

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 33
 Final Reading

Introduced by Hadley, 37.

Read first time January 10, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 77-3904, 77-3905, and 77-4022, Reissue Revised Statutes
 3 of Nebraska, and section 77-3906, Revised Statutes
 4 Cumulative Supplement, 2012; to provide for agreements
 5 relating to collections; to require a report as
 6 prescribed; to change provisions relating to liens and
 7 levies under the Uniform State Tax Lien Registration and
 8 Enforcement Act; to provide for a penalty for delinquent
 9 taxes; to harmonize provisions; and to repeal the
 10 original sections.

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

1 Section 1. The Tax Commissioner may enter into an
2 agreement with one or more financial institutions in this state to
3 levy upon personal property belonging to a taxpayer in accordance
4 with the Uniform State Tax Lien Registration and Enforcement Act and
5 in any medium and format to which the Tax Commissioner and the
6 financial institution have agreed. The Tax Commissioner shall issue a
7 report to the Revenue Committee of the Legislature, the Clerk of the
8 Legislature, and the Governor by November 1, 2015, containing the Tax
9 Commissioner's preliminary findings regarding implementation of this
10 section and recommendations for any needed changes. The report
11 submitted to the committee and to the Clerk of the Legislature shall
12 be submitted electronically.

13 Sec. 2. Section 77-3904, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-3904 (1) If any person liable to pay any tax or fee
16 under any tax program administered by the Tax Commissioner or
17 Commissioner of Labor neglects or refuses to pay such tax or fee
18 after demand, the amount of such tax or fee, including any interest,
19 penalty, and additions to such tax and such additional costs that may
20 accrue, shall be a lien in favor of the State of Nebraska upon all
21 property and rights to property, whether real or personal, then owned
22 by such person or acquired by him or her thereafter and prior to the
23 expiration of the lien. Unless another date is specifically provided
24 by law, such lien shall arise at the time of the assessment and shall
25 remain in effect (a) for three years from the time of the assessment

1 or one year after the expiration of an agreement between the Tax
2 Commissioner and a taxpayer for payment of tax which is due,
3 whichever is later, if the notice of lien is not filed for record in
4 the office of the appropriate filing officer, (b) for ten years from
5 the time of filing for record in the office of the appropriate filing
6 officer, or (c) until such amounts have been paid or a judgment
7 against such person arising out of such liability has been satisfied
8 or has become unenforceable by reason of lapse of time, unless a
9 continuation statement is filed prior to the lapse.

10 (2)(a) The Tax Commissioner or Commissioner of Labor may
11 present for filing or file for record in the office of the
12 appropriate filing officer a notice of lien specifying the year the
13 tax was due, the tax program, and the amount of the tax and any
14 interest, penalty, or addition to such tax that are due. Such notice
15 shall be filed for record in the office of the appropriate filing
16 officer within three years after the time of assessment or within one
17 year after the expiration of an agreement between the Tax
18 Commissioner and a taxpayer for payment of tax which is due,
19 whichever is later. Such notice shall contain the name and last-known
20 address of the taxpayer, the last four digits of the taxpayer's
21 social security number or federal identification number, the Tax
22 Commissioner's or Commissioner of Labor's serial number, and a
23 statement to the effect that the Tax Commissioner or Commissioner of
24 Labor has complied with all provisions of the law for the particular
25 tax program which he or she administers in the determination of the

1 amount of the tax and any interest, penalty, and addition to such tax
2 required to be paid.

3 (b) If the assets of the taxpayer are in the control or
4 custody of the court in any proceeding before any court of the United
5 States or of any state or the District of Columbia, before the end of
6 the ~~three-year time~~ period in subdivision (2)(a) of this section, the
7 notice shall be filed for record within the ~~three-year time~~ period or
8 within six months after the assets are released by the court,
9 whichever is later.

10 (3)(a)(i) A lien imposed upon real property pursuant to
11 the Uniform State Tax Lien Registration and Enforcement Act shall be
12 valid against any subsequent creditor when notice of such lien and
13 the amount due has been presented for filing by the Tax Commissioner
14 or Commissioner of Labor in the office of the Secretary of State and
15 filed in the office of the register of deeds.

16 (ii) A lien imposed upon personal property pursuant to
17 the Uniform State Tax Lien Registration and Enforcement Act shall be
18 valid against any subsequent creditor when notice of such lien and
19 the amount due has been filed by the Tax Commissioner or Commissioner
20 of Labor in the office of the Secretary of State.

21 (b) In the case of any prior mortgage on real property or
22 secured transaction covering personal property so written as to
23 secure a present debt and future advances, the lien provided in the
24 act, when notice thereof has been filed in the office of the
25 appropriate filing officer, shall be subject to such prior lien

1 unless the Tax Commissioner or Commissioner of Labor has notified the
2 lienholder in writing of the recording of such tax lien, in which
3 case the lien of any indebtedness thereafter created under such
4 mortgage or secured transaction shall be junior to the lien provided
5 for in the act.

6 (4) The lien may, within ten years from the date of
7 filing for record of the notice of lien in the office of the
8 appropriate filing officer, be extended by filing for record a
9 continuation statement. Upon timely filing of the continuation
10 statement, the effectiveness of the original notice shall be
11 continued for ten years after the last date to which the filing was
12 effective. After such period the notice shall lapse in the manner
13 prescribed in subsection (1) of this section unless another
14 continuation statement is filed prior to such lapse.

15 (5) When a termination statement of any tax lien issued
16 by the Tax Commissioner or Commissioner of Labor is filed in the
17 office where the notice of lien is filed, the appropriate filing
18 officer shall enter such statement with the date of filing in the
19 state tax lien index where notice of the lien so terminated is
20 entered and shall file the termination statement with the notice of
21 the lien.

22 (6) The Tax Commissioner or Commissioner of Labor may at
23 any time, upon request of any party involved, release from a lien all
24 or any portion of the property subject to any lien provided for in
25 the Uniform State Tax Lien Registration and Enforcement Act or

1 subordinate a lien to other liens and encumbrances if he or she
2 determines that (a) the tax amount and any interest, penalties, and
3 additions to such tax have been paid or secured sufficiently by a
4 lien on other property, (b) the lien has become legally
5 unenforceable, (c) a surety bond or other satisfactory security has
6 been posted, deposited, or pledged with the Tax Commissioner or
7 Commissioner of Labor in an amount sufficient to secure the payment
8 of such taxes and any interest, penalties, and additions to such
9 taxes, or (d) the release, partial release, or subordination of the
10 lien will not jeopardize the collection of such taxes and any
11 interest, penalties, and additions to such tax.

12 (7) A certificate by the Tax Commissioner or Commissioner
13 of Labor stating that any property has been released from the lien or
14 the lien has been subordinated to other liens and encumbrances shall
15 be conclusive evidence that the property has in fact been released or
16 the lien has been subordinated pursuant to the certificate.

17 Sec. 3. Section 77-3905, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-3905 (1) ~~At~~ Except as provided in section 77-3904, at
20 any time within three years after any amount of tax to be collected
21 under any tax program administered by the Tax Commissioner or
22 Commissioner of Labor is assessed or within ten years after the last
23 filing for record as set forth in the Uniform State Tax Lien
24 Registration and Enforcement Act, the Tax Commissioner or
25 Commissioner of Labor may bring an action in the courts of this

1 state, any other state, or the United States in the name of the
2 people of the State of Nebraska to collect the delinquent amount
3 together with penalties, any additions to such tax, costs, and
4 interest.

5 (2)(a) The Attorney General shall prosecute the action on
6 behalf of the Tax Commissioner, (b) the Commissioner of Labor shall
7 be represented in an action under the act as provided in section
8 48-667, and (c) the rules of civil procedure relating to service of
9 summons, pleadings, proofs, trials, and appeals shall be applicable
10 to the proceedings.

11 (3) In the action, a writ of attachment may issue, and no
12 bond or affidavit previous to the issuing of the attachment shall be
13 required.

14 (4) In the action, a certificate by the Tax Commissioner
15 or Commissioner of Labor showing the delinquency shall be prima facie
16 evidence of the determination of such tax or the amount of such tax,
17 the delinquency of the amounts set forth, and the compliance by the
18 Tax Commissioner or Commissioner of Labor with all provisions of the
19 applicable tax program which he or she administers in relation to the
20 computation and determination of the amounts set forth.

21 (5) The tax amounts required to be paid by any person
22 under any tax program administered by the Tax Commissioner or
23 Commissioner of Labor together with any interest, penalties, and
24 additions to such tax shall be satisfied first in any of the
25 following cases: When the person is insolvent; when the person makes

1 a voluntary assignment of his or her assets; when the estate of the
2 person in the hands of executors, personal representatives,
3 administrators, or heirs is insufficient to pay all the debts due
4 from the deceased; or when the estate and effects of an absconding,
5 concealed, or absent person required to pay any amount under any tax
6 program administered by the Tax Commissioner or Commissioner of Labor
7 are levied upon by process of law.

8 (6) Any tax which by law must be deducted and withheld by
9 an employer or payor or is collected by a retailer or any other
10 designated person as agent for the State of Nebraska on any
11 transaction governed by a tax program administered by the Tax
12 Commissioner or Commissioner of Labor shall constitute a trust fund
13 in the hands of the employer, payor, or retailer or such other
14 designated person and shall be owned by the state as of the time the
15 tax is deducted and withheld or is owing to the employer, payor, or
16 retailer or such other designated person.

17 Sec. 4. Section 77-3906, Revised Statutes Cumulative
18 Supplement, 2012, is amended to read:

19 77-3906 (1) In addition to all other remedies or actions
20 provided by law under any tax program administered by the Tax
21 Commissioner or Commissioner of Labor, it shall be lawful for the Tax
22 Commissioner or Commissioner of Labor, after making demand for
23 payment, to collect any delinquent taxes, together with any interest,
24 penalties, and additions to such tax by distraint and sale of the
25 real and personal property of the taxpayer. If the Tax Commissioner

1 finds that the collection of any tax is in jeopardy pursuant to
2 section 77-2710, 77-27,111, or 77-4311, notice and demand for
3 immediate payment of such tax may be made by the Tax Commissioner
4 and, upon failure or refusal to pay such tax, collection by levy
5 shall be lawful.

6 (2)(a) In case of failure to pay taxes or deficiencies,
7 the Tax Commissioner, or his or her authorized employee, may levy or,
8 by warrant issued under his or her own hand, authorize a sheriff or
9 duly authorized employee of the Tax Commissioner to levy upon, seize,
10 and sell such real and personal property belonging to the taxpayer,
11 except exempt property, as is necessary to satisfy the liability for
12 the payment of the amount due. The Tax Commissioner may also issue a
13 levy to a financial institution pursuant to section 1 of this act.

14 (b) In case of failure to pay taxes or deficiencies, the
15 Commissioner of Labor, or his or her authorized employee, may levy
16 or, by warrant issued under his or her own hand, authorize a sheriff
17 or duly authorized employee of the Department of Labor to levy upon,
18 seize, and sell such real and personal property belonging to the
19 taxpayer, except exempt property, as is necessary to satisfy the
20 liability for the payment of the amount due.

21 (c) As used in this section, exempt property shall mean
22 such property as is exempt from execution under the laws of this
23 state.

24 (3) When a warrant is issued or a levy is made by the Tax
25 Commissioner or Commissioner of Labor, or his or her duly authorized

1 employee, for the collection of any tax and any interest, penalty, or
2 addition to such tax imposed by law under any tax program
3 administered by the Tax Commissioner or Commissioner of Labor or for
4 the enforcement of any tax lien authorized by the Uniform State Tax
5 Lien Registration and Enforcement Act, such warrant or levy shall
6 have the same force and effect of a levy and sale pursuant to a writ
7 of execution. Such warrant or levy may be issued and sale made
8 pursuant to it in the same manner and with the same force and effect
9 of a levy and sale pursuant to a writ of execution. The Tax
10 Commissioner or Commissioner of Labor shall pay the financial
11 institution in accordance with section 1 of this act or the levying
12 sheriff the same fees, commissions, and expenses pursuant to such
13 warrant as are provided by law for similar services pursuant to a
14 writ of execution, except that fees for publications in a newspaper
15 shall be subject to approval by the Tax Commissioner or Commissioner
16 of Labor. Such fees, commissions, and expenses shall be an obligation
17 of the taxpayer and may be collected from the taxpayer by virtue of
18 the warrant. Any such warrant shall show the name and last-known
19 address of the taxpayer, the identity of the tax program, the year
20 for which such tax and any interest, penalty, or addition to such tax
21 is due and the amount thereof, the fact that the Tax Commissioner or
22 Commissioner of Labor has complied with all provisions of the law for
23 the applicable tax program which he or she administers in the
24 determination of the amount required to be paid, and that the tax and
25 any interest, penalty, or addition to such tax is due and payable

1 according to law.

2 (4)(a) Any person upon whom a levy is served who fails or
3 refuses to honor the levy without cause may be held liable for the
4 amount of the levy up to the value of the assets of the taxpayer
5 under his or her control at the time the levy was served or
6 thereafter. Such person may be subject to collection provisions as
7 set forth in the act.

8 (b) The effect of a levy on salary, wages, or other
9 regular payments due to or received by a taxpayer shall be continuous
10 from the date the levy is served until the amount of the levy, with
11 accrued interest, is satisfied.

12 (5) Notice of the sale and the time and place of the sale
13 shall be given, to the delinquent taxpayer and to any other person
14 with an interest in the property who has filed for record with the
15 appropriate filing officer on such property, in writing at least
16 twenty days prior to the date of such sale in the following manner:
17 The notice shall be mailed to the taxpayer and to any other person
18 with such interest at his or her last-known residence or place of
19 business in this state. The notice shall also be given by publication
20 at least once each week for four weeks prior to the date of the sale
21 in the newspaper of general circulation published in the county in
22 which the property seized is to be sold. If there is no newspaper of
23 general circulation in the county, notice shall be posted in three
24 public places in the county twenty days prior to the date of the
25 sale. The notice shall contain a description of the property to be

1 sold, a statement of the type of tax due and of the amount due,
2 including interest, penalties, additions to tax, and costs, the name
3 of the delinquent taxpayer, and the further statement that unless the
4 amount due, including interest, penalties, additions to tax, and
5 costs, is paid on or before the time fixed in the notice for the sale
6 or such security as may be determined by the Tax Commissioner or
7 Commissioner of Labor is placed with the Tax Commissioner or
8 Commissioner of Labor, or his or her duly authorized representative,
9 on or before such time, the property, or so much of it as may be
10 necessary, will be sold in accordance with law and the notice.

11 (6) At the sale the Tax Commissioner or Commissioner of
12 Labor, or his or her duly authorized representative, shall sell the
13 property in accordance with law and the notice and shall deliver to
14 the purchaser a bill of sale for the property. The bill of sale shall
15 vest the interest or title of the person liable for the amount in the
16 purchaser. The unsold portion of any property seized shall remain in
17 the custody and control of the Tax Commissioner or Commissioner of
18 Labor, or his or her duly authorized representative, until offered
19 for sale again in accordance with this section or redeemed by the
20 taxpayer.

21 (7) Whenever any property which is seized and sold under
22 this section is not sufficient to satisfy the claim of the state for
23 which distraint or seizure is made, the sheriff or duly authorized
24 employee of the Tax Commissioner or Department of Labor may
25 thereafter, and as often as the same may be necessary, proceed to

1 seize and sell in like manner any other property liable to seizure of
2 the taxpayer against whom such claim exists until the amount due from
3 such taxpayer, together with all expenses, is fully paid.

4 (8) If after the sale the money received exceeds the
5 total of all amounts due the state, including any interest,
6 penalties, additions to tax, and costs, and if there is no other
7 interest in or lien upon such money received, the Tax Commissioner or
8 Commissioner of Labor shall return the excess to the person liable
9 for the amounts and obtain a receipt. If any person having an
10 interest or lien upon the property files with the Tax Commissioner or
11 Commissioner of Labor prior to the sale notice of his or her interest
12 or lien, the Tax Commissioner or Commissioner of Labor shall withhold
13 any excess pending a determination of the rights of the respective
14 parties thereto by a court of competent jurisdiction. If for any
15 reason the receipt of the person liable for the amount is not
16 available, the Tax Commissioner or Commissioner of Labor shall
17 deposit the excess money with the State Treasurer, as trustee for the
18 owner, subject to the order of the person liable for the amount or
19 his or her heirs, successors, or assigns. No interest earned, if any,
20 shall become the property of the person liable for the amount.

21 (9) All persons and officers of companies or corporations
22 shall, on demand of a sheriff or duly authorized employee of the Tax
23 Commissioner or Department of Labor about to distraint or having
24 distrained any property or right to property, exhibit all books
25 containing evidence or statements relating to the property or rights

1 of property liable to distraint for the tax due.

2 Sec. 5. Section 77-4022, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-4022 (1) Any tax imposed by section 77-4008 which is
5 not paid on the due date shall become delinquent, and a penalty of
6 twenty-five percent shall be added thereto, and shall bear interest
7 at the rate prescribed by section 45-104.02, as such rate may from
8 time to time be adjusted, from the due date until paid.

9 (2) ~~If~~In addition to the penalty provided in subsection
10 (1) of this section, if the Tax Commissioner finds that a licensee
11 has made a false and fraudulent return with intent to evade the
12 Tobacco Products Tax Act, the Tax Commissioner shall assess a penalty
13 of twenty-five percent of the entire tax due for which the false and
14 fraudulent return was made, excluding interest.

15 Sec. 6. Original sections 77-3904, 77-3905, and 77-4022,
16 Reissue Revised Statutes of Nebraska, and section 77-3906, Revised
17 Statutes Cumulative Supplement, 2012, are repealed.