

ASSEMBLY BILL NO. 430—ASSEMBLYMEN SIBLEY AND HARDY

MARCH 25, 2005

Referred to Committee on Government Affairs

SUMMARY—Proposes to exempt sales of certain auditory devices and appliances, ophthalmic or ocular devices and appliances, durable medical equipment and mobility-enhancing equipment from sales and use taxes and analogous taxes. (BDR 32-1003)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption from the tax for certain auditory devices and appliances, ophthalmic or ocular devices and appliances, durable medical equipment and mobility-enhancing equipment; providing for such an exemption from certain analogous taxes if the voters approve the amendment to the Sales and Use Tax Act of 1955; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the Sales and Use Tax Act of 1955, which was approved by the voters in a referendum on November 6, 1956. (Chapter 372 of NRS) Under existing law, if the voters approve a statute or resolution in a referendum, the statute or resolution is the law of the State and may not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. (Nev. Const., Art. 19, § 1)

Existing law creates the Local School Support Tax Law. (Chapter 374 of NRS) Any amendment to the Local School Support Tax Law is also applicable to other sales and use taxes imposed under existing law. (NRS 354.705, 374A.010, 376A.060, 377.040, 377A.030, 377B.110 and 543.600 and various special and local acts)

This bill requires that a question be submitted to the voters at the 2006 General Election on whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption for auditory devices and appliances, ophthalmic or ocular



15 devices and appliances, durable medical equipment and mobility-enhancing
16 equipment prescribed by a licensed provider of health care.

17 This bill amends the Local School Support Tax Law to provide an exemption
18 for auditory devices and appliances, ophthalmic or ocular devices and appliances,
19 durable medical equipment and mobility-enhancing equipment prescribed by a
20 licensed provider of health care.

21 The exemptions from sales and use taxes for auditory devices and appliances,
22 ophthalmic or ocular devices and appliances, durable medical equipment and
23 mobility-enhancing equipment become effective on January 1, 2007, only if the
24 voters approve the amendment to the Sales and Use Tax Act of 1955 at the General
25 Election in 2006.

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

1 **Section 1.** At the General Election on November 7, 2006, a
2 proposal must be submitted to the registered voters of this State to
3 amend the Sales and Use Tax Act, which was enacted by the 47th
4 Session of the Legislature of the State of Nevada and approved by
5 the Governor in 1955, and subsequently approved by the people of
6 this State at the General Election held on November 6, 1956.

7 **Sec. 2.** At the time and in the manner provided by law, the
8 Secretary of State shall transmit the proposed act to the several
9 county clerks, and the county clerks shall cause it to be published
10 and posted as provided by law.

11 **Sec. 3.** The proclamation and notice to the voters given by the
12 county clerks pursuant to law must be in substantially the following
13 form:

14 Notice is hereby given that at the General Election on
15 November 7, 2006, a question will appear on the ballot for the
16 adoption or rejection by the registered voters of the State of the
17 following proposed act:

18 AN ACT to amend an Act entitled "An Act to provide
19 revenue for the State of Nevada; providing for sales
20 and use taxes; providing for the manner of collection;
21 defining certain terms; providing penalties for
22 violation, and other matters properly relating thereto."
23 approved March 29, 1955, as amended.
24

25 THE PEOPLE OF THE STATE OF NEVADA
26 DO ENACT AS FOLLOWS:
27

28 Section 1. Section 56.1 of the above-entitled Act, being
29 Chapter 397, Statutes of Nevada 1955, as added by Chapter
30 306, Statutes of Nevada 1969, at page 532, and as last



1 amended by Chapter 404, Statutes of Nevada 1995, at page
2 1007, is hereby amended to read as follows:

3 Sec. 56.1. 1. There are exempted from the taxes
4 imposed by this act the gross receipts from sales and the
5 storage, use or other consumption of:

6 (a) Prosthetic devices, orthotic appliances ~~{and}~~ ,
7 *hearing aids and other auditory devices and appliances,*
8 *corrective eyeglasses, contact lenses and other*
9 *ophthalmic or ocular devices and appliances,* ambulatory
10 casts for human use, and other supports and casts if
11 prescribed or applied by a licensed provider of health care,
12 within his scope of practice, for human use.

13 (b) Appliances and supplies relating to an ostomy.

14 (c) Products for hemodialysis ~~{}~~ *and durable medical*
15 *equipment if prescribed by a licensed provider of health*
16 *care acting within his scope of practice.*

17 (d) *Canes, crutches, manual or motorized*
18 *wheelchairs or scooters that enhance the ability of a*
19 *person to move, and other mobility-enhancing equipment*
20 *if prescribed by a licensed provider of health care acting*
21 *within his scope of practice.*

22 (e) Medicines:

23 (1) Prescribed for the treatment of a human being
24 by a person authorized to prescribe medicines, and
25 dispensed on a prescription filled by a registered
26 pharmacist in accordance with law;

27 (2) Furnished by a licensed physician, dentist or
28 podiatric physician to his own patient for the treatment of
29 the patient;

30 (3) Furnished by a hospital for treatment of any
31 person pursuant to the order of a licensed physician,
32 dentist or podiatric physician; or

33 (4) Sold to a licensed physician, dentist, podiatric
34 physician or hospital for the treatment of a human being.

35 2. As used in this section:

36 (a) "Medicine" means any substance or preparation
37 intended for use by external or internal application to the
38 human body in the diagnosis, cure, mitigation, treatment
39 or prevention of disease or affliction of the human body
40 and which is commonly recognized as a substance or
41 preparation intended for such use. The term includes
42 splints, bandages, pads, compresses and dressings.

43 (b) "Medicine" does not include:



(1) Any auditory, ophthalmic or ocular device or appliance.

(2) Articles which are in the nature of instruments, crutches, canes, devices or other mechanical, electronic, optical or physical equipment.

(3) Any alcoholic beverage, except where the alcohol merely provides a solution in the ordinary preparation of a medicine.

(4) Braces or supports, other than those prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

3. Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on a prescription within the meaning of this section.

Sec. 2. This Act becomes effective on January 1, 2007.

Sec. 4. The ballot page assemblies and the paper ballots to be used in voting on the question must present the question in substantially the following form:

Shall the Sales and Use Tax Act of 1955 be amended to provide an exemption from the taxes imposed by this Act on the gross receipts from the sale and the storage, use or other consumption of auditory devices and appliances, ophthalmic or ocular devices and appliances, durable medical equipment and mobility-enhancing equipment prescribed by a licensed provider of health care?

Yes ☐ No ☐

Sec. 5. The explanation of the question which must appear on each paper ballot and sample ballot and in every publication and posting of notice of the question must be in substantially the following form:

(Explanation of Question)

The proposed amendment to the Sales and Use Tax Act of 1955 would exempt from the taxes imposed by this Act the gross receipts from the sale and storage, use or other consumption of auditory devices and appliances, ophthalmic or ocular devices and appliances, durable medical equipment and mobility-enhancing equipment prescribed by a licensed provider of health care. If this proposal is adopted, the Legislature has provided that the Local School Support Tax Law and the City-County Relief Tax Law will be amended to provide the same exemption.

Sec. 6. If a majority of the votes cast on the question is yes, the amendment to the Sales and Use Tax Act of 1955 becomes effective on January 1, 2007. If less than a majority of votes cast on



1 the question is yes, the question fails and the amendment to the
2 Sales and Use Tax Act of 1955 does not become effective.

3 **Sec. 7.** All general election laws not inconsistent with this act
4 are applicable.

5 **Sec. 8.** Any informalities, omissions or defects in the content
6 or making of the publications, proclamations or notices provided for
7 in this act and by the general election laws under which this election
8 is held must be so construed as not to invalidate the adoption of the
9 act by a majority of the registered voters voting on the question if it
10 can be ascertained with reasonable certainty from the official returns
11 transmitted to the Office of the Secretary of State that the proposed
12 amendment was adopted by a majority of those registered voters.

13 **Sec. 9.** Chapter 372 of NRS is hereby amended by adding
14 thereto a new section to read as follows:

15 *In administering the provisions of section 56.1 of chapter 397,*
16 *Statutes of Nevada 1955, which is included in NRS as NRS*
17 *372.283, the Department shall construe the term:*

18 *1. "Durable medical equipment" to mean equipment,*
19 *including any repair and replacement parts therefor, which:*

20 *(a) Can withstand repeated use;*

21 *(b) Is primarily and customarily used to serve a medical*
22 *purpose;*

23 *(c) Generally is not useful to a person in the absence of illness*
24 *or injury; and*

25 *(d) Is not worn in or on the body.*

26 *2. "Mobility-enhancing equipment" to mean equipment,*
27 *including any repair and replacement parts therefor, which:*

28 *(a) Is primarily and customarily used to provide or increase*
29 *the ability to move from one place to another and which is*
30 *appropriate for use either in a home or a motor vehicle;*

31 *(b) Is not generally used by persons with normal mobility; and*

32 *(c) Does not include any motor vehicle or equipment on a*
33 *motor vehicle normally provided by a manufacturer of motor*
34 *vehicles.*

35 **Sec. 10.** Chapter 374 of NRS is hereby amended by adding
36 thereto a new section to read as follows:

37 *In administering the provisions of NRS 374.287, the*
38 *Department shall construe the term:*

39 *1. "Durable medical equipment" to mean equipment,*
40 *including any repair and replacement parts therefor, which:*

41 *(a) Can withstand repeated use;*

42 *(b) Is primarily and customarily used to serve a medical*
43 *purpose;*

44 *(c) Generally is not useful to a person in the absence of illness*
45 *or injury; and*



(d) *Is not worn in or on the body.*

2. *“Mobility-enhancing equipment” to mean equipment which:*

(a) *Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;*

(b) *Is not generally used by persons with normal mobility; and*

(c) *Does not include any motor vehicle or equipment on a motor vehicle normally provided by a manufacturer of motor vehicles.*

Sec. 11. NRS 374.287 is hereby amended to read as follows:

374.287 1. There are exempted from the taxes imposed by this chapter the gross receipts from sales and the storage, use or other consumption of:

(a) Prosthetic devices, orthotic appliances ~~and~~, *hearing aids and other auditory devices and appliances, corrective eyeglasses, contact lenses and other ophthalmic or ocular devices and appliances*, ambulatory casts for human use, and other supports and casts if prescribed or applied by a licensed provider of health care, within his scope of practice, for human use.

(b) Appliances and supplies relating to an ostomy.

(c) Products for hemodialysis ~~and~~ *and durable medical equipment if prescribed by a licensed provider of health care acting within his scope of practice.*

(d) *Canes, crutches, manual or motorized wheelchairs or scooters that enhance the ability of a person to move, and other mobility-enhancing equipment if prescribed by a licensed provider of health care acting within his scope of practice.*

(e) Medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe medicines, and dispensed on a prescription filled by a registered pharmacist in accordance with law;

(2) Furnished by a licensed physician, dentist or podiatric physician to his own patient for the treatment of the patient;

(3) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, dentist or podiatric physician; or

(4) Sold to a licensed physician, dentist, podiatric physician or hospital for the treatment of a human being.

2. As used in this section:

(a) “Medicine” means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or affliction of the human body and which is commonly recognized as



1 a substance or preparation intended for such use. The term includes
2 splints, bandages, pads, compresses and dressings.

3 (b) "Medicine" does not include:

4 (1) Any auditory, ophthalmic or ocular device or appliance.

5 (2) Articles which are in the nature of instruments, crutches,
6 canes, devices or other mechanical, electronic, optical or physical
7 equipment.

8 (3) Any alcoholic beverage, except where the alcohol merely
9 provides a solution in the ordinary preparation of a medicine.

10 (4) Braces or supports, other than those prescribed or applied
11 by a licensed provider of health care, within his scope of practice,
12 for human use.

13 3. Insulin furnished by a registered pharmacist to a person for
14 treatment of diabetes as directed by a physician shall be deemed to
15 be dispensed on a prescription within the meaning of this section.

16 **Sec. 12.** 1. This section and sections 1 to 8, inclusive, of this
17 act become effective on July 1, 2005.

18 2. Sections 9, 10 and 11 of this act become effective on
19 January 1, 2007, only if the proposal submitted pursuant to sections
20 1 to 8, inclusive, of this act is approved by the voters at the general
21 election on November 7, 2006.



