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**HOUSE BILL 1539**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Representative Frame; by request of Department of Revenue

AN ACT Relating to narrowing the business and occupation tax deduction, and sales and use tax credit and refund, for bad debts available to sellers; amending RCW 82.04.4284, 82.08.037, and 82.12.037; creating new sections; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  In light of the holding of the supreme court of the state of Washington in *Lowe's Home Centers, LLC v. Dep't of Revenue*, 195 Wn.2d 27 (2020), the legislature intends to modify the sales and use tax credit and refund for bad debts under RCW 82.08.037 and 82.12.037 to make clear that, to qualify for the credit and refund, the bad debts must be directly attributable to the buyer's unpaid sales or use tax obligation to the seller. The legislature also intends to make similar modifications to the business and occupation tax deduction for bad debts under RCW 82.04.4284.

**Sec.**  RCW 82.04.4284 and 2004 c 153 s 307 are each amended to read as follows:

(1) In computing tax ((~~there may be deducted~~)), a taxpayer may deduct from the measure of tax bad debts((~~, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003,~~)) on which the taxpayer previously paid tax ((~~was previously paid~~)) under this chapter.

(2)(a) For the purposes of this section, and subject to (b) of this subsection (2), "bad debts" means a debt obligation unpaid by the debtor, or that debtor's guarantor, to the taxpayer that:

(i) Qualifies for the federal bad debt deduction under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003; and

(ii) Has been written off as uncollectible in the taxpayer's books and records.

(b) For purposes of this section, "bad debts" do not include:

((~~(a)~~)) (i) Amounts due on property that remains in the possession of the ((~~seller~~)) taxpayer until the full purchase price is paid;

((~~(b)~~)) (ii) Expenses incurred in attempting to collect debt;

((~~(c)~~)) (iii) Sales or use taxes payable to a seller; ((~~and~~

~~(d)~~)) (iv) Repossessed property; and

(v) Amounts paid by a taxpayer to a third-party creditor of the debtor in reimbursement of that debtor's nonpayment of an obligation to that third-party creditor.

(3) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt must be applied under RCW 82.08.037(4) and 82.12.037, according to such rules as the department may prescribe.

**Sec.**  RCW 82.08.037 and 2010 1st sp.s. c 23 s 1502 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for sales taxes it previously paid on bad debts((~~, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003~~)).

(2)(a) For the purposes of this section, "bad debts" means a debt obligation unpaid by the buyer, or the buyer's guarantor, to the seller that:

(i) Qualifies for the federal bad debt deduction under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003; and

(ii) Has been written off as uncollectible in the seller's books and records.

(b) For purposes of this section, "bad debts" does not include:

((~~(a)~~)) (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

((~~(b)~~)) (ii) Expenses incurred in attempting to collect debt;

((~~(c)~~)) (iii) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; ((~~and~~

~~(d)~~)) (iv) Repossessed property; and

(v) Amounts paid by a seller to a third-party creditor of the buyer in reimbursement of that buyer's nonpayment of an obligation to that third-party creditor.

(3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales ((~~or use~~)) tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department must allow an allocation of bad debts among member states to the streamlined sales and use tax agreement((~~, as defined in RCW 82.58.010(1),~~)) if required under that agreement and the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller.

**Sec.**  RCW 82.12.037 and 2010 1st sp.s. c 23 s 1503 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for use taxes it previously paid on bad debts((~~, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003~~)).

(2) For purposes of this section, "bad debts" ((~~does not include:~~

~~(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;~~

~~(b) Expenses incurred in attempting to collect debt;~~

~~(c) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller; and~~

~~(d) Repossessed property~~)) has the same meaning as in RCW 82.08.037.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the ((~~sales or~~)) use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department must allow an allocation of bad debts among member states to the streamlined sales and use tax agreement((~~, as defined in RCW 82.58.010(1),~~)) if required under that agreement and the books and records of the person claiming bad debts support the allocation.

(7) A person's right to claim a credit or refund under this section is not assignable. No person other than the original seller in the transaction that generated the bad debt or, as provided in subsection (5) of this section, a certified service provider, is entitled to claim a credit or refund under this section. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund under this section only after the debt instrument is reassigned by the third party to the original seller.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. **Sec.**  This act applies only with respect to bad debts that were written off as uncollectible in the taxpayer's books and records on or after the effective date of this section.

**--- END ---**