



NEVADA FIREARMS COALITION

5575 Simmons Street, Suite 1-176
North Las Vegas, Nevada 89031
702-373-5935
www.nvfac.org
www.facebook.com/nvfac
don@nvfac.org

RECEIVED

NOV 30 2015

State of Nevada
Department of Taxation

November 24, 2015

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

Dear Mr. Nielsen,

Nevada businesses which do business as a Federal Firearms Licensee dealer (FFL) are required by federal law to receive firearms which are being transferred into Nevada, fill out the required federal paper work (form 4473), perform a background check through the Nevada Department of Public Safety and then pass on the merchandise to the customer who ordered it.

In some circumstances the firearm was bought through the dealer who then placed the order to the out of state supplier. In this circumstance the dealer also collects the state sales tax on the merchandise and the transaction if part of the dealer's gross sales.

In another circumstance, the firearm is bought on line by a customer from a source independent of the dealer. The buyer must have a dealer receive it by federal law even though the dealer has received no payment from the seller/buyer. The dealer does the background check for the transfer for a fee.

In the second circumstance, sometimes the firearms are bought as gifts. Gift purchases do not require tax gross receipts reporting.

We have been asked to inquire what rules/standards does the Department of Taxation use to determine the tax liability of a dealer regarding gifts? Is the word of the dealer sufficient? Is there a form that the Department of Taxation uses to document the number of transfers for personal possession vs. transfers for gifts? Our dealers are worried about potential tax liability for gifts.

We would appreciate the answers to our questions,

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

Sincerely,

Don Turner, President

cc: NV FFLs

**DEDICATED TO THE OWNERSHIP & SAFE USE OF FIREARMS FOR SELF-DEFENSE,
COMPETITION, RECREATION & HUNTING**



STATE OF NEVADA
DEPARTMENT OF TAXATION

Web Site: <http://tax.nv.gov>

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7937
Phone: (775) 684-2000 Fax: (775) 684-2020

RENO OFFICE
4600 Kietzke Lane
Building L, Suite 235
Reno, Nevada 89502
Phone: (775) 687-9999
Fax: (775) 688-1303

BRIAN SANDOVAL
Governor
JOAN LAMBERT
Chair, Nevada Tax Commission
DEONNE CONTINE
Executive Director

LAS VEGAS OFFICE
Grant Sawyer Office Building, Suite 1300
555 E. Washington Avenue
Las Vegas, Nevada 89101
Phone: (702) 486-2300 Fax: (702) 486-2373

HENDERSON OFFICE
2550 Paseo Verde Parkway, Suite 180
Henderson, Nevada 89074
Phone: (702) 486-2300
Fax: (702) 486-3377

December 15, 2015

Don Turner
Nevada Firearms Coalition
5575 Simmons Street, Ste. 1-176
North Las Vegas, Nevada 89031

Re: *Advisory Opinion 15-041*
Tax Liability for Transfers of Firearms as Gifts

Dear Mr. Turner:

Thank you for your recent inquiry regarding the treatment of interstate firearm transfers by Federal Firearms Licensees (FFLs) for tax purposes. Because you are not a taxpayer, this response is not binding advice that may be relied upon in an audit. However, the Department is able to provide a general response to your inquiry that you may share with your members.

Question Presented

1. What is an FFL required to report pursuant to NRS 372.050 as the gross receipts arising from the interstate transfer of a firearm as a gift to a Nevada resident?

Short Answer

1. If the FFL can demonstrate that the Nevada resident is not the purchaser of the firearm and is merely the recipient of the gift, then the FFL is relieved of the liability to report the retail price of the firearm in its gross receipts.

Facts

When a Nevada resident receives a firearm from an out-of-state sender, the firearm must be sent to a licensed FFL in Nevada. The FFL completes the actions required by Federal law to ensure that the recipient may legally possess the firearm. The FFL does not accept or receive payment for the retail sale of the firearm.

In one scenario, the Nevada resident purchases the firearm from an out-of-state seller. The out-of-state seller does not collect sales tax on the transaction, and sends the firearm to the Nevada FFL.

In the second scenario, a Nevada resident receives a firearm in an interstate transaction through a Nevada FFL, but did not make the purchase of the firearm from a seller.

Analysis

For the privilege of selling tangible personal property at retail, a retailer is subject to a tax upon his gross receipts. A “retailer” is a seller who makes more than two retail sales annually. “Gross receipts” is the total amount of the sales price.

NRS 372.050(2) provides:

The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to the consumer, **pursuant to a retail sale** made by a retailer not engaged in business in this State, is a retail sale by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

(emphasis added)

When a Nevada consumer purchases a firearm from an out of state retailer not licensed to do business in Nevada, the Nevada FFL accepts delivery of tangible personal property, presumptively shipped by “an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor,” for “redelivery to a consumer.” As the “person making the redelivery” to the consumer, the FFL must include the retail selling price of the property in his gross receipts, and may collect the sales tax due from the consumer.

However, this is only the case in a retail sale. A retail sale is the transfer of title or possession of tangible personal property for a consideration.¹ If there is no consideration, there is no sale. In the case of a gift, there is no exchange of consideration for the transfer of the tangible personal property, so the FFL has no duty to include the retail selling price of the property in the gross receipts.

Nevada created a presumption that all gross receipts are subject to sales tax until the contrary is established.² If the purchaser claims that the transaction is exempt from transaction, the retailer must maintain such records as are required by the Department.³ If the purchaser improperly claims an exemption, the incidence of taxation falls back on the purchaser.⁴ Thus the initial burden is on the FFL to maintain records sufficient to demonstrate that the transfer was not a retail sale. The FFL must demonstrate that the Nevada resident is not the purchaser of the firearm and is merely the recipient of the gift. If the FFL has documented the character of the transfer as a gift or purchase, the burden shifts to the recipient to prove later that the transfer was a gift, and sales tax was not due.

Although the Department does not have a specific form to be used, or exact documents that must be kept to support the character of the transaction as a gift, it is in the FFL’s best interest to gather reliable information from the firearm recipient or sender that disproves a retail sale in order to avoid liability for remitting tax on the value of the firearm.

¹ NRS 372.050, 372.060.

² NRS 372.155.

³ NRS 372.347

⁴ Id.

Conclusion

Sales tax is due on the retail sale of tangible personal property. When a Nevada-licensed retailer makes the delivery of tangible personal property sold at retail, the retailer has the duty to collect sales tax. However, where the transaction is not a retail sale because there is no consideration for the transfer of the tangible personal property, there is no obligation to collect sales tax. The retailer's duty then shifts to demonstrate that the transaction was not a retail sale. With proper documentation, the retailer's liability for collecting sales tax is shifted back to the purchaser who must demonstrate that the transfer was not a retail sale.

If you would like to propose a form that could be used by your members to collect the information necessary to document a gift instead of a retail sale, I am happy to have staff work with you to address this issue. In the alternative, if your members are retailers licensed in Nevada, they may request an advisory opinion from the Department pursuant to NAC 360.190. These advisory opinions are binding only upon a specific taxpayer, and are based upon the facts or assumptions included within that opinion.

Sincerely,



Deonne E. Contine
Executive Director
Nevada Department of Taxation

cc: Melissa Flatley, Deputy Attorney General

Encl.: Correspondence dated November 24, 2015