



NEVADA FIREARMS COALITION

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November 12, 2014

Mr. Christopher G. Nielsen, Executive Director Nevada Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706

Dear Mr. Nielsen,

In October 2014, "Nevada Tax Notes" were sent out to businesses. Page 3 (see below) contained a column entitled "Deliveries by Nevada Firearms Dealers for Out-of-State Retailers." We have received several questions from federal firearms dealers doing business in Nevada regarding the contents of this notice. In order to provide them with a proper response, we are requesting the following clarification from your office. Thank you for your prompt response to this request.

The following was sent as April 2014 Nevada Tax Notes page 3

Deliveries By Nevada Firearms Dealers for Out-of- State Retailers

Nevada residents order firearms from out-of-state retailers and the retailers ship the firearms to an authorized Nevada firearms dealer for delivery to the customer. The Nevada firearms dealer charges a fee to register each firearm in Nevada. When the Nevada firearms dealer completes the registration paperwork and delivers a firearm to a Nevada purchaser for an out-of-state retailer not registered with the State of Nevada, Department of Taxation (Department) as a retailer engaged in business in this state, it is presumed that the firearms dealer is the retailer of the firearms pursuant to NRS 372.055 and NRS 372.050. In such a case, the firearm dealer would owe sales tax on the total amount of the retail sales price of the gun to the customer, including the Department of Justice fee if passed on to the customer, and including any service charge made by the firearm dealer. If the firearm dealer establishes to the satisfaction of the Department that the out-of-state retailer was engaged in business in this state, its deliveries for that retailer will not be considered taxable retail sales by the firearm dealer, even if the out-of-state retailer has not registered with the Department as a retailer engaged in business in this state. In such cases, as well as in situations in which the retailer is in fact registered as a retailer engaged in business in this state, the out-of-state retailer has a duty to collect the use tax pursuant to NRS 372.185 and NRS 372.225, even if paid directly to the firearm dealer by the customer. Also, the Department of Justice fee passed onto the customer should be included in the measure of tax.

Background:

There are two ways Nevada residents may purchase firearms from out of state. In all cases, Federal law requires that all persons who sell firearms must be a Federal Firearms Licensed dealer (FFL). It also requires that all persons who obtain a firearm through a FFL, completed federal paperwork and undergo a background check. The background check is performed directly through National Criminal Information System (NICS) in other states but in Nevada, must go through the Central Repository for Nevada Records of Criminal History. Nevada allows the Central Repository to charge a fee (tax) for this service. At the present time, a \$25.00 charge is made to the FFL by the Central Repository. This fee is considered a state tax and is paid by the purchaser.

1. Direct Purchase: A Nevada retailer is an agent of an out of state business that sells firearms, and is therefore required to be a FFL. In this case, the firearms are usually on property and the purchaser pays for the firearm (including sales tax) and the background check tax. In some cases, the dealer orders the firearm and it is delivered to the retail store for delivery, purchase, background check and taxation.

2. Transfer: A Nevada based FFL is contacted by a person who has already purchased or obtained a firearm from an out of state dealer or private party, and all retail fees and appropriate taxes have been paid. The purchaser makes arrangements with a NV FFL to receive the firearm, complete the federal paperwork and complete the background check. The dealer usually charges a handling fee (but not in all cases) and a reimbursement fee for the background check fee. The FFL has nothing to do with the sale.

Questions regarding the Tax Notes:

Tax notes Statement

Nevada residents order firearms from out-of-state retailers and the retailers ship the firearms to an authorized Nevada firearms dealer for delivery to the customer.

Question: Based on the two cases of firearms transfers mentioned above, it appears this tax note therefore only applies to direct purchases, is that correct? If it is a transfer, the Nevada resident purchases the firearm and then makes arrangements for the delivery. Which of the two situations does this apply?

Tax notes Statement

The Nevada firearms dealer charges a fee to register each firearm in Nevada.

Question: Please provide us with the citation to the Nevada Revised Statute that requires firearms to be registered in Nevada?

Tax notes Statement

When the Nevada firearms dealer completes the registration paperwork and delivers a firearm to a Nevada purchaser for an out-of-state retailer not registered with the State of Nevada, Department of Taxation (Department) as a retailer engaged in business in this state, it is presumed that the firearms dealer is the retailer of the firearms pursuant to NRS 372.055 and NRS 372.050. In such a case, the firearm dealer would owe sales tax on the total amount of the retail sales price of the gun to the customer, including the Department of Justice fee if passed on to the customer, and including any service charge made by the firearm dealer.

Question: This may be true for direct purchase but not for a transfer. Was this statement written to include ALL out of state transfers? Under what authority is the "presumption" that the FFL is the retailer of the firearm?

Tax notes Statement

Also, the Department of Justice fee passed onto the customer should be included in the measure of tax.

Question: What is the Department of Justice? Where is that located in Nevada State government? What is a "Department of Justice Fee?" Where is that fee located in Nevada Revised Statutes? Where in your tax notes do you refer to the Nevada Department Central Repository of Criminal Records? The background check fee provided for in Nevada Revised Statutes is already considered a tax by the Nevada Central Repository. The US Department of Justice administers the NICS checks, but they are free, and Nevada, by statute does not allow for FFL to inquiry USDOJ NICS check system. So what does this refer to?

In summary, this tax note has created a lot of confusion with NV FFLs and customers. It appears that it may have been written by someone on your staff that is not familiar with the different ways firearms are transferred, the requirements of FFLs, nor the requirements and the tax by the Central Repository. The language matches almost word for word to the language that appears on the California State Board of Equalization web page as follows:

<http://www.boe.ca.gov/lawguides/business/current/btlg/vol2/suta/495-0843.html>

*"495.0000 SALE
Annotation 495.0843*

(e) RETAIL SALE OR SALE FOR RESALE—DELIVERY BY OWNER, FORMER OWNER, FACTOR OR AGENT

495.0843 Deliveries by California Firearm Dealers for Out-of-State Retailers. California residents order firearms from out-of-state retailers and the retailers ship the firearms to an authorized California firearm dealer for delivery to the customer. The California firearm dealer charges a fee to register each firearm in California.

When the California firearm dealer completes the registration paperwork and delivers a firearm to a California purchaser for an out-of-state retailer not registered with the Board as a retailer engaged in business in this state, it is presumed that the firearm dealer is the retailer of the firearm under the second paragraph of section 6007. In such a case, the firearm dealer would owe sales tax on the total amount of the retail sales price of the gun to the customer, including the Department of Justice fee if passed on to the customer, and including any service charge made by the firearm dealer.

If the firearm dealer establishes to the satisfaction of the Board that the out-of-state retailer was engaged in business in this state under section 6203, its deliveries for that retailer will not be considered taxable retail sales by the firearm dealer, even if the out-of-state retailer has not registered with the Board as a retailer engaged in business in this state. In such cases, as well as in situations in which the retailer is in fact registered as a retailer engaged in business in this state, the out-of-state retailer has a duty to collect the use tax under section 6203. The retailer should collect use tax on the invoice price of the firearm, plus the service fee, even if paid directly to the firearm dealer by the customer. Also, the Department of Justice fee passed onto the customer should be included in the measure of tax. 12/7/95. (Am. 99-2)."

Question: Did a member of your staff copy and modify the California regulations and insert them into the Tax Notes?

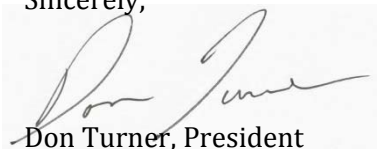
Considering that the language of the Nevada Tax notes is an exact reproduction of the California Tax Annotations, it therefore reflects California laws, departments and procedures and not Nevada's. We think that is what happened. The employee who performed this act needs some serious counseling.

We assume that this was not completed under your direction.

We would appreciate the answers to our questions, and a restatement of the tax notes as they apply to the actual laws in Nevada along with an immediate correction of the issue. We have received several customer complaints in the last two weeks.

Thank you for your prompt response and attention to this confusing issue.

Sincerely,



Don Turner, President

cc: NV FFLs