

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1004

FINAL READING

Introduced by Cornett, 45.

Read first time January 16, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2753 and 77-2790, Revised Statutes Supplement, 2007;
3 to change an income tax withholding amount; to harmonize
4 provisions; to repeal the original sections; and to
5 declare an emergency.

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

1 Section 1. Section 77-2753, Revised Statutes Supplement,
2 2007, is amended to read:

3 77-2753 (1)(a) Every employer and payor maintaining an
4 office or transacting business within this state and making payment
5 of any wages or other payments as defined in subsection (5) of this
6 section which are taxable under the Nebraska Revenue Act of 1967
7 to any individual shall deduct and withhold from such wages for
8 each payroll period and from such payments a tax computed in such
9 manner as to result, so far as practicable, in withholding from
10 the employee's wages and payments to the payee during each calendar
11 year an amount substantially equivalent to the tax reasonably
12 estimated to be due from the employee or payee under such act
13 with respect to the amount of such wages and payments included
14 in his or her taxable income during the calendar year. The method
15 of determining the amount to be withheld shall be prescribed by
16 rules and regulations of the Tax Commissioner. Such rules and
17 regulations may allow withholding to be computed at a percentage
18 of the federal withholding for gambling winnings or supplemental
19 payments, including bonuses, commissions, overtime pay, and sales
20 awards which are not paid at the same time as other wages. Any
21 withholding tables prescribed by the Tax Commissioner shall be
22 provided to the budget division of the Department of Administrative
23 Services and the Legislative Fiscal Analyst for review at least
24 sixty days before the tables become effective.

25 (b) Notwithstanding the amount of federal withholding or

1 the rules and regulations of the Department of Revenue determining
2 the amount of withholding, every employer and payor employing
3 twenty-five or more employees shall withhold at least ~~three~~ one and
4 one-half percent of the gross wages minus tax qualified deductions
5 of each employee unless the employee provides satisfactory evidence
6 that a lesser amount of withholding is justified in the employee's
7 particular circumstances. Such satisfactory evidence may include
8 birth certificates or social security information for dependents
9 or other evidence that reasonably assures the employer that the
10 employee is not improperly or fraudulently evading or defeating the
11 income tax by reducing or eliminating withholding.

12 (2) (a) Every payor who is either (i) making a payment or
13 payments in excess of five thousand dollars or (ii) maintaining
14 an office or transacting business within this state and making
15 a payment or payments related to such business in excess of six
16 hundred dollars, and such payment or payments are for personal
17 services performed or to be performed substantially within this
18 state, to a nonresident individual, other than an employee, who
19 is not subject to withholding on such payment under the Internal
20 Revenue Code or a corporation, partnership, or limited liability
21 company described in subdivision (c) of this subsection, shall
22 be deemed an employer, and the individual performing the personal
23 services shall be deemed an employee for the purposes of this
24 section. The payor shall deduct and withhold from such payments
25 the percentage of such payments prescribed in subdivision (b) of

1 this subsection. If the individual performing the personal services
2 provides the payor with a statement of the expenses reasonably
3 related to the personal services, the total payment or payments may
4 be reduced by the total expenses before computing the amount to
5 deduct and withhold, except that such reduction shall not be more
6 than fifty percent of such payment or payments.

7 (b) For any payment or payments for the same service,
8 award, or purse that totals less than twenty-eight thousand
9 dollars, the percentage deducted from such payment or payments
10 pursuant to this subsection shall be four percent, and for all
11 other payments, the percentage shall be six percent.

12 (c) For any corporation, partnership, or limited
13 liability company that receives compensation for personal services
14 in this state and of which all or substantially all of the
15 shareholders, partners, or members are the individuals performing
16 the personal services, including, but not limited to, individual
17 athletes, entertainers, performers, or public speakers performing
18 such personal services, such compensation shall be deemed wages of
19 the individuals performing the personal services and subject to
20 the income tax imposed on individuals by the Nebraska Revenue Act
21 of 1967.

22 (d) The withholding required by this subsection shall
23 not apply to any payment to a nonresident alien, corporation,
24 partnership, or limited liability company if such individual,
25 shareholder, partner, or member provides the payor with a statement

1 that the income earned is not subject to tax because of a treaty
2 obligation of the United States.

3 (3) The Tax Commissioner may enter into agreements with
4 the tax departments of other states, which require income tax to
5 be withheld from the payment of wages, salaries, and such other
6 payments, so as to govern the amounts to be withheld from the wages
7 and salaries of and other payments to residents of such states.
8 Such agreements may provide for recognition of anticipated tax
9 credits in determining the amounts to be withheld and, under rules
10 and regulations adopted and promulgated by the Tax Commissioner,
11 may relieve employers and payors in this state from withholding
12 income tax on wages, salaries, and such other payments paid
13 to nonresident employees and payees. The agreements authorized
14 by this subsection shall be subject to the condition that the
15 tax department of such other states grant similar treatment to
16 residents of this state.

17 (4) The Tax Commissioner shall enter into an agreement
18 with the United States Office of Personnel Management for the
19 withholding of income tax imposed on individuals by the Nebraska
20 Revenue Act of 1967 on civil service annuity payments for those
21 recipients who voluntarily request withholding. The agreement shall
22 be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted
23 and promulgated by the Tax Commissioner.

24 (5) Wages and other payments subject to withholding shall
25 mean payments that are subject to withholding under the Internal

1 Revenue Code of 1986 and are (a) payments made by employers to
2 employees, except such payments subject to 26 U.S.C. 3406, (b)
3 payments of gambling winnings, or (c) pension or annuity payments
4 when the recipient has requested the payor to withhold from such
5 payments.

6 Sec. 2. Section 77-2790, Revised Statutes Supplement,
7 2007, is amended to read:

8 77-2790 (1)(a) If any part of a deficiency is the result
9 of negligence or intentional disregard of rules and regulations but
10 without intent to defraud, the Tax Commissioner may add to the tax
11 an amount equal to five percent of the deficiency.

12 (b) If any part of a requested refund is overstated
13 as a result of negligence, material misstatement, or intentional
14 disregard of rules and regulations but without intent to defraud,
15 the Tax Commissioner may add to the tax an amount equal to five
16 percent of the overstatement of the refund.

17 (2)(a) If any part of a deficiency is the result of
18 fraud, the Tax Commissioner may add to the tax an amount equal to
19 fifty percent of the deficiency. This amount shall be in lieu of
20 any amount determined under subsection (1) of this section.

21 (b) If any part of a requested refund is overstated as a
22 result of fraud, the Tax Commissioner may add to the tax an amount
23 equal to fifty percent of the overstatement of the refund. This
24 amount shall be in lieu of any amount determined under subsection
25 (1) of this section.

1 (3) If any taxpayer fails to pay all or any part of an
2 installment of any tax due, he or she shall be deemed to have
3 made an underpayment of estimated tax. The Tax Commissioner shall
4 determine the amount of underpayment of estimated tax in accordance
5 with the laws of the United States.

6 (4) If any taxpayer, with intent to evade or defeat any
7 income tax imposed by the Nebraska Revenue Act of 1967 or the
8 payment thereof, claims an excessive number of exemptions or in any
9 other manner overstates the amount of withholding, he or she shall
10 be guilty of a Class II misdemeanor. If any employer or payor,
11 without intent to evade or defeat any income tax imposed by the
12 Nebraska Revenue Act of 1967 or the payment thereof, fails to make
13 a return and pay a tax withheld by him or her at the time required
14 by or under the act, such employer or payor shall be liable for
15 such taxes and shall pay the same together with interest thereon
16 and any addition to tax assessed pursuant to subsection (1) of this
17 section. Such interest and addition to tax shall not be charged to
18 or collected from the employee or payee by the employer or payor.
19 The Tax Commissioner shall have the same rights and powers for
20 the collection of such tax, interest, and addition to tax against
21 such employer or payor as are now prescribed by the act for the
22 collection of income tax against a taxpayer.

23 (5) If any person required to collect, withhold,
24 truthfully account for, and pay over the income tax imposed by
25 the Nebraska Revenue Act of 1967 willfully fails to collect or

1 withhold such tax or truthfully account for and pay over such tax
2 or willfully attempts in any manner to evade or defeat the tax or
3 the payment thereof, the Tax Commissioner may, in addition to other
4 penalties provided by law, impose, assess, and collect a penalty
5 equal to the total amount of the tax evaded, not collected, not
6 withheld, or not accounted for and paid over. No addition to tax
7 under subsection (1) or (2) of this section shall be imposed for
8 any offense to which this subsection applies.

9 (6) If any person with fraudulent intent fails to pay,
10 or to deduct or withhold and pay, any income tax, to make, render,
11 sign, or certify any return of estimated tax, or to supply any
12 information within the time required, the Tax Commissioner may
13 impose, assess, and collect a penalty of not more than one thousand
14 dollars, in addition to any other amounts required under the income
15 tax provisions of the Nebraska Revenue Act of 1967.

16 (7) If any person for frivolous or groundless reasons
17 or with the intent to delay or impede the administration of the
18 Nebraska Revenue Act of 1967 (a) fails to pay over any tax due
19 and owing under such act, (b) fails to file any return required
20 under such act, or (c) files what purports to be a return but which
21 does not contain sufficient information from which to determine
22 the correctness of the self-assessment of tax or which contains
23 information that indicates that the self-assessment of tax is
24 substantially incorrect, such person shall pay a penalty of five
25 hundred dollars for each occurrence. The penalty provided by this

1 subsection shall be in addition to any other penalties provided by
2 law.

3 (8) Any person who aids, procures, advises, or assists
4 in the preparation of any return, affidavit, refund claim, or
5 other document with the knowledge that its use will result in the
6 material understatement of the tax liability of another person or
7 the material overstatement of the amount of a refund of another
8 person shall, in addition to other penalties provided by law, pay
9 a penalty of one thousand dollars with respect to each separate
10 return or other document.

11 (a) For the purposes of this subsection, a person
12 furnishing typing, reproducing, or other mechanical assistance
13 shall not be treated as having aided or assisted in the preparation
14 of such document.

15 (b) A determination of a material deficiency shall not
16 be sufficient to show that a person has aided or assisted in a
17 material understatement of the tax liability of another person.

18 (c) The penalty in this subsection shall not be imposed
19 more than once on any person for having aided or assisted in the
20 preparation of documents for the same taxpayer, the same tax, and
21 the same tax period regardless of the number of documents involved.

22 (d) Such penalty shall apply whether or not the
23 understatement is with the consent of the person authorized to
24 present the return, affidavit, refund claim, or other document.

25 (9) The additions to the income tax and penalties

1 relating thereto provided by the Nebraska Revenue Act of 1967
2 shall be paid upon notice and demand and shall be assessed,
3 collected, and paid in the same manner as taxes, and any reference
4 in such act to income tax or the tax imposed by the act shall be
5 deemed also to refer to additions to the tax and penalties provided
6 by this section. For purposes of the deficiency procedures provided
7 in section 77-2776, this subsection shall not apply to:

8 (a) Any addition to tax under subsection (1) of section
9 77-2789 except as to that portion attributable to a deficiency;

10 (b) Any addition to tax for underpayment of estimated tax
11 as provided in subsection (3) of this section; or

12 (c) Any additional penalty under subsection (6), (7), or
13 (8) of this section.

14 (10) For purposes of subsections (1) and (2) of this
15 section relating to deficiencies resulting from negligence or
16 fraud, the amount shown as the tax by the taxpayer upon his or her
17 return shall be taken into account in determining the amount of the
18 deficiency only if such return was filed on or before the last day
19 prescribed for the filing of such return determined with regard to
20 any extension of time for such filing.

21 (11) For purposes of subsections (5) and (6) of this
22 section, the term person shall include an individual, corporation,
23 partnership, or limited liability company, or an officer or
24 employee of any corporation, including a dissolved corporation,
25 or a member or employee of any partnership or limited liability

1 company, who as such officer, employee, or member is under a duty
2 to perform the act in respect of which the violation occurs.

3 (12) If any person fails to comply with the reporting or
4 filing requirements of sections 77-2772, 77-2775, and 77-2786 or
5 the rules and regulations adopted and promulgated thereunder, the
6 Tax Commissioner may impose, assess, and collect a penalty against
7 such person for each instance of noncompliance of twenty-five
8 percent of the tax due. Such amount shall be in addition to any
9 other penalty, tax, or interest otherwise imposed by law for such
10 noncompliance.

11 (13) If any nonresident individual provides false
12 information or statements to an employer or payor regarding the
13 portion of his or her wages or payments that are subject to
14 withholding for this state which if used would result in the
15 amount withheld being less than seventy-five percent of his or
16 her income tax liability on such wages or payments or if any
17 employer or payor uses such information when the employer or payor
18 knows such information is false or maintains records which show
19 such information is false, the Tax Commissioner may, in addition
20 to other penalties provided by law, impose, assess, and collect
21 from such individual, payor, or employer the penalties provided in
22 subsections (5) and (6) of this section.

23 (14) If any employer or payor employing twenty-five or
24 more employees who is required to withhold and pay over income tax
25 imposed by the Nebraska Revenue Act of 1967 fails to either (a)

1 withhold at least ~~three~~ one and one-half percent of the wages of
2 any employee or (b) obtain satisfactory evidence from the employee
3 justifying a lower withholding amount as required by subdivision
4 (1) (b) of section 77-2753, the Tax Commissioner may impose, assess,
5 and collect a penalty of not more than one thousand dollars per
6 violation.

7 Sec. 3. Original sections 77-2753 and 77-2790, Revised
8 Statutes Supplement, 2007, are repealed.

9 Sec. 4. Since an emergency exists, this act takes effect
10 when passed and approved according to law.