

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1209

Introduced by Linehan, 39.

Read first time January 20, 2022

Committee: Revenue

- 1 A BILL FOR AN ACT relating to sales and use taxes; to amend sections
- 2 77-2701, 77-2701.04, 77-2701.41, 77-2711, 77-2713, and 77-27,223,
- 3 Revised Statutes Supplement, 2021; to change provisions relating to
- 4 purchasing agents; to harmonize provisions; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement, 2021, is
2 amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
4 77-27,236, 77-27,238, and 77-27,239 and section 4 of this act shall be
5 known and may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Supplement, 2021, is
7 amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and
9 77-27,239 and section 4 of this act, unless the context otherwise
10 requires, the definitions found in sections 77-2701.05 to 77-2701.55
11 shall be used.

12 Sec. 3. Section 77-2701.41, Revised Statutes Supplement, 2021, is
13 amended to read:

14 77-2701.41 Taxpayer means any person subject to a tax imposed by
15 sections 77-2701 to 77-2713 and section 4 of this act.

16 Sec. 4. The appointment of purchasing agents shall be recognized
17 for the purpose of permitting a construction contractor to purchase
18 materials tax free based on the buyer-based exemption of the contractor's
19 client for items that are physically annexed to the structure and which
20 subsequently belong to the client who is eligible for the buyer-based
21 exemption. The appointment of purchasing agents shall be in writing and
22 occur prior to having any buyer-based tax-exempt items annexed to real
23 estate in the construction, improvement, or repair. The contractor who
24 has been appointed as a purchasing agent may purchase the materials tax
25 free or may apply for a refund of or use as a credit against a future use
26 tax liability the tax paid on inventory items annexed to real estate in
27 the construction, improvement, or repair of a project that belongs to the
28 client who is eligible for the buyer-based exemption.

29 Sec. 5. Section 77-2711, Revised Statutes Supplement, 2021, is
30 amended to read:

31 77-2711 (1)(a) The Tax Commissioner shall enforce sections

1 77-2701.04 to 77-2713 and section 4 of this act and may prescribe, adopt,
2 and enforce rules and regulations relating to the administration and
3 enforcement of such sections.

4 (b) The Tax Commissioner may prescribe the extent to which any
5 ruling or regulation shall be applied without retroactive effect.

6 (2) The Tax Commissioner may employ accountants, auditors,
7 investigators, assistants, and clerks necessary for the efficient
8 administration of the Nebraska Revenue Act of 1967 and may delegate
9 authority to his or her representatives to conduct hearings, prescribe
10 regulations, or perform any other duties imposed by such act.

11 (3)(a) Every seller, every retailer, and every person storing,
12 using, or otherwise consuming in this state property purchased from a
13 retailer shall keep such records, receipts, invoices, and other pertinent
14 papers in such form as the Tax Commissioner may reasonably require.

15 (b) Every such seller, retailer, or person shall keep such records
16 for not less than three years from the making of such records unless the
17 Tax Commissioner in writing sooner authorized their destruction.

18 (4) The Tax Commissioner or any person authorized in writing by him
19 or her may examine the books, papers, records, and equipment of any
20 person selling property and any person liable for the use tax and may
21 investigate the character of the business of the person in order to
22 verify the accuracy of any return made or, if no return is made by the
23 person, to ascertain and determine the amount required to be paid. In the
24 examination of any person selling property or of any person liable for
25 the use tax, an inquiry shall be made as to the accuracy of the reporting
26 of city and county sales and use taxes for which the person is liable
27 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
28 and 77-6403 and the accuracy of the allocation made between the various
29 counties, cities, villages, and municipal counties of the tax due. The
30 Tax Commissioner may make or cause to be made copies of resale or
31 exemption certificates and may pay a reasonable amount to the person

1 having custody of the records for providing such copies.

2 (5) The taxpayer shall have the right to keep or store his or her
3 records at a point outside this state and shall make his or her records
4 available to the Tax Commissioner at all times.

5 (6) In administration of the use tax, the Tax Commissioner may
6 require the filing of reports by any person or class of persons having in
7 his, her, or their possession or custody information relating to sales of
8 property, the storage, use, or other consumption of which is subject to
9 the tax. The report shall be filed when the Tax Commissioner requires and
10 shall set forth the names and addresses of purchasers of the property,
11 the sales price of the property, the date of sale, and such other
12 information as the Tax Commissioner may require.

13 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
14 any official or employee of the Tax Commissioner, the State Treasurer, or
15 the Department of Administrative Services to make known in any manner
16 whatever the business affairs, operations, or information obtained by an
17 investigation of records and activities of any retailer or any other
18 person visited or examined in the discharge of official duty or the
19 amount or source of income, profits, losses, expenditures, or any
20 particular thereof, set forth or disclosed in any return, or to permit
21 any return or copy thereof, or any book containing any abstract or
22 particulars thereof to be seen or examined by any person not connected
23 with the Tax Commissioner. Nothing in this section shall be construed to
24 prohibit (a) the delivery to a taxpayer, his or her duly authorized
25 representative, or his or her successors, receivers, trustees, executors,
26 administrators, assignees, or guarantors, if directly interested, of a
27 certified copy of any return or report in connection with his or her tax,
28 (b) the publication of statistics so classified as to prevent the
29 identification of particular reports or returns and the items thereof,
30 (c) the inspection by the Attorney General, other legal representative of
31 the state, or county attorney of the reports or returns of any taxpayer

1 when either (i) information on the reports or returns is considered by
2 the Attorney General to be relevant to any action or proceeding
3 instituted by the taxpayer or against whom an action or proceeding is
4 being considered or has been commenced by any state agency or the county
5 or (ii) the taxpayer has instituted an action to review the tax based
6 thereon or an action or proceeding against the taxpayer for collection of
7 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
8 considered or has been commenced, (d) the furnishing of any information
9 to the United States Government or to states allowing similar privileges
10 to the Tax Commissioner, (e) the disclosure of information and records to
11 a collection agency contracting with the Tax Commissioner pursuant to
12 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
13 transaction of information and records concerning the transaction between
14 the taxpayer and the other party, (g) the disclosure of information
15 pursuant to section 77-27,195, 77-5731, 77-6837, 77-6839, or 77-6928, or
16 (h) the disclosure of information to the Department of Labor necessary
17 for the administration of the Employment Security Law, the Contractor
18 Registration Act, or the Employee Classification Act.

19 (8) Notwithstanding the provisions of subsection (7) of this
20 section, the Tax Commissioner may permit the Postal Inspector of the
21 United States Postal Service or his or her delegates to inspect the
22 reports or returns of any person filed pursuant to the Nebraska Revenue
23 Act of 1967 when information on the reports or returns is relevant to any
24 action or proceeding instituted or being considered by the United States
25 Postal Service against such person for the fraudulent use of the mails to
26 carry and deliver false and fraudulent tax returns to the Tax
27 Commissioner with the intent to defraud the State of Nebraska or to evade
28 the payment of Nebraska state taxes.

29 (9) Notwithstanding the provisions of subsection (7) of this
30 section, the Tax Commissioner may permit other tax officials of this
31 state to inspect the tax returns, reports, and applications filed under

1 sections 77-2701.04 to 77-2713 and section 4 of this act, but such
2 inspection shall be permitted only for purposes of enforcing a tax law
3 and only to the extent and under the conditions prescribed by the rules
4 and regulations of the Tax Commissioner.

5 (10) Notwithstanding the provisions of subsection (7) of this
6 section, the Tax Commissioner may, upon request, provide the county board
7 of any county which has exercised the authority granted by section
8 81-3716 with a list of the names and addresses of the hotels located
9 within the county for which lodging sales tax returns have been filed or
10 for which lodging sales taxes have been remitted for the county's County
11 Visitors Promotion Fund under the Nebraska Visitors Development Act.

12 The information provided by the Tax Commissioner shall indicate only
13 the names and addresses of the hotels located within the requesting
14 county for which lodging sales tax returns have been filed for a
15 specified period and the fact that lodging sales taxes remitted by or on
16 behalf of the hotel have constituted a portion of the total sum remitted
17 by the state to the county for a specified period under the provisions of
18 the Nebraska Visitors Development Act. No additional information shall be
19 revealed.

20 (11)(a) Notwithstanding the provisions of subsection (7) of this
21 section, the Tax Commissioner shall, upon written request by the Auditor
22 of Public Accounts or the office of Legislative Audit, make tax returns
23 and tax return information open to inspection by or disclosure to the
24 Auditor of Public Accounts or employees of the office of Legislative
25 Audit for the purpose of and to the extent necessary in making an audit
26 of the Department of Revenue pursuant to section 50-1205 or 84-304.
27 Confidential tax returns and tax return information shall be audited only
28 upon the premises of the Department of Revenue. All audit workpapers
29 pertaining to the audit of the Department of Revenue shall be stored in a
30 secure place in the Department of Revenue.

31 (b) No employee of the Auditor of Public Accounts or the office of

1 Legislative Audit shall disclose to any person, other than another
2 Auditor of Public Accounts or office employee whose official duties
3 require such disclosure, any return or return information described in
4 the Nebraska Revenue Act of 1967 in a form which can be associated with
5 or otherwise identify, directly or indirectly, a particular taxpayer.

6 (c) Any person who violates the provisions of this subsection shall
7 be guilty of a Class I misdemeanor. For purposes of this subsection,
8 employee includes a former Auditor of Public Accounts or office of
9 Legislative Audit employee.

10 (12) For purposes of this subsection and subsections (11) and (14)
11 of this section:

12 (a) Disclosure means the making known to any person in any manner a
13 tax return or return information;

14 (b) Return information means:

15 (i) A taxpayer's identification number and (A) the nature, source,
16 or amount of his or her income, payments, receipts, deductions,
17 exemptions, credits, assets, liabilities, net worth, tax liability, tax
18 withheld, deficiencies, overassessments, or tax payments, whether the
19 taxpayer's return was, is being, or will be examined or subject to other
20 investigation or processing or (B) any other data received by, recorded
21 by, prepared by, furnished to, or collected by the Tax Commissioner with
22 respect to a return or the determination of the existence or possible
23 existence of liability or the amount of liability of any person for any
24 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
25 and

26 (ii) Any part of any written determination or any background file
27 document relating to such written determination; and

28 (c) Tax return or return means any tax or information return or
29 claim for refund required by, provided for, or permitted under sections
30 77-2701 to 77-2713 and section 4 of this act which is filed with the Tax
31 Commissioner by, on behalf of, or with respect to any person and any

1 amendment or supplement thereto, including supporting schedules,
2 attachments, or lists which are supplemental to or part of the filed
3 return.

4 (13) Notwithstanding the provisions of subsection (7) of this
5 section, the Tax Commissioner shall, upon request, provide any
6 municipality which has adopted the local option sales tax under the Local
7 Option Revenue Act with a list of the names and addresses of the
8 retailers which have collected the local option sales tax for the
9 municipality. The request may be made annually and shall be submitted to
10 the Tax Commissioner on or before June 30 of each year. The information
11 provided by the Tax Commissioner shall indicate only the names and
12 addresses of the retailers. The Tax Commissioner may provide additional
13 information to a municipality so long as the information does not include
14 any data detailing the specific revenue, expenses, or operations of any
15 particular business.

16 (14)(a) Notwithstanding the provisions of subsection (7) of this
17 section, the Tax Commissioner shall, upon written request, provide an
18 individual certified under subdivision (b) of this subsection
19 representing a municipality which has adopted the local option sales and
20 use tax under the Local Option Revenue Act with confidential sales and
21 use tax returns and sales and use tax return information regarding
22 taxpayers that possess a sales tax permit and the amounts remitted by
23 such permitholders at locations within the boundaries of the requesting
24 municipality or with confidential business use tax returns and business
25 use tax return information regarding taxpayers that file a Nebraska and
26 Local Business Use Tax Return and the amounts remitted by such taxpayers
27 at locations within the boundaries of the requesting municipality. Any
28 written request pursuant to this subsection shall provide the Department
29 of Revenue with no less than ten business days to prepare the sales and
30 use tax returns and sales and use tax return information requested. The
31 individual certified under subdivision (b) of this subsection shall

1 review such returns and return information only upon the premises of the
2 department, except that such limitation shall not apply if the certifying
3 municipality has an agreement in effect under the Nebraska Advantage
4 Transformational Tourism and Redevelopment Act. In such case, the
5 individual certified under subdivision (b) of this subsection may request
6 that copies of such returns and return information be sent to him or her
7 by electronic transmission, secured in a manner as determined by the Tax
8 Commissioner.

9 (b) Each municipality that seeks to request information under
10 subdivision (a) of this subsection shall certify to the Department of
11 Revenue one individual who is authorized by such municipality to make
12 such request and review the documents described in subdivision (a) of
13 this subsection. The individual may be a municipal employee or an
14 individual who contracts with the requesting municipality to provide
15 financial, accounting, or other administrative services.

16 (c) No individual certified by a municipality pursuant to
17 subdivision (b) of this subsection shall disclose to any person any
18 information obtained pursuant to a review under this subsection. An
19 individual certified by a municipality pursuant to subdivision (b) of
20 this subsection shall remain subject to this subsection after he or she
21 (i) is no longer certified or (ii) is no longer in the employment of or
22 under contract with the certifying municipality.

23 (d) Any person who violates the provisions of this subsection shall
24 be guilty of a Class I misdemeanor.

25 (e) The Department of Revenue shall not be held liable by any person
26 for an impermissible disclosure by a municipality or any agent or
27 employee thereof of any information obtained pursuant to a review under
28 this subsection.

29 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
30 Tax Commissioner may act for and on behalf of the people of the State of
31 Nebraska. The Tax Commissioner in his or her discretion may waive all or

1 part of any penalties provided by the provisions of such act or interest
2 on delinquent taxes specified in section 45-104.02, as such rate may from
3 time to time be adjusted.

4 (16)(a) The purpose of this subsection is to set forth the state's
5 policy for the protection of the confidentiality rights of all
6 participants in the system operated pursuant to the streamlined sales and
7 use tax agreement and of the privacy interests of consumers who deal with
8 model 1 sellers.

9 (b) For purposes of this subsection:

10 (i) Anonymous data means information that does not identify a
11 person;

12 (ii) Confidential taxpayer information means all information that is
13 protected under a member state's laws, regulations, and privileges; and

14 (iii) Personally identifiable information means information that
15 identifies a person.

16 (c) The state agrees that a fundamental precept for model 1 sellers
17 is to preserve the privacy of consumers by protecting their anonymity.
18 With very limited exceptions, a certified service provider shall perform
19 its tax calculation, remittance, and reporting functions without
20 retaining the personally identifiable information of consumers.

21 (d) The governing board of the member states in the streamlined
22 sales and use tax agreement may certify a certified service provider only
23 if that certified service provider certifies that:

24 (i) Its system has been designed and tested to ensure that the
25 fundamental precept of anonymity is respected;

26 (ii) Personally identifiable information is only used and retained
27 to the extent necessary for the administration of model 1 with respect to
28 exempt purchasers;

29 (iii) It provides consumers clear and conspicuous notice of its
30 information practices, including what information it collects, how it
31 collects the information, how it uses the information, how long, if at

1 all, it retains the information, and whether it discloses the information
2 to member states. Such notice shall be satisfied by a written privacy
3 policy statement accessible by the public on the website of the certified
4 service provider;

5 (iv) Its collection, use, and retention of personally identifiable
6 information is limited to that required by the member states to ensure
7 the validity of exemptions from taxation that are claimed by reason of a
8 consumer's status or the intended use of the goods or services purchased;
9 and

10 (v) It provides adequate technical, physical, and administrative
11 safeguards so as to protect personally identifiable information from
12 unauthorized access and disclosure.

13 (e) The state shall provide public notification to consumers,
14 including exempt purchasers, of the state's practices relating to the
15 collection, use, and retention of personally identifiable information.

16 (f) When any personally identifiable information that has been
17 collected and retained is no longer required for the purposes set forth
18 in subdivision (16)(d)(iv) of this section, such information shall no
19 longer be retained by the member states.

20 (g) When personally identifiable information regarding an individual
21 is retained by or on behalf of the state, it shall provide reasonable
22 access by such individual to his or her own information in the state's
23 possession and a right to correct any inaccurately recorded information.

24 (h) If anyone other than a member state, or a person authorized by
25 that state's law or the agreement, seeks to discover personally
26 identifiable information, the state from whom the information is sought
27 should make a reasonable and timely effort to notify the individual of
28 such request.

29 (i) This privacy policy is subject to enforcement by the Attorney
30 General.

31 (j) All other laws and regulations regarding the collection, use,

1 and maintenance of confidential taxpayer information remain fully
2 applicable and binding. Without limitation, this subsection does not
3 enlarge or limit the state's authority to:

4 (i) Conduct audits or other reviews as provided under the agreement
5 and state law;

6 (ii) Provide records pursuant to the federal Freedom of Information
7 Act, disclosure laws with governmental agencies, or other regulations;

8 (iii) Prevent, consistent with state law, disclosure of confidential
9 taxpayer information;

10 (iv) Prevent, consistent with federal law, disclosure or misuse of
11 federal return information obtained under a disclosure agreement with the
12 Internal Revenue Service; and

13 (v) Collect, disclose, disseminate, or otherwise use anonymous data
14 for governmental purposes.

15 Sec. 6. Section 77-2713, Revised Statutes Supplement, 2021, is
16 amended to read:

17 77-2713 (1) Any person required under the provisions of sections
18 77-2701.04 to 77-2713 and section 4 of this act to collect, account for,
19 or pay over any tax imposed by the Nebraska Revenue Act of 1967 who
20 willfully fails to collect or truthfully account for or pay over such tax
21 and any person who willfully attempts in any manner to evade any tax
22 imposed by such provisions of such act or the payment thereof shall, in
23 addition to other penalties provided by law, be guilty of a Class IV
24 felony.

25 (2) Any person who willfully aids or assists in, procures, counsels,
26 or advises the preparation or presentation of a false or fraudulent
27 return, affidavit, claim, or document under or in connection with any
28 matter arising under sections 77-2701.04 to 77-2713 and section 4 of this
29 act shall, whether or not such falsity or fraud is with the knowledge or
30 consent of the person authorized or required to present such return,
31 affidavit, claim, or document, be guilty of a Class IV felony.

1 (3) A person who engages in business as a retailer in this state
2 without a permit or permits or after a permit has been suspended and each
3 officer of any corporation which so engages in business shall be guilty
4 of a Class IV misdemeanor. Each day of such operation shall constitute a
5 separate offense.

6 (4) Any person who gives a resale certificate to the seller for
7 property which he or she knows, at the time of purchase, is purchased for
8 the purpose of use rather than for the purpose of resale, lease, or
9 rental by him or her in the regular course of business shall be guilty of
10 a Class IV misdemeanor.

11 (5) Any violation of the provisions of sections 77-2701.04 to
12 77-2713 and section 4 of this act, except as otherwise provided, shall be
13 a Class IV misdemeanor.

14 (6) Any prosecution under sections 77-2701.04 to 77-2713 and section
15 4 of this act shall be instituted within three years after the commission
16 of the offense. If such offense is the failure to do an act required by
17 any of such sections to be done before a certain date, a prosecution for
18 such offense may be commenced not later than three years after such date.
19 The failure to do any act required by sections 77-2701.04 to 77-2713 and
20 section 4 of this act shall be deemed an act committed in part at the
21 principal office of the Tax Commissioner. Any prosecution under the
22 provisions of the Nebraska Revenue Act of 1967 may be conducted in any
23 county where the person or corporation to whose liability the proceeding
24 relates resides or has a place of business or in any county in which such
25 criminal act is committed. The Attorney General shall have concurrent
26 jurisdiction with the county attorney in the prosecution of any offenses
27 under the provisions of the Nebraska Revenue Act of 1967.

28 Sec. 7. Section 77-27,223, Revised Statutes Supplement, 2021, is
29 amended to read:

30 77-27,223 A county may raise revenue by levying and collecting a
31 license or occupation tax on any person, partnership, limited liability

1 company, corporation, or business engaged in the sale of admissions to
2 recreational, cultural, entertainment, or concert events that are subject
3 to sales tax under sections 77-2701.04 to 77-2713 and section 4 of this
4 act that occur outside any incorporated municipality, but within the
5 boundary limits of the county. The tax shall be uniform in respect to the
6 class upon which it is imposed. The tax shall be based upon a certain
7 percentage of gross receipts from sales in the county of the person,
8 partnership, limited liability company, corporation, or business, and may
9 include sales of other goods and services at such locations and events,
10 not to exceed one and one-half percent. A county may not impose the tax
11 on sales that are within an incorporated city or village. No county shall
12 levy and collect a license or occupation tax under this section unless
13 approved by a majority of those voting on the question at a special,
14 primary, or general election.

15 Sec. 8. Original sections 77-2701, 77-2701.04, 77-2701.41, 77-2711,
16 77-2713, and 77-27,223, Revised Statutes Supplement, 2021, are repealed.