

Amendment No. 164

Assembly Amendment to Assembly Bill No. 403

(BDR 32-752)

Proposed by: Assembly Committee on Taxation**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

SJC/BJE



Date: 4/2/2009

A.B. No. 403—Revises various provisions governing sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement. (BDR 32-752)



ASSEMBLY BILL NO. 403—ASSEMBLYMEN SETTELMAYER; GANSERT, GOEDHART,
GOICOECHEA, GRADY, HAMBRICK, HARDY, STEWART AND WOODBURY

MARCH 16, 2009

Referred to Committee on Taxation

SUMMARY—Revises various provisions governing sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement. (BDR 32-752)

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

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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; revising various provisions governing sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement; providing for the submission to the voters of the question whether the Sales and Use Tax Act of 1955 should be amended to authorize the Legislature to amend ~~for repeal~~ a provision of that Act ~~[without additional voter approval]~~ only when necessary to resolve a conflict with a federal law or interstate agreement for the administration of sales and use taxes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the administration of sales and use taxes in this State pursuant to the Simplified Sales and Use Tax Administration Act, the Sales and Use Tax Act and the Local School Support Tax Law. (Chapters 360B, 372 and 374 of NRS) Under existing law, the Legislature has found and declared that this State should enter into an interstate agreement to simplify and modernize sales and use tax administration to reduce the burden of tax compliance for all sellers and types of commerce. (NRS 360B.020) Existing law requires the Nevada Tax Commission to enter into the Streamlined Sales and Use Tax Agreement and take all other actions reasonably required to implement the provisions of the Agreement. (NRS 360B.110) **Sections 1-9** of this bill carry out recent amendments to the Agreement regarding the exclusion of electronically transferred products from certain required definitions, the certification by the State of the software of certain computer programs that calculate the taxes due on a sale, a limited waiver of liability for sellers who fail to collect a tax increase that becomes effective within 30 days after the enactment of a statute which provides for that increase, and the exclusion of certain delivery charges from the calculation of sales and use taxes.

Existing law authorizes the adoption of an ordinance for the imposition of a sales and use tax in Nye County to support public safety services. (Nye County Sales and Use Tax Act of 2007) **Section 10** of this bill revises the requirements for such an ordinance in accordance with the provisions of the Streamlined Sales and Use Tax Agreement imposing restrictions on the date of implementation of changes in tax rates.

Existing law includes various provisions of the Sales and Use Tax Act of 1955. (NRS 372.010-372.115, 372.185-372.205, 372.260-372.284, 372.285-372.326, 372.327-372.345, 372.350) Under existing law, the provisions of that Act, which was submitted to and approved by the voters at the 1956 General Election, cannot be amended or repealed without additional voter approval. (Nev. Const. Art. 19, § 1) **Sections 11-19** of this bill provide for the submission to the voters of an amendment to that Act to authorize the Legislature to amend that Act ~~[without any additional voter approval]~~ **only** if such a legislative amendment is necessary to resolve a conflict with any federal law or interstate agreement for the administration of sales and use taxes, and the legislative amendment does not increase the rate of a tax imposed pursuant to that Act or narrow the scope of a tax exemption approved by the voters.

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

Section 1. Chapter 360B of NRS is hereby amended by adding thereto a new section to read as follows:

1. "Specified digital products" means electronically transferred digital audio works, digital audiovisual works and digital books.

2. As used in this section:

(a) "Digital audio works" means works that result from the fixation of a series of musical, spoken or other sounds, including ringtones.

(b) "Digital audiovisual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(c) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(d) "Electronically transferred" means obtained by a purchaser by means other than tangible storage media.

(e) "Ringtones" means digitized sound files that are downloaded onto a device and may be used to alert the customer with respect to a communication.

Sec. 2. NRS 360B.225 is hereby amended to read as follows:

360B.225 The Department shall:

1. Review the software submitted for the certification of a certified automated system pursuant to the Agreement and, if the Department determines that the software ~~[adequately classifies each exemption from the sales and use taxes imposed in this State which is based upon the description of a product,]~~ *accurately reflects the taxability of the product categories included in the program*, certify its acceptance of the ~~[classifications made by the system,]~~ *determination of the taxability of the product categories included in the program.*

2. Except as otherwise provided in subsection 3:

(a) If a certified service provider acting on behalf of a registered seller fails to collect the correct amount of any sales or use tax imposed in this State as a result of his reliance on the certification of the Department pursuant to subsection 1 regarding the certified automated system used by that certified service provider, waive any liability of the certified service provider, and of the registered seller on whose behalf the certified service provider is acting, for:

(1) The amount of the sales or use tax which the certified service provider fails to collect as a result of that reliance; and

(2) Any penalties and interest on that amount.

(b) If a registered seller who elects to use a certified automated system pursuant to subsection 3 of NRS 360B.200 fails to collect the correct amount of any

1 sales or use tax imposed in this State as a result of his reliance on the certification
2 of the Department pursuant to subsection 1 regarding the certified automated
3 system used by that registered seller, waive any liability of the registered seller for:

4 (1) The amount of the sales or use tax which the registered seller fails to
5 collect as a result of that reliance; and

6 (2) Any penalties and interest on that amount.

7 3. Notify a certified service provider or a registered seller who elects to use a
8 certified automated system pursuant to subsection 3 of NRS 360B.200 if the
9 Department determines that the taxability of any item or transaction is being
10 incorrectly classified by the certified automated system used by the certified service
11 provider or registered seller. The provisions of subsection 2 do not require the
12 waiver of any liability for the incorrect classification of an item or transaction
13 regarding which notice was provided to the certified service provider or registered
14 seller pursuant to this subsection if the incorrect classification occurs more than 10
15 days after the receipt of that notice.

16 **Sec. 3.** NRS 360B.250 is hereby amended to read as follows:

17 360B.250 The Department shall:

18 1. If a registered seller fails to collect the correct amount of any sales or use
19 tax imposed in this State as a result of his reasonable reliance on the information
20 posted pursuant to NRS 360B.230 or his compliance with subsection 2 of NRS
21 360B.240, waive any liability of the registered seller for:

22 (a) The amount of the sales or use tax which the registered seller fails to collect
23 as a result of that reliance; and

24 (b) Any penalties and interest on that amount.

25 2. If a certified service provider acting on behalf of a registered seller fails to
26 collect the correct amount of any sales or use tax imposed in this State as a result of
27 his reasonable reliance on the information posted pursuant to NRS 360B.230 or his
28 compliance with subsection 2 of NRS 360B.240, waive any liability of the certified
29 service provider, and of the registered seller on whose behalf the certified service
30 provider is acting, for:

31 (a) The amount of the sales or use tax which the certified service provider fails
32 to collect as a result of that reliance; and

33 (b) Any penalties and interest on that amount.

34 3. Waive any liability of a purchaser for any sum for which the liability of a
35 registered seller or certified service provider is required to be waived pursuant to
36 subsection 1 or 2 with regard to a transaction involving that purchaser.

37 4. If a purchaser fails to pay the correct amount of any sales or use tax
38 imposed in this State as a result of his reasonable reliance on the information posted
39 pursuant to NRS 360B.230, waive any liability of the purchaser for:

40 (a) The amount of the sales or use tax which the purchaser fails to pay as a
41 result of that reliance; and

42 (b) Any penalties and interest on that amount.

43 *5. If an increase in the rate of any sales or use tax imposed in this State*
44 *becomes effective within 30 days after the enactment of a statute providing for*
45 *that increase, waive any liability of a registered seller for:*

46 *(a) The amount of the sales or use tax which the registered seller fails to*
47 *collect at the increased rate; and*

48 *(b) Any penalties and interest on that amount,*

49 *↪ unless the registered seller fails to collect the tax at the rate in effect*
50 *immediately preceding that increase, the registered seller's failure to collect the*
51 *tax at the increased rate extends beyond the first 30 days after the enactment of*
52 *the statute providing for that increase, the registered seller fraudulently fails to*

1 *collect the tax at the increased rate or the registered seller solicits purchasers*
2 *based on the rate in effect immediately preceding that increase.*

3 **Sec. 4.** NRS 360B.290 is hereby amended to read as follows:

4 360B.290 Any invoice, billing or other document given to a purchaser that
5 indicates the sales price for which tangible personal property is sold must state
6 separately any amount received by the seller for:

7 1. *Any transportation, shipping or postage charges for the delivery of the*
8 *property to a location designated by the purchaser.*

9 2. Any installation charges for the property;

10 ~~3.~~ 3. Any credit for any trade-in which is specifically exempted from the
11 sales price of the property pursuant to chapter 372 or 374 of NRS;

12 ~~4.~~ 4. Any interest, financing and carrying charges from credit extended on
13 the sale; and

14 ~~5.~~ 5. Any taxes legally imposed directly on the consumer.

15 **Sec. 5.** NRS 360B.400 is hereby amended to read as follows:

16 360B.400 In administering the provisions of this chapter and chapters 372 and
17 374 of NRS, and in carrying out the provisions of the Agreement, the Department
18 shall construe the terms defined in NRS 360B.405 to 360B.495, inclusive, *and*
19 *section 1 of this act*, unless the context otherwise requires, in the manner prescribed
20 by those sections.

21 **Sec. 6.** NRS 360B.415 is hereby amended to read as follows:

22 360B.415 “Computer software” means a set of coded instructions designed to
23 cause a computer or automatic data processing equipment to perform a task. *The*
24 *term does not include any specified digital products.*

25 **Sec. 7.** NRS 360B.425 is hereby amended to read as follows:

26 360B.425 “Delivery charges” means charges by a seller of personal property
27 for the preparation and delivery of the property to a location designated by the
28 purchaser of the property, including, but not limited to, charges for transportation,
29 shipping, postage, handling, crating and packing ~~and~~, *except that the term does not*
30 *include any charges for transportation, shipping or postage which are stated*
31 *separately pursuant to NRS 360B.290.*

32 **Sec. 8.** NRS 360B.480 is hereby amended to read as follows:

33 360B.480 1. “Sales price” means the total amount of consideration,
34 including cash, credit, property and services, for which personal property is sold,
35 leased or rented, valued in money, whether received in money or otherwise, and
36 without any deduction for:

37 (a) The seller’s cost of the property sold;

38 (b) The cost of materials used, labor or service cost, interest, losses, all costs of
39 transportation to the seller, all taxes imposed on the seller, and any other expense of
40 the seller;

41 (c) Any charges by the seller for any services necessary to complete the sale,
42 including any delivery charges *which are not stated separately pursuant to NRS*
43 *360B.290* and excluding any installation charges which are stated separately
44 pursuant to NRS 360B.290; and

45 (d) Except as otherwise provided in subsection 2, any credit for any trade-in.

46 2. The term does not include:

47 (a) *Any delivery charges which are stated separately pursuant to NRS*
48 *360B.290;*

49 (b) Any installation charges which are stated separately pursuant to NRS
50 360B.290;

51 ~~(b)~~ (c) Any credit for any trade-in which is:

52 (1) Specifically exempted from the sales price pursuant to chapter 372 or
53 374 of NRS; and

(2) Stated separately pursuant to NRS 360B.290;
~~(e)~~ (d) Any discounts, including those in the form of cash, term or coupons that are not reimbursed by a third party, which are allowed by a seller and taken by the purchaser on a sale;
~~(e)~~ (e) Any interest, financing and carrying charges from credit extended on the sale of personal property, if stated separately pursuant to NRS 360B.290; and
~~(e)~~ (f) Any taxes legally imposed directly on the consumer which are stated separately pursuant to NRS 360B.290.

3. The term includes consideration received by a seller from a third party if:

(a) The seller actually receives consideration from a person other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(b) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(d) Any of the following criteria is satisfied:

(1) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, and the coupon, certificate or other documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or other documentation is presented.

(2) The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount. For the purposes of this subparagraph, a preferred customer card that is available to any patron does not constitute membership in such a group.

(3) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

Sec. 9. NRS 360B.485 is hereby amended to read as follows:

360B.485 "Tangible personal property" includes, but is not limited to, electricity, water, gas, steam and prewritten computer software. *The term does not include any products that are transferred electronically to a purchaser.*

Sec. 10. Section 15 of the Nye County Sales and Use Tax Act of 2007, being chapter 545, Statutes of Nevada 2007, at page 3425, is hereby amended to read as follows:

Sec. 15. An ordinance enacted pursuant to this act must include provisions in substance as follows:

1. A provision imposing a tax on the gross receipts of any retailer from the sale of all tangible personal property sold at retail or stored, used or otherwise consumed in the County, including incorporated cities in the County, at a rate that does not exceed one-half of 1 percent.

2. Provisions substantially identical to those contained in chapter 374 of NRS, insofar as applicable.

3. A provision that an amendment to chapter 374 of NRS enacted after the effective date of the ordinance, not inconsistent with this act, automatically becomes part of the ordinance imposing the tax.

4. A provision that the Board shall contract with the Department, before the effective date of the ordinance, to perform all the functions incident to the administration or operation of the tax in the County.

5. A provision that a purchaser is entitled to a refund, in accordance with the provisions of NRS 374.635 to 374.720, inclusive, of the amount of the tax required to be paid that is attributable to the tax imposed on the sale

of, and the storage, use or other consumption in the County, including incorporated cities in the County, of, tangible personal property used for the performance of a written contract for the construction of an improvement to real property:

(a) That was entered into on or before the effective date of the tax; or

(b) For which a binding bid was submitted before that date if the bid was afterward accepted, and pursuant to the terms of the contract or bid, the contract price or bid amount may not be adjusted to reflect the imposition of the tax.

6. A provision that specifies the date on which the tax must first be imposed ~~+~~ *or on which any change in the rate of tax becomes effective,* which must ~~not be earlier than~~ *be* the first day of the ~~second calendar month following~~ *first calendar quarter that begins at least 120 days after* the effective date of the ordinance.

Sec. 11. The Legislature hereby finds and declares that:

1. There has been a rapid increase during recent years in the conduct of interstate commerce through telecommunication and electronic means.

2. Many of the merchants who transact these forms of interstate commerce have been discouraged by the substantial burdens of ascertaining and complying with the extremely diverse and detailed tax laws of each state from making the efforts necessary to collect sales and use taxes on behalf of the states in which they do not maintain a place of business.

3. As a result of the proliferation of these forms of interstate commerce and federal restrictions on the ability of each state to collect sales and use taxes from merchants who do not maintain a place of business in that state, the people of this State are losing millions of dollars in state and local tax revenue.

4. The nonpayment of Nevada sales and use taxes by merchants in other states provides those merchants with an unfair competitive advantage over local merchants who lawfully pay the sales and use taxes due in this State.

5. As a result of the similarity of these circumstances in the various states, considerable efforts are being made to provide more uniformity, simplicity and fairness in the administration and collection of sales and use taxes in this country, including the introduction and consideration of congressional legislation and the participation by Nevada and many other states in the Streamlined Sales and Use Tax Agreement.

6. Compliance with the Streamlined Sales and Use Tax Agreement and its amendments has and will continue to require amendments to the Nevada Sales and Use Tax Act, and it is anticipated that any congressional legislation will also necessitate such amendments.

7. The Nevada Sales and Use Tax Act was approved by referendum at the General Election in 1956 and therefore, pursuant to Section 1 of Article 19 of the Constitution of the State of Nevada, may not be "amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people."

8. Unlike the circumstances in other states where legislatures have the direct authority to amend sales and use tax laws in a timely manner, the period required for the legislative enactment and subsequent voter approval of any necessary amendments to the Nevada Sales and Use Tax Act has placed the ability of this State to comply with the Streamlined Sales and Use Tax Agreement and any congressional legislation in serious jeopardy.

9. It would be beneficial to the public welfare for the people of this State by direct vote to authorize the Legislature to enact without any additional voter approval such amendments to the Nevada Sales and Use Tax Act as are necessary

to resolve conflicts with any congressional legislation or interstate agreements providing for the administration, collection or enforcement of sales and use taxes.

Sec. 12. At the General Election on November 2, 2010, a proposal must be submitted to the registered voters of this State to amend the Sales and Use Tax Act, which was enacted by the 47th Session of the Legislature of the State of Nevada and approved by the Governor in 1955, and subsequently approved by the people of this State at the General Election held on November 6, 1956.

Sec. 13. At the time and in the manner provided by law, the Secretary of State shall transmit the proposed act to the several county clerks, and the county clerks shall cause it to be published and posted as provided by law.

Sec. 14. The proclamation and notice to the voters given by the county clerks pursuant to law must be in substantially the following form:

Notice is hereby given that at the General Election on November 2, 2010, a question will appear on the ballot for the adoption or rejection by the registered voters of the State of the following proposed act:

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

THE PEOPLE OF THE STATE OF NEVADA
DO ENACT AS FOLLOWS:

Section 1. The above-entitled Act, being chapter 397, Statutes of Nevada 1955, at page 788, is hereby amended by adding thereto a new section to be designated as section 153.5, immediately following section 153.2, to read as follows:

~~**Sec. 153.5.** [The people of the State of Nevada hereby authorize the Legislature to enact, without an additional direct vote of the people, legislation that amends, annuls, repeals, sets aside, suspends or otherwise makes inoperative any provision of this Act, being chapter 397, Statutes of Nevada 1955, at page 762, only if such legislation:~~

~~1. Is necessary to resolve a conflict with any federal statute or regulation or interstate agreement for the administration, collection or enforcement of sales and use taxes;~~

~~2. Does not increase the rate of any tax imposed pursuant to this Act; and~~

~~3. Does not narrow the scope of any tax exemption provided pursuant to the provisions of sections 48 to 67.1, inclusive, of this Act, as amended by the direct vote of the people.] The people of the State of Nevada hereby authorize the Legislature to enact legislation that amends, annuls, repeals, sets aside, suspends or otherwise makes inoperative any provision of this Act, being chapter 397, Statutes of Nevada 1955, at page 762, only if such legislation meets all of the following criteria:~~

~~1. It is necessary to resolve a conflict with any federal statute or regulation or interstate agreement for the administration, collection or enforcement of sales and use taxes;~~

~~2. It does not increase the rate of any tax imposed pursuant to this Act; and~~

3. It does not narrow the scope of any tax exemption provided pursuant to the provisions of sections 48 to 67.1, inclusive, of this Act, as amended by the direct vote of the people.

Sec. 2. This act becomes effective on January 1, 2011.

Sec. 15. 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 authorize the Legislature to amend or repeal any provision of this Act without an additional direct vote of the people if necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection or enforcement of sales and use taxes?]~~ Shall the Sales and Use Tax Act of 1955 be amended to authorize the Legislature to amend a provision of this Act only if necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection or enforcement of sales and use taxes?

Yes ☐ No ☐

Sec. 16. 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 authorize the Legislature to enact legislation amending or repealing any provision of this Act without obtaining additional voter approval only if that legislation is necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection or enforcement of sales and use taxes, that legislation does not increase the rate of any tax imposed pursuant to this Act, and that legislation does not narrow the scope of a tax exemption approved by the direct vote of the people.]~~ The proposed amendment to the Sales and Use Tax Act of 1955 would authorize the Legislature to enact legislation amending a provision of this Act only if that legislation is necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection or enforcement of sales and use taxes, that legislation does not increase the rate of any tax imposed pursuant to this Act, and that legislation does not narrow the scope of a tax exemption approved by the direct vote of the people.

Sec. 17. 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, 2011. If less than a majority of votes cast on the question is yes, the question fails and the amendment to the Sales and Use Tax Act of 1955 does not become effective.

Sec. 18. All general election laws not inconsistent with this act are applicable.

Sec. 19. Any informalities, omissions or defects in the content or making of the publications, proclamations or notices provided for in this act and by the general election laws under which this election is held must be so construed as not to invalidate the adoption of the act by a majority of the registered voters voting on the question if it can be ascertained with reasonable certainty from the official returns transmitted to the Office of the Secretary of State whether the proposed amendment was adopted by a majority of those registered voters.

Sec. 20. The amendatory provisions of section 10 of this act do not apply to any ordinance enacted before the effective date of this act.

Sec. 21. This act becomes effective upon passage and approval.