

One Hundred Third Legislature - First Session - 2013

Introducer's Statement of Intent

LB53

Chairperson: Senator Galen Hadley

Committee: Revenue

Date of Hearing: February 22, 2013

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 53 is designed to address the provisions of two state statutes that are seemingly in conflict regarding the priority of liens in cases in which unpaid sales and use taxes exist. Under current law (Neb.Rev.Stat. Section 77-2707), if a person liable for sales or use tax sells out his or her business or stock of goods or quits the business, his or her successor or assign is required to withhold amounts from the purchase price sufficient to cover any unpaid sales and use taxes until the former owner produces a tax clearance letter from the Department indicating that the sales and use tax liability has been paid or that no amount is due. Failure to withhold a portion of the purchase price as required results in the purchaser or successor or assign becoming personally liable for payment of the amount that should have been withheld to the extent of the purchase price, valued in money.

However, under the Uniform State Tax Lien Registration and Enforcement Act (Neb.Rev.Stat. Sections 77-3901 et seq.), a lien against real or personal property filed prior to the filing of a "notice of lien" by the Tax Commissioner retains its priority over the tax lien.

LB 53 would clarify the definition of "purchase price" under Neb.Rev.Stat. Section 77-2707, by providing that the "purchase price" does not include any amounts required to satisfy, in whole or in part, any liens against real property or personal property acquired by the purchaser if the Tax Commissioner has not filed a notice of lien under the Uniform State Tax Lien Registration and Enforcement Act or if the "notice of lien" does not have priority under the Act.

The changes contained within LB 53, would in essence, limit a purchaser's liability for the seller's sales and use tax debt to the fair market value of the business assets acquired, less the sales proceeds applied to debts for which there is a superior secured interest.

LB53 repeals the original section and declares an emergency.

Principal Introducer: _____

Senator Galen Hadley

