

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 209

Final Reading

(Second)

Introduced by Cornett, 45; Hadley, 37; Heidemann, 1; Schilz, 47;
Utter, 33; Wightman, 36; Larson, 40; Janssen, 15.

Read first time January 10, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-27,144, Reissue Revised Statutes of Nebraska, and
3 section 77-2711, Revised Statutes Cumulative Supplement,
4 2010; to provide for review of tax returns by certified
5 municipal employees; to provide for delayed deductions of
6 refunds from municipal sales and use tax receipts; to
7 harmonize provisions; and to repeal the original
8 sections.

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

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

3 77-2711 (1)(a) The Tax Commissioner shall enforce
4 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce
5 rules and regulations relating to the administration and enforcement
6 of such sections.

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

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

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

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

25 (4) The Tax Commissioner or any person authorized in

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

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

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

1 property, the date of sale, and such other information as the Tax
2 Commissioner may require.

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

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

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

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

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

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

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

25 (11)(a) Notwithstanding the provisions of subsection (7)

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

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

20 (c) Any person who violates the provisions of this
21 subsection shall be guilty of a Class I misdemeanor. For purposes of
22 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:

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

3 (b) Return information means:

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

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

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

24 (13) Notwithstanding the provisions of subsection (7) of
25 this section, the Tax Commissioner shall, upon request, provide any

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

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

24 (b) Each municipality that seeks to request information
25 under subdivision (a) of this subsection shall certify to the

1 Department of Revenue one municipal employee who is authorized by
2 such municipality to make such request and review the documents
3 described in subdivision (a) of this subsection.

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

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

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

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

24 ~~(15)(a)~~(16)(a) The purpose of this subsection is to set
25 forth the state's policy for the protection of the confidentiality

1 rights of all participants in the system operated pursuant to the
2 streamlined sales and use tax agreement and of the privacy interests
3 of consumers who deal with model 1 sellers.

4 (b) For purposes of this subsection:

5 (i) Anonymous data means information that does not
6 identify a person;

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

10 (iii) Personally identifiable information means
11 information that identifies a person.

12 (c) The state agrees that a fundamental precept for model
13 1 sellers is to preserve the privacy of consumers by protecting their
14 anonymity. With very limited exceptions, a certified service provider
15 shall perform its tax calculation, remittance, and reporting
16 functions without retaining the personally identifiable information
17 of consumers.

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

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

24 (ii) Personally identifiable information is only used and
25 retained to the extent necessary for the administration of model 1

1 with respect to exempt purchasers;

2 (iii) It provides consumers clear and conspicuous notice
3 of its information practices, including what information it collects,
4 how it collects the information, how it uses the information, how
5 long, if at all, it retains the information, and whether it discloses
6 the information to member states. Such notice shall be satisfied by a
7 written privacy policy statement accessible by the public on the web
8 site of the certified service provider;

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

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

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

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

25 (g) When personally identifiable information regarding an

1 individual is retained by or on behalf of the state, it shall provide
2 reasonable access by such individual to his or her own information in
3 the state's possession and a right to correct any inaccurately
4 recorded information.

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

10 (i) This privacy policy is subject to enforcement by the
11 Attorney General.

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

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

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

21 (iii) Prevent, consistent with state law, disclosure of
22 confidential taxpayer information;

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

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

3 Sec. 2. Section 77-27,144, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-27,144 (1) The Tax Commissioner shall collect the tax
6 imposed by any incorporated municipality concurrently with collection
7 of a state tax in the same manner as the state tax is collected. The
8 Tax Commissioner shall remit monthly the proceeds of the tax to the
9 incorporated municipalities levying the tax, after deducting the
10 amount of refunds made and three percent of the remainder to be
11 credited to the Municipal Equalization Fund.

12 (2) Deductions for a refund made pursuant to section
13 77-4105 or 77-5725 shall be delayed for one year after the refund has
14 been made to the taxpayer. The Department of Revenue shall notify the
15 municipality liable for the refund of the pending refund, the amount
16 of the refund, and the month in which the deduction will be made or
17 begin, except that if the amount of a refund claimed under section
18 77-4105 or 77-5725 exceeds twenty-five percent of the municipality's
19 total sales and use tax receipts, net of any refunds or sales tax
20 collection fees, for the municipality's prior fiscal year, the
21 department shall deduct the refund over the period of one year in
22 equal monthly amounts beginning after the one-year notification
23 period required by this subsection. This subsection applies to
24 refunds owed by cities of the first class, cities of the second
25 class, and villages. This subsection applies beginning January 1,

1 2014.

2 (3) The Tax Commissioner shall keep full and accurate
3 records of all money received and distributed under the provisions of
4 the Local Option Revenue Act. When proceeds of a tax levy are
5 received but the identity of the incorporated municipality which
6 levied the tax is unknown and is not identified within six months
7 after receipt, the amount shall be credited to the Municipal
8 Equalization Fund. The municipality may request the names and
9 addresses of the retailers which have collected the tax as provided
10 in subsection (13) of section 77-2711 and may certify a municipal
11 employee to request and review confidential sales tax returns and
12 sales tax return information as provided in subsection (14) of
13 section 77-2711.

14 Sec. 3. Original section 77-27,144, Reissue Revised
15 Statutes of Nebraska, and section 77-2711, Revised Statutes
16 Cumulative Supplement, 2010, are repealed.