

E AND R AMENDMENTS TO LB33

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. The Tax Commissioner may enter into an
4 agreement with one or more financial institutions in this state to
5 levy upon personal property belonging to a taxpayer in accordance
6 with the Uniform State Tax Lien Registration and Enforcement Act
7 and in any medium and format to which the Tax Commissioner and
8 the financial institution have agreed. The Tax Commissioner shall
9 issue a report to the Revenue Committee of the Legislature, the
10 Clerk of the Legislature, and the Governor by November 1, 2015,
11 containing the Tax Commissioner's preliminary findings regarding
12 implementation of this section and recommendations for any needed
13 changes. The report submitted to the committee and to the Clerk of
14 the Legislature shall be submitted electronically.

15 Sec. 2. Section 77-3904, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-3904 (1) If any person liable to pay any tax or
18 fee under any tax program administered by the Tax Commissioner
19 or Commissioner of Labor neglects or refuses to pay such tax or
20 fee after demand, the amount of such tax or fee, including any
21 interest, penalty, and additions to such tax and such additional
22 costs that may accrue, shall be a lien in favor of the State of
23 Nebraska upon all property and rights to property, whether real

1 or personal, then owned by such person or acquired by him or her
2 thereafter and prior to the expiration of the lien. Unless another
3 date is specifically provided by law, such lien shall arise at
4 the time of the assessment and shall remain in effect (a) for
5 three years from the time of the assessment or one year after
6 the expiration of an agreement between the Tax Commissioner and a
7 taxpayer for payment of tax which is due, whichever is later, if
8 the notice of lien is not filed for record in the office of the
9 appropriate filing officer, (b) for ten years from the time of
10 filing for record in the office of the appropriate filing officer,
11 or (c) until such amounts have been paid or a judgment against
12 such person arising out of such liability has been satisfied or
13 has become unenforceable by reason of lapse of time, unless a
14 continuation statement is filed prior to the lapse.

15 (2) (a) The Tax Commissioner or Commissioner of Labor
16 may present for filing or file for record in the office of the
17 appropriate filing officer a notice of lien specifying the year
18 the tax was due, the tax program, and the amount of the tax and
19 any interest, penalty, or addition to such tax that are due. Such
20 notice shall be filed for record in the office of the appropriate
21 filing officer within three years after the time of assessment
22 or within one year after the expiration of an agreement between
23 the Tax Commissioner and a taxpayer for payment of tax which
24 is due, whichever is later. Such notice shall contain the name
25 and last-known address of the taxpayer, the last four digits of
26 the taxpayer's social security number or federal identification
27 number, the Tax Commissioner's or Commissioner of Labor's serial

1 number, and a statement to the effect that the Tax Commissioner or
2 Commissioner of Labor has complied with all provisions of the law
3 for the particular tax program which he or she administers in the
4 determination of the amount of the tax and any interest, penalty,
5 and addition to such tax required to be paid.

6 (b) If the assets of the taxpayer are in the control or
7 custody of the court in any proceeding before any court of the
8 United States or of any state or the District of Columbia, before
9 the end of the ~~three-year~~ time period in subdivision (2) (a) of this
10 section, the notice shall be filed for record within the ~~three-year~~
11 time period or within six months after the assets are released by
12 the court, whichever is later.

13 (3) (a) (i) A lien imposed upon real property pursuant
14 to the Uniform State Tax Lien Registration and Enforcement Act
15 shall be valid against any subsequent creditor when notice of such
16 lien and the amount due has been presented for filing by the
17 Tax Commissioner or Commissioner of Labor in the office of the
18 Secretary of State and filed in the office of the register of
19 deeds.

20 (ii) A lien imposed upon personal property pursuant to
21 the Uniform State Tax Lien Registration and Enforcement Act shall
22 be valid against any subsequent creditor when notice of such lien
23 and the amount due has been filed by the Tax Commissioner or
24 Commissioner of Labor in the office of the Secretary of State.

25 (b) In the case of any prior mortgage on real property
26 or secured transaction covering personal property so written as to
27 secure a present debt and future advances, the lien provided in

1 the act, when notice thereof has been filed in the office of the
2 appropriate filing officer, shall be subject to such prior lien
3 unless the Tax Commissioner or Commissioner of Labor has notified
4 the lienholder in writing of the recording of such tax lien, in
5 which case the lien of any indebtedness thereafter created under
6 such mortgage or secured transaction shall be junior to the lien
7 provided for in the act.

8 (4) The lien may, within ten years from the date of
9 filing for record of the notice of lien in the office of the
10 appropriate filing officer, be extended by filing for record a
11 continuation statement. Upon timely filing of the continuation
12 statement, the effectiveness of the original notice shall be
13 continued for ten years after the last date to which the filing
14 was effective. After such period the notice shall lapse in the
15 manner prescribed in subsection (1) of this section unless another
16 continuation statement is filed prior to such lapse.

17 (5) When a termination statement of any tax lien issued
18 by the Tax Commissioner or Commissioner of Labor is filed in the
19 office where the notice of lien is filed, the appropriate filing
20 officer shall enter such statement with the date of filing in the
21 state tax lien index where notice of the lien so terminated is
22 entered and shall file the termination statement with the notice of
23 the lien.

24 (6) The Tax Commissioner or Commissioner of Labor may at
25 any time, upon request of any party involved, release from a lien
26 all or any portion of the property subject to any lien provided
27 for in the Uniform State Tax Lien Registration and Enforcement Act

1 or subordinate a lien to other liens and encumbrances if he or she
2 determines that (a) the tax amount and any interest, penalties,
3 and additions to such tax have been paid or secured sufficiently
4 by a lien on other property, (b) the lien has become legally
5 unenforceable, (c) a surety bond or other satisfactory security has
6 been posted, deposited, or pledged with the Tax Commissioner or
7 Commissioner of Labor in an amount sufficient to secure the payment
8 of such taxes and any interest, penalties, and additions to such
9 taxes, or (d) the release, partial release, or subordination of
10 the lien will not jeopardize the collection of such taxes and any
11 interest, penalties, and additions to such tax.

12 (7) A certificate by the Tax Commissioner or Commissioner
13 of Labor stating that any property has been released from the
14 lien or the lien has been subordinated to other liens and
15 encumbrances shall be conclusive evidence that the property has
16 in fact been released or the lien has been subordinated pursuant to
17 the certificate.

18 Sec. 3. Section 77-3905, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-3905 (1) ~~At~~ Except as provided in section 77-3904, at
21 any time within three years after any amount of tax to be collected
22 under any tax program administered by the Tax Commissioner or
23 Commissioner of Labor is assessed or within ten years after the
24 last filing for record as set forth in the Uniform State Tax
25 Lien Registration and Enforcement Act, the Tax Commissioner or
26 Commissioner of Labor may bring an action in the courts of this
27 state, any other state, or the United States in the name of the

1 people of the State of Nebraska to collect the delinquent amount
2 together with penalties, any additions to such tax, costs, and
3 interest.

4 (2) (a) The Attorney General shall prosecute the action on
5 behalf of the Tax Commissioner, (b) the Commissioner of Labor shall
6 be represented in an action under the act as provided in section
7 48-667, and (c) the rules of civil procedure relating to service of
8 summons, pleadings, proofs, trials, and appeals shall be applicable
9 to the proceedings.

10 (3) In the action, a writ of attachment may issue, and no
11 bond or affidavit previous to the issuing of the attachment shall
12 be required.

13 (4) In the action, a certificate by the Tax Commissioner
14 or Commissioner of Labor showing the delinquency shall be prima
15 facie evidence of the determination of such tax or the amount
16 of such tax, the delinquency of the amounts set forth, and the
17 compliance by the Tax Commissioner or Commissioner of Labor with
18 all provisions of the applicable tax program which he or she
19 administers in relation to the computation and determination of the
20 amounts set forth.

21 (5) The tax amounts required to be paid by any person
22 under any tax program administered by the Tax Commissioner or
23 Commissioner of Labor together with any interest, penalties, and
24 additions to such tax shall be satisfied first in any of the
25 following cases: When the person is insolvent; when the person
26 makes a voluntary assignment of his or her assets; when the estate
27 of the person in the hands of executors, personal representatives,

1 administrators, or heirs is insufficient to pay all the debts due
2 from the deceased; or when the estate and effects of an absconding,
3 concealed, or absent person required to pay any amount under any
4 tax program administered by the Tax Commissioner or Commissioner of
5 Labor are levied upon by process of law.

6 (6) Any tax which by law must be deducted and withheld
7 by an employer or payor or is collected by a retailer or any
8 other designated person as agent for the State of Nebraska on
9 any transaction governed by a tax program administered by the Tax
10 Commissioner or Commissioner of Labor shall constitute a trust fund
11 in the hands of the employer, payor, or retailer or such other
12 designated person and shall be owned by the state as of the time
13 the tax is deducted and withheld or is owing to the employer,
14 payor, or retailer or such other designated person.

15 Sec. 4. Section 77-3906, Revised Statutes Cumulative
16 Supplement, 2012, is amended to read:

17 77-3906 (1) In addition to all other remedies or actions
18 provided by law under any tax program administered by the Tax
19 Commissioner or Commissioner of Labor, it shall be lawful for the
20 Tax Commissioner or Commissioner of Labor, after making demand
21 for payment, to collect any delinquent taxes, together with any
22 interest, penalties, and additions to such tax by distraint and
23 sale of the real and personal property of the taxpayer. If the Tax
24 Commissioner finds that the collection of any tax is in jeopardy
25 pursuant to section 77-2710, 77-27,111, or 77-4311, notice and
26 demand for immediate payment of such tax may be made by the
27 Tax Commissioner and, upon failure or refusal to pay such tax,

1 collection by levy shall be lawful.

2 (2) (a) In case of failure to pay taxes or deficiencies,
3 the Tax Commissioner, or his or her authorized employee, may
4 levy or, by warrant issued under his or her own hand, authorize
5 a sheriff or duly authorized employee of the Tax Commissioner
6 to levy upon, seize, and sell such real and personal property
7 belonging to the taxpayer, except exempt property, as is necessary
8 to satisfy the liability for the payment of the amount due. The
9 Tax Commissioner may also issue a levy to a financial institution
10 pursuant to section 1 of this act.

11 (b) In case of failure to pay taxes or deficiencies,
12 the Commissioner of Labor, or his or her authorized employee, may
13 levy or, by warrant issued under his or her own hand, authorize
14 a sheriff or duly authorized employee of the Department of Labor
15 to levy upon, seize, and sell such real and personal property
16 belonging to the taxpayer, except exempt property, as is necessary
17 to satisfy the liability for the payment of the amount due.

18 (c) As used in this section, exempt property shall mean
19 such property as is exempt from execution under the laws of this
20 state.

21 (3) When a warrant is issued or a levy is made by
22 the Tax Commissioner or Commissioner of Labor, or his or her
23 duly authorized employee, for the collection of any tax and any
24 interest, penalty, or addition to such tax imposed by law under any
25 tax program administered by the Tax Commissioner or Commissioner
26 of Labor or for the enforcement of any tax lien authorized by
27 the Uniform State Tax Lien Registration and Enforcement Act, such

1 warrant or levy shall have the same force and effect of a levy
2 and sale pursuant to a writ of execution. Such warrant or levy
3 may be issued and sale made pursuant to it in the same manner and
4 with the same force and effect of a levy and sale pursuant to a
5 writ of execution. The Tax Commissioner or Commissioner of Labor
6 shall pay the financial institution in accordance with section 1
7 of this act or the levying sheriff the same fees, commissions,
8 and expenses pursuant to such warrant as are provided by law for
9 similar services pursuant to a writ of execution, except that
10 fees for publications in a newspaper shall be subject to approval
11 by the Tax Commissioner or Commissioner of Labor. Such fees,
12 commissions, and expenses shall be an obligation of the taxpayer
13 and may be collected from the taxpayer by virtue of the warrant.
14 Any such warrant shall show the name and last-known address of
15 the taxpayer, the identity of the tax program, the year for which
16 such tax and any interest, penalty, or addition to such tax is
17 due and the amount thereof, the fact that the Tax Commissioner
18 or Commissioner of Labor has complied with all provisions of the
19 law for the applicable tax program which he or she administers in
20 the determination of the amount required to be paid, and that the
21 tax and any interest, penalty, or addition to such tax is due and
22 payable according to law.

23 (4) (a) Any person upon whom a levy is served who fails
24 or refuses to honor the levy without cause may be held liable
25 for the amount of the levy up to the value of the assets of the
26 taxpayer under his or her control at the time the levy was served
27 or thereafter. Such person may be subject to collection provisions

1 as set forth in the act.

2 (b) The effect of a levy on salary, wages, or other
3 regular payments due to or received by a taxpayer shall be
4 continuous from the date the levy is served until the amount of the
5 levy, with accrued interest, is satisfied.

6 (5) Notice of the sale and the time and place of the
7 sale shall be given, to the delinquent taxpayer and to any other
8 person with an interest in the property who has filed for record
9 with the appropriate filing officer on such property, in writing at
10 least twenty days prior to the date of such sale in the following
11 manner: The notice shall be mailed to the taxpayer and to any other
12 person with such interest at his or her last-known residence or
13 place of business in this state. The notice shall also be given by
14 publication at least once each week for four weeks prior to the
15 date of the sale in the newspaper of general circulation published
16 in the county in which the property seized is to be sold. If there
17 is no newspaper of general circulation in the county, notice shall
18 be posted in three public places in the county twenty days prior
19 to the date of the sale. The notice shall contain a description
20 of the property to be sold, a statement of the type of tax due
21 and of the amount due, including interest, penalties, additions
22 to tax, and costs, the name of the delinquent taxpayer, and the
23 further statement that unless the amount due, including interest,
24 penalties, additions to tax, and costs, is paid on or before the
25 time fixed in the notice for the sale or such security as may
26 be determined by the Tax Commissioner or Commissioner of Labor is
27 placed with the Tax Commissioner or Commissioner of Labor, or his

1 or her duly authorized representative, on or before such time, the
2 property, or so much of it as may be necessary, will be sold in
3 accordance with law and the notice.

4 (6) At the sale the Tax Commissioner or Commissioner of
5 Labor, or his or her duly authorized representative, shall sell
6 the property in accordance with law and the notice and shall
7 deliver to the purchaser a bill of sale for the property. The
8 bill of sale shall vest the interest or title of the person
9 liable for the amount in the purchaser. The unsold portion of
10 any property seized shall remain in the custody and control of
11 the Tax Commissioner or Commissioner of Labor, or his or her
12 duly authorized representative, until offered for sale again in
13 accordance with this section or redeemed by the taxpayer.

14 (7) Whenever any property which is seized and sold under
15 this section is not sufficient to satisfy the claim of the state
16 for which distraint or seizure is made, the sheriff or duly
17 authorized employee of the Tax Commissioner or Department of Labor
18 may thereafter, and as often as the same may be necessary, proceed
19 to seize and sell in like manner any other property liable to
20 seizure of the taxpayer against whom such claim exists until the
21 amount due from such taxpayer, together with all expenses, is fully
22 paid.

23 (8) If after the sale the money received exceeds the
24 total of all amounts due the state, including any interest,
25 penalties, additions to tax, and costs, and if there is no other
26 interest in or lien upon such money received, the Tax Commissioner
27 or Commissioner of Labor shall return the excess to the person

1 liable for the amounts and obtain a receipt. If any person
2 having an interest or lien upon the property files with the Tax
3 Commissioner or Commissioner of Labor prior to the sale notice of
4 his or her interest or lien, the Tax Commissioner or Commissioner
5 of Labor shall withhold any excess pending a determination of
6 the rights of the respective parties thereto by a court of
7 competent jurisdiction. If for any reason the receipt of the person
8 liable for the amount is not available, the Tax Commissioner or
9 Commissioner of Labor shall deposit the excess money with the State
10 Treasurer, as trustee for the owner, subject to the order of the
11 person liable for the amount or his or her heirs, successors, or
12 assigns. No interest earned, if any, shall become the property of
13 the person liable for the amount.

14 (9) All persons and officers of companies or corporations
15 shall, on demand of a sheriff or duly authorized employee of
16 the Tax Commissioner or Department of Labor about to distrain or
17 having distrained any property or right to property, exhibit all
18 books containing evidence or statements relating to the property or
19 rights of property liable to distraint for the tax due.

20 Sec. 5. Section 77-4022, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-4022 (1) Any tax imposed by section 77-4008 which is
23 not paid on the due date shall become delinquent, and a penalty of
24 twenty-five percent shall be added thereto, and shall bear interest
25 at the rate prescribed by section 45-104.02, as such rate may from
26 time to time be adjusted, from the due date until paid.

27 (2) ~~If~~ In addition to the penalty provided in subsection

1 (1) of this section, if the Tax Commissioner finds that a licensee
2 has made a false and fraudulent return with intent to evade the
3 Tobacco Products Tax Act, the Tax Commissioner shall assess a
4 penalty of twenty-five percent of the entire tax due for which the
5 false and fraudulent return was made, excluding interest.

6 Sec. 6. Original sections 77-3904, 77-3905, and 77-4022,
7 Reissue Revised Statutes of Nebraska, and section 77-3906, Revised
8 Statutes Cumulative Supplement, 2012, are repealed.

9 2. On page 1, strike lines 2 through 10 and insert
10 "77-3904, 77-3905, and 77-4022, Reissue Revised Statutes of
11 Nebraska, and section 77-3906, Revised Statutes Cumulative
12 Supplement, 2012; to provide for agreements relating to
13 collections; to require a report as prescribed; to change
14 provisions relating to liens and levies under the Uniform State Tax
15 Lien Registration and Enforcement Act; to provide for a penalty
16 for delinquent taxes; to harmonize provisions; and to repeal the
17 original sections."