

**MINUTES OF THE
SENATE COMMITTEE ON REVENUE AND ECONOMIC DEVELOPMENT**

**Seventy-Seventh Session
March 12, 2013**

The Senate Committee on Revenue and Economic Development was called to order by Chair Ruben J. Kihuen at 1:37 p.m. on Tuesday, March 12, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Ruben J. Kihuen, Chair
Senator David R. Parks, Vice Chair
Senator Moises (Mo) Denis
Senator Debbie Smith
Senator Ben Kieckhefer
Senator Michael Roberson
Senator Greg Brower

STAFF MEMBERS PRESENT:

Joe Reel, Deputy Fiscal Analyst
Mike Wiley, Committee Secretary

OTHERS PRESENT:

Robert L. Crowell, DriveTime Automotive Group, Inc.
Claudia Vecchio, Director, Department of Tourism and Cultural Affairs
Chris Nielsen, Executive Director, Department of Taxation

Senator Kihuen:

I will open the meeting with Senate Bill (S.B.) 152.

SENATE BILL 152: Revises provisions governing the administration of sales and use taxes and related taxes. (BDR 32-877)

Senator Moises (Mo) Denis (Senatorial District No. 2):

Senate Bill 152 is a measure which seeks to rectify an inequity in our sales and use tax provisions relating to deductions or refunds for sales taxes paid on credit or installment transactions where there is failure of the purchaser to complete the purchase after the full amount of the sales tax on the transaction has been paid and a bad debt was created. Under our law, sales and use taxes levied on financed sale transactions are paid on the entire value of a sale knowing the entire purchase has not been paid.

The law provides where a retailer both sells and finances a product and is unable to collect all or part of the sales price, the retailer may claim a deduction or credit on its sales tax return for sales taxes paid on the bad debt. However, where a retailer has created an affiliated company to carry the paper on a financed retail sale and the purchaser fails to pay the full amount, the retailer is unable to claim the deduction or credit on its sales tax return because its finance affiliate is the entity that charged off the debt.

Senate Bill 152 will remedy the situation by providing that a retailer may claim a deduction or credit for sales tax paid on the bad debts incurred by its finance affiliate, provided the affiliate is related to the retail entity in terms of ownership or control. The legislation would not be applicable to unrelated third-party financing transactions.

There is an amendment ([Exhibit C](#)) requiring common ownership to meet the same requirements in federal tax law relating to affiliated and controlled groups. I support the amendment.

Robert L. Crowell (DriveTime Automotive Group, Inc.):

DriveTime Automotive Group, Inc., is a privately held company owned by five individuals. They sell used cars to buyers who may have credit problems and operate out of two locations in Clark County. DriveTime's business plan created its own car company and its own finance company to finance its sales. In essence, sales are made by the retail car company, and the paper is then assigned to its affiliate finance company. The full amount of the sales tax is paid up front and financed. Historically, DriveTime was able to claim a credit on its sales tax returns for bad debts from the sale of a car. In 2004, the Department of Taxation audited DriveTime and upheld the deduction. Later, the Department denied the deduction by ruling the note was transferred to a third party which was not a retailer as defined by law. The ruling was upheld by the

Nevada Supreme Court in a *Department of Taxation v. DaimlerChrysler Services North America, LLC*, 121 Nev. 541, 119 P.3d 135 (2005) dealing with third-party financing companies.

DriveTime does not finance its vehicles through a third-party financing company but through its commonly owned affiliate. DriveTime tried to get relief through the judicial system, and the Nevada Supreme Court upheld the ruling denying the credit. Senate Bill 152 would allow DriveTime, the retail company, to claim a credit on its sales tax return even though the paper is held by its financing affiliate.

Section 1 of the bill provides that if the debt qualifies as a bad debt under federal tax law, the retail company may claim the credit as long as the retail company and financing company are part of an affiliated group. Senate Bill 152 defines an affiliated group as either a controlled group or an affiliated group as defined by federal law, provided common ownership is at least 50 percent.

The amendment, [Exhibit C](#), would remove the 50 percent common ownership provision and follow the federal definition of an affiliate as 80 percent common ownership or a controlled group with common ownership of not more than five individuals. The State's sales and use tax and the Local School Support Tax have similar bad debt provisions; corresponding provisions are in sections 1 and 2 of the amendment. This legislation would put dealers who finance their transactions by a commonly owned affiliate on the same footing as those dealers who finance in-house transactions.

Senator Parks:

Would S.B. 152 be applicable to other auto dealers beyond your client?

Mr. Crowell:

Yes, if they meet the definition of an affiliate. It would not apply to a third-party affiliate.

Senator Kieckhefer:

Are you aware of any entity in the State that would be affected by this bill?

Mr. Crowell:

CarMax comes to mind, but I have not researched whether that is correct.

Senator Kieckhefer:

Would the bill apply to other industries; for example, a home supply store where a washer and dryer purchase would be financed in house?

Mr. Crowell:

It is not limited to auto dealers. If you owned an appliance store and created an affiliate, the bill would apply.

Chair Kihuen:

How would the retroactive provision back to January 1, 2012, work?

Mr. Crowell:

I do not know.

Chair Kihuen:

I will close the hearing on S.B. 152 and move into work session starting with Senate Bill 48.

SENATE BILL 48: Revises the composition of the Commission on Tourism.
(BDR 18-289)

Joe Reel (Deputy Fiscal Analyst):

The Committee heard S.B. 48 on February 28 as sponsored by this Committee on behalf the Department of Tourism and Cultural Affairs and shown in the work session document ([Exhibit D](#)). Senate Bill 48 adds the following ex officio, nonvoting members to the current 11-member Commission on Tourism: the Chair of the Commission for Cultural Affairs; the Chair of the Board of Museums and History; the Chair of the Nevada Indian Commission; and the Chair of the Board of the Nevada Arts Council.

Claudia Vecchio, Director, Department of Tourism and Cultural Affairs, testified on S.B. 48. In response to questions from the Committee regarding whether the ex officio nonvoting members would receive compensation, Ms. Vecchio said that compensation would not be provided to these new ex officio members because they receive compensation from their other boards.

Chair Kihuen:

Are there any additional questions? Ms. Vecchio, do you have any additional comments?

Ms. Vecchio:

I have no additional comments to add to [Exhibit D](#).

Chair Kihuen:

I will entertain a motion.

SENATOR SMITH MOVED TO DO PASS S.B. 48.

SENATOR KIECKHEFER SECONDED THE MOTION.

Senator Smith:

I want it on the record that I support the bill—because there is no fiscal need.

THE MOTION PASSED UNANIMOUSLY.

Chair Kihuen:

We will continue our work session with Senate Bill 7.

SENATE BILL 7: Requires the Executive Director of the Department of Taxation to publish and periodically revise technical bulletins. (BDR 32-299)

Mr. Reel:

Testimony was provided by Chris Nielsen, Executive Director, Department of Taxation. Mr. Nielsen stated that the technical bulletins would provide real-world examples on how various taxes are administrated by the Department. Mr. Nielsen also provided the Committee examples of technical bulletins published by other states. Additional testimony in support was presented by the Nevada Petroleum Marketers Association, Retail Association of Nevada and the Nevada Taxpayers Association. An amendment proposed by the Nevada Taxpayers Association is in the work session document, ([Exhibit E](#)). The amendment adds language that would require the Executive Director to prepare technical bulletins on all written opinions it receives from the Attorney General's Office.

Chair Kihuen:

Are there questions from the Committee?

Senator Kieckhefer:

Does the amendment in section 2 mean all opinions or just tax policy opinions from the Attorney General's Office that require the Executive Director to prepare technical bulletins?

Mr. Reel:

We do need clarification.

Chris Nielsen (Director, Department of Taxation):

We are in support of the amendment. The technical bulletins would apply to tax matters.

Chair Kihuen:

Do I have a motion?

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS
AMENDED S.B. 7.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Kihuen:

We will move on to Senate Bill 8.

SENATE BILL 8: Clarifies the wholesale price upon which the tax on certain tobacco products is calculated. (BDR 32-300)

Mr. Reel:

In the work session document ([Exhibit F](#)), S.B. 8 clarifies the wholesale price for other tobacco products is the established price for which other tobacco products are sold to a Nevada wholesale dealer, before any discount or other reduction is made, irrespective of whether the wholesale dealer purchases the products directly from the manufacturer or from any other person. Deonne Contine, Deputy Executive Director, Department of Taxation, provided testimony in [Exhibit F](#), giving an example for the need of maintaining the revenue stream.

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Chair Kihuen:

I will entertain a motion.

SENATOR DENIS MOVED TO DO PASS S.B. 8.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Kihuen:

Seeing no public comment, I will close the hearing for the Senate Committee on Revenue and Economic Development at 1:58 p.m.

RESPECTFULLY SUBMITTED:

Mike Wiley,
Committee Secretary

APPROVED BY:

Senator Ruben J. Kihuen, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 152	C	3	Robert L. Crowell	Proposed Amendment
S.B. 48	D	2	Joe Reel	Work Session Document
S.B. 7	E	5	Joe Reel	Work Session Document
S.B. 8	F	1	Joe Reel	Work Session Document