

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 89

Introduced by Cornett, 45.

Read first time January 8, 2009

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, and 77-4024, Reissue
4 Revised Statutes of Nebraska; to change the tax on snuff;
5 to define a term; to harmonize provisions; to provide an
6 operative date; and to repeal the original sections.
7 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, (5) cavendish, and (6) granulated, plug
5 cut, crimp cut, ready rubbed, and other tobacco prepared in such
6 manner as to be suitable for smoking, except that smoking tobacco
7 does not mean 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 ~~erimp cut, ready rubbed, and other smoking tobacco, (6) means~~
13 (1) snuff, (7) (2) snuff flour, (8) cavendish, (9) (3) plug and
14 twist tobacco, (10) (4) fine cut and other chewing tobacco, (11)
15 (5) shorts, refuse scraps, clippings, cuttings, and sweepings of
16 tobacco, and (12) (6) 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. ~~The tax~~

1 (b) The tax on tobacco products shall be sixty-five
2 cents per ounce and a proportionate tax at the like rate on all
3 fractional parts of an ounce. Such tax shall be computed based on
4 the net weight as listed by the manufacturer.

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

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

12 (2) Whenever any person who is licensed under section
13 77-4009 purchases tobacco products or smoking tobacco from another
14 person licensed under section 77-4009, the seller shall be liable
15 for the payment of the tax.

16 (3) ~~On and after October 1, 2002, and continuing until~~
17 ~~October 1, 2004, the Tax Commissioner shall remit the amount~~
18 ~~collected pursuant to this section to the State Treasurer, and the~~
19 ~~State Treasurer shall credit three-fourths of such amount to the~~
20 ~~General Fund and one-fourth of such amount to the Cash Reserve~~
21 ~~Fund. On and after October 1, 2004, amounts collected~~ Amounts
22 collected pursuant to this section shall be used and distributed
23 pursuant to section 77-4025.

24 Sec. 7. Section 77-4009, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-4009 (1) Each first owner of tobacco products and
2 smoking tobacco to be sold in this state shall be licensed by
3 the Tax Commissioner. Every application for such license shall be
4 made on a form prescribed by the Tax Commissioner. The application
5 shall include: (a) The name and address of the applicant or, if
6 the applicant is a firm, partnership, limited liability company, or
7 association, the name and address of each of its members or, if
8 the applicant is a corporation, the name and address of each of
9 its officers and the address of its principal place of business;
10 (b) the location of the place of business to be licensed; and (c)
11 such other information as the Tax Commissioner may require for the
12 purpose of administering the Tobacco Products Tax Act.

13 (2) A person outside of this state who ships or
14 transports tobacco products and smoking tobacco to any person
15 in this state to be sold in this state may make application for a
16 license and be granted such a license by the Tax Commissioner. If
17 a license is granted, such person shall be subject to the Tobacco
18 Products Tax Act and shall be entitled to act as a licensee.
19 A person outside this state who receives a license shall have
20 established sufficient contact with this state for the exercise
21 of personal jurisdiction over the person in any matter or issue
22 arising under the act.

23 Sec. 8. Section 77-4014, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-4014 (1) On or before the tenth day of each calendar

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

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

19 (3) Returns shall be made upon forms furnished and
20 prescribed by the Tax Commissioner. Each return shall be
21 accompanied by a remittance for the full tax liability shown, less
22 an amount of such liability equal to any amount allowed a payer of
23 the sales and use tax pursuant to subdivision (1)(d) of section
24 77-2708 as compensation to reimburse the licensee for his or her
25 expenses incurred in complying with the Tobacco Products Tax Act.

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

3 77-4017 (1) Every licensee shall keep complete and
4 accurate records for all places of business, including itemized
5 invoices of tobacco products and smoking tobacco (a) held,
6 purchased, manufactured, or brought in or caused to be brought
7 into this state or (b) for a licensee located outside of this
8 state, shipped or transported to retailers in this state. For
9 tobacco products, such return shall also include the net weight as
10 listed by the manufacturer.

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

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

1 suspension of the license.

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

4 77-4018 When tobacco products or smoking tobacco for
5 which the tax imposed by the Tobacco Products Tax Act has been
6 reported and paid are (1) sold, shipped, or transported by the
7 licensee to retailers, licensees, or ultimate consumers outside
8 this state or (2) returned to the manufacturer by the licensee, a
9 refund or credit of the tax shall be made to the licensee. For the
10 purpose of making such credit or refund, the Tax Commissioner may
11 issue a tax credit or may prepare a voucher showing the net amount
12 of such refund due. The Tax Commissioner shall have a warrant
13 drawn upon the State Treasurer for the amount of any such refund
14 certified by the Tax Commissioner.

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

17 77-4024 Any person who violates the Tobacco Products Tax
18 Act or any person who sells, delivers, or accepts tobacco products
19 or smoking tobacco with the intent to evade the act shall be guilty
20 of a Class IV felony.

21 Sec. 12. This act becomes operative on October 1, 2009.

22 Sec. 13. Original sections 77-4001, 77-4002, 77-4004,
23 77-4007, 77-4008, 77-4009, 77-4014, 77-4017, 77-4018, and 77-4024,
24 Reissue Revised Statutes of Nebraska, are repealed.