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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

Read first time 02/16/21. Referred to Committee on Finance.

1 AN ACT Relating to narrowing the business and occupation tax  
2 deduction, and sales and use tax credit and refund, for bad debts  
3 available to sellers; amending RCW 82.04.4284, 82.08.037, and  
4 82.12.037; creating new sections; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** In light of the holding of the supreme  
7 court of the state of Washington in *Lowe's Home Centers, LLC v. Dep't*  
8 *of Revenue*, 195 Wn.2d 27 (2020), the legislature intends to modify  
9 the sales and use tax credit and refund for bad debts under RCW  
10 82.08.037 and 82.12.037 to make clear that, to qualify for the credit  
11 and refund, the bad debts must be directly attributable to the  
12 buyer's unpaid sales or use tax obligation to the seller. The  
13 legislature also intends to make similar modifications to the  
14 business and occupation tax deduction for bad debts under RCW  
15 82.04.4284.

16 **Sec. 2.** RCW 82.04.4284 and 2004 c 153 s 307 are each amended to  
17 read as follows:

18 (1) In computing tax (~~(there may be deducted)~~), a taxpayer may  
19 deduct from the measure of tax bad debts(~~(, as that term is used in~~  
20 ~~26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003,))~~)

1 on which the taxpayer previously paid tax (~~was previously paid~~)  
2 under this chapter.

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 3.** RCW 82.08.037 and 2010 1st sp.s. c 23 s 1502 are each  
28 amended to read as follows:

29 (1) A seller is entitled to a credit or refund for sales taxes it  
30 previously paid on bad debts(~~, as that term is used in 26 U.S.C.~~  
31 ~~Sec. 166, as amended or renumbered as of January 1, 2003)~~).  
32

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

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

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

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

1       ~~((a))~~ (i) Amounts due on property that remains in the  
2 possession of the seller until the full purchase price is paid;  
3       ~~((b))~~ (ii) Expenses incurred in attempting to collect debt;  
4       ~~((c))~~ (iii) Debts sold or assigned by the seller to third  
5 parties, where the third party is without recourse against the  
6 seller; ~~(and~~  
7       ~~(d))~~ (iv) Repossessed property; and  
8       (v) Amounts paid by a seller to a third-party creditor of the  
9 buyer in reimbursement of that buyer's nonpayment of an obligation to  
10 that third-party creditor.

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

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

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

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

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

1       **Sec. 4.** RCW 82.12.037 and 2010 1st sp.s. c 23 s 1503 are each  
2 amended to read as follows:

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

6       (2) For purposes of this section, "bad debts" (~~(does not include:~~  
7 ~~(a) Amounts due on property that remains in the possession of the~~  
8 ~~seller until the full purchase price is paid;~~

9 ~~(b) Expenses incurred in attempting to collect debt;~~  
10 ~~(c) Debts sold or assigned by the seller to third parties, where~~  
11 ~~the third party is without recourse against the seller; and~~

12 ~~(d) Repossessed property)~~ has the same meaning as in RCW  
13 82.08.037.

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

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

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

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

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

1 only after the debt instrument is reassigned by the third party to  
2 the original seller.

3 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of  
5 the state government and its existing public institutions, and takes  
6 effect immediately.

7 NEW SECTION. **Sec. 6.** This act applies only with respect to bad  
8 debts that were written off as uncollectible in the taxpayer's books  
9 and records on or after the effective date of this section.

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