for the unwary. It is important to know the issues and the relevant time frames to contest a deficiency. When a client contacts you, the first question should be whether the client has received a deficiency notice and, if so, what the date is of the notice. Then you can proceed to navigate your way around the labyrinth of NRS Chapters 360, 360B, 372, 374, 377 and the associated regulations. ■



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- 1 Report of the State of Nevada Economic Forum Forecast of Future State Revenues (Dec. 1, 2010).
- 2 Nev. Const., art. 19, § 1.
- 3 See SB 429 (2009) (temporarily increasing the LSST until June 30, 2011).
- 4 See www.tax.state.nv.us/documents/SUT_Rates_7_09.pdf.
- 5 See *Quill v North Dakota*, 504 U.S. 298 (1992).
- 6 NRS 360.355
- 7 NRS 360.360
- 8 NRS 360.370
- 9 NRS 360.390, NRS 360.395.
- 10 NRS 360.294
- 11 181 P.3d 675, ___ Nev. ___ (2008).