

AMENDMENTS TO LB 209

Introduced by Cornett

1           1. Strike original section 2 and insert the following new  
2 sections:

3           Section 1. Section 77-2711, Revised Statutes Cumulative  
4 Supplement, 2010, is amended to read:

5           77-2711 (1)(a) The Tax Commissioner shall enforce  
6 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and  
7 enforce rules and regulations relating to the administration and  
8 enforcement of such sections.

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

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

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

23           (b) Every such seller, retailer, or person shall keep

1 such records for not less than three years from the making of such  
2 records unless the Tax Commissioner in writing sooner authorized  
3 their destruction.

4 (4) The Tax Commissioner or any person authorized in  
5 writing by him or her may examine the books, papers, records, and  
6 equipment of any person selling property and any person liable for  
7 the use tax and may investigate the character of the business of  
8 the person in order to verify the accuracy of any return made or,  
9 if no return is made by the person, to ascertain and determine  
10 the amount required to be paid. In the examination of any person  
11 selling property or of any person liable for the use tax, an  
12 inquiry shall be made as to the accuracy of the reporting of city  
13 sales and use taxes for which the person is liable under the Local  
14 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and  
15 the accuracy of the allocation made between the various counties,  
16 cities, villages, and municipal counties of the tax due. The Tax  
17 Commissioner may make or cause to be made copies of resale or  
18 exemption certificates and may pay a reasonable amount to the  
19 person having custody of the records for providing such copies.

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

23 (6) In administration of the use tax, the Tax  
24 Commissioner may require the filing of reports by any person or  
25 class of persons having in his, her, or their possession or custody  
26 information relating to sales of property, the storage, use, or  
27 other consumption of which is subject to the tax. The report shall

1 be filed when the Tax Commissioner requires and shall set forth the  
2 names and addresses of purchasers of the property, the sales price  
3 of the property, the date of sale, and such other information as  
4 the Tax Commissioner may require.

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

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

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

1 defraud the State of Nebraska or to evade the payment of Nebraska  
2 state taxes.

3 (9) Notwithstanding the provisions of subsection (7) of  
4 this section, the Tax Commissioner may permit other tax officials  
5 of this state to inspect the tax returns, reports, and applications  
6 filed under sections 77-2701.04 to 77-2713, but such inspection  
7 shall be permitted only for purposes of enforcing a tax law and  
8 only to the extent and under the conditions prescribed by the rules  
9 and regulations of the Tax Commissioner.

10 (10) Notwithstanding the provisions of subsection (7)  
11 of this section, the Tax Commissioner may, upon request, provide  
12 the county board of any county which has exercised the authority  
13 granted by section 81-1254 with a list of the names and addresses  
14 of the hotels located within the county for which lodging sales tax  
15 returns have been filed or for which lodging sales taxes have been  
16 remitted for the county's County Visitors Promotion Fund under the  
17 Nebraska Visitors Development Act.

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

26 (11) (a) Notwithstanding the provisions of subsection (7)  
27 of this section, the Tax Commissioner shall, upon written request

1 by the Auditor of Public Accounts or the Legislative Performance  
2 Audit Committee, make tax returns and tax return information open  
3 to inspection by or disclosure to Auditor of Public Accounts or  
4 Legislative Performance Audit Section employees for the purpose of  
5 and to the extent necessary in making an audit of the Department  
6 of Revenue pursuant to section 50-1205 or 84-304. Confidential  
7 tax returns and tax return information shall be audited only upon  
8 the premises of the Department of Revenue. All audit workpapers  
9 pertaining to the audit of the Department of Revenue shall be  
10 stored in a secure place in the Department of Revenue.

11 (b) No employee of the Auditor of Public Accounts or  
12 Legislative Performance Audit Section shall disclose to any person,  
13 other than another Auditor of Public Accounts or Legislative  
14 Performance Audit Section employee whose official duties require  
15 such disclosure or as provided in subsections (2) and (3) of  
16 section 50-1213, any return or return information described in the  
17 Nebraska Revenue Act of 1967 in a form which can be associated  
18 with or otherwise identify, directly or indirectly, a particular  
19 taxpayer.

20 (c) Any person who violates the provisions of this  
21 subsection shall be guilty of a Class I misdemeanor. For purposes  
22 of this subsection, employee includes a former Auditor of Public  
23 Accounts or Legislative Performance Audit Section employee.

24 (12) For purposes of this subsection and ~~subsection~~  
25 subsections (11) and (14) of this section:

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

1 (b) Return information means:

2 (i) A taxpayer's identification number and (A) the  
3 nature, source, or amount of his or her income, payments, receipts,  
4 deductions, exemptions, credits, assets, liabilities, net worth,  
5 tax liability, tax withheld, deficiencies, overassessments, or tax  
6 payments, whether the taxpayer's return was, is being, or will be  
7 examined or subject to other investigation or processing or (B) any  
8 other data received by, recorded by, prepared by, furnished to, or  
9 collected by the Tax Commissioner with respect to a return or the  
10 determination of the existence or possible existence of liability  
11 or the amount of liability of any person for any tax, penalty,  
12 interest, fine, forfeiture, or other imposition or offense; and

13 (ii) Any part of any written determination or any  
14 background file document relating to such written determination;  
15 and

16 (c) Tax return or return means any tax or information  
17 return or claim for refund required by, provided for, or permitted  
18 under sections 77-2701 to 77-2713 which is filed with the Tax  
19 Commissioner by, on behalf of, or with respect to any person  
20 and any amendment or supplement thereto, including supporting  
21 schedules, attachments, or lists which are supplemental to or part  
22 of the filed return.

23 (13) Notwithstanding the provisions of subsection (7) of  
24 this section, the Tax Commissioner shall, upon request, provide any  
25 municipality which has adopted the local option sales tax under the  
26 Local Option Revenue Act with a list of the names and addresses  
27 of the retailers which have collected the local option sales tax

1 for the municipality. The request may be made annually and shall  
2 be submitted to the Tax Commissioner on or before June 30 of  
3 each year. The information provided by the Tax Commissioner shall  
4 indicate only the names and addresses of the retailers. The Tax  
5 Commissioner may provide additional information to a municipality  
6 so long as the information does not include any data detailing  
7 the specific revenue, expenses, or operations of any particular  
8 business.

9 (14) (a) Notwithstanding the provisions of subsection (7)  
10 of this section, the Tax Commissioner shall, upon written request,  
11 provide a municipal employee certified under subdivision (b) of  
12 this subsection representing a municipality which has adopted the  
13 local option sales tax under the Local Option Revenue Act with  
14 confidential sales tax returns and sales tax return information  
15 regarding taxpayers that possess a sales tax permit and the amounts  
16 remitted by such permitholders at locations within the boundaries  
17 of the requesting municipality. Any written request pursuant to  
18 this subsection shall provide the Department of Revenue with no  
19 less than ten business days to prepare the sales tax returns  
20 and sales tax return information requested. Such returns and  
21 return information shall be viewed only upon the premises of the  
22 department.

23 (b) Each municipality that seeks to request information  
24 under subdivision (a) of this subsection shall certify to the  
25 Department of Revenue one municipal employee who is authorized by  
26 such municipality to make such request and review the documents  
27 described in subdivision (a) of this subsection.

1           (c) No municipal employee certified by a municipality  
2 pursuant to subdivision (b) of this subsection shall disclose  
3 to any person any information obtained pursuant to a review by  
4 that municipal employee pursuant to this subsection. A municipal  
5 employee certified by a municipality pursuant to subdivision (b)  
6 of this subsection shall remain subject to this subsection after  
7 he or she (i) is no longer certified or (ii) is no longer in the  
8 employment of the certifying municipality.

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

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

15           ~~(14)~~ (15) In all proceedings under the Nebraska Revenue  
16 Act of 1967, the Tax Commissioner may act for and on behalf of the  
17 people of the State of Nebraska. The Tax Commissioner in his or her  
18 discretion may waive all or part of any penalties provided by the  
19 provisions of such act or interest on delinquent taxes specified in  
20 section 45-104.02, as such rate may from time to time be adjusted.

21           ~~(15)(a)~~ (16)(a) The purpose of this subsection is to set  
22 forth the state's policy for the protection of the confidentiality  
23 rights of all participants in the system operated pursuant to  
24 the streamlined sales and use tax agreement and of the privacy  
25 interests of consumers who deal with model 1 sellers.

26           (b) For purposes of this subsection:

27           (i) Anonymous data means information that does not

1 identify a person;

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

5 (iii) Personally identifiable information means  
6 information that identifies a person.

7 (c) The state agrees that a fundamental precept for model  
8 1 sellers is to preserve the privacy of consumers by protecting  
9 their anonymity. With very limited exceptions, a certified service  
10 provider shall perform its tax calculation, remittance, and  
11 reporting functions without retaining the personally identifiable  
12 information of consumers.

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

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

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

22 (iii) It provides consumers clear and conspicuous  
23 notice of its information practices, including what information  
24 it collects, how it collects the information, how it uses the  
25 information, how long, if at all, it retains the information, and  
26 whether it discloses the information to member states. Such notice  
27 shall be satisfied by a written privacy policy statement accessible

1 by the public on the web site of the certified service provider;

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

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

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

14 (f) When any personally identifiable information that has  
15 been collected and retained is no longer required for the purposes  
16 set forth in subdivision ~~(15)(d)(iv)~~ (16)(d)(iv) of this section,  
17 such information shall no longer be retained by the member states.

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

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

1           (i) This privacy policy is subject to enforcement by the  
2 Attorney General.

3           (j) All other laws and regulations regarding the  
4 collection, use, and maintenance of confidential taxpayer  
5 information remain fully applicable and binding. Without  
6 limitation, this subsection does not enlarge or limit the state's  
7 authority to:

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

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

13           (iii) Prevent, consistent with state law, disclosure of  
14 confidential taxpayer information;

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

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

20           Sec. 3. Original section 77-27,144, Reissue Revised  
21 Statutes of Nebraska, and section 77-2711, Revised Statutes  
22 Cumulative Supplement, 2010, are repealed.

23           2. On page 2, line 25, after "in" insert "subsection  
24 (13) of" and after "77-2711" insert "and may certify a municipal  
25 employee to request and review confidential sales tax returns and  
26 sales tax return information as provided in subsection (14) of  
27 section 77-2711".

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3. Renumber the remaining section accordingly.