

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 94

FINAL READING

Introduced by Cornett, 45

Read first time January 5, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to sales and use tax; to amend section
2 77-27,144, Reissue Revised Statutes of Nebraska, and
3 section 77-2711, Revised Statutes Cumulative Supplement,
4 2006; to authorize municipalities to receive information
5 as prescribed; and to repeal the original sections.

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

1 Section 1. Section 77-2711, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-2711 (1)(a) The Tax Commissioner shall enforce
4 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
5 enforce rules and regulations relating to the administration and
6 enforcement of such sections.

7 (b) The Tax Commissioner may prescribe the extent to
8 which any ruling or regulation shall be applied without retroactive
9 effect.

10 (2) The Tax Commissioner may employ accountants,
11 auditors, investigators, assistants, and clerks necessary for the
12 efficient administration of the Nebraska Revenue Act of 1967 and
13 may delegate authority to his or her representatives to conduct
14 hearings, prescribe regulations, or perform any other duties
15 imposed by such act.

16 (3)(a) Every seller, every retailer, and every person
17 storing, using, or otherwise consuming in this state property
18 purchased from a retailer shall keep such records, receipts,
19 invoices, and other pertinent papers in such form as the Tax
20 Commissioner may reasonably require.

21 (b) Every such seller, retailer, or person shall keep
22 such records for not less than three years from the making of such
23 records unless the Tax Commissioner in writing sooner authorized
24 their destruction.

25 (4) The Tax Commissioner or any person authorized in

1 writing by him or her may examine the books, papers, records, and
2 equipment of any person selling property and any person liable for
3 the use tax and may investigate the character of the business of
4 the person in order to verify the accuracy of any return made or,
5 if no return is made by the person, to ascertain and determine
6 the amount required to be paid. In the examination of any person
7 selling property or of any person liable for the use tax, an
8 inquiry shall be made as to the accuracy of the reporting of city
9 sales and use taxes for which the person is liable under the Local
10 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
11 the accuracy of the allocation made between the various counties,
12 cities, villages, and municipal counties of the tax due. The Tax
13 Commissioner may make or cause to be made copies of resale or
14 exemption certificates and may pay a reasonable amount to the
15 person having custody of the records for providing such copies.

16 (5) The taxpayer shall have the right to keep or store
17 his or her records at a point outside this state and shall make his
18 or her records available to the Tax Commissioner at all times.

19 (6) In administration of the use tax, the Tax
20 Commissioner may require the filing of reports by any person or
21 class of persons having in his, her, or their possession or custody
22 information relating to sales of property, the storage, use, or
23 other consumption of which is subject to the tax. The report shall
24 be filed when the Tax Commissioner requires and shall set forth the
25 names and addresses of purchasers of the property, the sales price

1 of the property, the date of sale, and such other information as
2 the Tax Commissioner may require.

3 (7) It shall be a Class I misdemeanor for the Tax
4 Commissioner or any official or employee of the Tax Commissioner,
5 the State Treasurer, or the Department of Administrative Services
6 to make known in any manner whatever the business affairs,
7 operations, or information obtained by an investigation of records
8 and activities of any retailer or any other person visited
9 or examined in the discharge of official duty or the amount
10 or source of income, profits, losses, expenditures, or any
11 particular thereof, set forth or disclosed in any return, or
12 to permit any return or copy thereof, or any book containing
13 any abstract or particulars thereof to be seen or examined by
14 any person not connected with the Tax Commissioner. Nothing in
15 this section shall be construed to prohibit (a) the delivery to
16 a taxpayer, his or her duly authorized representative, or his
17 or her successors, receivers, trustees, executors, administrators,
18 assignees, or guarantors, if directly interested, of a certified
19 copy of any return or report in connection with his or her tax,
20 (b) the publication of statistics so classified as to prevent
21 the identification of particular reports or returns and the items
22 thereof, (c) the inspection by the Attorney General, other legal
23 representative of the state, or county attorney of the reports
24 or returns of any taxpayer when either (i) information on the
25 reports or returns is considered by the Attorney General to be

1 relevant to any action or proceeding instituted by the taxpayer
2 or against whom an action or proceeding is being considered or
3 has been commenced by any state agency or the county or (ii) the
4 taxpayer has instituted an action to review the tax based thereon
5 or an action or proceeding against the taxpayer for collection of
6 tax or failure to comply with the Nebraska Revenue Act of 1967 is
7 being considered or has been commenced, (d) the furnishing of any
8 information to the United States Government or to states allowing
9 similar privileges to the Tax Commissioner, (e) the disclosure of
10 information and records to a collection agency contracting with the
11 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
12 the disclosure to another party to a transaction of information
13 and records concerning the transaction between the taxpayer and
14 the other party, or (g) the disclosure of information pursuant to
15 section 77-27,195 or section 77-5731.

16 (8) Notwithstanding the provisions of subsection (7) of
17 this section, the Tax Commissioner may permit the Postal Inspector
18 of the United States Postal Service or his or her delegates to
19 inspect the reports or returns of any person filed pursuant to the
20 Nebraska Revenue Act of 1967 when information on the reports or
21 returns is relevant to any action or proceeding instituted or being
22 considered by the United States Postal Service against such person
23 for the fraudulent use of the mails to carry and deliver false and
24 fraudulent tax returns to the Tax Commissioner with the intent to
25 defraud the State of Nebraska or to evade the payment of Nebraska

1 state taxes.

2 (9) Notwithstanding the provisions of subsection (7) of
3 this section, the Tax Commissioner may permit other tax officials
4 of this state to inspect the tax returns, reports, and applications
5 filed under sections 77-2701.04 to 77-2713, but such inspection
6 shall be permitted only for purposes of enforcing a tax law and
7 only to the extent and under the conditions prescribed by the rules
8 and regulations of the Tax Commissioner.

9 (10) Notwithstanding the provisions of subsection (7)
10 of this section, the Tax Commissioner may, upon request, provide
11 the county board of any county which has exercised the authority
12 granted by section 81-1254 with a list of the names and addresses
13 of the hotels located within the county for which lodging sales tax
14 returns have been filed or for which lodging sales taxes have been
15 remitted for the county's County Visitors Promotion Fund under the
16 Nebraska Visitors Development Act.

17 The information provided by the Tax Commissioner shall
18 indicate only the names and addresses of the hotels located within
19 the requesting county for which lodging sales tax returns have been
20 filed for a specified period and the fact that lodging sales taxes
21 remitted by or on behalf of the hotel have constituted a portion of
22 the total sum remitted by the state to the county for a specified
23 period under the provisions of the Nebraska Visitors Development
24 Act. No additional information shall be revealed.

25 (11)(a) Notwithstanding the provisions of subsection (7)

1 of this section, the Tax Commissioner shall, upon written request
2 by the Legislative Performance Audit Committee, make tax returns
3 and tax return information open to inspection by or disclosure to
4 Legislative Performance Audit Section employees for the purpose of
5 and to the extent necessary in making an audit of the Department
6 of Revenue pursuant to section 50-1205. Confidential tax returns
7 and tax return information shall be audited only upon the premises
8 of the Department of Revenue. All audit workpapers pertaining to
9 the audit of the Department of Revenue shall be stored in a secure
10 place in the Department of Revenue.

11 (b) No employee of the Legislative Performance Audit
12 Section shall disclose to any person, other than another
13 Legislative Performance Audit Section employee whose official
14 duties require such disclosure or as provided in subsections (2)
15 and (3) of section 50-1213, any return or return information
16 described in the Nebraska Revenue Act of 1967 in a form which can
17 be associated with or otherwise identify, directly or indirectly,
18 a particular taxpayer.

19 (c) Any person who violates the provisions of this
20 subsection shall be guilty of a Class I misdemeanor. For purposes
21 of this subsection, employee includes a former Legislative
22 Performance Audit Section employee.

23 (12) For purposes of subsections (11) and (12) of this
24 section:

25 (a) Disclosure means the making known to any person in

1 any manner a tax return or return information;

2 (b) Return information means:

3 (i) A taxpayer's identification number and (A) the
4 nature, source, or amount of his or her income, payments, receipts,
5 deductions, exemptions, credits, assets, liabilities, net worth,
6 tax liability, tax withheld, deficiencies, overassessments, or tax
7 payments, whether the taxpayer's return was, is being, or will be
8 examined or subject to other investigation or processing or (B) any
9 other data received by, recorded by, prepared by, furnished to, or
10 collected by the Tax Commissioner with respect to a return or the
11 determination of the existence or possible existence of liability
12 or the amount of liability of any person for any tax, penalty,
13 interest, fine, forfeiture, or other imposition or offense; and

14 (ii) Any part of any written determination or any
15 background file document relating to such written determination;
16 and

17 (c) Tax return or return means any tax or information
18 return or claim for refund required by, provided for, or permitted
19 under sections 77-2701 to 77-2713 which is filed with the Tax
20 Commissioner by, on behalf of, or with respect to any person
21 and any amendment or supplement thereto, including supporting
22 schedules, attachments, or lists which are supplemental to or part
23 of the filed return.

24 (13) Notwithstanding the provisions of subsection (7) of
25 this section, the Tax Commissioner shall, upon request, provide

1 any municipality which has adopted the local option sales tax
2 under the Local Option Revenue Act with a list of the names and
3 addresses of the retailers which have collected the local option
4 sales tax for the municipality. The request may be made annually
5 and shall be submitted to the Tax Commissioner on or before June
6 30 of each year. The information provided by the Tax Commissioner
7 shall indicate only the names and addresses of the retailers. No
8 additional information shall be revealed.

9 ~~(13)~~ (14) In all proceedings under the Nebraska Revenue
10 Act of 1967, the Tax Commissioner may act for and on behalf of the
11 people of the State of Nebraska. The Tax Commissioner in his or
12 her discretion may waive all or part of any penalties provided by
13 the provisions of such act, but may not waive the minimum interest
14 on delinquent taxes specified in section 45-104.02, as such rate
15 may from time to time be adjusted, except interest on use taxes
16 voluntarily reported by an individual.

17 ~~(14)(a)~~ (15)(a) The purpose of this subsection is to set
18 forth the state's policy for the protection of the confidentiality
19 rights of all participants in the system operated pursuant to
20 the streamlined sales and use tax agreement and of the privacy
21 interests of consumers who deal with model 1 sellers.

22 (b) For purposes of this subsection:

23 (i) Anonymous data means information that does not
24 identify a person;

25 (ii) Confidential taxpayer information means all

1 information that is protected under a member state's laws,
2 regulations, and privileges; and

3 (iii) Personally identifiable information means
4 information that identifies a person.

5 (c) The state agrees that a fundamental precept for model
6 1 sellers is to preserve the privacy of consumers by protecting
7 their anonymity. With very limited exceptions, a certified service
8 provider shall perform its tax calculation, remittance, and
9 reporting functions without retaining the personally identifiable
10 information of consumers.

11 (d) The governing board of the member states in the
12 streamlined sales and use tax agreement may certify a certified
13 service provider only if that certified service provider certifies
14 that:

15 (i) Its system has been designed and tested to ensure
16 that the fundamental precept of anonymity is respected;

17 (ii) Personally identifiable information is only used and
18 retained to the extent necessary for the administration of model 1
19 with respect to exempt purchasers;

20 (iii) It provides consumers clear and conspicuous
21 notice of its information practices, including what information
22 it collects, how it collects the information, how it uses the
23 information, how long, if at all, it retains the information, and
24 whether it discloses the information to member states. Such notice
25 shall be satisfied by a written privacy policy statement accessible

1 by the public on the web site of the certified service provider;

2 (iv) Its collection, use, and retention of personally
3 identifiable information is limited to that required by the member
4 states to ensure the validity of exemptions from taxation that are
5 claimed by reason of a consumer's status or the intended use of the
6 goods or services purchased; and

7 (v) It provides adequate technical, physical, and
8 administrative safeguards so as to protect personally identifiable
9 information from unauthorized access and disclosure.

10 (e) The state shall provide public notification to
11 consumers, including exempt purchasers, of the state's practices
12 relating to the collection, use, and retention of personally
13 identifiable information.

14 (f) When any personally identifiable information that has
15 been collected and retained is no longer required for the purposes
16 set forth in subdivision ~~(14)(d)(iv)~~ (15)(d)(iv) of this section,
17 such information shall no longer be retained by the member states.

18 (g) When personally identifiable information regarding an
19 individual is retained by or on behalf of the state, it shall
20 provide reasonable access by such individual to his or her own
21 information in the state's possession and a right to correct any
22 inaccurately recorded information.

23 (h) If anyone other than a member state, or a person
24 authorized by that state's law or the agreement, seeks to discover
25 personally identifiable information, the state from whom the

1 information is sought should make a reasonable and timely effort to
2 notify the individual of such request.

3 (i) This privacy policy is subject to enforcement by the
4 Attorney General.

5 (j) All other laws and regulations regarding the
6 collection, use, and maintenance of confidential taxpayer
7 information remain fully applicable and binding. Without
8 limitation, this subsection does not enlarge or limit the state's
9 authority to:

10 (i) Conduct audits or other reviews as provided under the
11 agreement and state law;

12 (ii) Provide records pursuant to the federal Freedom of
13 Information Act, disclosure laws with governmental agencies, or
14 other regulations;

15 (iii) Prevent, consistent with state law, disclosure of
16 confidential taxpayer information;

17 (iv) Prevent, consistent with federal law, disclosure or
18 misuse of federal return information obtained under a disclosure
19 agreement with the Internal Revenue Service; and

20 (v) Collect, disclose, disseminate, or otherwise use
21 anonymous data for governmental purposes.

22 Sec. 2. Section 77-27,144, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-27,144 The Tax Commissioner shall collect the
25 tax imposed by any incorporated municipality concurrently with

1 collection of a state tax in the same manner as the state tax is
2 collected. The Tax Commissioner shall remit monthly the proceeds
3 of the tax to the incorporated municipalities levying the tax,
4 after deducting the amount of refunds made and three percent of the
5 remainder to be credited to the Municipal Equalization Fund. The
6 Tax Commissioner shall keep full and accurate records of all money
7 received and distributed under the provisions of the Local Option
8 Revenue Act. When proceeds of a tax levy are received but the
9 identity of the incorporated municipality which levied the tax is
10 unknown and is not identified within six months after receipt, the
11 amount shall be credited to the Municipal Equalization Fund. The
12 municipality may request the names and addresses of the retailers
13 which have collected the tax as provided in section 77-2711.

14 Sec. 3. Original section 77-27,144, Reissue Revised
15 Statutes of Nebraska, and section 77-2711, Revised Statutes
16 Cumulative Supplement, 2006, are repealed.