

## LEGISLATIVE BILL 170

Approved by the Governor February 18, 1981

Introduced by V. Johnson, 8; Newell, 13

AN ACT relating to revenue and taxation; to amend section 66-633, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2711 and 77-27,119, Revised Statutes Supplement, 1980; to provide for the collection of nonresident delinquent taxes as prescribed; to change provisions relating to confidentiality of records; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer not residing or domiciled in this state, and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to sections 81-8,158 to 81-8,183, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process. For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment, one of which shall have been sent by certified or registered mail. The notice sent by certified or registered mail shall include a statement that the matter of such taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

Sec. 2. (1) Fees for services, reimbursements, or other remuneration to such collection agency shall be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the Tax Commissioner and the collection agency shall provide for the payment of fees for such services, reimbursements, or other remuneration not in excess of fifty per cent of the total amount of delinquent taxes, penalties, and interest actually collected.

(2) All funds collected, less the fees for collection services as provided in the contract, shall be remitted to the Tax Commissioner within forty-five days from the date of collection from a taxpayer. Forms to be

used for such remittances shall be prescribed by the Tax Commissioner.

Sec. 3. Before entering into such a contract, the Tax Commissioner shall require a bond for the collection agency not in excess of one hundred thousand dollars, guaranteeing compliance with the terms of the contract and such bond shall be in addition to any bond required by section 81-8,169.

Sec. 4. A collection agency entering into a contract with the Tax Commissioner for the collection of delinquent taxes pursuant to sections 1 to 4 of this act agrees that it is receiving income from sources within this state or doing business in this state for purposes of the Nebraska income tax and franchise tax laws pursuant to section 77-2733 or 77-2734, respectively.

Sec. 5. That section 66-633, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-633. Returns required by the provisions of sections 66-601 to 66-640 exclusive of schedules, itemized statements, and other supporting evidence annexed thereto, shall at all reasonable times be open to the public. Nothing in this section shall prohibit the use of information on such returns by a collection agency pursuant to sections 1 to 4 of this act.

Sec. 6. That section 77-2711, Revised Statutes Supplement, 1980, be amended to read as follows:

77-2711. (1) (a) The Tax Commissioner shall enforce the provisions of sections 77-2702 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

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

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of sections 77-2701 to 77-27,135, and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by sections 77-2701 to 77-2713.

(3) (a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this

state tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

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

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

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

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

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a

certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General or other legal representative of the state of the reports or returns of any taxpayer when information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency, or (d) the furnishing of any information to the United States government or to states allowing similar privileges to the Tax Commissioner, or (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 1 to 4 of this act.

(8) In all proceedings under the provisions of sections 77-2701 to 77-27,135, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of sections 77-2701 to 77-27,135, but may not waive the minimum interest on delinquent taxes of one half of one per cent per month.

Sec. 7. That section 77-27,119, Revised Statutes Supplement, 1980, be amended to read as follows:

77-27,119. (1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135 and he or she is authorized to conduct hearings and to make such rules and regulations and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of sections 77-2714 to 77-27,135; Provided, that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2) (a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions of sections 77-2714 to 77-27,135; Provided, that such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States; and provided further, that commencing with the taxable year 1971, the form shall have a place where the taxpayer shall designate the

school district in which he or she lives and the county in which the district is located. The Tax Commissioner shall promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue. Such system shall be fully operational by December 31, 1980, and shall be used in all tax years thereafter for the school district identification required by subsection (2) (a) of this section.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions of sections 77-2714 to 77-27,135, for the purpose of determining corporate income, corporate franchise, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may, by summons, require the attendance of the person responsible for rendering such return or other document, or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths to such person or persons. Such examination shall be made in the case of any corporation which (a) is not incorporated or domesticated in Nebraska, (b) has gross annual sales of ten million dollars or more, and (c) is not examined by a state with which Nebraska has an agreement for the exchange of examination or audit information.

(4) The time and place of examination pursuant to the provisions of this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, or any other person, to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing the provisions of sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party, or on behalf of any party to any action or proceeding under the provisions of sections 77-2714 to 77-27,135 when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted, or (d) to prohibit furnishing to the Nebraska Workmen's Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, or (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 1 to 4 of this act. Any person who violates the provisions of this subsection shall be guilty of a felony and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court, together with costs of

prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved for three years and thereafter until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates, or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer, or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any taxpayer but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by the provisions of sections 77-2714 to 77-27,135.

(9) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under the provisions of sections 77-2714 to 77-27,135 but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the regulations of the Tax Commissioner. The Tax Commissioner may furnish to the Multistate Tax Commission any information contained in the tax returns and reports and related schedules and documents filed pursuant to the laws of this state and in the report of an audit or investigation made with respect thereto. Such information may be furnished solely for tax purposes, and the Multistate Tax Commission may make such information available to the tax officials of any other state, the District of Columbia, or the United States and its territories for tax purposes.

(10) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in

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the state. The Tax Commissioner shall promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return, nor conflict with any other provisions of state or federal law.

Sec. 8. That original section 66-633, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2711 and 77-27,119, Revised Statutes Supplement, 1980, are repealed.