

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 210

Final Reading

Introduced by Cornett, 45.

Read first time January 10, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 13-2609, 72-258.03, 77-702, 77-1327, 77-1783.01,
 3 77-2704.50, 77-2705.01, 77-2708, 77-2709, 81-1260, and
 4 81-15,164, Reissue Revised Statutes of Nebraska, and
 5 sections 13-3107 and 81-8,128, Revised Statutes
 6 Cumulative Supplement, 2010; to change provisions
 7 relating to the due dates for certain sales tax returns,
 8 sales and use taxes, and certain fees; to change
 9 provisions relating to school lands, qualifications of
 10 the Property Tax Administrator, data reporting, personal
 11 liability for corporate taxes, common or contract carrier
 12 exemption certificates, and supervision of the State
 13 Athletic Commissioner; to eliminate the Greenbelt
 14 Advisory Committee; to harmonize provisions; to provide
 15 operative dates; to repeal the original sections; and to
 16 outright repeal section 77-1355, Reissue Revised Statutes

1 of Nebraska.

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

1 Section 1. Section 13-2609, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 13-2609 (1) If an application is approved, the Tax
4 Commissioner shall:

5 (a) Audit or review audits of the approved convention and
6 meeting center facility, sports arena facility, or associated hotel
7 to determine the state sales tax revenue collected by retailers and
8 operators doing business at such facilities on sales at such
9 facilities, state sales tax revenue collected on primary and
10 secondary box office sales of admissions to such facilities, and
11 state sales tax revenue collected by associated hotels; and

12 (b) Certify annually the amount of state sales tax
13 revenue collected by retailers and operators doing business at such
14 facilities on sales at such facilities, state sales tax revenue
15 collected on primary and secondary box office sales of admissions to
16 such facilities, and state sales tax revenue collected by associated
17 hotels, to the State Treasurer.

18 (2) State sales tax revenue collected by retailers and
19 operators that are not eligible facilities but are doing business at
20 eligible facilities shall be reported on informational returns
21 developed by the Department of Revenue and provided to any such
22 retailers and operators by the eligible facility. The informational
23 returns shall be submitted to the department by the retailer or
24 operator by the ~~twenty-fifth~~ twentieth day of the month following the
25 month the sales taxes are collected. The Tax Commissioner shall use

1 the data from the informational returns and sales tax returns of
2 eligible facilities and associated hotels to determine the
3 appropriate amount of state sales tax revenue.

4 (3) Changes made to the Convention Center Facility
5 Financing Assistance Act by Laws 2007, LB 551, shall apply to state
6 sales tax revenue collected commencing on July 1, 2006.

7 Sec. 2. Section 13-3107, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

9 13-3107 (1) If an application is approved, the Tax
10 Commissioner shall:

11 (a) Audit or review audits of the approved eligible
12 sports arena facility to determine the (i) state sales tax revenue
13 collected by retailers doing business at such facility on sales at
14 such facility, (ii) state sales tax revenue collected on primary and
15 secondary box office sales of admissions to such facility, and (iii)
16 new state sales tax revenue collected by nearby retailers;

17 (b) Certify annually the amount of state sales tax
18 revenue and new state sales tax revenue determined under subdivision
19 (a) of this subsection to the State Treasurer; and

20 (c) Determine if more than one facility is eligible for
21 state assistance from state sales tax revenue collected by the same
22 nearby retailers. If the Tax Commissioner has made such a
23 determination, the facility that was first determined to be eligible
24 for state assistance shall be the only facility eligible to receive
25 such funds.

1 (2) State sales tax revenue collected by retailers that
2 are doing business at an eligible sports arena facility and new state
3 sales tax revenue collected by nearby retailers shall be reported on
4 informational returns developed by the Department of Revenue and
5 provided to any such retailers by the facility. The informational
6 returns shall be submitted to the department by the retailer by the
7 ~~twenty-fifth~~ twentieth day of the month following the month the sales
8 taxes are collected. The Tax Commissioner shall use the data from the
9 informational returns and sales tax returns of both such categories
10 of retailers and the sports arena facility to determine the
11 appropriate amount of state sales tax revenue.

12 (3) The Department of Revenue may adopt and promulgate
13 rules and regulations to carry out the Sports Arena Facility
14 Financing Assistance Act.

15 Sec. 3. Section 72-258.03, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 72-258.03 For purposes of sales of educational lands at
18 public auction, appraised value is the ~~adjusted value as determined~~
19 ~~by the Property Tax Administrator or his or her representative such~~
20 ~~that the real property's assessed value for the current year is~~
21 ~~adjusted to one hundred percent of actual value, unless the Board of~~
22 ~~Educational Lands and Funds establishes a higher value~~ established
23 pursuant to section 72-257 or 72-258, ~~in which case that value~~
24 ~~shall be the appraised value for purposes of sale.~~

25 Sec. 4. Section 77-702, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-702 (1) ~~Commencing with the expiration of the term of~~
3 ~~the Property Tax Administrator holding office on July 1, 1999, the~~
4 The Governor shall appoint a Property Tax Administrator with the
5 approval of a majority of the members of the Legislature. The
6 Property Tax Administrator shall have experience and training in the
7 fields of taxation and property appraisal and shall meet all the
8 qualifications required for members of the Tax Equalization and
9 Review Commission under subsections (1) and (2) ~~and subdivision (6)~~
10 ~~(a)~~ of section 77-5004. The Property Tax Administrator shall adopt
11 and promulgate rules and regulations to carry out his or her duties
12 through June 30, 2007. Rules, regulations, and forms of the Property
13 Tax Administrator in effect on July 1, 2007, shall be valid rules,
14 regulations, and forms of the Department of Revenue beginning on July
15 1, 2007.

16 (2) In addition to any duties, powers, or
17 responsibilities otherwise conferred upon the Property Tax
18 Administrator, he or she shall administer and enforce all laws
19 related to the state supervision of local property tax administration
20 and the central assessment of property subject to property taxation.
21 The Property Tax Administrator shall also advise county assessors
22 regarding the administration and assessment of taxable property
23 within the state and measure assessment performance in order to
24 determine the accuracy and uniformity of assessments.

25 Sec. 5. Section 77-1327, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-1327 (1) It is the intent of the Legislature that
3 accurate and comprehensive information be developed by the Property
4 Tax Administrator and made accessible to the taxing officials and
5 property owners in order to ensure the uniformity and proportionality
6 of the assessments of real property valuations in the state in
7 accordance with law and to provide the statistical and narrative
8 reports pursuant to section 77-5027.

9 (2) All transactions of real property for which the
10 statement required in section 76-214 is filed shall be available for
11 development of a sales file by the Property Tax Administrator. All
12 transactions with stated consideration of more than one hundred
13 dollars or upon which more than two dollars and twenty-five cents in
14 documentary stamp taxes are paid shall be considered sales. All sales
15 shall be deemed to be arm's length transactions unless determined to
16 be otherwise under professionally accepted mass appraisal techniques.
17 The Department of Revenue shall not overturn a determination made by
18 a county assessor regarding the qualification of a sale unless the
19 department reviews the sale and determines through the review that
20 the determination made by the county assessor is incorrect.

21 (3) The Property Tax Administrator annually shall make
22 and issue comprehensive assessment ratio studies of the average level
23 of assessment, the degree of assessment uniformity, and the overall
24 compliance with assessment requirements for each major class of real
25 property subject to the property tax in each county. The

1 comprehensive assessment ratio studies shall be developed in
2 compliance with professionally accepted mass appraisal techniques and
3 shall employ such statistical analysis as deemed appropriate by the
4 Property Tax Administrator, including measures of central tendency
5 and dispersion. The comprehensive assessment ratio studies shall be
6 based upon the sales file as developed in subsection (2) of this
7 section and shall be used by the Property Tax Administrator for the
8 analysis of the level of value and quality of assessment for purposes
9 of section 77-5027 and by the Property Tax Administrator in
10 establishing the adjusted valuations required by section 79-1016.
11 Such studies may also be used by assessing officials in establishing
12 assessed valuations.

13 (4) For purposes of determining the level of value of
14 agricultural and horticultural land subject to special valuation
15 under sections 77-1343 to 77-1347.01, the Property Tax Administrator
16 shall annually make and issue a comprehensive study developed in
17 compliance with professionally accepted mass appraisal techniques to
18 establish the level of value if in his or her opinion the level of
19 value cannot be developed through the use of the comprehensive
20 assessment ratio studies developed in subsection (3) of this section.

21 (5) ~~The Property Tax Administrator may require County~~
22 assessors and other taxing officials ~~to~~ shall electronically report
23 data on the assessed valuation and other features of the property
24 assessment process for such periods and in such form and content as
25 the Property Tax Administrator shall deem appropriate. The Property

1 Tax Administrator shall so construct and maintain the system used to
2 collect and analyze the data to enable him or her to make intracounty
3 comparisons of assessed valuation, including school districts and
4 other political subdivisions, as well as intercounty comparisons of
5 assessed valuation, including school districts and other political
6 subdivisions. The Property Tax Administrator shall include analysis
7 of real property sales pursuant to land contracts and similar
8 transfers at the time of execution of the contract or similar
9 transfer.

10 Sec. 6. Section 77-1783.01, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-1783.01 (1) Any officer or employee with the duty to
13 collect, account for, or pay over any taxes imposed upon a
14 corporation or with the authority to decide whether the corporation
15 will pay taxes imposed upon a corporation shall be personally liable
16 for the payment of such taxes in the event of willful failure on his
17 or her part to have a corporation perform such act. Such taxes shall
18 be collected in the same manner as provided under the Uniform State
19 Tax Lien Registration and Enforcement Act.

20 (2) Within sixty days after the day on which the notice
21 and demand are made for the payment of such taxes, any officer or
22 employee seeking to challenge the Tax Commissioner's determination as
23 to his or her personal liability for the corporation's unpaid taxes
24 may petition for a redetermination. The petition may include a
25 request for the redetermination of the personal liability of the

1 corporate officer or employee, the redetermination of the amount of
2 the corporation's unpaid taxes, or both. If a petition for
3 redetermination is not filed within the sixty-day period, the
4 determination becomes final at the expiration of the period.

5 (3) If the requirements prescribed in subsection (2) of
6 this section are satisfied, the Tax Commissioner shall abate
7 collection proceedings and shall grant the officer or employee an
8 oral hearing and give him or her ten days' notice of the time and
9 place of such hearing. The Tax Commissioner may continue the hearing
10 from time to time as necessary.

11 (4) Any notice required under this section shall be
12 served personally or by mail in the manner provided in section
13 77-27,135.

14 (5) If the Tax Commissioner determines that further delay
15 in the collection of such taxes from the officer or employee will
16 jeopardize future collection proceedings, nothing in this section
17 shall prevent the immediate collection of such taxes.

18 (6) No notice or demand for payment may be issued against
19 any officer or employee with the duty to collect, account for, or pay
20 over any taxes imposed upon a corporation or with the authority to
21 decide whether the corporation will pay taxes imposed upon a
22 corporation more than three years after the final determination of
23 the corporation's liability or more than one year after the closure
24 or dismissal of a bankruptcy case in which the corporation appeared
25 as the debtor or debtor in possession if the three-year period to

1 issue a notice or demand for payment had not expired prior to the
2 filing of the petition in bankruptcy, whichever date is later.

3 (7) For purposes of this section:

4 (a) Corporation shall mean any corporation and any other
5 entity that is taxed as a corporation under the Internal Revenue
6 Code;

7 (b) Taxes shall mean all taxes and additions to taxes
8 including interest and penalties imposed under the revenue laws of
9 this state which are administered by the Tax Commissioner; and

10 (c) Willful failure shall mean that failure which was the
11 result of an intentional, conscious, and voluntary action.

12 Sec. 7. Section 77-2704.50, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2704.50 Sales and use taxes shall not be imposed on
15 the gross receipts from the sale, lease, or rental of and the
16 storage, use, or other consumption in this state from the purchase in
17 this state or the purchase outside this state, with title passing in
18 this state, of materials and replacement parts and any associated
19 labor used as or used directly in the repair and maintenance or
20 manufacture of railroad rolling stock, whether owned by a railroad or
21 by any person, whether a common or contract carrier or otherwise,
22 motor vehicles, watercraft, or aircraft engaged as common or contract
23 carriers or the purchase in such manner of motor vehicles,
24 watercraft, or aircraft to be used as common or contract carriers.
25 All purchasers seeking to take advantage of the exemption shall apply

1 to the Tax Commissioner for a common or contract carrier exemption.
2 All common or contract carrier exemption certificates shall expire on
3 October 31, ~~1986,~~ 2013, and on October 31 every ~~three~~ five years
4 thereafter. All persons seeking to continue to take advantage of the
5 common or contract carrier exemption shall apply for a new
6 certificate at the expiration of the prior certificate. The Tax
7 Commissioner shall notify such exemption certificate holders at least
8 sixty days prior to the expiration date of such certificate that the
9 certificate will expire and be null and void as of such date.

10 Sec. 8. Section 77-2705.01, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2705.01 (1) The Tax Commissioner may issue direct
13 payment permits to any person who annually purchases at least three
14 million dollars of taxable property excluding purchases for which a
15 resale certificate could be used.

16 (2) The applicant for a direct payment permit shall apply
17 on a form prescribed by the Tax Commissioner. The applicant shall pay
18 a nonrefundable fee of ten dollars for processing the application.
19 The application shall include the agreement of the applicant to
20 accrue and pay to the Tax Commissioner on or before the ~~twenty-fifth~~
21 twentieth day of the month following the date of purchase, lease, or
22 rental all sales and use taxes on the taxable property purchased,
23 leased, or rented by the applicant unless the items are exempt from
24 taxation and the tax paid will be treated as a sales tax. The Tax
25 Commissioner may require a description of the accounting methods by

1 which an applicant will differentiate between taxable and exempt
2 transactions.

3 (3) The Tax Commissioner may issue a direct payment
4 permit to any applicant who meets the requirements of subsections (1)
5 and (2) of this section. The direct payment permit shall become
6 effective on the first day of the month following approval of an
7 application. The decision of the Tax Commissioner under this section
8 is not appealable. An applicant who is denied a direct payment permit
9 may submit an amended application or reapply.

10 (4) A direct payment permit is not transferable.

11 (5) The holder of a direct payment permit is not entitled
12 to any collection fee otherwise payable to those who collect and
13 remit sales and use taxes.

14 Sec. 9. Section 77-2708, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 77-2708 (1)(a) The sales and use taxes imposed by the
17 Nebraska Revenue Act of 1967 shall be due and payable to the Tax
18 Commissioner monthly on or before the ~~twenty-fifth~~twentieth day of
19 the month next succeeding each monthly period unless otherwise
20 provided pursuant to the Nebraska Revenue Act of 1967.

21 (b)(i) On or before the ~~twenty-fifth~~twentieth day of the
22 month following each monthly period or such other period as the Tax
23 Commissioner may require, a return for such period, along with all
24 taxes due, shall be filed with the Tax Commissioner in such form and
25 content as the Tax Commissioner may prescribe and containing such

1 information as the Tax Commissioner deems necessary for the proper
2 administration of the Nebraska Revenue Act of 1967. The Tax
3 Commissioner, if he or she deems it necessary in order to insure
4 payment to or facilitate the collection by the state of the amount of
5 sales or use taxes due, may require returns and payment of the amount
6 of such taxes for periods other than monthly periods in the case of a
7 particular seller, retailer, or purchaser, as the case may be. The
8 Tax Commissioner shall by rule and regulation require reports and tax
9 payments from sellers, retailers, or purchasers depending on their
10 yearly tax liability. Except as required by the streamlined sales and
11 use tax agreement, annual returns shall be required if such sellers',
12 retailers', or purchasers' yearly tax liability is less than nine
13 hundred dollars, quarterly returns shall be required if their yearly
14 tax liability is nine hundred dollars or more and less than three
15 thousand dollars, and monthly returns shall be required if their
16 yearly tax liability is three thousand dollars or more. The Tax
17 Commissioner shall have the discretion to allow an annual return for
18 seasonal retailers, even when their yearly tax liability exceeds the
19 amounts listed in this subdivision.

20 The Tax Commissioner may adopt and promulgate rules and
21 regulations to allow annual, semiannual, or quarterly returns for any
22 retailer making monthly remittances or payments of sales and use
23 taxes by electronic funds transfer or for any retailer remitting tax
24 to the state pursuant to the streamlined sales and use tax agreement.
25 Such rules and regulations may establish a method of determining the

1 amount of the payment that will result in substantially all of the
2 tax liability being paid each quarter. At least once each year, the
3 difference between the amount paid and the amount due shall be
4 reconciled. If the difference is more than ten percent of the amount
5 paid, a penalty of fifty percent of the unpaid amount shall be
6 imposed.

7 (ii) For purposes of the sales tax, a return shall be
8 filed by every retailer liable for collection from a purchaser and
9 payment to the state of the tax, except that a combined sales tax
10 return may be filed for all licensed locations which are subject to
11 common ownership. For purposes of this subdivision, common ownership
12 means the same person or persons own eighty percent or more of each
13 licensed location. For purposes of the use tax, a return shall be
14 filed by every retailer engaged in business in this state and by
15 every person who has purchased property, the storage, use, or other
16 consumption of which is subject to the use tax, but who has not paid
17 the use tax due to a retailer required to collect the tax.

18 (iii) The Tax Commissioner may require that returns be
19 signed by the person required to file the return or by his or her
20 duly authorized agent but need not be verified by oath.

21 (iv) A taxpayer who keeps his or her regular books and
22 records on a cash basis, an accrual basis, or any generally
23 recognized accounting basis which correctly reflects the operation of
24 the business may file the sales and use tax returns required by the
25 Nebraska Revenue Act of 1967 on the same accounting basis that is

1 used for the regular books and records, except that on credit,
2 conditional, and installment sales, the retailer who keeps his or her
3 books on an accrual basis may report such sales on the cash basis and
4 pay the tax upon the collections made during each month. If a
5 taxpayer transfers, sells, assigns, or otherwise disposes of an
6 account receivable, he or she shall be deemed to have received the
7 full balance of the consideration for the original sale and shall be
8 liable for the remittance of the sales tax on the balance of the
9 total sale price not previously reported, except that such transfer,
10 sale, assignment, or other disposition of an account receivable by a
11 retailer to a subsidiary shall not be deemed to require the retailer
12 to pay the sales tax on the credit sale represented by the account
13 transferred prior to the time the customer makes payment on such
14 account. If the subsidiary does not obtain a Nebraska sales tax
15 permit, the taxpayer shall obtain a surety bond in favor of the State
16 of Nebraska to insure payment of the tax and any interest and penalty
17 imposed thereon under this section in an amount not less than two
18 times the amount of tax payable on outstanding accounts receivable
19 held by the subsidiary as of the end of the prior calendar year.
20 Failure to obtain either a sales tax permit or a surety bond in
21 accordance with this section shall result in the payment on the next
22 required filing date of all sales taxes not previously remitted. When
23 the retailer has adopted one basis or the other of reporting credit,
24 conditional, or installment sales and paying the tax thereon, he or
25 she will not be permitted to change from that basis without first

1 having notified the Tax Commissioner.

2 (c) Except as provided in the streamlined sales and use
3 tax agreement, the taxpayer required to file the return shall deliver
4 or mail any required return together with a remittance of the net
5 amount of the tax due to the office of the Tax Commissioner on or
6 before the required filing date. Failure to file the return, filing
7 after the required filing date, failure to remit the net amount of
8 the tax due, or remitting the net amount of the tax due after the
9 required filing date shall be cause for a penalty, in addition to
10 interest, of ten percent of the amount of tax not paid by the
11 required filing date or twenty-five dollars, whichever is greater,
12 unless the penalty is being collected under subdivision (1)(i) or (1)
13 (j)(i) of section 77-2703 by a county treasurer, a designated county
14 official, or the Department of Motor Vehicles, in which case the
15 penalty shall be five dollars.

16 ~~(d) For all sales tax collected prior to October 1, 2002,~~
17 ~~the taxpayer shall deduct and withhold, from the taxes otherwise due~~
18 ~~from him or her on his or her tax return, two and one half percent of~~
19 ~~the first three thousand dollars remitted each month and one half of~~
20 ~~one percent of all amounts in excess of three thousand dollars~~
21 ~~remitted each month to reimburse himself or herself for the cost of~~
22 ~~collecting the tax. For all sales tax collected on and after October~~
23 ~~1, 2002, the The taxpayer shall deduct and withhold, from the taxes~~
24 otherwise due from him or her on his or her tax return, two and one-
25 half percent of the first three thousand dollars remitted each month

1 to reimburse himself or herself for the cost of collecting the tax.
2 Taxpayers filing a combined return as allowed by subdivision (1)(b)
3 (ii) of this subsection shall compute such collection fees on the
4 basis of the receipts and liability of each licensed location.

5 (2)(a) If the Tax Commissioner determines that any sales
6 or use tax amount, penalty, or interest has been paid more than once,
7 has been erroneously or illegally collected or computed, or has been
8 paid and the purchaser qualifies for a refund under section
9 77-2708.01, the Tax Commissioner shall set forth that fact in his or
10 her records and the excess amount collected or paid may be credited
11 on any sales, use, or income tax amounts then due and payable from
12 the person under the Nebraska Revenue Act of 1967. Any balance may be
13 refunded to the person by whom it was paid or his or her successors,
14 administrators, or executors.

15 (b) No refund shall be allowed unless a claim therefor is
16 filed with the Tax Commissioner by the person who made the
17 overpayment or his or her attorney, executor, or administrator within
18 three years from the required filing date following the close of the
19 period for which the overpayment was made, within six months after
20 any determination becomes final under section 77-2709, or within six
21 months from the date of overpayment with respect to such
22 determinations, whichever of these three periods expires later,
23 unless the credit relates to a period for which a waiver has been
24 given. Failure to file a claim within the time prescribed in this
25 subsection shall constitute a waiver of any demand against the state

1 on account of overpayment.

2 (c) Every claim shall be in writing on forms prescribed
3 by the Tax Commissioner and shall state the specific amount and
4 grounds upon which the claim is founded. No refund shall be made in
5 any amount less than two dollars.

6 (d) The Tax Commissioner shall allow or disallow a claim
7 within one hundred eighty days after it has been filed. A request for
8 a hearing shall constitute a waiver of the one-hundred-eighty-day
9 period. The claimant and the Tax Commissioner may also agree to
10 extend the one-hundred-eighty-day period. If a hearing has not been
11 requested and the Tax Commissioner has neither allowed nor disallowed
12 a claim within either the one hundred eighty days or the period
13 agreed to by the claimant and the Tax Commissioner, the claim shall
14 be deemed to have been allowed.

15 (e) Within thirty days after disallowing any claim in
16 whole or in part, the Tax Commissioner shall serve notice of his or
17 her action on the claimant in the manner prescribed for service of
18 notice of a deficiency determination.

19 (f) Within thirty days after the mailing of the notice of
20 the Tax Commissioner's action upon a claim filed pursuant to the
21 Nebraska Revenue Act of 1967, the action of the Tax Commissioner
22 shall be final unless the taxpayer seeks review of the Tax
23 Commissioner's determination as provided in section 77-27,127.

24 (g) Upon the allowance of a credit or refund of any sum
25 erroneously or illegally assessed or collected, of any penalty

1 collected without authority, or of any sum which was excessive or in
2 any manner wrongfully collected, interest shall be allowed and paid
3 on the amount of such credit or refund at the rate specified in
4 section 45-104.02, as such rate may from time to time be adjusted,
5 from the date such sum was paid or from the date the return was
6 required to be filed, whichever date is later, to the date of the
7 allowance of the refund or, in the case of a credit, to the due date
8 of the amount against which the credit is allowed, but in the case of
9 a voluntary and unrequested payment in excess of actual tax liability
10 or a refund under section 77-2708.01, no interest shall be allowed
11 when such excess is refunded or credited.

12 (h) No suit or proceeding shall be maintained in any
13 court for the recovery of any amount alleged to have been erroneously
14 or illegally determined or collected unless a claim for refund or
15 credit has been duly filed.

16 (i) The Tax Commissioner may recover any refund or part
17 thereof which is erroneously made and any credit or part thereof
18 which is erroneously allowed by issuing a deficiency determination
19 within one year from the date of refund or credit or within the
20 period otherwise allowed for issuing a deficiency determination,
21 whichever expires later.

22 (j)(i) Credit shall be allowed to the retailer,
23 contractor, or repairperson for sales or use taxes paid pursuant to
24 the Nebraska Revenue Act of 1967 on any deduction taken that is
25 attributed to bad debts not including interest. Bad debt has the same

1 meaning as in 26 U.S.C. 166, as such section existed on January 1,
2 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall
3 be adjusted to exclude: Financing charges or interest; sales or use
4 taxes charged on the purchase price; uncollectible amounts on
5 property that remains in the possession of the seller until the full
6 purchase price is paid; and expenses incurred in attempting to
7 collect any debt and repossessed property.

8 (ii) Bad debts may be deducted on the return for the
9 period during which the bad debt is written off as uncollectible in
10 the claimant's books and records and is eligible to be deducted for
11 federal income tax purposes. A claimant who is not required to file
12 federal income tax returns may deduct a bad debt on a return filed
13 for the period in which the bad debt is written off as uncollectible
14 in the claimant's books and records and would be eligible for a bad
15 debt deduction for federal income tax purposes if the claimant was
16 required to file a federal income tax return.

17 (iii) If a deduction is taken for a bad debt and the debt
18 is subsequently collected in whole or in part, the tax on the amount
19 so collected must be paid and reported on the return filed for the
20 period in which the collection is made.

21 (iv) When the amount of bad debt exceeds the amount of
22 taxable sales for the period during which the bad debt is written
23 off, a refund claim may be filed within the otherwise applicable
24 statute of limitations for refund claims. The statute of limitations
25 shall be measured from the due date of the return on which the bad

1 debt could first be claimed.

2 (v) If filing responsibilities have been assumed by a
3 certified service provider, the service provider may claim, on behalf
4 of the retailer, any bad debt allowance provided by this section. The
5 certified service provider shall credit or refund the full amount of
6 any bad debt allowance or refund received to the retailer.

7 (vi) For purposes of reporting a payment received on a
8 previously claimed bad debt, any payments made on a debt or account
9 are applied first proportionally to the taxable price of the property
10 or service and the sales tax thereon, and secondly to interest,
11 service charges, and any other charges.

12 (vii) In situations in which the books and records of the
13 party claiming the bad debt allowance support an allocation of the
14 bad debts among the member states in the streamlined sales and use
15 tax agreement, the state shall permit the allocation.

16 Sec. 10. Section 77-2709, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-2709 (1) If the Tax Commissioner is not satisfied with
19 the return or returns of the tax or the amount of tax required to be
20 paid to the state by any person, he or she may compute and determine
21 the amount required to be paid upon the basis of the facts contained
22 in the return or returns or upon the basis of any information within
23 his or her possession or which may come into his or her possession.
24 One or more deficiency determinations of the amount due for one or
25 more than one period may be made. To the amount of the deficiency

1 determination for each period shall be added a penalty equal to ten
2 percent thereof or twenty-five dollars, whichever is greater. In
3 making a determination, the Tax Commissioner may offset overpayments
4 for a period or periods, together with interest on the overpayments,
5 against underpayments for other period or periods, against penalties,
6 and against the interest on the underpayments.

7 The interest on underpayments and overpayments shall be
8 computed in the manner set forth hereinafter.

9 (2) If any person fails to make a return, the Tax
10 Commissioner shall make an estimate of the amount of the gross
11 receipts of the person or, as the case may be, of the amount of the
12 total sales, rent, or lease price of property sold, rented, or leased
13 or purchased, by the person, the storage, use, or consumption of
14 which in this state is subject to the use tax. The estimate shall be
15 made for the period or periods in respect to which the person failed
16 to make a return and shall be based upon any information which is in
17 the Tax Commissioner's possession or may come into his or her
18 possession. Upon the basis of this estimate, the Tax Commissioner
19 shall compute and determine the amount required to be paid to the
20 state, adding to the sum thus arrived at a penalty equal to ten
21 percent thereof or twenty-five dollars, whichever is greater. One or
22 more determinations may be made for one or more than one period.

23 (3) The amount of the determination of any deficiency
24 exclusive of penalties shall bear interest at the rate specified in
25 section 45-104.02, as such rate may from time to time be adjusted,

1 from the ~~twenty-fifth~~ twentieth of the month following the period for
2 which the amount should have been returned until the date of payment.

3 (4) If any part of a deficiency for which a deficiency
4 determination is made is the result of fraud or an intent to evade
5 the Nebraska Revenue Act of 1967 or authorized rules and regulations,
6 a penalty of twenty-five percent of the amount of the determination
7 or fifty dollars, whichever is greater, shall be added thereto.

8 (5)(a) Promptly after making his or her determination,
9 the Tax Commissioner shall give to the person written notice of his
10 or her determination.

11 (b) The notice may be served personally or by mail, and
12 if by mail the notice shall be addressed to the person at his or her
13 address as it appears in the records of the Tax Commissioner. In case
14 of service by mail of any notice required by the Nebraska Revenue Act
15 of 1967, the service is complete at the time of deposit in the United
16 States post office.

17 (c) Every notice of a deficiency determination shall be
18 personally served or mailed within three years after the last day of
19 the calendar month following the period for which the amount is
20 proposed to be determined or within three years after the return is
21 filed, whichever period expires the later. In the case of failure to
22 make a return, every notice of determination shall be mailed or
23 personally served within five years after the last day of the
24 calendar month following the period for which the amount is proposed
25 to be determined.

1 (d) When, before the expiration of the time prescribed in
2 this section for the mailing of a notice of deficiency determination,
3 both the Tax Commissioner and the taxpayer have consented in writing
4 to its mailing after such time, the notice of the deficiency
5 determination may be mailed at any time prior to the expiration of
6 the period agreed upon. The agreed-upon period may be extended by
7 subsequent agreement, in writing, made before the expiration of the
8 period previously agreed upon.

9 (6) When a business is discontinued, a determination may
10 be made at any time thereafter within the periods specified in this
11 section as to liability arising out of that business, irrespective of
12 whether the determination is issued prior to the due date of the
13 liability as otherwise specified in the Nebraska Revenue Act of 1967.

14 (7) Any person against whom a determination is made under
15 subsections (1) and (2) of this section or any person directly
16 interested may petition for a redetermination within sixty days after
17 service upon the person of notice thereof. For the purposes of this
18 subsection, a person is directly interested in a deficiency
19 determination when such deficiency could be collected from such
20 person. If a petition for redetermination is not filed within the
21 sixty-day period, the determination becomes final at the expiration
22 of the period.

23 (8) If a petition for redetermination is filed within the
24 sixty-day period, the Tax Commissioner shall reconsider the
25 determination and, if the person has so requested in his or her

1 petition, shall grant the person an oral hearing and shall give him
2 or her ten days' notice of the time and place of the hearing. The Tax
3 Commissioner may continue the hearing from time to time as may be
4 necessary.

5 (9) The Tax Commissioner may decrease or increase the
6 amount of the determination before it becomes final, but the amount
7 may be increased only if a claim for the increase is asserted by the
8 Tax Commissioner at or before the hearing, upon which assertion the
9 petitioner shall be entitled to a thirty-day continuance of the
10 hearing to allow him or her to obtain and produce further evidence
11 applicable to the items upon which the increase is based.

12 (10) The order or decision of the Tax Commissioner upon a
13 petition for redetermination shall become final thirty days after
14 service upon the petitioner of notice thereof.

15 (11) All determinations made by the Tax Commissioner
16 under the provisions of subsections (1) and (2) of this section are
17 due and payable at the time they become final. If they are not paid
18 when due and payable, a penalty of ten percent of the amount of the
19 determination, exclusive of interest and penalties, shall be added
20 thereto.

21 (12) Any notice required by this section shall be served
22 personally or by mail in the manner prescribed in subsection (5) of
23 this section.

24 Sec. 11. Section 81-8,128, Revised Statutes Cumulative
25 Supplement, 2010, is amended to read:

1 81-8,128 There is hereby established the position of
2 State Athletic Commissioner. The commissioner shall be appointed by
3 the Governor and shall hold office for a term of two years commencing
4 the first Thursday after the first Tuesday of January in each odd-
5 numbered year. The commissioner shall receive such salary as the
6 Governor may elect and shall be bonded or insured as required by
7 section 11-201. The commissioner may be reappointed for successive
8 terms.

9 The office of the commissioner shall be located within
10 and under the general supervision of the Charitable Gaming Division
11 of the Department of Revenue. The commissioner may exercise and
12 perform his or her powers and duties at any location in the state.
13 The commissioner may employ assistants and fix their compensation in
14 conjunction with the Charitable Gaming Division. The compensation of
15 assistants and expenses of the office of the commissioner shall be
16 paid through the State Athletic Commissioner's Cash Fund.

17 Sec. 12. Section 81-1260, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 81-1260 Unless otherwise specifically provided, any sales
20 tax on transient lodging imposed under the Nebraska Visitors
21 Development Act is in addition to that sales tax imposed under the
22 provisions of Chapter 77, article 27, and shall be interpreted,
23 collected, remitted, and enforced by the Tax Commissioner under the
24 provisions of such article. Any sales tax on transient lodging
25 imposed under the Nebraska Visitors Development Act shall be due and

1 payable to the Tax Commissioner monthly on or before the twenty-fifth
2 day of the month next succeeding each monthly period.

3 Sec. 13. Section 81-15,164, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 81-15,164 (1) Except as provided in ~~subsection~~
6 subsections (2) and (3) of this section, the fees imposed by sections
7 81-15,159 to 81-15,165 shall be collected in the same manner as the
8 sales tax under the Nebraska Revenue Act of 1967, including
9 provisions of the act relating to ~~due dates~~, interest, penalties, and
10 collection procedures. No fees shall be charged for any permits under
11 section 81-15,162, and no collection fees shall be allowed any
12 retailer.

13 (2) The fees imposed by section 81-15,162 shall be due
14 and payable to the Tax Commissioner monthly on or before the twenty-
15 fifth day of the month next succeeding each monthly period.

16 ~~(2)-(3)~~ (3) The fees imposed by section 81-15,163 shall be
17 collected in the same manner as the litter fee under the Nebraska
18 Litter Reduction and Recycling Act, including provisions of the act
19 relating to due dates, interest, penalties, and collection
20 procedures. No fees shall be charged for any permits, and no
21 collection fees shall be allowed any retailer.

22 Sec. 14. Sections 3, 4, 5, 6, 11, 14, 15, and 17 of this
23 act become operative on their effective date. The other sections of
24 this act become operative on October 1, 2011.

25 Sec. 15. Original sections 72-258.03, 77-702, 77-1327,

1 and 77-1783.01, Reissue Revised Statutes of Nebraska, and section
2 81-8,128, Revised Statutes Cumulative Supplement, 2010, are repealed.

3 Sec. 16. Original sections 13-2609, 77-2704.50,
4 77-2705.01, 77-2708, 77-2709, 81-1260, and 81-15,164, Reissue Revised
5 Statutes of Nebraska, and section 13-3107, Revised Statutes
6 Cumulative Supplement, 2010, are repealed.

7 Sec. 17. The following section is outright repealed:
8 Section 77-1355, Reissue Revised Statutes of Nebraska.