

E AND R AMENDMENTS TO LB 106

Introduced by Enrollment and Review Committee: McGill, 26,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 77-4001, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           77-4001 Sections 77-4001 to 77-4025 and section 4 of this  
6 act shall be known and may be cited as the Tobacco Products Tax  
7 Act.

8           Sec. 2. Section 77-4002, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           77-4002 For purposes of the Tobacco Products Tax Act,  
11 unless the context otherwise requires, the definitions found in  
12 sections 77-4003 to 77-4007 and section 4 of this act shall be  
13 used.

14           Sec. 3. Section 77-4004, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           77-4004 First owner ~~shall mean~~ means any person:

17           (1) Engaged in the business of selling tobacco products  
18 or smoking tobacco in this state who brings or causes to be brought  
19 into this state from outside this state any tobacco products or  
20 smoking tobacco for sale in this state, including a retailer who  
21 purchases directly from suppliers outside this state who are not  
22 licensed pursuant to subsection (2) of section 77-4009;

23           (2) Who makes, manufactures, or fabricates tobacco

1 products or smoking tobacco in this state for sale in this state;  
2 or

3 (3) Engaged in business outside this state who ships  
4 or transports tobacco products or smoking tobacco to retailers in  
5 this state and who becomes licensed pursuant to subsection (2) of  
6 section 77-4009.

7 Sec. 4. Smoking tobacco means (1) cigars, (2) cheroots,  
8 (3) stogies, (4) periques, and (5) granulated, plug cut, crimp cut,  
9 ready rubbed, and other tobacco prepared in such manner as to be  
10 suitable for smoking, except that smoking tobacco does not mean  
11 cigarettes as defined in section 77-2601.

12 Sec. 5. Section 77-4007, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 77-4007 Tobacco products shall mean ~~(1) cigars, (2)~~  
15 ~~cheroots, (3) stogies, (4) periques, (5) granulated, plug cut,~~  
16 ~~crimp cut, ready rubbed, and other smoking tobacco, (6) means (1)~~  
17 ~~snuff, (7) (2) snuff flour, (8) (3) cavendish, (9) (4) plug and~~  
18 ~~twist tobacco, (10) (5) fine cut and other chewing tobacco, (11)~~  
19 ~~(6) shorts, refuse scraps, clippings, cuttings, and sweepings of~~  
20 ~~tobacco, and (12) (7) other kinds and forms of tobacco, prepared~~  
21 ~~in such manner as to be suitable for chewing, or smoking in a pipe~~  
22 ~~or otherwise or both for chewing and smoking, except that tobacco~~  
23 ~~products shall does not mean cigarettes as defined in section~~  
24 77-2601.

25 Sec. 6. Section 77-4008, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 77-4008 ~~(1)~~ (1) (a) A tax is hereby imposed upon the first

1 owner of tobacco products and smoking tobacco to be sold in this  
2 state.

3 (b) The tax on tobacco products shall be one dollar and  
4 five cents per ounce and a proportionate tax at the like rate on  
5 all fractional parts of an ounce. Such tax shall be computed based  
6 on the net weight as listed by the manufacturer. Any product listed  
7 by the manufacturer as having a net weight of less than one ounce  
8 shall be taxed as if the product had a net weight of one ounce.

9 (c) The tax on smoking tobacco shall be twenty percent  
10 of ~~(a)~~ (i) the purchase price of such tobacco products the smoking  
11 tobacco paid by the first owner or ~~(b)~~ (ii) the price at which  
12 a first owner who made, manufactured, or fabricated the smoking  
13 tobacco ~~product~~ sells the items to others. ~~Such tax~~

14 (d) The tax on tobacco products and smoking tobacco shall  
15 be in addition to all other taxes.

16 (2) Whenever any person who is licensed under section  
17 77-4009 purchases tobacco products or smoking tobacco from another  
18 person licensed under section 77-4009, the seller shall be liable  
19 for the payment of the tax.

20 (3) ~~On and after October 1, 2002, and continuing until~~  
21 ~~October 1, 2004, the Tax Commissioner shall remit the amount~~  
22 ~~collected pursuant to this section to the State Treasurer, and the~~  
23 ~~State Treasurer shall credit three-fourths of such amount to the~~  
24 ~~General Fund and one-fourth of such amount to the Cash Reserve~~  
25 ~~Fund. On and after October 1, 2004, amounts collected~~ Amounts  
26 collected pursuant to this section shall be used and distributed  
27 pursuant to section 77-4025.

1           Sec. 7. Section 77-4009, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-4009 (1) Each first owner of tobacco products and  
4 smoking tobacco to be sold in this state shall be licensed by  
5 the Tax Commissioner. Every application for such license shall be  
6 made on a form prescribed by the Tax Commissioner. The application  
7 shall include: (a) The name and address of the applicant or, if  
8 the applicant is a firm, partnership, limited liability company, or  
9 association, the name and address of each of its members or, if  
10 the applicant is a corporation, the name and address of each of  
11 its officers and the address of its principal place of business;  
12 (b) the location of the place of business to be licensed; and (c)  
13 such other information as the Tax Commissioner may require for the  
14 purpose of administering the Tobacco Products Tax Act.

15           (2) A person outside of this state who ships or  
16 transports tobacco products or smoking tobacco to any person  
17 in this state to be sold in this state may make application for a  
18 license and be granted such a license by the Tax Commissioner. If  
19 a license is granted, such person shall be subject to the Tobacco  
20 Products Tax Act and shall be entitled to act as a licensee.  
21 A person outside this state who receives a license shall have  
22 established sufficient contact with this state for the exercise  
23 of personal jurisdiction over the person in any matter or issue  
24 arising under the act.

25           Sec. 8. Section 77-4014, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27           77-4014 (1) On or before the tenth day of each calendar

1 month, ~~commencing on or after January 1, 1988,~~ every person  
2 licensed under subsection (1) of section 77-4009 shall file a  
3 return with the Tax Commissioner showing either the quantity and  
4 the price of each tobacco product or smoking tobacco brought or  
5 caused to be brought into this state for sale or the quantity  
6 and the price of each tobacco product or smoking tobacco made,  
7 manufactured, or fabricated in this state for sale in this state,  
8 whichever is applicable, during the preceding calendar month. For  
9 tobacco products, such return shall also include the net weight as  
10 listed by the manufacturer.

11 (2) Every person licensed pursuant to subsection (2) of  
12 section 77-4009 shall, in the manner described in subsection (1) of  
13 this section, file a return showing in detail the different kinds,  
14 quantity, and wholesale sales price of each tobacco product or  
15 smoking tobacco shipped or transported to retailers in this state  
16 to be sold by such retailers during the preceding calendar month.  
17 For tobacco products, such return shall also include the net weight  
18 as listed by the manufacturer.

19 (3) Returns shall be made upon forms furnished and  
20 prescribed by the Tax Commissioner. Each return shall be  
21 accompanied by a remittance for the full tax liability shown, less  
22 an amount of such liability equal to any amount allowed a payer of  
23 the sales and use tax pursuant to subdivision (1)(d) of section  
24 77-2708 as compensation to reimburse the licensee for his or her  
25 expenses incurred in complying with the Tobacco Products Tax Act.

26 Sec. 9. Section 77-4017, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1                   77-4017 (1) Every licensee shall keep complete and  
2 accurate records for all places of business, including itemized  
3 invoices of tobacco products and smoking tobacco (a) held,  
4 purchased, manufactured, or brought in or caused to be brought  
5 into this state or (b) for a licensee located outside of this  
6 state, shipped or transported to retailers in this state. For  
7 tobacco products, such return shall also include the net weight as  
8 listed by the manufacturer.

9                   (2) All books, records, and other papers and documents  
10 required to be kept by this section shall be preserved for a period  
11 of at least three years after the due date of the tax imposed  
12 by the Tobacco Products Tax Act unless the Tax Commissioner, in  
13 writing, authorizes their destruction or disposal at an earlier  
14 date.

15                   (3) At any time during usual business hours, duly  
16 authorized agents or employees of the Tax Commissioner may enter  
17 any place of business of a licensee and inspect the premises,  
18 the records required to be kept pursuant to this section, and  
19 the tobacco products and smoking tobacco contained in such place  
20 of business for purposes of determining whether or not such  
21 licensee is in full compliance with the act. Refusal to permit  
22 such inspection by a duly authorized agent or employee of the  
23 Tax Commissioner shall be grounds for revocation, cancellation, or  
24 suspension of the license.

25                   Sec. 10. Section 77-4018, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27                   77-4018 When tobacco products or smoking tobacco, for

1 which the tax imposed by the Tobacco Products Tax Act has been  
2 reported and paid, is ~~are~~ (1) sold, shipped, or transported by  
3 the licensee to retailers, licensees, or ultimate consumers outside  
4 this state or (2) returned to the manufacturer by the licensee, a  
5 refund or credit of the tax shall be made to the licensee. For the  
6 purpose of making such credit or refund, the Tax Commissioner may  
7 issue a tax credit or may prepare a voucher showing the net amount  
8 of such refund due. The Tax Commissioner shall have a warrant  
9 drawn upon the State Treasurer for the amount of any such refund  
10 certified by the Tax Commissioner.

11           Sec. 11. Section 77-4024, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           77-4024 Any person who violates the Tobacco Products Tax  
14 Act or any person who sells, delivers, or accepts tobacco products  
15 or smoking tobacco with the intent to evade the act shall be guilty  
16 of a Class IV felony.

17           Sec. 12. Section 77-4025, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           77-4025 There is hereby created a cash fund in the  
20 Department of Revenue to be known as the Tobacco Products  
21 Administration Cash Fund. ~~Except as otherwise provided in section~~  
22 ~~77-4008,~~ all All revenue collected or received by the Tax  
23 Commissioner from the license fees and taxes imposed by the Tobacco  
24 Products Tax Act shall be remitted to the State Treasurer for  
25 credit to the Tobacco Products Administration Cash Fund. All costs  
26 required for administration of the Tobacco Products Tax Act shall  
27 be paid from such fund. Credits and refunds allowed under the act

1 shall be paid from the Tobacco Products Administration Cash Fund.  
2 Any receipts, after credits and refunds, in excess of the amounts  
3 sufficient to cover the costs of administration may be transferred  
4 to the General Fund at the direction of the Legislature. The State  
5 Treasurer shall transfer two million five hundred thousand dollars  
6 from the Tobacco Products Administration Cash Fund to the General  
7 Fund within fifteen days after November 1, 2002. Any money in the  
8 Tobacco Products Administration Cash Fund available for investment  
9 shall be invested by the state investment officer pursuant to  
10 the Nebraska Capital Expansion Act and the Nebraska State Funds  
11 Investment Act.

12           Sec. 13. This act becomes operative on October 1, 2007.

13           Sec. 14. Original sections 77-4001, 77-4002, 77-4004,  
14 77-4007, 77-4008, 77-4009, 77-4014, 77-4017, 77-4018, 77-4024, and  
15 77-4025, Reissue Revised Statutes of Nebraska, are repealed.

16           2. On page 1, strike lines 2 through 4 and insert  
17 "sections 77-4001, 77-4002, 77-4004, 77-4007, 77-4008, 77-4009,  
18 77-4014, 77-4017, 77-4018, 77-4024, and 77-4025, Reissue Revised  
19 Statutes of Nebraska; to change the tax on certain tobacco  
20 products; to define and redefine terms; to harmonize provisions;  
21 to".