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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.

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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 or repeal a provision of that Act without additional voter approval 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:**

1 Existing law provides for the administration of sales and use taxes in this State  
2 pursuant to the Simplified Sales and Use Tax Administration Act, the Sales and  
3 Use Tax Act and the Local School Support Tax Law. (Chapters 360B, 372 and 374  
4 of NRS) Under existing law, the Legislature has found and declared that this State  
5 should enter into an interstate agreement to simplify and modernize sales and use  
6 tax administration to reduce the burden of tax compliance for all sellers and types  
7 of commerce. (NRS 360B.020) Existing law requires the Nevada Tax Commission  
8 to enter into the Streamlined Sales and Use Tax Agreement and take all other  
9 actions reasonably required to implement the provisions of the Agreement. (NRS  
10 360B.110) **Sections 1-9** of this bill carry out recent amendments to the Agreement  
11 regarding the exclusion of electronically transferred products from certain required  
12 definitions, the certification by the State of the software of certain computer



13 programs that calculate the taxes due on a sale, a limited waiver of liability for  
14 sellers who fail to collect a tax increase that becomes effective within 30 days after  
15 the enactment of a statute which provides for that increase, and the exclusion of  
16 certain delivery charges from the calculation of sales and use taxes.

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

23 Existing law includes various provisions of the Sales and Use Tax Act of 1955.  
24 (NRS 372.010-372.115, 372.185-372.205, 372.260-372.284, 372.285-372.326,  
25 372.327-372.345, 372.350) Under existing law, the provisions of that Act, which  
26 was submitted to and approved by the voters at the 1956 General Election, cannot  
27 be amended or repealed without additional voter approval. (Nev. Const. Art. 19, §  
28 1) **Sections 11-19** of this bill provide for the submission to the voters of an  
29 amendment to that Act to authorize the Legislature to amend that Act without any  
30 additional voter approval if such a legislative amendment is necessary to resolve a  
31 conflict with any federal law or interstate agreement for the administration of sales  
32 and use taxes, and the legislative amendment does not increase the rate of a tax  
33 imposed pursuant to that Act or narrow the scope of a tax exemption approved by  
34 the voters.

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

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

3 1. *“Specified digital products” means electronically*  
4 *transferred digital audio works, digital audiovisual works and*  
5 *digital books.*

6 2. *As used in this section:*

7 (a) *“Digital audio works” means works that result from the*  
8 *fixation of a series of musical, spoken or other sounds, including*  
9 *ringtones.*

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

13 (c) *“Digital books” means works that are generally recognized*  
14 *in the ordinary and usual sense as books.*

15 (d) *“Electronically transferred” means obtained by a*  
16 *purchaser by means other than tangible storage media.*

17 (e) *“Ringtones” means digitized sound files that are*  
18 *downloaded onto a device and may be used to alert the customer*  
19 *with respect to a communication.*

20 **Sec. 2.** NRS 360B.225 is hereby amended to read as follows:  
21 360B.225 The Department shall:



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

10 2. Except as otherwise provided in subsection 3:

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

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

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

21 (b) If a registered seller who elects to use a certified automated  
22 system pursuant to subsection 3 of NRS 360B.200 fails to collect  
23 the correct amount of any sales or use tax imposed in this State as a  
24 result of his reliance on the certification of the Department pursuant  
25 to subsection 1 regarding the certified automated system used by  
26 that registered seller, waive any liability of the registered seller for:

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

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

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

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

42 360B.250 The Department shall:

43 1. If a registered seller fails to collect the correct amount of any  
44 sales or use tax imposed in this State as a result of his reasonable  
45 reliance on the information posted pursuant to NRS 360B.230 or his



1 compliance with subsection 2 of NRS 360B.240, waive any liability  
2 of the registered seller for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 360B.290 Any invoice, billing or other document given to a  
43 purchaser that indicates the sales price for which tangible personal  
44 property is sold must state separately any amount received by the  
45 seller for:



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

3 2. Any installation charges for the property;

4 ~~3.~~ 3. Any credit for any trade-in which is specifically  
5 exempted from the sales price of the property pursuant to chapter  
6 372 or 374 of NRS;

7 ~~4.~~ 4. Any interest, financing and carrying charges from credit  
8 extended on the sale; and

9 ~~5.~~ 5. Any taxes legally imposed directly on the consumer.

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

11 360B.400 In administering the provisions of this chapter and  
12 chapters 372 and 374 of NRS, and in carrying out the provisions of  
13 the Agreement, the Department shall construe the terms defined in  
14 NRS 360B.405 to 360B.495, inclusive, *and section 1 of this act,*  
15 unless the context otherwise requires, in the manner prescribed by  
16 those sections.

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

18 360B.415 "Computer software" means a set of coded  
19 instructions designed to cause a computer or automatic data  
20 processing equipment to perform a task. *The term does not include*  
21 *any specified digital products.*

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

23 360B.425 "Delivery charges" means charges by a seller of  
24 personal property for the preparation and delivery of the property to  
25 a location designated by the purchaser of the property, including,  
26 but not limited to, charges for transportation, shipping, postage,  
27 handling, crating and packing ~~H~~, *except that the term does not*  
28 *include any charges for transportation, shipping or postage which*  
29 *are stated separately pursuant to NRS 360B.290.*

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

31 360B.480 1. "Sales price" means the total amount of  
32 consideration, including cash, credit, property and services, for  
33 which personal property is sold, leased or rented, valued in money,  
34 whether received in money or otherwise, and without any deduction  
35 for:

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

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

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



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

3 2. The term does not include:

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

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

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

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

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

12 ~~(e)~~ (d) Any discounts, including those in the form of cash,  
13 term or coupons that are not reimbursed by a third party, which are  
14 allowed by a seller and taken by the purchaser on a sale;

15 ~~(d)~~ (e) Any interest, financing and carrying charges from  
16 credit extended on the sale of personal property, if stated separately  
17 pursuant to NRS 360B.290; and

18 ~~(e)~~ (f) Any taxes legally imposed directly on the consumer  
19 which are stated separately pursuant to NRS 360B.290.

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

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

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

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

30 (d) Any of the following criteria is satisfied:

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

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

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



1     **Sec. 9.** NRS 360B.485 is hereby amended to read as follows:  
2     360B.485 “Tangible personal property” includes, but is not  
3 limited to, electricity, water, gas, steam and prewritten computer  
4 software. *The term does not include any products that are*  
5 *transferred electronically to a purchaser.*

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

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

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

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

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

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

26     5. A provision that a purchaser is entitled to a refund, in  
27 accordance with the provisions of NRS 374.635 to 374.720,  
28 inclusive, of the amount of the tax required to be paid that is  
29 attributable to the tax imposed on the sale of, and the storage,  
30 use or other consumption in the County, including  
31 incorporated cities in the County, of, tangible personal  
32 property used for the performance of a written contract for the  
33 construction of an improvement to real property:

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

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

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



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

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

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

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

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

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

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

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

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

44       9. It would be beneficial to the public welfare for the people of  
45 this State by direct vote to authorize the Legislature to enact without



1 any additional voter approval such amendments to the Nevada Sales  
2 and Use Tax Act as are necessary to resolve conflicts with any  
3 congressional legislation or interstate agreements providing for the  
4 administration, collection or enforcement of sales and use taxes.

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

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

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

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

22 AN ACT to amend an Act entitled "An Act to provide  
23 revenue for the State of Nevada; providing for sales  
24 and use taxes; providing for the manner of collection;  
25 defining certain terms; providing penalties for  
26 violation, and other matters properly relating thereto."  
27 approved March 29, 1955, as amended.  
28

29 THE PEOPLE OF THE STATE OF NEVADA  
30 DO ENACT AS FOLLOWS:  
31

32 Section 1. The above-entitled Act, being chapter  
33 397, Statutes of Nevada 1955, at page 788, is hereby  
34 amended by adding thereto a new section to be designated  
35 as section 153.5, immediately following section 153.2, to  
36 read as follows:

37 *Sec. 153.5. The people of the State of Nevada*  
38 *hereby authorize the Legislature to enact, without an*  
39 *additional direct vote of the people, legislation that*  
40 *amends, annuls, repeals, sets aside, suspends or*  
41 *otherwise makes inoperative any provision of this Act,*  
42 *being chapter 397, Statutes of Nevada 1955, at page*  
43 *762, only if such legislation:*

44 *1. Is necessary to resolve a conflict with any*  
45 *federal statute or regulation or interstate agreement*



1 *for the administration, collection or enforcement of*  
2 *sales and use taxes;*

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

5 *3. Does not narrow the scope of any tax*  
6 *exemption provided pursuant to the provisions of*  
7 *sections 48 to 67.1, inclusive, of this Act, as amended*  
8 *by the direct vote of the people.*

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

10 **Sec. 15.** The ballot page assemblies and the paper ballots to be  
11 used in voting on the question must present the question in  
12 substantially the following form:

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

19 Yes  No

20 **Sec. 16.** The explanation of the question which must appear on  
21 each paper ballot and sample ballot and in every publication and  
22 posting of notice of the question must be in substantially the  
23 following form:

24  
25 (Explanation of Question)

26 The proposed amendment to the Sales and Use Tax Act of  
27 1955 would authorize the Legislature to enact legislation  
28 amending or repealing any provision of this Act without  
29 obtaining additional voter approval only if that legislation is  
30 necessary to resolve a conflict with any federal law or  
31 interstate agreement for the administration, collection or  
32 enforcement of sales and use taxes, that legislation does not  
33 increase the rate of any tax imposed pursuant to this Act, and  
34 that legislation does not narrow the scope of a tax exemption  
35 approved by the direct vote of the people.

36 **Sec. 17.** If a majority of the votes cast on the question is yes,  
37 the amendment to the Sales and Use Tax Act of 1955 becomes  
38 effective on January 1, 2011. If less than a majority of votes cast on  
39 the question is yes, the question fails and the amendment to the  
40 Sales and Use Tax Act of 1955 does not become effective.

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

43 **Sec. 19.** Any informalities, omissions or defects in the content  
44 or making of the publications, proclamations or notices provided for  
45 in this act and by the general election laws under which this election



1 is held must be so construed as not to invalidate the adoption of the  
2 act by a majority of the registered voters voting on the question if it  
3 can be ascertained with reasonable certainty from the official returns  
4 transmitted to the Office of the Secretary of State whether the  
5 proposed amendment was adopted by a majority of those registered  
6 voters.

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

10 **Sec. 21.** This act becomes effective upon passage and  
11 approval.

