



QUESTION 4: THE MEDICAL PATIENT TAX RELIEF ACT

Executive Summary

Question 4: The Medical Patient Tax Relief Act is a statewide constitutional ballot initiative that will be placed before Nevada's registered voters at the November 6, 2018, General Election. The measure seeks to provide sales and use tax exemptions for individuals requiring certain medical, oxygen delivery, and mobility-enhancing equipment.

Should a majority of Nevada voters approve Question 4, the *Nevada Constitution* would be amended to require the Nevada Legislature to eliminate the sales and use tax on certain medical, oxygen delivery, and mobility-enhancing equipment. Should a majority of voters reject the measure, no further action will be taken and certain medical, oxygen delivery, and mobility-enhancing equipment will remain subject to the sales and use tax.

Our intent, in the pages that follow, is to summarize the primary arguments for and against the measure and to answer questions voters may have. The following are the questions this Voter Guide addresses:

1. What is Question 4: The Medical Patient Tax Relief Act?
2. Why is it coming before the voters?
3. What happens if Question 4 passes?
4. What is the expected financial impact to Nevada if this initiative passes?
5. How does the ballot initiative differ from Senate Bill 334 that was proposed in 2015?
6. Have other states exempted medical equipment from the sales and use tax?
7. Should it pass, how might this initiative affect medical patients?
8. Does Nevada exempt sales tax on other items?

The Guinn Center will not take a position on Question 4.

1. What is Question 4: The Medical Patient Tax Relief Act?

On November 6, 2018, 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.¹

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 licenses 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.”²

The Nevada Legislature would need to approve legislation to implement the specific sales and use tax exemptions before these exemptions could become effective.

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 78th (2015) legislative session.³ Although the bill passed in the Senate it did not receive a vote in the Assembly and died without further action.⁴

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

The voters in two successive general elections must approve any proposed amendment to the *Nevada Constitution*. In 2016, Question 4 appeared on the General Election ballot and received the support of 71.8 percent of Nevada’s voters.^a Thus, Question 4 will appear again on the 2018 General

^a Question 4 appeared on the 2016 General Election ballot. Voter approval by county in 2016 is as follows: 67.2 percent in Carson City; 65.4 percent in Churchill County; 73.1 percent in Clark County; 68.0 percent in Douglas County; 67.8 percent in Elko County; 61.5 percent in Esmeralda County; 67.6 percent in Eureka County; 64.6 percent in Humboldt County; 61.5 percent in Lander County; 59.1 percent in Lincoln County; 66.9 percent

Election ballot.⁸ If the question passes again, the Medical Patient Tax Relief Act will officially become Article 10 § 7 of the *Nevada Constitution* on November 26, 2018.⁹ Then, the Nevada Legislature would need to approve legislation to implement the specific sales and use tax exemptions before these exemptions could become effective.

3. What happens if Question 4 passes?

Should a majority of voters approve the initiative in November 2018, certain medical, oxygen delivery, and mobility-enhancing equipment would no longer be subject to the state and local sales and use tax in Nevada.

Table 1 shows the estimated (as of 2016) retail cost of the 13 items specifically listed in the ballot initiative, according to several popular medical equipment retail sites. If voters approve once again the ballot initiative in November 2018, this initiative would amend the *Nevada Constitution* to exempt these specific pieces of medical equipment from state and local sales and use tax.

Table 1: Estimated Retail Cost of Items Exempt from Sales Tax under Medical Patient Tax Relief Act^b

Item Name	Retail Price (before Taxes)
Oxygen Tank and Concentrator	\$639 - \$3,325 ¹⁰
Ventilator	\$205 - \$3,000 ¹¹
CPAP Machine	\$325 - \$1,225 ¹²
Nebulizer	\$28 - \$3,226 ¹³
Drug Infusion Device	\$154 - \$167 ¹⁴
Feeding Pump	\$106 - \$407 ¹⁵
Infant Apnea Monitor	\$132 - \$249 ¹⁶
Hospital Beds	\$585 - \$13,500 ¹⁷
Bath and Shower Aids	\$28 - \$3,226 ¹⁸
Wheelchairs	\$114 - \$8,800 ¹⁹
Walkers	\$58 - \$132 ²⁰
Canes	\$14 - \$85 ²¹
Crutches	\$47 - \$65 ²²

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.²³ Only Esmeralda, Eureka, Humboldt, and Mineral Counties do not impose local sales and use taxes. Table 2 shows the sales tax rates for Nevada and

in Lyon County; 69.2 percent in Mineral County; 70.2 percent in Nye County; 63.7 percent in Pershing County; 67.8 percent in Storey County; 70.4 percent in Washoe County; and 64.6 percent in White Pine County.

^b 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.

the seventeen counties in the state. Washoe County has the highest combined state and local sales and use tax rate of 8.265 percent, followed by Clark County with 8.250 percent.

Table 2. State and Local Sales Tax in Nevada, 2018

County	Total Sales Tax (%)
Carson City	7.600
Churchill	7.600
Clark	8.250
Douglas	7.100
Elko	7.100
Esmeralda	6.850
Eureka	6.850
Humboldt	6.850
Lander	7.100
Lincoln	7.100
Lyon	7.100
Mineral	6.850
Nye	7.600
Pershing	7.100
Storey	7.600
Washoe	8.265
White Pine	7.725
State	6.850

Currently, four separate tax rates comprise the total state sales and use tax rate of 6.85 percent. Table 3 shows these four taxes, their rates, and their purpose.

Table 3: Tax Rates Combined in the Statewide Sales and Use Taxes of 6.85 percent²⁴

Name of Tax	Tax Rate	Amount in FY 2017	Purpose
State	2.00%	\$1.1 billion ²⁵	Deposited in the State General Fund.
Local School Support	2.60%	\$1.4 billion ²⁶	Distributed among the state’s school districts and the State Distributive School Account (DSA).
Basic City-County Relief	0.50%	\$270.3 million ²⁷	Distributed among counties, cities, and other local government entities through the Consolidated Tax Distribution (CTX) mechanism.
Supplemental City-County Relief	1.75%	\$945.7 million ²⁸	Distributed among counties, cities, and other local government entities through the Consolidated Tax Distribution (CTX) mechanism.

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

The circulated initiative petition for the Medical Patient Tax Relief Act states that government estimates found that the sales and use tax exemption would have a “nominal impact on tax revenues.”²⁹ Research from the Nevada Legislative Counsel Bureau (LCB) suggests that the revenue for these programs will remain largely unaffected by the proposed constitutional amendment.³⁰ The Fiscal Analysis Division of 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.”³¹ The Nevada Department of Taxation reported that the implementation and administration of the initiative could be performed using current resources and without any additional effects on the state government.³²

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 Nevada over ten years in the event the bill passed.³³ Removal of these items from the revenue streams was expected to 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 SB 334 legislation and the current ballot initiative voters will consider again this November 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 FY 2017 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 Question 4: Medical Patient Tax Relief Act.

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,³⁴ California,³⁵ Colorado,³⁶ Texas,³⁷ and Utah.³⁸ New Mexico only provides exemptions for prosthetics, oxygen equipment, and vision and hearing aids.³⁹ 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.⁴⁰

Nevada is one of 24 states that belong to the Streamlined Sales and Use Tax Agreement (SSUTA).⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ Eighteen states provide exemptions for oxygen-delivery equipment.⁴⁵ 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.

Question 4: 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, several 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 delivery, and mobility-enhancing equipment during 2013.^{c,46} Should Question 4 pass again in November 2018, approximately 6.8 percent of Nevadans would benefit from the sales and use tax exemption.⁴⁷

^c This estimate is likely slightly smaller than the real figure because the Centers for Medicare and Medicaid Services: 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 patients. In addition, this number does not include the patients in Nevada that do not use Medicare and Medicaid for their health insurance.

Currently, patients with Medicare Part B who require durable medical, oxygen delivery, and mobility-enhancing equipment do receive coverage for these items, so long as a healthcare provider prescribes them.⁴⁸ 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.⁴⁹ 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.⁵⁰

If a majority of voters once again approve the Medical Patent Relief Act in November 2018, 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, also found that Medicare Part C patients are also exempt from sales and use tax on durable medical, oxygen delivery, and mobility-enhancing equipment.⁵¹

8. Does Nevada exempt sales tax on other items?

Nevada levies sales and use tax on all personal tangible property.⁵² 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.⁵³

In 1990, the Nevada Supreme Court ruled that all oxygen delivery equipment would be exempt from sales and use taxes.⁵⁴ 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.⁵⁵

Under the Streamlined Sales and Use Tax Agreement (see Section 6 above), states are allowed to provide tax exemptions for certain items, provided the exemption applies equally to both local businesses and online retailers.⁵⁶ When the measure Senate Bill (SB) 334 was presented to the Nevada Legislature in 2015, Senator Michael Roberson (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.⁵⁷

Supporters argue that the initiative would assist people living with disabilities and senior citizens, especially since many of them are low-income or live on fixed incomes. In addition, some have suggested that the state is unfairly profiting from the sales of medically necessary items.⁵⁸

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