

SENATE BILL NO. 152—SENATOR DENIS

FEBRUARY 18, 2013

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions governing the administration of sales and use taxes and related taxes. (BDR 32-877)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; making various changes governing the administration of sales and use taxes and related taxes; providing that the right of a retailer to claim certain deductions or refunds is not affected by the assignment of a debt to certain affiliated entities, and providing for the retroactive application of that provision under certain circumstances; requiring the Department of Taxation to adopt certain regulations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 The Sales and Use Tax Act provides that a retailer who is unable to collect all
2 or part of the sales price of a sale is entitled to receive a deduction from his or her
3 taxable sales for that bad debt. (NRS 372.368) A corresponding provision is set
4 forth in the Local School Support Tax Law. (NRS 374.373) **Section 1** of this bill
5 provides that the right of a retailer to claim a deduction or refund under the Sales
6 and Use Tax Act is not affected by the assignment of a debt by the retailer to an
7 entity which is part of an affiliated group that includes the retailer. **Section 1** also
8 defines what constitutes an affiliated group. **Section 2** of this bill makes
9 corresponding changes to the Local School Support Tax Law. **Section 4** of this bill
10 provides for the retroactive application of those provisions under certain
11 circumstances. **Section 3** of this bill requires the Department of Taxation to adopt
12 regulations necessary to carry out the provisions of this bill.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 372.368 is hereby amended to read as follows:
2 372.368 1. If a retailer is unable to collect all or part of the
3 sales price of a sale, the retailer is entitled to receive a deduction
4 from his or her taxable sales for that bad debt.
5 2. Any deduction that is claimed pursuant to this section may
6 not include interest.
7 3. The amount of any deduction claimed must equal the
8 amount of a deduction that may be claimed pursuant to *section 166*
9 *of the Internal Revenue Code*, 26 U.S.C. § 166 , for that sale
10 minus:
11 (a) Any finance charge or interest charged as part of the sale;
12 (b) Any sales or use tax charged on the sales price;
13 (c) Any amount not paid on the sales price because the tangible
14 personal property that was sold has remained in the possession of
15 the retailer until the full sales price is paid;
16 (d) Any expense incurred in attempting to collect the bad debt;
17 and
18 (e) The value of any property sold that has been repossessed by
19 the retailer.
20 4. A bad debt may be claimed as a deduction on the return that
21 covers the period during which the bad debt is written off in the
22 business records of the retailer that are maintained in the ordinary
23 course of the retailer's business and is eligible to be claimed as a
24 deduction pursuant to *section 166 of the Internal Revenue Code*, 26
25 U.S.C. § 166 , or ~~§~~ if the retailer is not required to file a federal
26 income tax return, would be eligible to be claimed as a deduction
27 pursuant to *section 166 of the Internal Revenue Code*, 26 U.S.C. §
28 166.
29 5. If a bad debt for which a deduction has been claimed is
30 subsequently collected in whole or in part, the tax on the amount so
31 collected must be reported on the return that covers the period in
32 which the collection is made.
33 6. If the amount of the bad debt is greater than the amount of
34 the taxable sales reported for the period during which the bad debt is
35 claimed as a deduction, a claim for a refund may be filed pursuant to
36 NRS 372.630 to 372.720, inclusive, except that the time within
37 which the claim may be filed begins on the date on which the return
38 that included the deduction was filed.
39 7. If the retailer has contracted with a certified service provider
40 for the remittance of the tax due under this chapter, the service
41 provider may, on behalf of the retailer, claim any deduction to
42 which the retailer is entitled pursuant to this section. The service



1 provider shall credit or refund the full amount of any deduction or
2 refund received pursuant to this section to the retailer.

3 8. For the purposes of reporting a payment received on a bad
4 debt for which a deduction has been claimed, the payment must first
5 be applied to the sales price of the property sold and the tax due
6 thereon, and then to any interest, service charge or other charge that
7 was charged as part of the sale.

8 9. If the records of a retailer indicate that a bad debt may be
9 allocated among other states that are members of the Streamlined
10 Sales and Use Tax Agreement, the retailer may allocate the bad debt
11 among those states.

12 10. *A retailer who assigns a debt to an entity which is part of*
13 *an affiliated group that includes the retailer may claim any*
14 *deduction or refund to which the retailer would otherwise be*
15 *entitled pursuant to this section, notwithstanding the assignment*
16 *of the debt.*

17 11. Except as otherwise provided in subsection ~~11.1~~ 12, upon
18 determining that a retailer has filed a return which contains one or
19 more violations of the provisions of this section, the Department
20 shall:

21 (a) For the first return of any retailer which contains one or more
22 violations, issue a letter of warning to the retailer which provides an
23 explanation of the violation or violations contained in the return.

24 (b) For the first or second return, other than a return described in
25 paragraph (a), in any calendar year which contains one or more
26 violations, assess a penalty equal to the amount of the deduction
27 claimed or \$1,000, whichever is less.

28 (c) For the third and each subsequent return in any calendar year
29 which contains one or more violations, assess a penalty of three
30 times the amount of the deduction claimed or \$3,000, whichever is
31 less.

32 ~~11.1~~ 12. For the purposes of subsection ~~11.0~~ 11, if the first
33 violation of this section by any retailer was determined by the
34 Department through an audit which covered more than one return of
35 the retailer, the Department shall treat all returns which were
36 determined through the same audit to contain a violation or
37 violations in the manner provided in paragraph (a) of subsection ~~11.0~~
38 ~~12.1~~ 11.

39 13. As used in this section:

40 (a) *“Affiliated group” means:*

41 *(1) An affiliated group as defined in section 1504(a) of the*
42 *Internal Revenue Code, 26 U.S.C. § 1504(a), except that the*
43 *requirements of section 1504(a)(2) of the Internal Revenue Code,*
44 *26 U.S.C. § 1504(a)(2), shall be deemed to be satisfied by the*
45 *ownership of stock that possesses at least 50 percent of the total*



1 *voting power, and has a value equal to at least 50 percent of the*
2 *total value, of the stock of an includible corporation;*

3 *(2) A controlled group of corporations as described in*
4 *section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. §*
5 *1563(a)(2); or*

6 *(3) Any combination of two or more partnerships, limited-*
7 *liability companies, limited-liability partnerships or S corporations*
8 *which have mutual ownership in an amount not less than that*
9 *required of an affiliated group described in subparagraph (1), as*
10 *determined pursuant to regulations adopted by the Department.*

11 (b) "Bad debt" means a debt that may be deducted pursuant to
12 *section 166 of the Internal Revenue Code, 26 U.S.C. § 166.*

13 ~~(b)~~ (c) "Certified service provider" has the meaning ascribed
14 to it in NRS 360B.060.

15 (d) *"Includible corporation" has the meaning ascribed to it in*
16 *section 1504(b) of the Internal Revenue Code, 26 U.S.C. §*
17 *1504(b).*

18 (e) *"S corporation" has the meaning ascribed to it in section*
19 *1361(a)(1) of the Internal Revenue Code, 26 U.S.C. § 1361(a)(1).*

20 **Sec. 2.** NRS 374.373 is hereby amended to read as follows:

21 374.373 1. If a retailer is unable to collect all or part of the
22 sales price of a sale, the retailer is entitled to receive a deduction
23 from his or her taxable sales for that bad debt.

24 2. Any deduction that is claimed pursuant to this section may
25 not include interest.

26 3. The amount of any deduction claimed must equal the
27 amount of a deduction that may be claimed pursuant to *section 166*
28 *of the Internal Revenue Code, 26 U.S.C. § 166* , for that sale
29 minus:

30 (a) Any finance charge or interest charged as part of the sale;

31 (b) Any sales or use tax charged on the sales price;

32 (c) Any amount not paid on the sales price because the tangible
33 personal property that was sold has remained in the possession of
34 the retailer until the full sales price is paid;

35 (d) Any expense incurred in attempting to collect the bad debt;
36 and

37 (e) The value of any property sold that has been repossessed by
38 the retailer.

39 4. A bad debt may be claimed as a deduction on the return that
40 covers the period during which the bad debt is written off in the
41 business records of the retailer that are maintained in the ordinary
42 course of the retailer's business and is eligible to be claimed as a
43 deduction pursuant to *section 166 of the Internal Revenue Code, 26*
44 *U.S.C. § 166* , or ~~(b)~~ if the retailer is not required to file a federal
45 income tax return, would be eligible to be claimed as a deduction



1 pursuant to *section 166 of the Internal Revenue Code*, 26 U.S.C. §
2 166.

3 5. If a bad debt for which a deduction has been claimed is
4 subsequently collected in whole or in part, the tax on the amount so
5 collected must be reported on the return that covers the period in
6 which the collection is made.

7 6. If the amount of the bad debt is greater than the amount of
8 the taxable sales reported for the period during which the bad debt is
9 claimed as a deduction, a claim for a refund may be filed pursuant to
10 NRS 374.635 to 374.720, inclusive, except that the time within
11 which the claim may be filed begins on the date on which the return
12 that included the deduction was filed.

13 7. If the retailer has contracted with a certified service provider
14 for the remittance of the tax due under this chapter, the service
15 provider may, on behalf of the retailer, claim any deduction to
16 which the retailer is entitled pursuant to this section. The service
17 provider shall credit or refund the full amount of any deduction or
18 refund received pursuant to this section to the retailer.

19 8. For the purposes of reporting a payment received on a bad
20 debt for which a deduction has been claimed, the payment must first
21 be applied to the sales price of the property sold and the tax due
22 thereon, and then to any interest, service charge or other charge that
23 was charged as part of the sale.

24 9. If the records of a retailer indicate that a bad debt may be
25 allocated among other states that are members of the Streamlined
26 Sales and Use Tax Agreement, the retailer may allocate the bad debt
27 among those states.

28 10. *A retailer who assigns a debt to an entity which is part of*
29 *an affiliated group that includes the retailer may claim any*
30 *deduction or refund to which the retailer would otherwise be*
31 *entitled pursuant to this section, notwithstanding the assignment*
32 *of the debt.*

33 **11.** Except as otherwise provided in subsection ~~11.1~~ 12, upon
34 determining that a retailer has filed a return which contains one or
35 more violations of the provisions of this section, the Department
36 shall:

37 (a) For the first return of any retailer which contains one or more
38 violations, issue a letter of warning to the retailer which provides an
39 explanation of the violation or violations contained in the return.

40 (b) For the first or second return, other than a return described in
41 paragraph (a), in any calendar year which contains one or more
42 violations, assess a penalty equal to the amount of the deduction
43 claimed or \$1,000, whichever is less.

44 (c) For the third and each subsequent return in any calendar year
45 which contains one or more violations, assess a penalty of three



1 times the amount of the deduction claimed or \$3,000, whichever is
2 less.

3 ~~11.1~~ 12. For the purposes of subsection ~~10.1~~ 11, if the first
4 violation of this section by any retailer was determined by the
5 Department through an audit which covered more than one return of
6 the retailer, the Department shall treat all returns which were
7 determined through the same audit to contain a violation or
8 violations in the manner provided in paragraph (a) of subsection ~~10.~~
9 ~~12.1~~ 11.

10 13. As used in this section:

11 (a) "Affiliated group" means:

12 (1) *An affiliated group as defined in section 1504(a) of the*
13 *Internal Revenue Code, 26 U.S.C. § 1504(a), except that the*
14 *requirements of section 1504(a)(2) of the Internal Revenue Code,*
15 *26 U.S.C. § 1504(a)(2), shall be deemed to be satisfied by the*
16 *ownership of stock that possesses at least 50 percent of the total*
17 *voting power, and has a value equal to at least 50 percent of the*
18 *total value, of the stock of an includible corporation;*

19 (2) *A controlled group of corporations as described in*
20 *section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. §*
21 *1563(a)(2); or*

22 (3) *Any combination of two or more partnerships, limited-*
23 *liability companies, limited-liability partnerships or S corporations*
24 *which have mutual ownership in an amount not less than that*
25 *required of an affiliated group described in subparagraph (1), as*
26 *determined pursuant to regulations adopted by the Department.*

27 (b) "Bad debt" means a debt that may be deducted pursuant to
28 *section 166 of the Internal Revenue Code, 26 U.S.C. § 166.*

29 ~~10.1~~ (c) "Certified service provider" has the meaning ascribed
30 to it in NRS 360B.060.

31 (d) *"Includible corporation" has the meaning ascribed to it in*
32 *section 1504(b) of the Internal Revenue Code, 26 U.S.C. §*
33 *1504(b).*

34 (e) *"S corporation" has the meaning ascribed to it in section*
35 *1361(a)(1) of the Internal Revenue Code, 26 U.S.C. § 1361(a)(1).*

36 **Sec. 3.** The Department of Taxation shall, as soon as
37 practicable on or after the date of passage and approval of this act,
38 adopt such regulations as are necessary to carry out the provisions of
39 this act.

40 **Sec. 4.** Notwithstanding the provisions of subsection 2 of NRS
41 372.725 and subsection 2 of NRS 374.725, the provisions of NRS
42 372.368, as amended by section 1 of this act, and NRS 374.373, as
43 amended by section 2 of this act, apply retroactively with respect to
44 a bad debt that on or after January 1, 2012, was written off in the



1 business records of a retailer that were maintained in the ordinary
2 course of the retailer's business.

3 **Sec. 5.** This act becomes effective:

4 1. Upon passage and approval for the purposes of adopting
5 regulations and performing any other preparatory administrative
6 tasks that are necessary to carry out the provisions of this act; and

7 2. On July 1, 2013, for all other purposes.

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