

SENATE BILL NO. 152—COMMITTEE ON TAXATION

FEBRUARY 26, 2007

Referred to Committee on Taxation

SUMMARY—Proposes to exempt sales of certain ophthalmic or ocular devices or appliances from sales and use taxes and analogous taxes. (BDR 32-939)

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 taxes on retail sales; 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 ophthalmic or ocular devices or appliances; 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or resolution in a referendum, the statute or resolution is the law of the State and may not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people.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.020, 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 2008 General Election on whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption for ophthalmic or ocular devices or appliances prescribed by a physician or optometrist.



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16 This bill amends the Local School Support Tax Law to provide an exemption
17 for ophthalmic or ocular devices or appliances prescribed by a physician or
18 optometrist.

19 The exemptions from sales and use taxes for ophthalmic or ocular devices or
20 appliances become effective on January 1, 2009, only if the voters approve the
21 amendment to the Sales and Use Tax Act of 1955 at the General Election in 2008.

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 4, 2008, 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 4, 2008, 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 15 of the above-entitled Act, being
29 chapter 397, Statutes of Nevada 1955, at page 765, is hereby
30 amended to read as follows:

31 Sec. 15. 1. "Retailer" includes:

32 (a) Every seller who makes any retail sale or sales
33 of tangible personal property, and every person
34 engaged in the business of making retail sales at



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1 auction of tangible personal property owned by the
2 person or others.

3 (b) Every person engaged in the business of
4 making sales for storage, use or other consumption or
5 in the business of making sales at auction of tangible
6 personal property owned by the person or others for
7 storage, use or other consumption.

8 (c) Every person making more than two retail sales
9 of tangible personal property during any 12-month
10 period, including sales made in the capacity of
11 assignee for the benefit of creditors, or receiver or
12 trustee in bankruptcy.

13 2. When the Tax Commission determines that it is
14 necessary for the efficient administration of this
15 chapter to regard any salesmen, representatives,
16 peddlers or canvassers as the agents of the dealers,
17 distributors, supervisors or employers under whom
18 they operate or from whom they obtain the tangible
19 personal property sold by them, irrespective of whether
20 they are making sales on their own behalf or on behalf
21 of such dealers, distributors, supervisors or employers,
22 the Tax Commission may so regard them and may
23 regard the dealers, distributors, supervisors or
24 employers as retailers for purposes of this chapter.

25 ~~[3. A licensed optometrist or physician and~~
26 ~~surgeon is a consumer of, and shall not be considered,~~
27 ~~a retailer within the provisions of this chapter, with~~
28 ~~respect to the ophthalmic materials used or furnished~~
29 ~~by him in the performance of his professional services~~
30 ~~in the diagnosis, treatment or correction of conditions~~
31 ~~of the human eye, including the adaptation of lenses or~~
32 ~~frames for the aid thereof.]~~

33 Sec. 2. Section 56.1 of the above-entitled Act, being
34 chapter 397, Statutes of Nevada 1955, as added by chapter
35 306, Statutes of Nevada 1969, at page 532, and amended by
36 chapter 627, Statutes of Nevada 1985, at page 2028, and
37 amended by chapter 404, Statutes of Nevada 1995, at page
38 1007, is hereby amended to read as follows:

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

42 (a) Prosthetic devices, orthotic appliances and
43 ambulatory casts for human use, and other supports
44 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.

(d) *Any ophthalmic or ocular device or appliance prescribed by a physician or optometrist.*

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

(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.



1 Sec. 3. This act becomes effective on January 1, 2009.

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

5 Shall the Sales and Use Tax Act of 1955 be amended to
6 provide an exemption from the taxes imposed by this Act on
7 the gross receipts from the sale and the storage, use or other
8 consumption of ophthalmic or ocular devices or appliances
9 prescribed by a physician or optometrist?

10 Yes ☐ No ☐

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

15
16 (Explanation of Question)

17 The proposed amendment to the Sales and Use Tax Act of
18 1955 would exempt from the taxes imposed by this Act the
19 gross receipts from the sale and storage, use or other
20 consumption of ophthalmic or ocular devices or appliances
21 prescribed by a physician or optometrist. If this proposal is
22 adopted, the Legislature has provided that the Local School
23 Support Tax Law and certain analogous taxes on retail sales
24 will be amended to provide the same exemption.

25 **Sec. 6.** If a majority of the votes cast on the question is yes,
26 the amendment to the Sales and Use Tax Act of 1955 becomes
27 effective on January 1, 2009. If less than a majority of votes cast on
28 the question is yes, the question fails and the amendment to the
29 Sales and Use Tax Act of 1955 does not become effective.

30 **Sec. 7.** All general election laws not inconsistent with this act
31 are applicable.

32 **Sec. 8.** Any informalities, omissions or defects in the content
33 or making of the publications, proclamations or notices provided for
34 in this act and by the general election laws under which this election
35 is held must be so construed as not to invalidate the adoption of the
36 act by a majority of the registered voters voting on the question if it
37 can be ascertained with reasonable certainty from the official returns
38 transmitted to the office of the Secretary of State whether the
39 proposed amendment was adopted by a majority of those registered
40 voters.

41 **Sec. 9.** NRS 374.060 is hereby amended to read as follows:

42 374.060 1. "Retailer" includes:

43 (a) Every seller who makes any retail sale or sales of tangible
44 personal property, and every person engaged in the business of



1 making retail sales at auction of tangible personal property owned
2 by the person or others.

3 (b) Every person engaged in the business of making sales for
4 storage, use or other consumption or in the business of making sales
5 at auction of tangible personal property owned by the person or
6 others for storage, use or other consumption.

7 (c) Every person making more than two retail sales of tangible
8 personal property during any 12-month period, including sales made
9 in the capacity of assignee for the benefit of creditors, or receiver or
10 trustee in bankruptcy.

11 2. When the Department determines that it is necessary for the
12 efficient administration of this chapter to regard any salesmen,
13 representatives, peddlers or canvassers as the agents of the dealers,
14 distributors, supervisors or employers under whom they operate or
15 from whom they obtain the tangible personal property sold by them,
16 irrespective of whether they are making sales on their own behalf or
17 on behalf of such dealers, distributors, supervisors or employers, the
18 Department may so regard them and may regard the dealers,
19 distributors, supervisors or employers as retailers for purposes of
20 this chapter.

21 ~~[3. A licensed optometrist or physician is a consumer of, and~~
22 ~~shall not be considered, a retailer within the provisions of this~~
23 ~~chapter, with respect to the ophthalmic materials used or furnished~~
24 ~~by him in the performance of his professional services in the~~
25 ~~diagnosis, treatment or correction of conditions of the human eye,~~
26 ~~including the adaptation of lenses or frames for the aid thereof.]~~

27 **Sec. 10.** NRS 374.287 is hereby amended to read as follows:

28 374.287 1. There are exempted from the taxes imposed by
29 this chapter the gross receipts from sales and the storage, use or
30 other consumption of:

31 (a) Prosthetic devices, orthotic appliances and ambulatory casts
32 for human use, and other supports and casts if prescribed or applied
33 by a licensed provider of health care, within his scope of practice,
34 for human use.

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

36 (c) Products for hemodialysis.

37 (d) *Any ophthalmic or ocular device or appliance prescribed*
38 *by a physician or optometrist.*

39 (e) Medicines:

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

43 (2) Furnished by a licensed physician, dentist or podiatric
44 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 a substance or preparation intended for such use. The term includes splints, bandages, pads, compresses and dressings.

(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. 11. 1. This section and sections 1 to 8, inclusive, of this act become effective on July 1, 2007.

2. Sections 9 and 10 of this act become effective on January 1, 2009, only if the proposal submitted pursuant to sections 1 to 8, inclusive, of this act is approved by the voters at the General Election on November 4, 2008.

