

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB727

Hearing Date: Wednesday January 18, 2012
Committee On: Revenue
Introducer: Cornett
One Liner: Change various tax provisions

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Adams, Brasch, Cornett, Fischer, Hadley, Louden, Pirsch, Schumacher

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. Abbie Cornett
Doug Ewald

Representing:

Introducer
Dept. of Revenue

Opponents:

John Dilsaver

Representing:

NE Petroleum Market

Neutral:

Representing:

Summary of purpose and/or changes:

LB 727 was introduced on behalf of the Nebraska Department of Revenue and is the department's annual omnibus tax administration and enforcement bill.

As a cost saving measure, LB 727 eliminates statutory requirements that the Department of Revenue must use "certified mail" (and in some instances "registered mail") for mailing certain notices, including a notice of a proposed deficiency determination. [LB 727, secs. 1 through 15, amending Neb. Rev. Stat. secs. 9-226(4), 9-226.01 (1) and (3), 9-228, 9-322(4), 9-322.02 (1) and (3), 9-324, 9-418(4), 9-418.01 (1) and (3), 9-420, 9-620(4), 9-622 (1) and (3), 9-623, 9-820, 57-706; and LB 727, secs. 23, 27, 28, 30 through 33, 35 through 38, and 40 through 47, amending Neb. Rev. Stat. secs. 66-721, 76-908, 77-377.01, 77-612, 77-802, 77-1375 (2) and (4), 77-1780, 77-2705.03(1), 77-2776 (3) and (4), 77-2779, 77-27,130(3), 77-27,150(4), 77-27,152(1), 77-3311, 77-3906(5), 77-4015, 77-4016(2), 77-4020, and 77-4312(2), respectively.]

Additionally, LB 727 adds "first-class" mail to the list of authorized forms of mail (e.g., certified mail and registered mail) that the department can use whenever it is required to give any notice under the Nebraska Revenue Act of 1967. [LB 727, sec. 39, amending Neb. Rev. Stat. sec. 77-27,135.]

LB 727 eliminates certain motor fuels tax collection commissions if a notice of a deficiency assessment issued under Neb. Rev. Stat. sec. 66-722 has become a final assessment. More specifically:

LB 727 provides that a motor fuels "producer, supplier, distributor, wholesaler, or importer" will not be entitled to the

commissions authorized by Neb. Rev. Stat. Sec. 66-486 (i.e., 5% of the first \$5,000 and 2.5% of all amounts over \$5,000 remitted each reporting period pursuant to Neb. Rev. Stat. Sec. 66-486(1) and 2% of the first \$5,000 and 0.5% of the all amounts over \$5,000 remitted each reporting period pursuant to Neb. Rev. Stat. sec. 66-486(2)) if such a deficiency assessment become a final assessment. [LB 727, sec. 16, amending Neb. Rev. Stat. sec. 66-486 by adding new subsection (6).]

LB 727 makes the same type of change for retailers of compressed fuel. [LB 727, sec. 21, adding new subsection (4) to Neb. Rev. Stat. sec. 66-6,113.]

LB 727 changes the due date for motor fuel producers, suppliers, distributors, wholesalers, importers, and exporters to file their motor fuel tax returns to the 20th day (25th day under current law) of the month following the reporting period to which it relates. [LB 727, sec. 17, amending Neb. Rev. Stat. sec. 66-488.] LB 727 also makes the same date change (20th day rather than the 25th day) for:

Certain transporters (e.g., railroad companies, motor truck transportation companies, and pipeline companies) of any motor vehicle fuel or diesel fuel for delivery within Nebraska or for export from Nebraska to file their information returns, and for motor fuel tax returns of retailers of compressed fuel. [LB 727, secs. 19 and 20, amending Neb. Rev. Stat. secs. 66-525 and 66-6,110.]

The issuance of a notice of a proposed deficiency determination, which must be mailed within 3 years after the 20th day of the month following the end of the period for which the amount proposed is to be determined or within 3 years after the return is filed, whichever period expires later. [LB 727, sec. 24, amending Neb. Rev. Stat. sec. 66-722(6)(a).]

The due date for paying the petroleum release remedial action fee. [LB 727, sec. 26, amending Neb. Rev. Stat. sec. 66-1521(1).]

LB 727 changes the source of data required to be used to update the department's calculation of the wholesale price of gasoline. Specifically, it requires the average wholesale price of gasoline to be determined using data available from the Nebraska State Energy Office. (Under current law, the department is required to use data available from the Energy Information Administration of the U.S. Department of Energy.) [LB 727, sec. 18.]

LB 727 changes the due date for the department to update its biennial tax burden study to December 1, 2013, and every two years thereafter. [LB 727, sec. 29.]

LB 727 clarifies the sales tax exemption for sales of prepared food by parent or student organizations at elementary or secondary schools. Specifically, the bill adds new language stating that "This exemption does not apply to sales by an institution of higher education at any facility or function which is open to the public" and it strikes current statutory language stating that the "exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt. . . ." [LB 727, sec. 34, amending Neb. Rev. Stat. sec. 772704.10(1).]

LB 727 outright repeals Neb. Rev. Stat. sec. 66-737, which currently requires the Department of Revenue to appoint a committee to oversee the operation of the "motor fuel trust fund" created by Neb. Rev. Stat. sec. 66-733. [LB 727, sec. 53.] Neb. Rev. Stat. sec. 66-737 currently provides:

"(1) The department shall appoint a committee to oversee the operation of the trust fund created in section 66-733. The committee shall consist of seven members. Two members shall be diesel fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be motor vehicle fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be compressed fuel retailers, and one member shall be selected at large. Members shall be appointed for terms of four years.

(2) The committee shall have access to information concerning any transfers occurring from the trust fund, the collection efforts of the department to collect from the person owing the tax, and the management of the trust fund.

(3) Members of the committee shall be considered employees of the department solely for the purpose of the disclosure of confidential information and the imposition of penalties for the unauthorized disclosure of such information.

(4) The committee may receive confidential information only for the purpose of determining the effectiveness of the department in collecting the amounts transferred from the cash bond collected pursuant to section 66-734."

Additionally, LB 727 changes internal statutory citations within a number of statute sections to reflect the outright repeal of Neb. Rev. Stat, 66-737 by LB 727, sec. 53. [LB 727, secs. 22 and 25.]

Changes proposed by LB 727 have different operative dates. Sections 17, 19, 20, 22, 24, 25, 26, 50, and 53 will be operative on July 1, 2012. Sections 34 and 51 will be operative October 1, 2012. Sections 29 and 52 will be operative three calendar months after adjournment of the 2012 regular legislative session. The other sections of the bill will be operative on their effective date. [LB 727, sec. 48.]

Sections 49 through 52 of LB 727 repeal the current version of the statutes amended by the bill. [LB 727, secs. 49 through 52.]

Finally, LB 727 has the emergency clause attached. [LB 727, sec. 54.]

Explanation of amendments:

The Revenue Committee amendment (AM 1902) to LB 727 would add the provisions of LB 903 to the bill, with modifications to exempt from sales and use taxes gross receipts from amounts charged to participate in a "youth competitive educational activity". (As introduced, LB 903 would have exempted from sales and use taxes amounts charged to participate in a youth sports event or youth sports league.)

Thus, the committee amendment would exempt from sales and use taxes gross receipts from the sale, use, or other consumption of amounts charged to participate in a youth sports event, youth sports league, or youth competitive educational activity by political subdivisions or qualified Internal Revenue Code (IRC) section 501(c)(3) organizations. (IRC section 501(c)(3) organizations include educational, charitable, and religious organizations.)

The committee amendment also defines a number of key terms and phrases, including the term "admission". For purposes of the definition of "admission", the committee amendment also defines the phrases "access to a place or location", "entertainment", and "recreation."

The committee amendment also provides that "Admission does not include the lease or rental of a location, facility, or part of a location or facility if the lessor cedes the right to determine who is granted access to the location or facility to the lessee for the period of the lease or rental." Thus, changes proposed by the committee amendment would make it clear that rental fees for facilities used or accessed by persons not under the control of the owner are not subject to sales and use taxes.

Additionally, the committee amendment's definition of "admission" continues to reflect a provision in current law that exempts from sales and use taxes membership fees paid to organizations in which such membership includes "the right to hold office, vote, or change the policies of the organization." Therefore, a membership which includes such rights continues to be exempt from sales and use taxes.

Furthermore, for purposes of the committee amendment's sales and use tax exemption, the committee amendment defines the following terms:

"competitive educational activity" (i.e., "a tournament, or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a competitive educational activity");

"sports event" (i.e., "a tournament or a single competition that occurs over a limited period of time annually or

intermittently where the participant's engage in a sport");

"sports league" (i.e., "an organized series of sports competitions taking place over several weeks or months between teams or individuals that are members of the league"); and

"youth sports event, youth sports league, or youth competitive educational activity" (i.e., "an event, league, or activity that is restricted to participants who are less than nineteen years of age").

The provisions of the committee amendment would be operative July 1, 2012.

Abbie Cornett, Chairperson