

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 106
FINAL READING

Introduced by Engel, 17

Read first time January 5, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Tobacco Products Tax Act; to amend
2 sections 77-4001, 77-4002, 77-4004, 77-4007, 77-4008,
3 77-4009, 77-4014, 77-4017, 77-4018, 77-4024, and 77-4025,
4 Reissue Revised Statutes of Nebraska; to change the
5 tax on certain tobacco products; to define and redefine
6 terms; to harmonize provisions; to provide an operative
7 date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

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

3 77-4001 Sections 77-4001 to 77-4025 and section 4 of this
4 act shall be known and may be cited as the Tobacco Products Tax
5 Act.

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

8 77-4002 For purposes of the Tobacco Products Tax Act,
9 unless the context otherwise requires, the definitions found in
10 sections 77-4003 to 77-4007 and section 4 of this act shall be
11 used.

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

14 77-4004 First owner ~~shall mean~~ means any person:

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

21 (2) Who makes, manufactures, or fabricates tobacco
22 products or smoking tobacco in this state for sale in this state;
23 or

24 (3) Engaged in business outside this state who ships
25 or transports tobacco products or smoking tobacco to retailers in

1 this state and who becomes licensed pursuant to subsection (2) of
2 section 77-4009.

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

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

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

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

23 77-4008 ~~(1)~~ (1)(a) A tax is hereby imposed upon the first
24 owner of tobacco products and smoking tobacco to be sold in this
25 state.

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

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

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

14 (2) Whenever any person who is licensed under section
15 77-4009 purchases tobacco products or smoking tobacco from another
16 person licensed under section 77-4009, the seller shall be liable
17 for the payment of the tax.

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

1 Nebraska, is amended to read:

2 77-4014 (1) On or before the tenth day of each calendar
3 month, ~~commencing on or after January 1, 1988,~~ every person
4 licensed under subsection (1) of section 77-4009 shall file a
5 return with the Tax Commissioner showing either the quantity and
6 the price of each tobacco product or smoking tobacco brought or
7 caused to be brought into this state for sale or the quantity
8 and the price of each tobacco product or smoking tobacco made,
9 manufactured, or fabricated in this state for sale in this state,
10 whichever is applicable, during the preceding calendar month. For
11 tobacco products, such return shall also include the net weight as
12 listed by the manufacturer.

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

21 (3) Returns shall be made upon forms furnished and
22 prescribed by the Tax Commissioner. Each return shall be
23 accompanied by a remittance for the full tax liability shown, less
24 an amount of such liability equal to any amount allowed a payer of
25 the sales and use tax pursuant to subdivision (1)(d) of section

1 77-2708 as compensation to reimburse the licensee for his or her
2 expenses incurred in complying with the Tobacco Products Tax Act.

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

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

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

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

1 such inspection by a duly authorized agent or employee of the
2 Tax Commissioner shall be grounds for revocation, cancellation, or
3 suspension of the license.

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

6 77-4018 When tobacco products or smoking tobacco, for
7 which the tax imposed by the Tobacco Products Tax Act has been
8 reported and paid, is ~~are~~ (1) sold, shipped, or transported by
9 the licensee to retailers, licensees, or ultimate consumers outside
10 this state or (2) returned to the manufacturer by the licensee, a
11 refund or credit of the tax shall be made to the licensee. For the
12 purpose of making such credit or refund, the Tax Commissioner may
13 issue a tax credit or may prepare a voucher showing the net amount
14 of such refund due. The Tax Commissioner shall have a warrant
15 drawn upon the State Treasurer for the amount of any such refund
16 certified by the Tax Commissioner.

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

19 77-4024 Any person who violates the Tobacco Products Tax
20 Act or any person who sells, delivers, or accepts tobacco products
21 or smoking tobacco with the intent to evade the act shall be guilty
22 of a Class IV felony.

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

25 77-4025 There is hereby created a cash fund in the

1 Department of Revenue to be known as the Tobacco Products
2 Administration Cash Fund. ~~Except as otherwise provided in section~~
3 ~~77-4008,~~ all All revenue collected or received by the Tax
4 Commissioner from the license fees and taxes imposed by the Tobacco
5 Products Tax Act shall be remitted to the State Treasurer for
6 credit to the Tobacco Products Administration Cash Fund. All costs
7 required for administration of the Tobacco Products Tax Act shall
8 be paid from such fund. Credits and refunds allowed under the act
9 shall be paid from the Tobacco Products Administration Cash Fund.
10 Any receipts, after credits and refunds, in excess of the amounts
11 sufficient to cover the costs of administration may be transferred
12 to the General Fund at the direction of the Legislature. The State
13 Treasurer shall transfer two million five hundred thousand dollars
14 from the Tobacco Products Administration Cash Fund to the General
15 Fund within fifteen days after November 1, 2002. Any money in the
16 Tobacco Products Administration Cash Fund available for investment
17 shall be invested by the state investment officer pursuant to
18 the Nebraska Capital Expansion Act and the Nebraska State Funds
19 Investment Act.

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

21 Sec. 14. Original sections 77-4001, 77-4002, 77-4004,
22 77-4007, 77-4008, 77-4009, 77-4014, 77-4017, 77-4018, 77-4024, and
23 77-4025, Reissue Revised Statutes of Nebraska, are repealed.