

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 867

Introduced by Hadley, 37.

Read first time January 13, 2014

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-27,144, Revised Statutes Cumulative Supplement, 2012,
3 and section 77-2711, Revised Statutes Supplement, 2013;
4 to change provisions relating to review of sales and use
5 tax information by municipalities; to harmonize
6 provisions; and to repeal the original sections.

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

1 Section 1. Section 77-2711, Revised Statutes Supplement,
2 2013, is amended to read:

3 77-2711 (1)(a) The Tax Commissioner shall enforce
4 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce
5 rules and regulations relating to the administration and enforcement
6 of such sections.

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

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

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

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

25 (4) The Tax Commissioner or any person authorized in

1 writing by him or her may examine the books, papers, records, and
2 equipment of any person selling property and any person liable for
3 the use tax and may investigate the character of the business of the
4 person in order to verify the accuracy of any return made or, if no
5 return is made by the person, to ascertain and determine the amount
6 required to be paid. In the examination of any person selling
7 property or of any person liable for the use tax, an inquiry shall be
8 made as to the accuracy of the reporting of city sales and use taxes
9 for which the person is liable under the Local Option Revenue Act or
10 sections 13-319, 13-324, and 13-2813 and the accuracy of the
11 allocation made between the various counties, cities, villages, and
12 municipal counties of the tax due. The Tax Commissioner may make or
13 cause to be made copies of resale or exemption certificates and may
14 pay a reasonable amount to the person having custody of the records
15 for providing such copies.

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

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

1 property, the date of sale, and such other information as the Tax
2 Commissioner may require.

3 (7) It shall be a Class I misdemeanor for the Tax
4 Commissioner or any official or employee of the Tax Commissioner, the
5 State Treasurer, or the Department of Administrative Services to make
6 known in any manner whatever the business affairs, operations, or
7 information obtained by an investigation of records and activities of
8 any retailer or any other person visited or examined in the discharge
9 of official duty or the amount or source of income, profits, losses,
10 expenditures, or any particular thereof, set forth or disclosed in
11 any return, or to permit any return or copy thereof, or any book
12 containing any abstract or particulars thereof to be seen or examined
13 by any person not connected with the Tax Commissioner. Nothing in
14 this section shall be construed to prohibit (a) the delivery to a
15 taxpayer, his or her duly authorized representative, or his or her
16 successors, receivers, trustees, executors, administrators,
17 assignees, or guarantors, if directly interested, of a certified copy
18 of any return or report in connection with his or her tax, (b) the
19 publication of statistics so classified as to prevent the
20 identification of particular reports or returns and the items
21 thereof, (c) the inspection by the Attorney General, other legal
22 representative of the state, or county attorney of the reports or
23 returns of any taxpayer when either (i) information on the reports or
24 returns is considered by the Attorney General to be relevant to any
25 action or proceeding instituted by the taxpayer or against whom an

1 action or proceeding is being considered or has been commenced by any
2 state agency or the county or (ii) the taxpayer has instituted an
3 action to review the tax based thereon or an action or proceeding
4 against the taxpayer for collection of tax or failure to comply with
5 the Nebraska Revenue Act of 1967 is being considered or has been
6 commenced, (d) the furnishing of any information to the United States
7 Government or to states allowing similar privileges to the Tax
8 Commissioner, (e) the disclosure of information and records to a
9 collection agency contracting with the Tax Commissioner pursuant to
10 sections 77-377.01 to 77-377.04, (f) the disclosure to another party
11 to a transaction of information and records concerning the
12 transaction between the taxpayer and the other party, (g) the
13 disclosure of information pursuant to section 77-27,195 or 77-5731,
14 or (h) the disclosure of information to the Department of Labor
15 necessary for the administration of the Employment Security Law, the
16 Contractor Registration Act, or the Employee Classification Act.

17 (8) Notwithstanding the provisions of subsection (7) of
18 this section, the Tax Commissioner may permit the Postal Inspector of
19 the United States Postal Service or his or her delegates to inspect
20 the reports or returns of any person filed pursuant to the Nebraska
21 Revenue Act of 1967 when information on the reports or returns is
22 relevant to any action or proceeding instituted or being considered
23 by the United States Postal Service against such person for the
24 fraudulent use of the mails to carry and deliver false and fraudulent
25 tax returns to the Tax Commissioner with the intent to defraud the

1 State of Nebraska or to evade the payment of Nebraska state taxes.

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

9 (10) Notwithstanding the provisions of subsection (7) of
10 this section, the Tax Commissioner may, upon request, provide the
11 county board of any county which has exercised the authority granted
12 by section 81-3716 with a list of the names and addresses of the
13 hotels located within the county for which lodging sales tax returns
14 have been filed or for which lodging sales taxes have been remitted
15 for the county's County Visitors Promotion Fund under the Nebraska
16 Visitors Development Act.

17 The information provided by the Tax Commissioner shall
18 indicate only the names and addresses of the hotels located within
19 the requesting county for which lodging sales tax returns have been
20 filed for a specified period and the fact that lodging sales taxes
21 remitted by or on behalf of the hotel have constituted a portion of
22 the total sum remitted by the state to the county for a specified
23 period under the provisions of the Nebraska Visitors Development Act.
24 No additional information shall be revealed.

25 (11)(a) Notwithstanding the provisions of subsection (7)

1 of this section, the Tax Commissioner shall, upon written request by
2 the Auditor of Public Accounts or the Legislative Performance Audit
3 Committee, make tax returns and tax return information open to
4 inspection by or disclosure to the Auditor of Public Accounts or
5 employees of the office of Legislative Audit for the purpose of and
6 to the extent necessary in making an audit of the Department of
7 Revenue pursuant to section 50-1205 or 84-304. Confidential tax
8 returns and tax return information shall be audited only upon the
9 premises of the Department of Revenue. All audit workpapers
10 pertaining to the audit of the Department of Revenue shall be stored
11 in a secure place in the Department of Revenue.

12 (b) No employee of the Auditor of Public Accounts or the
13 office of Legislative Audit shall disclose to any person, other than
14 another Auditor of Public Accounts or office employee whose official
15 duties require such disclosure or as provided in subsections (2) and
16 (3) of section 50-1213, any return or return information described in
17 the Nebraska Revenue Act of 1967 in a form which can be associated
18 with or otherwise identify, directly or indirectly, a particular
19 taxpayer.

20 (c) Any person who violates the provisions of this
21 subsection shall be guilty of a Class I misdemeanor. For purposes of
22 this subsection, employee includes a former Auditor of Public
23 Accounts or office of Legislative Audit employee.

24 (12) For purposes of this subsection and subsections (11)
25 and (14) of this section:

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

3 (b) Return information means:

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

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

17 (c) Tax return or return means any tax or information
18 return or claim for refund required by, provided for, or permitted
19 under sections 77-2701 to 77-2713 which is filed with the Tax
20 Commissioner by, on behalf of, or with respect to any person and any
21 amendment or supplement thereto, including supporting schedules,
22 attachments, or lists which are supplemental to or part of the filed
23 return.

24 (13) Notwithstanding the provisions of subsection (7) of
25 this section, the Tax Commissioner shall, upon request, provide any

1 municipality which has adopted the local option sales tax under the
2 Local Option Revenue Act with a list of the names and addresses of
3 the retailers which have collected the local option sales tax for the
4 municipality. The request may be made annually and shall be submitted
5 to the Tax Commissioner on or before June 30 of each year. The
6 information provided by the Tax Commissioner shall indicate only the
7 names and addresses of the retailers. The Tax Commissioner may
8 provide additional information to a municipality so long as the
9 information does not include any data detailing the specific revenue,
10 expenses, or operations of any particular business.

11 (14)(a) Notwithstanding the provisions of subsection (7)
12 of this section, the Tax Commissioner shall, upon written request,
13 provide ~~a municipal employee~~ an individual certified under
14 subdivision (b) of this subsection representing a municipality which
15 has adopted the local option sales and use tax under the Local Option
16 Revenue Act with confidential sales and use tax returns and sales and
17 use tax return information regarding taxpayers that possess a sales
18 tax permit and the amounts remitted by such permit holders at
19 locations within the boundaries of the requesting municipality or
20 regarding any person liable for the use tax and the amounts remitted
21 by such persons which are allocable to the requesting municipality.
22 Any written request pursuant to this subsection shall provide the
23 Department of Revenue with no less than ten business days to prepare
24 the sales and use tax returns and sales and use tax return
25 information requested. Such returns and return information shall be

1 viewed only upon the premises of the department.

2 (b) Each municipality that seeks to request information
3 under subdivision (a) of this subsection shall certify to the
4 Department of Revenue one ~~municipal employee~~ individual who is
5 authorized by such municipality to make such request and review the
6 documents described in subdivision (a) of this subsection. The
7 individual may be a municipal employee or an individual who contracts
8 with the requesting municipality to provide financial, accounting, or
9 other administrative services.

10 (c) No ~~municipal employee~~ individual certified by a
11 municipality pursuant to subdivision (b) of this subsection shall
12 disclose to any person any information obtained pursuant to a review
13 ~~by that municipal employee pursuant to~~ under this subsection. A
14 ~~municipal employee~~ An individual certified by a municipality pursuant
15 to subdivision (b) of this subsection shall remain subject to this
16 subsection after he or she (i) is no longer certified or (ii) is no
17 longer in the employment of or under contract with the certifying
18 municipality.

19 (d) Any person who violates the provisions of this
20 subsection shall be guilty of a Class I misdemeanor.

21 (e) The Department of Revenue shall not be held liable by
22 any person for an impermissible disclosure by a municipality or any
23 agent or employee thereof of any information obtained pursuant to a
24 review under this subsection.

25 (15) In all proceedings under the Nebraska Revenue Act of

1 1967, the Tax Commissioner may act for and on behalf of the people of
2 the State of Nebraska. The Tax Commissioner in his or her discretion
3 may waive all or part of any penalties provided by the provisions of
4 such act or interest on delinquent taxes specified in section
5 45-104.02, as such rate may from time to time be adjusted.

6 (16)(a) The purpose of this subsection is to set forth
7 the state's policy for the protection of the confidentiality rights
8 of all participants in the system operated pursuant to the
9 streamlined sales and use tax agreement and of the privacy interests
10 of consumers who deal with model 1 sellers.

11 (b) For purposes of this subsection:

12 (i) Anonymous data means information that does not
13 identify a person;

14 (ii) Confidential taxpayer information means all
15 information that is protected under a member state's laws,
16 regulations, and privileges; and

17 (iii) Personally identifiable information means
18 information that identifies a person.

19 (c) The state agrees that a fundamental precept for model
20 1 sellers is to preserve the privacy of consumers by protecting their
21 anonymity. With very limited exceptions, a certified service provider
22 shall perform its tax calculation, remittance, and reporting
23 functions without retaining the personally identifiable information
24 of consumers.

25 (d) The governing board of the member states in the

1 streamlined sales and use tax agreement may certify a certified
2 service provider only if that certified service provider certifies
3 that:

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

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

9 (iii) It provides consumers clear and conspicuous notice
10 of its information practices, including what information it collects,
11 how it collects the information, how it uses the information, how
12 long, if at all, it retains the information, and whether it discloses
13 the information to member states. Such notice shall be satisfied by a
14 written privacy policy statement accessible by the public on the web
15 site of the certified service provider;

16 (iv) Its collection, use, and retention of personally
17 identifiable information is limited to that required by the member
18 states to ensure the validity of exemptions from taxation that are
19 claimed by reason of a consumer's status or the intended use of the
20 goods or services purchased; and

21 (v) It provides adequate technical, physical, and
22 administrative safeguards so as to protect personally identifiable
23 information from unauthorized access and disclosure.

24 (e) The state shall provide public notification to
25 consumers, including exempt purchasers, of the state's practices

1 relating to the collection, use, and retention of personally
2 identifiable information.

3 (f) When any personally identifiable information that has
4 been collected and retained is no longer required for the purposes
5 set forth in subdivision (16)(d)(iv) of this section, such
6 information shall no longer be retained by the member states.

7 (g) When personally identifiable information regarding an
8 individual is retained by or on behalf of the state, it shall provide
9 reasonable access by such individual to his or her own information in
10 the state's possession and a right to correct any inaccurately
11 recorded information.

12 (h) If anyone other than a member state, or a person
13 authorized by that state's law or the agreement, seeks to discover
14 personally identifiable information, the state from whom the
15 information is sought should make a reasonable and timely effort to
16 notify the individual of such request.

17 (i) This privacy policy is subject to enforcement by the
18 Attorney General.

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

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

25 (ii) Provide records pursuant to the federal Freedom of

1 Information Act, disclosure laws with governmental agencies, or other
2 regulations;

3 (iii) Prevent, consistent with state law, disclosure of
4 confidential taxpayer information;

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

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

10 Sec. 2. Section 77-27,144, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 77-27,144 (1) The Tax Commissioner shall collect the tax
13 imposed by any incorporated municipality concurrently with collection
14 of a state tax in the same manner as the state tax is collected. The
15 Tax Commissioner shall remit monthly the proceeds of the tax to the
16 incorporated municipalities levying the tax, after deducting the
17 amount of refunds made and three percent of the remainder to be
18 credited to the Municipal Equalization Fund.

19 (2) Deductions for a refund made pursuant to section
20 77-4105 or 77-5725 shall be delayed for one year after the refund has
21 been made to the taxpayer. The Department of Revenue shall notify the
22 municipality liable for the refund of the pending refund, the amount
23 of the refund, and the month in which the deduction will be made or
24 begin, except that if the amount of a refund claimed under section
25 77-4105 or 77-5725 exceeds twenty-five percent of the municipality's

1 total sales and use tax receipts, net of any refunds or sales tax
2 collection fees, for the municipality's prior fiscal year, the
3 department shall deduct the refund over the period of one year in
4 equal monthly amounts beginning after the one-year notification
5 period required by this subsection. This subsection applies to
6 refunds owed by cities of the first class, cities of the second
7 class, and villages. This subsection applies beginning January 1,
8 2014.

9 (3) The Tax Commissioner shall keep full and accurate
10 records of all money received and distributed under the provisions of
11 the Local Option Revenue Act. When proceeds of a tax levy are
12 received but the identity of the incorporated municipality which
13 levied the tax is unknown and is not identified within six months
14 after receipt, the amount shall be credited to the Municipal
15 Equalization Fund. The municipality may request the names and
16 addresses of the retailers which have collected the tax as provided
17 in subsection (13) of section 77-2711 and may certify a ~~municipal~~
18 ~~employee~~ an individual to request and review confidential sales and
19 use tax returns and sales and use tax return information as provided
20 in subsection (14) of section 77-2711.

21 Sec. 3. Original section 77-27,144, Revised Statutes
22 Cumulative Supplement, 2012, and section 77-2711, Revised Statutes
23 Supplement, 2013, are repealed.