

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1175

Introduced by White, 8.

Read first time January 23, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-3104, 77-3105, and 77-3106, Reissue Revised Statutes
3 of Nebraska, and sections 77-2753 and 77-3102, Revised
4 Statutes Supplement, 2007; to change provisions relating
5 to income tax withholding; to harmonize provisions; and
6 to repeal the original sections.
7 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 in
14 his or her taxable income during the calendar year. The method of
15 determining the amount to be withheld shall be prescribed by rules
16 and regulations of the Tax Commissioner. Such rules and regulations
17 may allow withholding to be computed at a percentage of the
18 federal withholding or at a comparable flat percentage for gambling
19 winnings or supplemental payments, including bonuses, commissions,
20 overtime pay, and sales awards which are not paid at the same
21 time as other wages, or payments to independent contractors. Any
22 withholding tables prescribed by the Tax Commissioner shall be
23 provided to the budget division of the Department of Administrative
24 Services and the Legislative Fiscal Analyst for review at least
25 sixty days before the tables become effective.

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

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

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

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

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

23 (d) The withholding required by this subsection shall
24 not apply to any payment to a nonresident alien, corporation,
25 partnership, or limited liability company if such individual,

1 shareholder, partner, or member provides the payor with a statement
2 that the income earned is not subject to tax because of a treaty
3 obligation of the United States or if such payment is subject to
4 withholding under subsection (3) of this section.

5 (3) (a) Every payor who is maintaining an office or
6 transacting business within this state and making a payment
7 or payments related to such business in excess of six hundred
8 dollars, and such payment or payments are for construction services
9 performed or to be performed substantially within this state, to
10 an individual, other than an employee, who is not subject to
11 withholding on such payment under the Internal Revenue Code of
12 1986, as amended, or to any person who is providing or arranging
13 for labor for construction services, either as an employee or as an
14 independent contractor, shall deduct and withhold five percent of
15 such payments. If the individual performing the services provides
16 the payor with the total amount of expenses reasonably related to
17 the services, the total payment or payments may be reduced by the
18 total amount of expenses before computing the amount to deduct and
19 withhold. Such reduction shall not be more than fifty percent of
20 such payment or payments, except that when one-half or more of the
21 payment is for materials or the use of equipment provided to the
22 payor, such reduction shall not be more than seventy-five percent
23 of such payment or payments.

24 (b) The withholding required by this subsection shall not
25 apply to any payment made to a person that provides the payor with

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

3 (c) For purposes of this subsection, construction
4 services means services that are provided by a contractor as
5 defined in section 77-3101.

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

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

1 adopted and promulgated by the Tax Commissioner.

2 ~~(5)~~ (6) Wages and other payments subject to withholding
3 shall mean payments that are subject to withholding under the
4 Internal Revenue Code of 1986 and are (a) payments made by
5 employers to employees, except such payments subject to 26 U.S.C.
6 3406, (b) payments of gambling winnings, ~~or~~ (c) pension or annuity
7 payments when the recipient has requested the payor to withhold
8 from such payments, or (d) payments to independent contractors.

9 Sec. 2. Section 77-3102, Revised Statutes Supplement,
10 2007, is amended to read:

11 77-3102 (1) In order that the State of Nebraska and
12 the political subdivisions thereof may receive all taxes due in
13 every instance, including contributions due under the Employment
14 Security Law and any withholding required under the Nebraska
15 Revenue Act of 1967, contractors who are nonresidents of this
16 state, desiring to engage in, prosecute, follow, or carry on the
17 business of contracting within this state shall register with the
18 Tax Commissioner.

19 (2) Each contract to which a nonresident contractor is a
20 party shall be registered with the Tax Commissioner, except that
21 if the total contract price or compensation to be received is
22 less than ten thousand dollars, the Tax Commissioner may waive the
23 requirements of this subsection.

24 Sec. 3. Section 77-3104, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-3104 Every contractor required to register under the
2 provisions of sections 77-3101 to 77-3112 shall, before entering
3 into the performance of any contract or contracts in this state
4 either (1) execute and file with the Tax Commissioner a good and
5 valid bond issued by a surety company authorized to do business in
6 this state, or with sufficient sureties to be approved by the Tax
7 Commissioner, conditioned that all taxes, including contributions
8 under the Employment Security Law and any withholding required
9 under the Nebraska Revenue Act of 1967, which may accrue to the
10 State of Nebraska and all taxes which may accrue to the political
11 subdivisions thereof on account of the execution and performance
12 of such contract or contracts, will be paid when due, and the
13 execution and filing of such bond shall be a condition precedent
14 to commencing work on any contract in the State of Nebraska, or
15 (2) such other form of assurance of such performance as shall be
16 acceptable to the Tax Commissioner.

17 Sec. 4. Section 77-3105, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-3105 Every contractor required to register any
20 contract or contracts, under the provisions of sections 77-3101 to
21 77-3112, shall, for each such contract and before entering into
22 the performance of such contract or contracts, execute and file
23 with the Tax Commissioner either (1) a good and valid bond issued
24 by a surety company authorized to do business in this state, or
25 with sufficient sureties to be approved by the Tax Commissioner,

1 conditioned that all taxes, including contributions due under the
2 Employment Security Law and any withholding required under the
3 Nebraska Revenue Act of 1967, which may accrue to the State of
4 Nebraska and the political subdivisions thereof on account of the
5 execution and performance of such contract or contracts, will be
6 paid when due, and the execution and filing of such bond shall be
7 a condition precedent to commencing work on any contract in the
8 State of Nebraska, or (2) such other form of assurance of such
9 performance as shall be acceptable to the Tax Commissioner. Bonds
10 filed pursuant to this section shall be subject to the following
11 conditions:

12 (1) The Tax Commissioner may, at his or her discretion,
13 allow the execution and filing of one bond to be sufficient for
14 commencing performance of all such contracts. Such ~~PROVIDED,~~
15 ~~that such~~ bond shall be conditioned as provided in this section
16 with respect to all contracts to be performed during the current
17 calendar year and shall be in the sum of not less than five
18 thousand dollars;

19 (2) If at any time the Tax Commissioner shall determine
20 that the amount of any bond is not sufficient to cover the tax
21 liabilities accruing to the State of Nebraska or the political
22 subdivisions thereof for the current calendar year, the Tax
23 Commissioner shall require such bond to be increased in such
24 sum as the Tax Commissioner may determine to be proper;

25 (3) When any nonresident contractor shall have fully

1 performed the contracts registered by him or her and shall have
2 made payments of all taxes, including contributions due under
3 the Employment Security Law and any withholding required under
4 the Nebraska Revenue Act of 1967, which accrued to the State of
5 Nebraska and the political subdivisions thereof on account of the
6 execution and performance of such contracts, the bond or bonds may
7 be released by the Tax Commissioner; and

8 (4) Any bond or bonds required in this section are in
9 addition to, separate, and distinct from all bonds required under
10 the provisions of section 77-3104.

11 Sec. 5. Section 77-3106, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-3106 Any resident or nonresident contractor, who
14 contracts with (1) any subcontractor who is or shall become
15 subject to the provisions of sections 77-3101 to 77-3112, (2)
16 any individual who is not an employee and who is not subject to
17 withholding on such payment under the Internal Revenue Code of
18 1986, as amended, or (3) any person who is providing or arranging
19 for labor for construction services, either as an employee or
20 as an independent contractor, shall withhold sufficient money
21 on such contract or contracts to guarantee that all taxes,
22 including contributions due under the Employment Security Law
23 and any withholding required under the Nebraska Revenue Act of
24 1967, which may accrue to the State of Nebraska and all taxes
25 which may accrue to the political subdivisions thereof on account

1 of the execution and performance of such contract or contracts,
2 will be paid when due. Failure to comply with the provisions of
3 this section or to release such withholding to the subcontractor
4 without a clearance from the Department of Revenue shall render
5 such contractor directly liable ~~for such taxes, contributions,~~
6 ~~penalties, and interest due from such subcontractors,~~ for the
7 amount of bond that the subcontractor was required to provide
8 under section 77-3104 and the Tax Commissioner shall have all the
9 remedies of collection against such contractor under the provisions
10 of sections 77-3101 to 77-3112 as though the services in question
11 were performed directly by such contractor. The contractor may
12 reduce the amount for which the contractor is liable under this
13 section to the extent the contractor can show the subcontractor has
14 paid the taxes and contributions due to the State of Nebraska and
15 taxes due to any political subdivision.

16 Sec. 6. Original sections 77-3104, 77-3105, and 77-3106,
17 Reissue Revised Statutes of Nebraska, and sections 77-2753 and
18 77-3102, Revised Statutes Supplement, 2007, are repealed.