

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, the writing off by such an entity of the debt as a bad debt and the eligibility of such an entity to deduct the bad debt under federal law; providing for the retroactive application of those provisions 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, the writing off
8 by the entity of the debt as a bad debt and the eligibility of the entity to deduct the
9 bad debt under federal law. **Section 1** also defines what constitutes an affiliated
10 group. **Section 2** of this bill makes corresponding changes to the Local School
11 Support Tax Law. **Section 4** of this bill provides for the retroactive application of
12 those provisions under certain circumstances. **Section 3** of this bill requires the
13 Department of Taxation to adopt regulations necessary to carry out the provisions
14 of this bill.



* S B 1 5 2 R 1 *

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:*

16 (a) *The assignment of the debt to the entity;*

17 (b) *That the debt is written off as a bad debt in the business*
18 *records of the entity which are maintained in the ordinary course*
19 *of the entity's business; and*

20 (c) *That the bad debt is or would be eligible to be claimed by*
21 *the entity as a deduction pursuant to section 166 of the Internal*
22 *Revenue Code, 26 U.S.C. § 166.*

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

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

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

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

38 ~~11.1~~ 12. For the purposes of subsection ~~11.0~~ 11, if the first
39 violation of this section by any retailer was determined by the
40 Department through an audit which covered more than one return of
41 the retailer, the Department shall treat all returns which were
42 determined through the same audit to contain a violation or
43 violations in the manner provided in paragraph (a) of subsection ~~11.0~~
44 ~~12.1~~ 11.

45 13. As used in this section:



1 (a) ***“Affiliated group” means:***

2 ***(1) An affiliated group as defined in section 1504(a) of the***
3 ***Internal Revenue Code, 26 U.S.C. § 1504(a); or***

4 ***(2) A controlled group of corporations as described in***
5 ***section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. §***
6 ***1563(a)(2).***

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

9 ~~10~~ ***(c) “Certified service provider” has the meaning ascribed***
10 ***to it in NRS 360B.060.***

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

12 374.373 1. If a retailer is unable to collect all or part of the
13 sales price of a sale, the retailer is entitled to receive a deduction
14 from his or her taxable sales for that bad debt.

15 2. Any deduction that is claimed pursuant to this section may
16 not include interest.

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

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

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

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

26 (d) Any expense incurred in attempting to collect the bad debt;
27 and

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

30 4. A bad debt may be claimed as a deduction on the return that
31 covers the period during which the bad debt is written off in the
32 business records of the retailer that are maintained in the ordinary
33 course of the retailer’s business and is eligible to be claimed as a
34 deduction pursuant to ***section 166 of the Internal Revenue Code, 26***
35 ***U.S.C. § 166*** , or ~~16~~ if the retailer is not required to file a federal
36 income tax return, would be eligible to be claimed as a deduction
37 pursuant to ***section 166 of the Internal Revenue Code, 26 U.S.C. §***
38 ***166.***

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

43 6. If the amount of the bad debt is greater than the amount of
44 the taxable sales reported for the period during which the bad debt is
45 claimed as a deduction, a claim for a refund may be filed pursuant to



1 NRS 374.635 to 374.720, inclusive, except that the time within
2 which the claim may be filed begins on the date on which the return
3 that included the deduction was filed.

4 7. If the retailer has contracted with a certified service provider
5 for the remittance of the tax due under this chapter, the service
6 provider may, on behalf of the retailer, claim any deduction to
7 which the retailer is entitled pursuant to this section. The service
8 provider shall credit or refund the full amount of any deduction or
9 refund received pursuant to this section to the retailer.

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

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

19 10. *A retailer who assigns a debt to an entity which is part of*
20 *an affiliated group that includes the retailer may claim any*
21 *deduction or refund to which the retailer would otherwise be*
22 *entitled pursuant to this section, notwithstanding:*

23 (a) *The assignment of the debt to the entity;*

24 (b) *That the debt is written off as a bad debt in the business*
25 *records of the entity which are maintained in the ordinary course*
26 *of the entity's business; and*

27 (c) *That the bad debt is or would be eligible to be claimed by*
28 *the entity as a deduction pursuant to section 166 of the Internal*
29 *Revenue Code, 26 U.S.C. § 166.*

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

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

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

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



1 ~~11.1~~ 12. For the purposes of subsection ~~11.1~~ 11, if the first
2 violation of this section by any retailer was determined by the
3 Department through an audit which covered more than one return of
4 the retailer, the Department shall treat all returns which were
5 determined through the same audit to contain a violation or
6 violations in the manner provided in paragraph (a) of subsection ~~11.1~~
7 ~~12.1~~ 11.

8 13. As used in this section:

9 (a) *“Affiliated group” means:*

10 (1) *An affiliated group as defined in section 1504(a) of the*
11 *Internal Revenue Code, 26 U.S.C. § 1504(a); or*

12 (2) *A controlled group of corporations as described in*
13 *section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. §*
14 *1563(a)(2).*

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

17 ~~11.1~~ (c) *“Certified service provider” has the meaning ascribed*
18 *to it in NRS 360B.060.*

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

23 **Sec. 4.** 1. Notwithstanding the provisions of subsection 2 of
24 NRS 372.725 and subsection 2 of NRS 374.725, the provisions of
25 NRS 372.368, as amended by section 1 of this act, and NRS
26 374.373, as amended by section 2 of this act, apply retroactively
27 with respect to a bad debt that on or after January 1, 2012, was
28 written off in the business records of a retailer, or an entity that is
29 part of an affiliated group which includes the retailer, and that were
30 maintained in the ordinary course of the retailer’s or entity’s
31 business.

32 2. As used in this section, “affiliated group” has the meaning
33 ascribed to it in subsection 13 of NRS 372.368, as amended by
34 section 1 of this act.

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

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

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

