

## Amendment No. 215

Senate Amendment to Senate Bill No. 152

(BDR 32-877)

**Proposed by:** Senate Committee on Revenue and Economic Development**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 underlining* is newly added transitory language.

TMC/JWP



Date: 4/14/2013

S.B. No. 152—Revises provisions governing the administration of sales and use taxes and related taxes. (BDR 32-877)



## 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 ~~that provision~~ 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 or part of  
2 the sales price of a sale is entitled to receive a deduction from his or her taxable sales for that  
3 bad debt. (NRS 372.368) A corresponding provision is set forth in the Local School Support  
4 Tax Law. (NRS 374.373) **Section 1** of this bill provides that the right of a retailer to claim a  
5 deduction or refund under the Sales and Use Tax Act is not affected by the assignment of a  
6 debt by the retailer to an entity which is part of an affiliated group that includes the retailer. ~~It~~  
7 , the writing off by the entity of the debt as a bad debt and the eligibility of the entity to  
8 deduct the bad debt under federal law. **Section 1** also defines what constitutes an affiliated  
9 group. **Section 2** of this bill makes corresponding changes to the Local School Support Tax  
10 Law. **Section 4** of this bill provides for the retroactive application of those provisions under  
11 certain 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:

**Section 1.** NRS 372.368 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

6. If the amount of the bad debt is greater than the amount of the taxable sales reported for the period during which the bad debt is claimed as a deduction, a claim for a refund may be filed pursuant to NRS 372.630 to 372.720, inclusive, except that the time within which the claim may be filed begins on the date on which the return that included the deduction was filed.

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

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

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

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

(a) The assignment of the debt ~~H~~ to the entity;

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

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

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

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

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

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

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

~~11.~~ **11.**

**13.** As used in this section:

(a) "Affiliated group" means:

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

~~(2) A controlled group of corporations as described in section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. § 1563(a)(2). ~~1~~ or~~

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

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

~~11.~~ (c) "Certified service provider" has the meaning ascribed to it in NRS 360B.060.

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

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

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

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

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

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

- (a) Any finance charge or interest charged as part of the sale;
- (b) Any sales or use tax charged on the sales price;
- (c) Any amount not paid on the sales price because the tangible personal property that was sold has remained in the possession of the retailer until the full sales price is paid;
- (d) Any expense incurred in attempting to collect the bad debt; and
- (e) The value of any property sold that has been repossessed by the retailer.

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

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

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

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

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

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

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

- (a) The assignment of the debt ~~to~~ to the entity;*
- (b) That the debt is written off as a bad debt in the business records of the entity which are maintained in the ordinary course of the entity's business; and*
- (c) That the bad debt is or would be eligible to be claimed by the entity as a deduction pursuant to section 166 of the Internal Revenue Code, 26 U.S.C. § 166.*

11. Except as otherwise provided in subsection ~~H1~~ 12, upon determining that a retailer has filed a return which contains one or more violations of the provisions of this section, the Department shall:

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

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

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

~~111~~ **12.** For the purposes of subsection ~~110~~ **11**, if the first violation of this section by any retailer was determined by the Department through an audit which covered more than one return of the retailer, the Department shall treat all returns which were determined through the same audit to contain a violation or violations in the manner provided in paragraph (a) of subsection ~~110~~:

~~112~~ **11.**

**13.** As used in this section:

(a) **"Affiliated group" means:**

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

(2) *A controlled group of corporations as described in section 1563(a)(2) of the Internal Revenue Code, 26 U.S.C. § 1563(a)(2) ~~1~~ or*

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

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

~~113~~ (c) "Certified service provider" has the meaning ascribed to it in NRS 360B.060.

~~114~~ (d) *"Includible corporation" has the meaning ascribed to it in section 1504(b) of the Internal Revenue Code, 26 U.S.C. § 1504(b).*

~~115~~ (e) *"S corporation" has the meaning ascribed to it in section 1361(a)(1) of the Internal Revenue Code, 26 U.S.C. § 1361(a)(1).*

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

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

**2.** As used in this section, "affiliated group" has the meaning ascribed to it in subsection 13 of NRS 372.368, as amended by section 1 of this act.

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

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

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