
HOUSE BILL 1539

State of Washington

67th Legislature

2021 Regular Session

By Representative Frame; by request of Department of Revenue

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

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

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

39 (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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