

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 94**

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 section  
3               77-2711, Revised Statutes Cumulative Supplement, 2006; to  
4       authorize municipalities to receive information as  
5       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 sections  
4 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and  
5 regulations relating to the administration and enforcement of such  
6 sections.

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

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

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

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

23           (4) The Tax Commissioner or any person authorized in writing  
24 by him or her may examine the books, papers, records, and equipment of  
25 any person selling property and any person liable for the use tax and  
26 may investigate the character of the business of the person in order  
27 to verify the accuracy of any return made or, if no return is made by

1 the person, to ascertain and determine the amount required to be paid.  
2 In the examination of any person selling property or of any person  
3 liable for the use tax, an inquiry shall be made as to the accuracy of  
4 the reporting of city sales and use taxes for which the person is  
5 liable under the Local Option Revenue Act or sections 13-319, 13-324,  
6 and 13-2813 and the accuracy of the allocation made between the  
7 various counties, cities, villages, and municipal counties of the tax  
8 due. The Tax Commissioner may make or cause to be made copies of  
9 resale or exemption certificates and may pay a reasonable amount to  
10 the person having custody of the records for providing such copies.

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

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

23 (7) It shall be a Class I misdemeanor for the Tax  
24 Commissioner or any official or employee of the Tax Commissioner, the  
25 State Treasurer, or the Department of Administrative Services to make  
26 known in any manner whatever the business affairs, operations, or  
27 information obtained by an investigation of records and activities of

1 any retailer or any other person visited or examined in the discharge  
2 of official duty or the amount or source of income, profits, losses,  
3 expenditures, or any particular thereof, set forth or disclosed in any  
4 return, or to permit any return or copy thereof, or any book  
5 containing any abstract or particulars thereof to be seen or examined  
6 by any person not connected with the Tax Commissioner. Nothing in this  
7 section shall be construed to prohibit (a) the delivery to a taxpayer,  
8 his or her duly authorized representative, or his or her successors,  
9 receivers, trustees, executors, administrators, assignees, or  
10 guarantors, if directly interested, of a certified copy of any return  
11 or report in connection with his or her tax, (b) the publication of  
12 statistics so classified as to prevent the identification of  
13 particular reports or returns and the items thereof, (c) the  
14 inspection by the Attorney General, other legal representative of the  
15 state, or county attorney of the reports or returns of any taxpayer  
16 when either (i) information on the reports or returns is considered by  
17 the Attorney General to be relevant to any action or proceeding  
18 instituted by the taxpayer or against whom an action or proceeding is  
19 being considered or has been commenced by any state agency or the  
20 county or (ii) the taxpayer has instituted an action to review the tax  
21 based thereon or an action or proceeding against the taxpayer for  
22 collection of tax or failure to comply with the Nebraska Revenue Act  
23 of 1967 is being considered or has been commenced, (d) the furnishing  
24 of any information to the United States Government or to states  
25 allowing similar privileges to the Tax Commissioner, (e) the  
26 disclosure of information and records to a collection agency  
27 contracting with the Tax Commissioner pursuant to sections 77-377.01

1 to 77-377.04, (f) the disclosure to another party to a transaction of  
2 information and records concerning the transaction between the  
3 taxpayer and the other party, or (g) the disclosure of information  
4 pursuant to section 77-27,195 or section 77-5731.

5 (8) Notwithstanding the provisions of subsection (7) of this  
6 section, the Tax Commissioner may permit the Postal Inspector of the  
7 United States Postal Service or his or her delegates to inspect the  
8 reports or returns of any person filed pursuant to the Nebraska  
9 Revenue Act of 1967 when information on the reports or returns is  
10 relevant to any action or proceeding instituted or being considered by  
11 the United States Postal Service against such person for the  
12 fraudulent use of the mails to carry and deliver false and fraudulent  
13 tax returns to the Tax Commissioner with the intent to defraud the  
14 State of Nebraska or to evade the payment of Nebraska state taxes.

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

22 (10) Notwithstanding the provisions of subsection (7) of  
23 this section, the Tax Commissioner may, upon request, provide the  
24 county board of any county which has exercised the authority granted  
25 by section 81-1254 with a list of the names and addresses of the  
26 hotels located within the county for which lodging sales tax returns  
27 have been filed or for which lodging sales taxes have been remitted

1 for the county's County Visitors Promotion Fund under the Nebraska  
2 Visitors Development Act.

3 The information provided by the Tax Commissioner shall  
4 indicate only the names and addresses of the hotels located within the  
5 requesting county for which lodging sales tax returns have been filed  
6 for a specified period and the fact that lodging sales taxes remitted  
7 by or on behalf of the hotel have constituted a portion of the total  
8 sum remitted by the state to the county for a specified period under  
9 the provisions of the Nebraska Visitors Development Act. No additional  
10 information shall be revealed.

11 (11)(a) Notwithstanding the provisions of subsection (7) of  
12 this section, the Tax Commissioner shall, upon written request by the  
13 Legislative Performance Audit Committee, make tax returns and tax  
14 return information open to inspection by or disclosure to Legislative  
15 Performance Audit Section employees for the purpose of and to the  
16 extent necessary in making an audit of the Department of Revenue  
17 pursuant to section 50-1205. Confidential tax returns and tax return  
18 information shall be audited only upon the premises of the Department  
19 of Revenue. All audit workpapers pertaining to the audit of the  
20 Department of Revenue shall be stored in a secure place in the  
21 Department of Revenue.

22 (b) No employee of the Legislative Performance Audit Section  
23 shall disclose to any person, other than another Legislative  
24 Performance Audit Section employee whose official duties require such  
25 disclosure or as provided in subsections (2) and (3) of section  
26 50-1213, any return or return information described in the Nebraska  
27 Revenue Act of 1967 in a form which can be associated with or

1 otherwise identify, directly or indirectly, a particular taxpayer.

2 (c) Any person who violates the provisions of this  
3 subsection shall be guilty of a Class I misdemeanor. For purposes of  
4 this subsection, employee includes a former Legislative Performance  
5 Audit Section employee.

6 (12) For purposes of subsections (11) and (12) of this  
7 section:

8 (a) Disclosure means the making known to any person in any  
9 manner a tax return or return information;

10 (b) Return information means:

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

22 (ii) Any part of any written determination or any background  
23 file document relating to such written determination; and

24 (c) Tax return or return means any tax or information return  
25 or claim for refund required by, provided for, or permitted under  
26 sections 77-2701 to 77-2713 which is filed with the Tax Commissioner  
27 by, on behalf of, or with respect to any person and any amendment or

1 supplement thereto, including supporting schedules, attachments, or  
2 lists which are supplemental to or part of the filed return.

3 (13) Notwithstanding the provisions of subsection (7) of  
4 this section, the Tax Commissioner shall, upon request, provide any  
5 municipality which has adopted the local option sales tax under the  
6 Local Option Revenue Act with a list of the names and addresses of  
7 the retailers which have collected the local option sales tax for the  
8 municipality. The request may be made annually and shall be submitted  
9 to the Tax Commissioner on or before June 30 of each year. The  
10 information provided by the Tax Commissioner shall indicate only the  
11 names and addresses of the retailers. No additional information shall  
12 be revealed.

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

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

26 (b) For purposes of this subsection:

27 (i) Anonymous data means information that does not identify



1 a person;

2 (ii) Confidential taxpayer information means all information  
3 that is protected under a member state's laws, regulations, and  
4 privileges; and

5 (iii) Personally identifiable information means information  
6 that identifies a person.

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

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

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

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

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

1 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 set  
16 forth in subdivision ~~(14)(d)(iv)~~ (15)(d)(iv) of this section, such  
17 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 provide  
20 reasonable access by such individual to his or her own information in  
21 the state's possession and a right to correct any inaccurately  
22 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  
26 information is sought should make a reasonable and timely effort to  
27 notify the individual of such request.

1           (i) This privacy policy is subject to enforcement by the  
2 Attorney General.

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

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

9           (ii) Provide records pursuant to the federal Freedom of  
10 Information Act, disclosure laws with governmental agencies, or other  
11 regulations;

12           (iii) Prevent, consistent with state law, disclosure of  
13 confidential taxpayer information;

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

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

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

21           77-27,144. The Tax Commissioner shall collect the tax  
22 imposed by any incorporated municipality concurrently with collection  
23 of a state tax in the same manner as the state tax is collected. The  
24 Tax Commissioner shall remit monthly the proceeds of the tax to the  
25 incorporated municipalities levying the tax, after deducting the  
26 amount of refunds made and three percent of the remainder to be  
27 credited to the Municipal Equalization Fund. The Tax Commissioner

1 shall keep full and accurate records of all money received and  
2 distributed under the provisions of the Local Option Revenue Act. When  
3 proceeds of a tax levy are received but the identity of the  
4 incorporated municipality which levied the tax is unknown and is not  
5 identified within six months after receipt, the amount shall be  
6 credited to the Municipal Equalization Fund. The municipality may  
7 request the names and addresses of the retailers which have collected  
8 the tax as provided in section 77-2711.

9           Sec. 3. Original section 77-27,144, Reissue Revised Statutes  
10 of Nebraska, and section 77-2711, Revised Statutes Cumulative  
11 Supplement, 2006, are repealed.