

QUESTION NO. 3

Amendment to the *Sales and Use Tax Act of 1955*

Assembly Bill 403 of the 75th Session

CONDENSATION (Ballot Question)

Shall the Sales and Use Tax Act of 1955 be amended to authorize the Legislature to amend or repeal any 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

EXPLANATION

This proposed amendment to the Sales and Use Tax Act of 1955 would authorize the Nevada Legislature to enact legislation amending or repealing any provision of this Act without obtaining voter approval whenever such 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. The proposed amendment would not authorize the Legislature, without obtaining voter approval, to enact any legislation that increases the rate of any tax imposed pursuant to this Act, or to narrow the scope of any exemption under the Act.

Nevada has enacted laws providing for the administration of sales and use taxes in accordance with the interstate Streamlined Sales and Use Tax Agreement to which Nevada is a member. The purpose of this Agreement is to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and types of commerce within and across state lines. To avoid a conflict with the provisions of the Agreement, the Legislature may be required to enact legislation amending the Sales and Use Tax Act of 1955 in response to federal legislation approved by Congress affecting the Agreement or in response to interstate actions amending the Agreement. The Legislature has the authority to amend local sales taxes without voter approval, but the Sales and Use Tax Act, which was enacted by referendum, cannot be amended without voter approval. Passage of this question would grant limited authority to amend the Sales and Use Tax Act to resolve certain conflicts.

A “Yes” vote would authorize the Legislature to amend or repeal any provision of the Sales and Use Tax Act of 1955 without voter approval in order to resolve a conflict with federal law or interstate agreements for the administration, collection, or enforcement of the sales and use tax, except for legislation that would increase the rate of tax imposed pursuant to the Act or narrow the scope of any exemption under the Act.

A “No” vote would continue to require the Legislature to obtain voter approval before enacting any legislation amending or repealing any provision of the Sales and Use Tax Act of 1955.

ARGUMENTS FOR PASSAGE

To remain in compliance with the Streamlined Sales and Use Tax Agreement, Nevada must act in a timely manner regarding federal legislation or amendments to the Agreement that affect the Sales and Use Tax Act of 1955. Authorizing the Legislature to amend or repeal provisions of the Act without voter approval, under certain limited conditions, would allow the Legislature to respond flexibly and efficiently to such legislation and amendments. Because the Legislature only meets regularly in odd-numbered years and general elections only

occur in even-numbered years, there is already a potential 2-year delay in maintaining compliance with the Agreement. The additional delay of requiring approval of a ballot question to make technical and administrative changes relating to sales and use taxes increases the risk of falling out of compliance with the Agreement, which would jeopardize Nevada's membership status under the Agreement.

This amendment does not authorize the Legislature, without voter approval, to increase the State's portion of the tax rate (2 percent) or to take away or narrow the scope of any tax exemption under the Act.

ARGUMENTS AGAINST PASSAGE

Amendments to the Sales and Use Tax Act of 1955 have required voter approval since 1956 when Nevada voters approved the Act through the constitutional referendum process. Since that time, the Department of Taxation has been able to administer sales and use taxes and the Nevada Legislature has been able to enact appropriate legislation to amend the State's portion of the sales and use tax and obtain voter approval when required. With respect to federal law and the Streamlined Sales and Use Tax Agreement, the State was able to become a member to the Agreement and has been able to maintain compliance with the Agreement up to this point under the current process that requires voter approval. The citizens of Nevada should not give up the right to approve even minor legislation that changes the administration, collection, and enforcement of the State's portion of the sales and use tax.

FISCAL NOTE

Financial Impact – Cannot Be Determined

If this proposal to amend the Sales and Use Tax Act of 1955 is approved by voters, the Nevada Legislature would be authorized to make changes to the Sales and Use Tax Act of 1955 without voter approval under certain conditions. It cannot be determined with any degree of certainty the number or types of legislative actions that would be required by the Legislature which would meet all of the conditions specified within the question. Thus, the financial impact on the sales and use taxes collected in the State or upon individual taxpayers cannot be determined with any reasonable degree of certainty.

Assembly Bill No. 403—Assemblymen Settlemeyer; Gansert, Goedhart, Goicoechea, Grady, Hambrick, Hardy, Stewart and Woodbury

CHAPTER 163

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 a provision of that Act 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.

[Approved: May 22, 2009]

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 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 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 registered seller, waive any liability of the registered seller for:

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

(2) Any penalties and interest on that amount.

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

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

360B.250 The Department shall:

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

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

(b) Any penalties and interest on that amount.

2. 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 reasonable reliance on the information posted pursuant to NRS 360B.230 or his compliance with subsection 2 of NRS 360B.240, waive any liability of the certified service provider, and of the registered seller on whose behalf the certified service provider is acting, for:

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

(b) Any penalties and interest on that amount.

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

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

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

(b) Any penalties and interest on that amount.

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

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

(b) Any penalties and interest on that amount,

↪ unless the registered seller fails to collect the tax at the rate in effect immediately preceding that increase, the registered seller's failure to collect the tax at the increased rate extends beyond the first 30 days after the enactment of the statute providing for that increase, the registered seller fraudulently fails to collect the tax at the increased rate or the registered seller solicits purchasers based on the rate in effect immediately preceding that increase.

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

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

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

2. Any installation charges for the property;

~~[2-]~~ 3. Any credit for any trade-in which is specifically exempted from the sales price of the property pursuant to chapter 372 or 374 of NRS;

~~[3-]~~ 4. Any interest, financing and carrying charges from credit extended on the sale; and

~~[4-]~~ 5. Any taxes legally imposed directly on the consumer.

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

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

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

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

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

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

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

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

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

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

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

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

2. The term does not include:

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

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

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

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

(2) Stated separately pursuant to NRS 360B.290;

~~[(c)]~~ (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;

~~[(d)]~~ (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 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 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 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.
