

QUESTION NO.

Amendment to the Sales and Use Tax Act of 1955

Senate Bill No. 502 of the 74th 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 without an additional direct vote of the people whenever necessary to carry out any federal law or interstate agreement for the administration, collection or enforcement of sales and use taxes, and to repeal an exemption from the taxes imposed by this Act on certain aircraft and aircraft components?

EXPLANATION (Ballot Question)

This proposed amendment to the Sales and Use Tax Act of 1955 (Act) would authorize the Nevada Legislature to enact legislation amending or repealing any provision of this Act without obtaining additional voter approval whenever that legislation is necessary to carry out 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 to enact any legislation that increases the rate of the tax imposed pursuant to this Act, currently 2 percent, without obtaining voter approval.

Additionally, this amendment would repeal an exemption from the taxes imposed by the Act for the sale of aircraft and major components of aircraft to a scheduled air carrier based in Nevada. The language in the Act providing this exemption from the state's portion of the sales and use tax was declared unconstitutional by the Nevada Supreme Court in 1997. Thus, although the language remains in the Act, the exemption is no longer provided to air carriers. The Legislature cannot enact legislation to remove this unconstitutional language from the Act without voter approval.

Existing law provides for the administration of sales and use taxes in Nevada pursuant to the Simplified Sales and Use Tax Administration Act, the Sales and Use Tax Act, and the Local School Support Tax Law. The state's portion of the sales and use tax is administered under provisions of the Act that were submitted to and approved by the voters at the 1956 General Election. These provisions cannot be amended or repealed without additional voter approval.

Nevada has entered into the interstate "Streamlined Sales and Use Tax Agreement" 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. To maintain compliance with the provisions the Agreement, the Legislature may be required to enact legislation amending the Sales and Use Tax Act and the Local School Support Tax Law in response to federal legislation approved by Congress affecting the Agreement or to interstate actions amending the Agreement. The Legislature has the authority to amend the Local School Support Tax Law without voter approval, but the Sales and Use Tax Act cannot be amended without voter approval.

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 carry out 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. A “Yes” vote would also repeal an exemption from the taxes imposed on the sale of aircraft and major components of aircraft to an air carrier based in Nevada.

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, including legislation required to carry out federal law or an interstate agreement, and would retain the exemption for the sale of aircraft and major components of aircraft to an air carrier based in Nevada.

ARGUMENTS FOR PASSAGE

This proposed amendment would authorize the Nevada Legislature to amend or repeal provisions of the Sales and Use Tax Act without voter approval only for legislation necessary to comply with a federal law or an interstate agreement, such as the Streamlined Sales and Use Tax Agreement, for the administration, collection, and enforcement of sales and use taxes in Nevada. Authorizing the Legislature to enact legislation without voter approval would allow the Legislature to respond more flexibly and efficiently to federal legislation and interstate agreements.

This amendment does not authorize the Legislature to increase the rate of tax without voter approval. Thus, the sales and use tax rate for the state's portion of the tax (currently 2 percent) could not be increased by the Legislature without voter approval.

The language in the Sales and Use Tax Act of 1955 granting an exemption from the state's portion of the sales and use tax for the sale of aircraft and major components of aircraft to a scheduled air carrier based in Nevada was declared unconstitutional by the Nevada Supreme Court in 1997. This exemption has not been allowed by the Department of Taxation to any air carrier based in Nevada since it was declared unconstitutional. The purpose of repealing this exemption is simply to eliminate obsolete language. The repeal will not impact any air carrier because the unconstitutional exemption is not being offered.

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 1956, 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 maintain compliance with federal law and interstate agreements with voter approval when required. The citizens of Nevada should not surrender their right to approve legislation that makes changes to the administration, collection, and enforcement of sales and use taxes whether to comply with federal law or interstate agreements, or for any other reason.

Finally, there is no need to repeal the unconstitutional language concerning aircraft from the Act because it is not being applied.

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 amend the Act without voter approval for legislation necessary to carry out federal law or interstate agreements affecting the administration, collection, or enforcement of the sales and use tax in Nevada. It cannot be determined with any degree of certainty what changes to federal law or existing interstate agreements may occur and the legislative actions that would be required by the Legislature to maintain compliance with the federal law or these interstate agreements, such as the Streamlined Sales and Use Tax Agreement. If this proposed amendment is not approved, and voter approval is still required, it cannot be determined which legislative actions may or may not be approved by voters. Thus, the financial impact on the sales and use taxes collected in the state or individual taxpayers cannot be determined.

Since the proposed amendment to repeal the exemption from the State 2 percent sales and use tax for the sale of aircraft and major components of aircraft to a scheduled air carrier which is based in Nevada has been declared unconstitutional and is not currently provided to any air carrier in the state by the Department of Taxation, there is no financial impact.