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Streamlined Compliance Review and Interpretations Committee

RE: Nevada Compliance

Dear Committee Members:

I am bring this issue to your attention as far as the State of Nevada and how they claim to be in compliance with the Streamlined Sales Tax Act, but in fact, the state is far from it.

#### BACKGROUND

I represented a client that mostly operated in the State of California, but in the last construction boom years moved into the Nevada market. The State of Nevada initiated an audit a few years later. The company after the assessment from the state of Nevada issued the audit report contacted AMCS to assist in resolving the issues. There were two major issues and some smaller issues. one issue in particular caused a great deal of heartache. If there is a dispute between the taxpayer and the taxing authority, a member of the attorney generals' office gets involved to try to settle and if required litigate the differences. This is the case in this audit. The company is a Ready mixed Concrete company as well as a Sand and Gravel Company. It should also be noted that this is not a current year audit, but was resolved in the current year and the arguments and the fact are that currently of the State of Nevada.

#### FACTS

The one area that is of concern was dealing with delivery charges. At this time the Streamlined Sales Tax Matrix only indicated that delivery charges were not subject to tax. Since this audit and the issues that were brought up the Matrix was changed during the resolution phase of the audit, but is currently back

where it was at the start of the audit. The Matrix was modified to reflect the laws under Chapter 372, but have since settlement changed to where they were at the beginning of the audit. The company included delivery with the product price and did not separate out the delivery charges. It was agreed that those were subject to tax. On occasion the company did separate the delivery from the product and appropriately only charged sales tax on the product and the delivery. The State of Nevada assessed the tax on the delivery charges.

There are a few major issues that need to be discussed that shows that the state of Nevada is not in compliance. Even though they want to be when it benefits the state, if it does not benefit the state then they ignore streamlined sales tax. The first issue that should be brought up is the sales tax matrix. The matrix was provided to the sales tax auditor and the attorney from the attorney generals' office. Their response to this matrix is first of all that the matrix is not valid because it is not prepared by the State of Nevada, but is prepared by the Streamlined Sales Tax Governing Body, so the matrix itself is not valid. The second issue is that there is a difference between the laws prior to adopting Streamlined Sales and the laws after adopting Streamlined Sales Tax. It was pointed out that "the laws prior to streamlined sales tax were adopted by voter referendum, i.e. a vote of the people. Any change to a statute which is adopted by referendum may only be amended by referendum. Therefore, Nevada cannot adopt a provision which is encouraged by the streamline initiative if it conflicts with the provisions of Chapter 372 until Chapter 372 has been repealed." The attorney generals' office is under the belief that streamlined sales tax cannot be adopted until through voter referendum Chapter 372 has been repealed, which it has not been. The attorney generals' office also pointed out that the laws state that if there is a discrepancy between Chapter 372 and Chapter 360B that Chapter 372 would take precedence over streamlined sales tax. A letter was presented to the attorney generals' office where Mr. Dino DiCianno, has signed a letter to the streamlined sales tax governing board that the state of Nevada would honor streamlined sales tax if there was a discrepancy. The attorney generals' office stated that Mr. DiCianno does not have the authority to sign such a letter and that it cannot be honored because he does not have that authority to enter into that agreement.

#### SUMMARY

The legal expenses of fighting the sales tax differences and trying to get a ruling as to which set of sales tax laws take precedence would have been way more expensive than simply paying the tax. The taxpayer did spend significant amounts of time and money trying to resolve this issue. This legal battle is not one that any taxpayer in the state of Nevada should have to burden. The Judicial branch of the state of Nevada does not feel that the state of Nevada has the right to enter into the Streamlined Sales Tax Act until by voter referendum Chapter 372 is repealed. This has not happened and until that does, no matter what the Nevada taxing authority leaders do or say or agree to even in writing cannot and will not be honored by the Judicial branch of the state of Nevada. The sales tax matrix will never be honored as the attorney generals' office feels it is not allowed under law. As such the state of Nevada can never be in compliance with the Streamlined Sales tax Act until that takes place.

Sincerely,  
AMCS, LLC

Val Gibson