



**Hundredth Legislature - First Session - 2007**  
**Committee Statement**  
**LB 223**

---

**Hearing Date:** January 18, 2007  
**Committee On:** Revenue

**Introducer(s):** (Revenue Committee)  
**Title:** Change tax laws

---

**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
- 

**Vote Results:**

7	Yes	Senators Burling, Cornett, Dierks, Janssen, Langemeier, Preister, and White
1	No	Senator Raikes
0	Present, not voting	
0	Absent	

---

**Proponents:**

George Kilpatrick, Legal Counsel  
Doug Ewald  
Richard Baier  
Lance Hedquist

**Representing:**

Committee on Revenue  
Department of Revenue  
Department of Economic Development  
City of South Sioux City

**Opponents:**

None

**Representing:**

**Neutral:**

John Cederberg

**Representing:**

Himself

---

**Summary of purpose and/or changes:**

LB 223 is the annual bill from the Department of Revenue to enhance the administration and enforcement of the tax laws of this state. This year, the bill deals largely with three areas: 1) Streamlined Sales and Use Tax Agreement compliance, 2) clarifying and changing provisions of the incentive acts, and 3) withholding enforcement including access to information required by federal law. The changes to comply with the Streamlined Sales and Use Tax Agreement do not change revenue from the sales tax in any way.

---

Section 1 would amend section 77-375 to state that the Tax Commissioner is to have access to information required under the federal New Hire Reporting Act. This Act was an immigration control initiative designed to assure that newly hired employees are legally in the country. The Department would like access to the information for purposes of withholding.

Section 2 would amend section 77-3,112, the general powers of the Tax Commissioner to require the Tax Commissioner to deny tax incentive benefits to any person that would otherwise be entitled to due to the employment of a person who has been deported by the Immigration and Naturalization Service. If benefits have already been received due to the employment of such persons before they were deported, such benefits are to be recaptured.

Sections 3 through 5 would amend three sections of the sales tax statutes to insert the newly-adopted uniform definition of “bundled transaction” under the Streamlined Sales and Use Tax Agreement. Bundled transaction means the sale of two or more distinct and identifiable products at a single price. The definition contains a number of exclusions. A la cart selections where the price varies depending on what items are selected is not a bundled transaction. Packaging is not a separate product. Transactions that would otherwise qualify are not considered bundled transactions where the true object of the sale is a sale of service and the additional goods or services are only sold in connection with delivering the service or where sales of the taxable items are de minimus in comparison to the price of the transaction. De minimus means ten percent or less.

Bundled transaction also does not include retail sales of taxable and exempt personal property if the exempt share is half or less of the total sales price.

The reason this definition has been made part of the agreement is because there are provisions allowing retailers to impose the tax on the entirety of a “bundled transaction” containing taxable and exempt portions. (See section 7.)

Section 6 would amend section 77-2701.35, the definition of “sales price” to specifically state that the sales price includes payments by third parties, typically manufacturer’s coupons. This has always been the policy in Nebraska, but the Agreement requires that the definition be in place.

Section 7 would amend section 77-2703 to specifically require that sales tax be collected on the entirety of any bundled transaction where one or more of the products would be taxable if sold separately.

Section 8 would amend section 77-2703.04, the definitions within the federal Mobile Telecommunications Sourcing Act (adopted in Nebraska by LB 947, 2002) to add many definitions approved by the governing body of the Agreement. The definitions include “800 service,” “900 service,” “coin-operated telephone service,” and “conference bridging service.” “Ancillary service” would be defined to mean services incidental to telecommunications services, including directory assistance and voice mail. “International,” “interstate,” “intrastate,”

“mobile wireless service,” “paging service,” “prepaid wireless service,” and “residential service” are all defined by the bill, but the definitions are not unnatural.

Another definition to be added is “telecommunications service.”. The definition is broad but excludes data processing and information services, installation, tangible personal property, advertising, internet access, radio and television broadcasting, or digital products.

Section 9 would amend section 77-2711, dealing with sales tax confidentiality to allow the State Auditor to see sales tax records that are necessary for purposes of an audit. The State Auditor is then included in the list of officers bound by the confidentiality provisions of the section.

Section 10 would amend section 77-2712.03 to include amendments to the Agreement adopted since November 12th, 2002 within Nebraska’s obligation to comply with the terms of the Agreement.

Section 11 would amend section 77-2712.05 to insert references to model 2 sellers regarding liability relief for sellers using the taxability matrix provided by the state as required under the agreement. Relief from liability would also be extended to reliance on product-based classifications that have been approved by the state. Finally, amendments to this section reword the references to private sector advisory councils.

Section 12 would amend section 77-2756, dealing with withholding to conform the state requirements with federal allowance of annual remission of withholding. Other changes to this section also require anyone filing more than 250 W-2s in a year to file them with the Department electronically.

Section 13 would amend section 77-2790 to allow a five percent penalty to be imposed by the Department for intentional disregard of the rules, or material or negligent misstatements with regard to an overstated refund. Currently, this penalty is available only in cases of a deficiency assessment. A fraudulent, overstated refund would result in a fifty percent penalty. Another person who aids in the overstatement of a refund would become subject to a \$1,000 penalty.

Section 14 would amend section 77-27,131 to eliminate the caps on bonds that may be required of businesses that may hold substantial trust funds for the state such as sales tax or withholding. Currently, such bonds may not be greater than three times the estimated amount payable or \$10,000, whichever is lesser. LB 223 would eliminate the \$10,000 cap. For taxpayers who are habitually delinquent, the current maximum bond is five times the estimated annual liability up to \$15,000. Again, the bill would eliminate the cap.

Sections 15 through 20 amend the Nebraska Advantage Rural Development Act. Section 15 would amend section 77-27,181.01 to define “livestock” as cattle, hogs, chickens, and turkeys. This section would also eliminate the definition of “Nebraska employee” as a Nebraska-resident employee. Along this line, sections 17 & 19 would amend sections 77-27,188 & 77-27,190 to change the qualifications for benefits so that “new employees” would not be required to be Nebraska residents.

Section 16 would amend section 77-27,187.02 to require applications for benefits under the act to be filed by November 1st and completed by December 1st. If the applications fail to meet that deadline, they would be considered to be the first filed the following year. Section 18 would amend section 77-27,189 to define “telecommunications services” which are eligible businesses under the act, to include community antenna service, internet access, satellite ground centers, data centers, call centers, or telemarketing.

Section 20 would amend section 77-27,192 to prohibit relocations of businesses as “new businesses” qualified to receive benefits under the act. Such prohibited transactions also include purchasing or leasing the assets of an existing business, or any other activity entered into primarily for the purpose of receiving benefits which is without a business purpose, and any activity that results in benefits under the Ethanol Development Act. These restrictions are the same as what is currently contained in the Nebraska Advantage Act.

Section 21 would amend section 77-3102, the non-resident contractor registration act, to lower the exemption from \$25,000 to \$10,000. Under LB 223, contracts worth less than \$10,000 involving a non-resident contractor would not have to be registered with the Department of Revenue.

Sections 22 and 23 would amend section 77-3903 and 77-3904 of the Uniform State Tax Lien Registration Act to limit the disclosure of the social security number of the person liable on the lien to the last four digits. Section 23 would also allow the three-year life of the lien registered under the act to be extended if the person is in bankruptcy. The lien would extend until six months after the assets are released by the court, or three years, whichever is later.

Sections 24 and 29 would amend sections 77-4105 of the Employment and Investment Growth Act and section 77-5725 of the Nebraska Advantage Act to strike “mainframe business computers” as eligible for the personal property tax exemption and insert “computer systems” instead. Computer systems would be defined as equipment that is interconnected to enable the acquisition, storage manipulation, etc., of data using computer software and hardware. Under current law, this equipment includes peripheral components. Also, section 29 clarifies that the personal property exemption runs for ten years from the year the first property qualifies for the exemption. The Nebraska Advantage Act replaced the Employment and Investment Growth Act beginning January 1, 2006.

Sections 25, 26, and 27 would amend sections 77-4110 (Employment and Investment Growth Act), 77-4933 (Quality Jobs Act), and 77-5542 (Invest Nebraska Act) to change the date for the annual report of activity from March 15 to July 15. July 15th is the reporting date for the Nebraska Advantage Act so with the change, all incentive acts would have annual reports issued at the same time. There are no new applications under any of the acts to be amended, but there will be activity regarding qualified beneficiaries for years to come.

Section 28 would amend section 77-5715 of the Nebraska Advantage Act to define “telecommunications services” which are eligible businesses under the act, to include community antenna service, internet access, satellite ground centers, data centers, call centers, or telemarketing.

Section 30 would amend section 77-5803 to change the tax credit that may be granted under the Nebraska Advantage Research and Development Act. Currently, the credit is equal to three percent of the increase in research and development expenses deducted for purposes of the federal tax return. Under LB 223, the credit would be 15 percent of the federal credit. The bill would also clarify that the apportionment of the credit (currently expenses) would be available only if the firm is doing business in more than one state.

The federal research and development tax credit was recently renewed by Congress and is available through 2009.

Section 31 would amend section 77-5904 to require that applications under the Nebraska Advantage Microenterprise Tax Credit Act be filed by November 1 and completed by December 1. Otherwise, the application will be deemed to be filed the following year. These are the same changes that are proposed to the Nebraska Advantage Rural Development Act by this bill.

Section 32 would provide that many of the enforcement and withholding changes be operative January 1, 2008. The other sections are operative on their effective dates without the emergency clause. Sections 33 and 34 would repeal the original sections. Section 35 would repeal section 77-2703.02 outright. This section currently provides an exemption for multiple points of use as formerly required by the Streamlined Sales and Use Tax Agreement. The requirement is no longer in force.

#### **Explanation of amendments, if any:**

The Committee amendments:

1. Clarify that the hold harmless that is available for retailers using the state-maintained database required by the Streamlined Sales and Use Tax Agreement extends to both incorrectly calculated tax amounts and incorrect product classifications.
2. Clarify that income tax refunds may be overstated “as a result” of fraud.
3. Expand the definition of “livestock” for purposes of qualifying for the Nebraska Advantage Rural Development Act under the provisions granting benefits for livestock modernization facilities. The expanded definition includes sheep, goats, horses, and game species regulated by the Game and Parks Commission of the Department of Agriculture.
4. Add a new withholding requirement for businesses employing 25 or more employees. Under the Committee amendment, section 77-2753 would be amended to require withholding for each employee to be at least three percent of gross wages, less qualified deductions, unless the employee proves to the satisfaction of the business that more withholding is not an effort to evade taxes. The evidence could include birth certificates or social security information.

5. Add new penalties for employees claiming excess exemptions with intent to evade income taxes. It would be a class II misdemeanor. If an employer with more than 25 employees fails to either withhold three percent from an employee or obtain evidence that greater withholding is justified, the employer is subject to a penalty of not more than \$1,000 per violation.

---

**Senator Ray Janssen, Chairperson**