

LEGISLATIVE BILL 758

Passed over the Governor's veto April 2, 1984

Introduced by Pappas, 42

AN ACT relating to revenue and taxation; to amend section 77-2708, Revised Statutes Supplement, 1983; to change provisions relating to certain sales and use tax revenue collections by retailers; to require a surety bond; to provide an operative date; and to repeal the original section.

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

Section 1. That section 77-2708, Revised Statutes Supplement, 1983, be amended to read as follows:
77-2708. (1)(a) The sales and use taxes imposed by the provisions of sections 77-2701 to 77-27,135 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period, unless otherwise provided pursuant to the provisions of sections 77-2701 to 77-27,135.

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe, and containing such information as the Tax Commissioner deems necessary for the proper administration of the provisions of sections 77-2701 to 77-27,135. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods, in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner may by rule and regulation permit or require quarterly, semiannual, or annual reports and tax payments from sellers, retailers, or purchasers as the case may be who have small tax liabilities, but no such reports or payments may be permitted or required when the tax liability exceeds sixty dollars in any quarter, one hundred twenty dollars in any semiannual period, or two hundred forty dollars in any year.?

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased tangible personal property, the

storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath;

(iv) A taxpayer who keeps his or her regular books and records on a cash basis or on an accrual basis or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the sales and use tax returns required by sections 77-2701 to 77-27,135 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and ~~elect to~~ pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. if this accounting method correctly reflects the operation of the business and is the same accounting method used for the regular books and records. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified obtained the permission of the Tax Commissioner.

(c) The taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the

required filing date shall be cause for a penalty of forfeiture of the collection fee allowed pursuant to subdivision (d) of this subsection or five dollars, whichever is greater.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, three per cent of the first five thousand dollars remitted each month and one per cent of all amounts in excess of five thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, or has been erroneously or illegally collected or computed, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the provisions of sections 77-2701 to 77-27,135. Any balance may be refunded to the person by whom it was paid, or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, assignee, executor, or administrator, within three years from the required filing date following the close of the period for which the overpayment was made, or within six months after any determination becomes final under the provisions of section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. If the Tax Commissioner has neither allowed nor disallowed a claim within such one hundred eighty days, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the provisions of sections 77-2701 to 77-27,135, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section

77-27, 127.

(g) Upon the allowance of a credit or refund, of any sum erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund, or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within one year from the date of refund or credit, in the name of the state, in a court of competent jurisdiction in the county in which the taxpayer involved is located.

(j) The action shall be tried in the county in which the taxpayer involved is a resident unless the court orders a change of place of trial.

(k) The Attorney General shall prosecute the action provided for in subdivision (i) of this subsection, and the provisions of state law and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(l) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to sections 77-2701 to 77-27,135 on: (i) Sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes. If such accounts are thereafter collected by the retailer, contractor, or repairperson, a tax shall be paid upon the amount so collected; or (ii) on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

Sec. 2. This act shall become operative on the first day of the month following the effective date of this act.

Sec. 3. That original section 77-2708, Revised Statutes Supplement, 1983, is repealed.