

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 33

Introduced by Hadley, 37.

Read first time January 10, 2013

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 32-1610, 77-3904, 77-3905, and 77-4022, Reissue Revised
 3 Statutes of Nebraska, and section 77-3906, Revised
 4 Statutes Cumulative Supplement, 2012; to provide for
 5 agreements relating to collections; to provide for a
 6 penalty for delinquent taxes; to eliminate a provision
 7 relating to campaign fund contributions; to harmonize
 8 provisions; to repeal the original sections; and to
 9 outright repeal section 77-27,119.04, Reissue Revised
 10 Statutes of Nebraska.

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

1 Section 1. The Tax Commissioner may enter into an
2 agreement with one or more financial institutions in this state to
3 levy upon real and personal property belonging to a taxpayer in
4 accordance with the Uniform State Tax Lien Registration and
5 Enforcement Act and in any medium and format to which the Tax
6 Commissioner and the financial institution have agreed.

7 Sec. 2. Section 32-1610, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 32-1610 The Campaign Finance Limitation Cash Fund is
10 hereby created. The fund shall be used by the commission to provide
11 public financing of campaigns pursuant to the Campaign Finance
12 Limitation Act, except that transfers may be made to the General Fund
13 at the direction of the Legislature. The fund shall consist of money
14 appropriated to it by the Legislature, and amounts repaid by
15 candidates pursuant to sections 32-1606 and 32-1607., ~~and taxpayer~~
16 ~~contributions to the fund pursuant to section 77-27,119.04.~~ Any money
17 in the fund available for investment shall be invested by the state
18 investment officer pursuant to the Nebraska Capital Expansion Act and
19 the Nebraska State Funds Investment Act.

20 Sec. 3. Section 77-3904, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-3904 (1) If any person liable to pay any tax or fee
23 under any tax program administered by the Tax Commissioner or
24 Commissioner of Labor neglects or refuses to pay such tax or fee
25 after demand, the amount of such tax or fee, including any interest,

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

17 (2)(a) The Tax Commissioner or Commissioner of Labor may
18 present for filing or file for record in the office of the
19 appropriate filing officer a notice of lien specifying the year the
20 tax was due, the tax program, and the amount of the tax and any
21 interest, penalty, or addition to such tax that are due. Such notice
22 shall be filed for record in the office of the appropriate filing
23 officer within three years after the time of assessment or within one
24 year after the expiration of an agreement between the Tax
25 Commissioner and a taxpayer to extend the time period for payment of

1 tax which may be due, whichever is later. Such notice shall contain
2 the name and last-known address of the taxpayer, the last four digits
3 of the taxpayer's social security number or federal identification
4 number, the Tax Commissioner's or Commissioner of Labor's serial
5 number, and a statement to the effect that the Tax Commissioner or
6 Commissioner of Labor has complied with all provisions of the law for
7 the particular tax program which he or she administers in the
8 determination of the amount of the tax and any interest, penalty, and
9 addition to such tax required to be paid.

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

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

23 (ii) A lien imposed upon personal property pursuant to
24 the Uniform State Tax Lien Registration and Enforcement Act shall be
25 valid against any subsequent creditor when notice of such lien and

1 the amount due has been filed by the Tax Commissioner or Commissioner
2 of Labor in the office of the Secretary of State.

3 (b) In the case of any prior mortgage on real property or
4 secured transaction covering personal property so written as to
5 secure a present debt and future advances, the lien provided in the
6 act, when notice thereof has been filed in the office of the
7 appropriate filing officer, shall be subject to such prior lien
8 unless the Tax Commissioner or Commissioner of Labor has notified the
9 lienholder in writing of the recording of such tax lien, in which
10 case the lien of any indebtedness thereafter created under such
11 mortgage or secured transaction shall be junior to the lien provided
12 for in the act.

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

22 (5) When a termination statement of any tax lien issued
23 by the Tax Commissioner or Commissioner of Labor is filed in the
24 office where the notice of lien is filed, the appropriate filing
25 officer shall enter such statement with the date of filing in the

1 state tax lien index where notice of the lien so terminated is
2 entered and shall file the termination statement with the notice of
3 the lien.

4 (6) The Tax Commissioner or Commissioner of Labor may at
5 any time, upon request of any party involved, release from a lien all
6 or any portion of the property subject to any lien provided for in
7 the Uniform State Tax Lien Registration and Enforcement Act or
8 subordinate a lien to other liens and encumbrances if he or she
9 determines that (a) the tax amount and any interest, penalties, and
10 additions to such tax have been paid or secured sufficiently by a
11 lien on other property, (b) the lien has become legally
12 unenforceable, (c) a surety bond or other satisfactory security has
13 been posted, deposited, or pledged with the Tax Commissioner or
14 Commissioner of Labor in an amount sufficient to secure the payment
15 of such taxes and any interest, penalties, and additions to such
16 taxes, or (d) the release, partial release, or subordination of the
17 lien will not jeopardize the collection of such taxes and any
18 interest, penalties, and additions to such tax.

19 (7) A certificate by the Tax Commissioner or Commissioner
20 of Labor stating that any property has been released from the lien or
21 the lien has been subordinated to other liens and encumbrances shall
22 be conclusive evidence that the property has in fact been released or
23 the lien has been subordinated pursuant to the certificate.

24 Sec. 4. Section 77-3905, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-3905 (1) ~~At~~ Except as provided in section 77-3904, at
2 any time within three years after any amount of tax to be collected
3 under any tax program administered by the Tax Commissioner or
4 Commissioner of Labor is assessed or within ten years after the last
5 filing for record as set forth in the Uniform State Tax Lien
6 Registration and Enforcement Act, the Tax Commissioner or
7 Commissioner of Labor may bring an action in the courts of this
8 state, any other state, or the United States in the name of the
9 people of the State of Nebraska to collect the delinquent amount
10 together with penalties, any additions to such tax, costs, and
11 interest.

12 (2)(a) The Attorney General shall prosecute the action on
13 behalf of the Tax Commissioner, (b) the Commissioner of Labor shall
14 be represented in an action under the act as provided in section
15 48-667, and (c) the rules of civil procedure relating to service of
16 summons, pleadings, proofs, trials, and appeals shall be applicable
17 to the proceedings.

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

21 (4) In the action, a certificate by the Tax Commissioner
22 or Commissioner of Labor showing the delinquency shall be prima facie
23 evidence of the determination of such tax or the amount of such tax,
24 the delinquency of the amounts set forth, and the compliance by the
25 Tax Commissioner or Commissioner of Labor with all provisions of the

1 applicable tax program which he or she administers in relation to the
2 computation and determination of the amounts set forth.

3 (5) The tax amounts required to be paid by any person
4 under any tax program administered by the Tax Commissioner or
5 Commissioner of Labor together with any interest, penalties, and
6 additions to such tax shall be satisfied first in any of the
7 following cases: When the person is insolvent; when the person makes
8 a voluntary assignment of his or her assets; when the estate of the
9 person in the hands of executors, personal representatives,
10 administrators, or heirs is insufficient to pay all the debts due
11 from the deceased; or when the estate and effects of an absconding,
12 concealed, or absent person required to pay any amount under any tax
13 program administered by the Tax Commissioner or Commissioner of Labor
14 are levied upon by process of law.

15 (6) Any tax which by law must be deducted and withheld by
16 an employer or payor or is collected by a retailer or any other
17 designated person as agent for the State of Nebraska on any
18 transaction governed by a tax program administered by the Tax
19 Commissioner or Commissioner of Labor shall constitute a trust fund
20 in the hands of the employer, payor, or retailer or such other
21 designated person and shall be owned by the state as of the time the
22 tax is deducted and withheld or is owing to the employer, payor, or
23 retailer or such other designated person.

24 Sec. 5. Section 77-3906, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

1 77-3906 (1) In addition to all other remedies or actions
2 provided by law under any tax program administered by the Tax
3 Commissioner or Commissioner of Labor, it shall be lawful for the Tax
4 Commissioner or Commissioner of Labor, after making demand for
5 payment, to collect any delinquent taxes, together with any interest,
6 penalties, and additions to such tax by distraint and sale of the
7 real and personal property of the taxpayer. If the Tax Commissioner
8 finds that the collection of any tax is in jeopardy pursuant to
9 section 77-2710, 77-27,111, or 77-4311, notice and demand for
10 immediate payment of such tax may be made by the Tax Commissioner
11 and, upon failure or refusal to pay such tax, collection by levy
12 shall be lawful.

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

21 (b) In case of failure to pay taxes or deficiencies, the
22 Commissioner of Labor, or his or her authorized employee, may levy
23 or, by warrant issued under his or her own hand, authorize a sheriff
24 or duly authorized employee of the Department of Labor to levy upon,
25 seize, and sell such real and personal property belonging to the

1 taxpayer, except exempt property, as is necessary to satisfy the
2 liability for the payment of the amount due.

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

6 (3) When a warrant is issued or a levy is made by the Tax
7 Commissioner or Commissioner of Labor, or his or her duly authorized
8 employee, for the collection of any tax and any interest, penalty, or
9 addition to such tax imposed by law under any tax program
10 administered by the Tax Commissioner or Commissioner of Labor or for
11 the enforcement of any tax lien authorized by the Uniform State Tax
12 Lien Registration and Enforcement Act, such warrant or levy shall
13 have the same force and effect of a levy and sale pursuant to a writ
14 of execution. Such warrant or levy may be issued and sale made
15 pursuant to it in the same manner and with the same force and effect
16 of a levy and sale pursuant to a writ of execution. The Tax
17 Commissioner or Commissioner of Labor shall pay the financial
18 institution in accordance with section 1 of this act or the levying
19 sheriff the same fees, commissions, and expenses pursuant to such
20 warrant as are provided by law for similar services pursuant to a
21 writ of execution, except that fees for publications in a newspaper
22 shall be subject to approval by the Tax Commissioner or Commissioner
23 of Labor. Such fees, commissions, and expenses shall be an obligation
24 of the taxpayer and may be collected from the taxpayer by virtue of
25 the warrant. Any such warrant shall show the name and last-known

1 address of the taxpayer, the identity of the tax program, the year
2 for which such tax and any interest, penalty, or addition to such tax
3 is due and the amount thereof, the fact that the Tax Commissioner or
4 Commissioner of Labor has complied with all provisions of the law for
5 the applicable tax program which he or she administers in the
6 determination of the amount required to be paid, and that the tax and
7 any interest, penalty, or addition to such tax is due and payable
8 according to law.

9 (4)(a) Any person upon whom a levy is served who fails or
10 refuses to honor the levy without cause may be held liable for the
11 amount of the levy up to the value of the assets of the taxpayer
12 under his or her control at the time the levy was served or
13 thereafter. Such person may be subject to collection provisions as
14 set forth in the act.

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

19 (5) Notice of the sale and the time and place of the sale
20 shall be given, to the delinquent taxpayer and to any other person
21 with an interest in the property who has filed for record with the
22 appropriate filing officer on such property, in writing at least
23 twenty days prior to the date of such sale in the following manner:
24 The notice shall be mailed to the taxpayer and to any other person
25 with such interest at his or her last-known residence or place of

1 business in this state. The notice shall also be given by publication
2 at least once each week for four weeks prior to the date of the sale
3 in the newspaper of general circulation published in the county in
4 which the property seized is to be sold. If there is no newspaper of
5 general circulation in the county, notice shall be posted in three
6 public places in the county twenty days prior to the date of the
7 sale. The notice shall contain a description of the property to be
8 sold, a statement of the type of tax due and of the amount due,
9 including interest, penalties, additions to tax, and costs, the name
10 of the delinquent taxpayer, and the further statement that unless the
11 amount due, including interest, penalties, additions to tax, and
12 costs, is paid on or before the time fixed in the notice for the sale
13 or such security as may be determined by the Tax Commissioner or
14 Commissioner of Labor is placed with the Tax Commissioner or
15 Commissioner of Labor, or his or her duly authorized representative,
16 on or before such time, the property, or so much of it as may be
17 necessary, will be sold in accordance with law and the notice.

18 (6) At the sale the Tax Commissioner or Commissioner of
19 Labor, or his or her duly authorized representative, shall sell the
20 property in accordance with law and the notice and shall deliver to
21 the purchaser a bill of sale for the property. The bill of sale shall
22 vest the interest or title of the person liable for the amount in the
23 purchaser. The unsold portion of any property seized shall remain in
24 the custody and control of the Tax Commissioner or Commissioner of
25 Labor, or his or her duly authorized representative, until offered

1 for sale again in accordance with this section or redeemed by the
2 taxpayer.

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

11 (8) If after the sale the money received exceeds the
12 total of all amounts due the state, including any interest,
13 penalties, additions to tax, and costs, and if there is no other
14 interest in or lien upon such money received, the Tax Commissioner or
15 Commissioner of Labor shall return the excess to the person liable
16 for the amounts and obtain a receipt. If any person having an
17 interest or lien upon the property files with the Tax Commissioner or
18 Commissioner of Labor prior to the sale notice of his or her interest
19 or lien, the Tax Commissioner or Commissioner of Labor shall withhold
20 any excess pending a determination of the rights of the respective
21 parties thereto by a court of competent jurisdiction. If for any
22 reason the receipt of the person liable for the amount is not
23 available, the Tax Commissioner or Commissioner of Labor shall
24 deposit the excess money with the State Treasurer, as trustee for the
25 owner, subject to the order of the person liable for the amount or

1 his or her heirs, successors, or assigns. No interest earned, if any,
2 shall become the property of the person liable for the amount.

3 (9) All persons and officers of companies or corporations
4 shall, on demand of a sheriff or duly authorized employee of the Tax
5 Commissioner or Department of Labor about to distrain or having
6 distrained any property or right to property, exhibit all books
7 containing evidence or statements relating to the property or rights
8 of property liable to distraint for the tax due.

9 Sec. 6. Section 77-4022, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 77-4022 (1) Any tax imposed by section 77-4008 which is
12 not paid on the due date shall become delinquent, and a penalty of
13 twenty-five percent shall be added thereto, and shall bear interest
14 at the rate prescribed by section 45-104.02, as such rate may from
15 time to time be adjusted, from the due date until paid.

16 (2) ~~If~~In addition to the penalty provided in subsection
17 (1) of this section, if the Tax Commissioner finds that a licensee
18 has made a false and fraudulent return with intent to evade the
19 Tobacco Products Tax Act, the Tax Commissioner shall assess a penalty
20 of twenty-five percent of the entire tax due for which the false and
21 fraudulent return was made, excluding interest.

22 Sec. 7. Original sections 32-1610, 77-3904, 77-3905, and
23 77-4022, Reissue Revised Statutes of Nebraska, and section 77-3906,
24 Revised Statutes Cumulative Supplement, 2012, are repealed.

25 Sec. 8. The following section is outright repealed:

1 Section 77-27,119.04, Reissue Revised Statutes of Nebraska.