



## Fact Sheet: Medical Patient Tax Relief Act

### 1. What is the Medical Patient Tax Relief Act?

On November 8, 2016, the election ballot in Nevada will feature a statewide question (Question 4) to amend the Nevada Constitution to provide sales and use tax exemptions for individuals requiring certain medical, oxygen delivery and mobility-enhancing equipment. Currently, the state exempts prosthetic devices from sales and use tax, and the proposed amendment would expand exemptions to include durable medical equipment, oxygen delivery equipment and mobility-enhancing equipment, including: (1) oxygen tanks and concentrators, (2) ventilators, (3) continuous positive airway pressure (CPAP) machines, (4) nebulizers, (5) drug infusion devices, (6) feeding pumps, (7) infant apnea monitors, (8) hospital beds, (9) bath and shower aids, (10) wheelchairs, (11) walkers, (12) canes, and (13) crutches.<sup>1</sup>

If a majority of voters approve the ballot initiative, Article 10 of the Nevada Constitution would be amended to include a new section, Section 7, which would read as follows:

“The legislature shall provide by law for the exemption of durable medical equipment, oxygen delivery equipment and mobility-enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice from any tax upon the sale, storage, use or consumption of tangible personal property.”<sup>2</sup>

### 2. Why is it coming before the voters?

The proposed issue regarding sales and uses tax exemptions of certain medical equipment was originally presented as Senate Bill (SB) 334 during the 2015 78th legislative session.<sup>3</sup> Although the bill passed in the Senate it did not receive a vote in the Assembly and died without further action.<sup>4</sup>

Following the absence of definitive action in the Legislature, the political action committee (PAC), the Alliance to Stop Taxes on the Sick and Dying,<sup>5</sup> filed a petition in September 2015, meeting all requirements to have the initiative language placed on the ballot.<sup>6</sup> The purpose of the PAC is “to support petitions that exempt certain medical equipment from taxation.”<sup>7</sup>

The voters in two successive general elections must approve any proposed amendment to the Nevada Constitution. This means that if Question 4 passes in November 2016, it will appear again on the 2018 General Election Ballot.<sup>8</sup> If the question passes again in the second election, the Medical Patient Tax Relief Act will officially become Article 10(7) of the Nevada Constitution on November 26, 2018.<sup>9</sup>

**3. What happens if it passes?**

Should a majority of voters approve the initiative (Question 4), certain medical, oxygen delivery, and mobility-enhancing equipment would no longer be subject to the Nevada 6.85 percent sales and use tax.

The initiative would also exempt the purchase of the specified medical equipment from all local sales and use taxes. Thirteen of the 17 counties in Nevada currently levy local sales and use taxes, the revenue from which is used for designated entities or purposes.<sup>10</sup> Only Esmeralda, Eureka, Humboldt, and Mineral County do not impose local sales and use taxes. Research from the Nevada Legislative Counsel Bureau (LCB) suggests that the revenue for these programs will remain largely unaffected by the proposed amendment.<sup>11</sup> Table 1 shows the estimated retail cost of the 13 items specifically listed in the ballot initiative, according to several popular medical equipment retail sites. If voters approve the ballot initiative in two general elections, the initiative becomes a Constitutional Amendment and these specific pieces of medical equipment would be exempt from Nevada’s 6.85 percent sales and use tax.

**Table 1: Estimated Retail Cost of Items Exempt from Sales Tax under Medical Patient Tax Relief Act<sup>a</sup>**

Item Name	Retail Price (before Taxes)
Oxygen Tank and Concentrator	\$639 - \$3,325 <sup>12</sup>
Ventilator	\$205 - \$3,000 <sup>13</sup>
CPAP Machine	\$325 - \$1,225 <sup>14</sup>
Nebulizer	\$28 - \$3,226 <sup>15</sup>
Drug Infusion Device	\$154 - \$167 <sup>16</sup>
Feeding Pump	\$106 - \$407 <sup>17</sup>
Infant Apnea Monitor	\$132 - \$249 <sup>18</sup>
Hospital Beds	\$585 - \$13,500 <sup>19</sup>
Bath and Shower Aids	\$28 - \$3,226 <sup>20</sup>
Wheelchairs	\$114 - \$8,800 <sup>21</sup>
Walkers	\$58 - \$132 <sup>22</sup>
Canes	\$14 - \$85 <sup>23</sup>
Crutches	\$47 - \$65 <sup>24</sup>

**4. What is the expected financial impact to the State if this initiative passes?**

The circulated initiative petition for the Medical Patient Tax Relief Act stated that government estimates found that the sales and use tax exemption would have a “nominal impact on tax revenues.”<sup>25</sup> The Fiscal Analysis Division of the Nevada Legislative Counsel Bureau (LCB) stated it cannot “determine how the terms specified within the Initiative would be defined in the legislation, nor can it estimate the amount of sales that would be subject to the exemption.”<sup>26</sup> The Nevada Department of Taxation reported that the

<sup>a</sup> These prices are meant to convey the range of cost for the equipment, and they are based on the retail prices of the items according to popular websites that sell such equipment, such as Betty Mills, MedMart, Target and Walgreens. They are meant to illustrate the often-high costs of the equipment. The prices do not include sales tax.

implementation and administration of the initiative could be performed using current resources and without any additional effects on the state government.<sup>27</sup>

Should the initiative pass, certain medical, oxygen delivery and mobility-enhancing equipment would no longer be subject to the State 6.85 percent combined sales and use tax, or any local sales and use tax, which 13 counties impose.<sup>28</sup> Currently, four separate tax rates comprise the total sales and use tax rate in Nevada. Table 2 shows these four taxes, their rates and their purpose.

**Table 2: Tax Rates Combined in the Statewide Sales and Use Taxes<sup>29</sup>**

Name of Tax	Tax Rate	Amount in Fiscal Year (FY) 2015	Purpose
State	2.0%	\$998.7 million <sup>30</sup>	Deposited in the State General Fund.
Local School Support	2.6%	\$1.3 billion <sup>31</sup>	Distributed among the state’s school districts and the State Distributive School Account.
Basic City-County Relief	0.5%	\$247.6 million <sup>32</sup>	Distributed among counties, cities, and other local government entities through the Consolidated Tax Distribution (CTX) mechanism.
Supplemental City-County Relief	1.75%	\$886.7million	Distributed among counties, cities, and other local government entities through the Consolidated Tax Distribution (CTX) mechanism.

**5. How does the ballot initiative differ from Senate Bill 334 that was proposed in 2015?**

When Senate Bill 334 was proposed during the Legislative Session in 2015, the Nevada Department of Taxation had attached a \$25.0 million fiscal note, which reflected the expected loss in tax revenue to the State over ten years in the event the bill passed.<sup>33</sup> Removal of these items from the revenue loss would result in residual losses of \$3.7M and \$1.0M respectively for the 10-year and Fiscal Year (FY) 2017 periods, respectively.

However, one key difference between the proposed legislation and the ballot initiative is that SB 334 included exemptions for hearing aids and hearing aid accessories, and ophthalmic or ocular devices or appliances (including corrective eyeglasses and contact lenses). Hearing aid and hearing aid accessories had an estimated loss in revenue of \$0.5 million in FY 2017, and a ten-year loss of \$2.2 million. Ophthalmic or ocular devices or appliances had an estimated loss in revenue of \$4.8 million FY 2017 and a ten-year loss of \$19.1 million.

On the other hand, the projected losses for durable medical equipment and mobility-enhancing equipment was \$0.9 million in F2017 and \$3.7 million over ten years. The projected loss in revenue for durable medical and mobility-enhancing equipment is only 14.8 percent of total projected losses.

Unlike the proposed legislation, the ballot initiative does not include hearing aids and hearing aid accessories, and ophthalmic or ocular devices or appliances in the list of exempted equipment. Consequently, the Nevada Department of Taxation concluded that there would be nominal fiscal impact to the State, should a majority of voters approve this ballot initiative.

## 6. Have other states exempted medical equipment from the sales and use tax?

Several neighboring states in the Intermountain West have implemented tax exemptions on durable medical, oxygen, and mobility-enhancing equipment: Arizona,<sup>34</sup> California,<sup>35</sup> Colorado,<sup>36</sup> Texas,<sup>37</sup> and Utah.<sup>38</sup> New Mexico only provides exemptions for prosthetics, oxygen equipment, and vision and hearing aids.<sup>39</sup> Seventeen other states across the country also provide sales tax exemptions for medical equipment: Arkansas, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, North Carolina, Oklahoma, South Carolina, South Dakota, and West Virginia.<sup>40</sup>

Nevada is one of 24 states that belong to the Streamlined Sales and Use Tax Agreement (SSUTA).<sup>41</sup> The Agreement seeks to “simplify sales and use tax collection and administration by retailers and states,” especially those that operate in multiple states and/or online.<sup>42</sup> Other member states are: Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.<sup>43</sup>

Of the 24 states in SSUTA, 19 states provide sales and use tax exemptions for durable medical equipment and 21 states for mobility-enhancing equipment, provided the patient has a prescription.<sup>44</sup> Eighteen states provide exemptions for oxygen-delivery equipment.<sup>45</sup> Some states with exemptions for oxygen-delivery equipment do still charge sales tax on that equipment if Medicaid or Medicare pays for part of the prescription, and other states charge sales taxes if the equipment is purchased without a prescription.

The Medical Patient Tax Relief Act ballot initiative in Nevada states that all such equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice will be exempt from sales and uses taxes. This means that an individual in Nevada who purchases any durable medical, oxygen delivery, or mobility-enhancing equipment in the State will need a prescription for the equipment in order to prevent sales and use tax from being added to the purchase price.

Moreover, a number of states that are part of the SSUTA provide sales and use tax exemptions for hearing aids, hearing aid accessories, and ophthalmic or ocular devices or appliances: 21 states have exemptions for hearing aids with a prescription, 16 states have exemptions for prescription corrective eyeglasses, and 15 states have exemptions for contact lenses with a prescription.

## 7. Should it pass, how might this initiative affect medical patients?

More than 197,638 unique beneficiaries in Nevada had claims filed with Medicare on their behalf from a provider or supplier for a prescription to receive durable medical, oxygen deliver and mobility enhancing equipment during 2013.<sup>46,b</sup> Should Question 4 pass, approximately 6.8 percent of Nevadans would benefit from the sales and use tax exemption.<sup>47</sup>

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<sup>b</sup> This estimate is likely slightly smaller than the real figure because the Centers for Medicare and Medicaid Research, Statistics, Data and Systems reporting on durable medical equipment, prosthetics, orthotics and supplies does not include figures for such supplies that have fewer than 11 unique beneficiaries to protect the privacy of such

Currently, patients with Medicare Part B who require durable medical, oxygen delivery, and mobility equipment do receive coverage for these items, so long as a healthcare provider prescribes them.<sup>48</sup> Still, patients are required to pay up to 20 percent of the full retail amount for many of the medical devices that would fall under the exemption, provided the retailer participates in Medicare.<sup>49</sup> In some cases Medicare Part B does require the patient to rent the equipment from a licensed provider, but under the Nevada Revised Statutes, sales tax is still due on these transactions.<sup>50</sup>

If a majority of voters approve the Medical Patent Relief Act in two general elections, this ballot initiative would provide tax relief to medical patients who use the particular equipment covered by the sales and use tax exemption. Medical patients who are on low incomes, in particular, might benefit from the exemptions. However, medical patients who must purchase hearing aids and hearing aid accessories, and ophthalmic or ocular devices (e.g., glasses) will not receive any tax relief in the event that this ballot initiative is approved by the voters.

An unpublished ruling from the Nevada Tax Commission on June 27, 2016 found that Medicare Part C patients are also exempt from sales tax on durable medical, oxygen delivery, and mobility equipment.<sup>51</sup>

## 8. Does Nevada exempt sales tax on other items?

Nevada levies sales and use tax on all personal tangible property.<sup>52</sup> However, several items sold in the State are exempt from these taxes: (1) fuel used to propel motor vehicles, (2) animal and plants intended for human consumption, and feed and fertilizer, (3) medicines, prescription drugs, and certain medical supplies, (4) gas, electricity, and water, (5) domestic fuels, (6) newspapers, (7) manufactured and mobile homes, and (8) amount of used vehicle trade-in allowance provided against the purchase price of another vehicle.<sup>53</sup>

In 1990, the Nevada Supreme Court ruled that all oxygen delivery equipment would be exempt from sales and use taxes.<sup>54</sup> However, because this decision was unpublished (and therefore deemed to not have any value as a precedent for future cases), the Nevada Department of Taxation continued to collect sales and use taxes on this and other medical equipment.<sup>55</sup>

Under the Streamlined Sales and Use Tax Agreement (SSUTA) (see Question 6 above), states are allowed to provide tax exemptions for certain items, provided the exemption applies equally to both local businesses and online retailers.<sup>56</sup> When the measure (SB 334) was presented to the Nevada Legislature in 2015, Senator Michael Roberson (R-Las Vegas) explained that many states in the SSUTA agreement have passed exemptions for these devices, and that the measure would ease the confusion for out-of-state sellers of medical equipment.<sup>57</sup>

The initiative would assist people living with disabilities and senior citizens, especially since many of them have low incomes or live on fixed incomes. In addition, some have suggested that the state is unfairly profiting from the sales of items these people cannot live without.<sup>58</sup>

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patients.<sup>48</sup> In addition, this number does not include the patients in Nevada that do not use Medicare and Medicaid for their health insurance.



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- <sup>3</sup> Senators Roberson, Kieckhefer, Brower, Hardy, Gustavson, Farley, Goicoechea, Harris and Lipparelli. “Senate Bill No. 334.” Nevada Legislature. March 16, 2015. <http://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB334.pdf>.
- <sup>4</sup> Open States. “Nevada Senate Bill 334.” Open States. April 21, 2015. <http://openstates.org/nv/bills/78/SB334/> ; <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=755>
- <sup>5</sup> The Alliance lists its sole officer as Doug Bennett, a registered respiratory therapist and owner of Bennett Medical Services, which is also listed as an affiliated organization with the PAC. The company is one of the largest family-owned and operated at home medical equipment companies, according to its website. It has eight locations, all in the Western Region of the United States, including four in Nevada—in Carson City, Elko Las Vegas and Reno. The company sells a number of the medical items specifically mentioned in the petition for the Medical Patient Tax Relief Act, including: ventilators, oxygen concentrators, CPAP machines, infant apnea monitors, bath and shower aids, hospital beds, wheelchairs, walkers, canes and crutches.
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