

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1095

Introduced by Kintner, 2; Scheer, 19.

Read first time January 20, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2753, Reissue Revised Statutes of Nebraska; to require employer
- 3 identification numbers and use of the federal immigration
- 4 verification system as prescribed; to harmonize provisions; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2753, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2753 (1)(a) Every employer and payor maintaining an office or
4 transacting business within this state and making payment of any wages or
5 other payments as defined in subsection (7 ~~6~~) of this section which are
6 taxable under the Nebraska Revenue Act of 1967 to any individual shall
7 deduct and withhold from such wages for each payroll period and from such
8 payments a tax computed in such manner as to result, so far as
9 practicable, in withholding from the employee's wages and payments to the
10 payee during each calendar year an amount substantially equivalent to the
11 tax reasonably estimated to be due from the employee or payee under such
12 act with respect to the amount of such wages and payments included in his
13 or her taxable income during the calendar year. The method of determining
14 the amount to be withheld shall be prescribed by rules and regulations of
15 the Tax Commissioner. Such rules and regulations may allow withholding to
16 be computed at a percentage of the federal withholding or at a comparable
17 flat percentage for gambling winnings or supplemental payments, including
18 bonuses, commissions, overtime pay, and sales awards which are not paid
19 at the same time as other wages, or payments to independent contractors.
20 Any withholding tables prescribed by the Tax Commissioner shall be
21 provided to the budget division of the Department of Administrative
22 Services and the Legislative Fiscal Analyst for review at least sixty
23 days before the tables become effective.

24 (b) Notwithstanding the amount of federal withholding or the rules
25 and regulations of the Department of Revenue determining the amount of
26 withholding, every employer and payor employing twenty-five or more
27 employees shall withhold at least one and one-half percent of the gross
28 wages minus tax qualified deductions of each employee unless the employee
29 provides satisfactory evidence that a lesser amount of withholding is
30 justified in the employee's particular circumstances. Such satisfactory
31 evidence may include birth certificates or social security information

1 for dependents or other evidence that reasonably assures the employer
2 that the employee is not improperly or fraudulently evading or defeating
3 the income tax by reducing or eliminating withholding.

4 (2)(a) Every employer making payment of any wages subject to
5 withholding pursuant to this section shall register with the Tax
6 Commissioner, on a form prescribed by the Tax Commissioner, and shall be
7 assigned an employer identification number. Such registration shall be
8 renewed annually. The Tax Commissioner may prescribe a separate
9 registration form for renewal purposes.

10 (b) It shall be unlawful for any employer making payment of any
11 wages subject to withholding to maintain an office or transact business
12 within this state after January 1, 2017, unless such employer has
13 registered with the Tax Commissioner and been assigned an employer
14 identification number as prescribed in this subsection.

15 (c) Beginning January 1, 2017, every employer required to register
16 with the Tax Commissioner as provided in this subsection shall register
17 with and use the federal immigration verification system to determine the
18 work eligibility status of new employees subject to withholding under
19 this section and physically performing services within the State of
20 Nebraska. Such employers shall, after making an offer of employment which
21 has been accepted by an employee, determine such employee's work
22 eligibility status pursuant to federal law or regulations. Such employers
23 shall not knowingly employ an unauthorized alien. Each such employer
24 shall file a signed sworn affidavit with the Tax Commissioner stating
25 that the employer is in compliance with the requirements of this
26 subdivision. An employee hired prior to the date of the employer's
27 registration with the federal immigration verification system is exempt
28 from the requirements of this subdivision.

29 (d) Whenever an employer required to register with the Tax
30 Commissioner as provided in this subsection fails to comply with any
31 requirement of this subsection, the Tax Commissioner upon hearing, after

1 giving the employer twenty days' notice in writing specifying the time
2 and place of hearing and requiring such employer to show cause why the
3 employer's employer identification number should not be revoked or
4 suspended, may revoke or suspend such number. The Tax Commissioner shall
5 give to the employer written notice of the suspension or revocation of
6 the employer identification number. The notice may be served personally
7 or by mail, and if by mail the notice shall be addressed to the employer
8 at the employer's address as it appears in the records of the Tax
9 Commissioner. In case of service by mail of any notice required by this
10 subsection, the service is complete at the time of deposit in the United
11 States mail.

12 (e) In determining whether an employee is an unauthorized alien, the
13 Tax Commissioner shall consider only the federal government's
14 determination pursuant to 8 U.S.C. 1373(c). The federal government's
15 determination creates a rebuttable presumption of the employee's lawful
16 status. The Tax Commissioner may take judicial notice of the federal
17 government's determination and may request the federal government to
18 provide automated or testimonial verification pursuant to 8 U.S.C.
19 1373(c).

20 (f) For purposes of this subsection, proof of verifying the
21 employment authorization of an employee through the federal immigration
22 verification system creates a rebuttable presumption that an employer did
23 not knowingly employ an unauthorized alien.

24 (g) For purposes of this subsection, an employer who establishes
25 that it has complied in good faith with the requirements of 8 U.S.C.
26 1324a(b) establishes an affirmative defense that the employer did not
27 knowingly employ an unauthorized alien.

28 (h) The Tax Commissioner shall have the power to reinstate employer
29 identification numbers which have been suspended or revoked under this
30 subsection but shall not do so unless the employer has complied with the
31 provisions of this subsection relating to verifying the work eligibility

1 status of new employees and has filed a signed sworn affidavit with the
2 Tax Commissioner stating that the employer has so complied. An employer
3 whose employer identification number has been suspended or revoked shall
4 pay the Tax Commissioner a fee of fifty dollars for reinstatement of the
5 number in the event of any suspension or revocation.

6 (i) Actions of the Tax Commissioner under this subsection may be
7 appealed by the employer in accordance with the Administrative Procedure
8 Act.

9 (j) Any report, name, or information which is supplied to the Tax
10 Commissioner regarding a violation of this subsection, including the
11 identity of the informer, shall be subject to the pertinent provisions
12 regarding wrongful disclosure in section 77-27,119.

13 (k) For purposes of this subsection:

14 (i) Federal immigration verification system means the electronic
15 verification of the work authorization program of the Illegal Immigration
16 Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as
17 the E-Verify Program, or an equivalent federal program designated by the
18 United States Department of Homeland Security or other federal agency
19 authorized to verify the work eligibility status of a newly hired
20 employee pursuant to the Immigration Reform and Control Act of 1986;

21 (ii) Knowingly employ an unauthorized alien means the actions
22 described in 8 U.S.C. 1324a. This term shall be interpreted consistently
23 with 8 U.S.C. 1324a and any applicable federal rules and regulations; and

24 (iii) Unauthorized alien means an alien who does not have the legal
25 right or authorization under federal law to work in the United States as
26 described in 8 U.S.C. 1324a(h)(3).

27 (3)(a) ~~(2)(a)~~ Every payor who is either (i) making a payment or
28 payments in excess of five thousand dollars or (ii) maintaining an office
29 or transacting business within this state and making a payment or
30 payments related to such business in excess of six hundred dollars, and
31 such payment or payments are for personal services performed or to be

1 performed substantially within this state, to a nonresident individual,
2 other than an employee, who is not subject to withholding on such payment
3 under the Internal Revenue Code or a corporation, partnership, or limited
4 liability company described in subdivision (c) of this subsection, shall
5 be deemed an employer, and the individual performing the personal
6 services shall be deemed an employee for the purposes of this section.
7 The payor shall deduct and withhold from such payments the percentage of
8 such payments prescribed in subdivision (b) of this subsection. If the
9 individual performing the personal services provides the payor with a
10 statement of the expenses reasonably related to the personal services,
11 the total payment or payments may be reduced by the total expenses before
12 computing the amount to deduct and withhold, except that such reduction
13 shall not be more than fifty percent of such payment or payments.

14 (b) For any payment or payments for the same service, award, or
15 purse that totals less than twenty-eight thousand dollars, the percentage
16 deducted from such payment or payments pursuant to this subsection shall
17 be four percent, and for all other payments, the percentage shall be six
18 percent.

19 (c) For any corporation, partnership, or limited liability company
20 that receives compensation for personal services in this state and of
21 which all or substantially all of the shareholders, partners, or members
22 are the individuals performing the personal services, including, but not
23 limited to, individual athletes, entertainers, performers, or public
24 speakers performing such personal services, such compensation shall be
25 deemed wages of the individuals performing the personal services and
26 subject to the income tax imposed on individuals by the Nebraska Revenue
27 Act of 1967.

28 (d) The withholding required by this subsection shall not apply to
29 any payment to a nonresident alien, corporation, partnership, or limited
30 liability company if such individual, shareholder, partner, or member
31 provides the payor with a statement that the income earned is not subject

1 to tax because of a treaty obligation of the United States or if such
2 payment is subject to withholding under subsection (4 ~~3~~) of this section.

3 (4 ~~3~~)(a) Every contractor who is maintaining an office or
4 transacting business within this state and making a payment or payments
5 to any contractor or any person that is not an employee for construction
6 services performed within this state shall deduct and withhold five
7 percent of such payments.

8 (b) The withholding required by this subsection shall not apply to
9 any payment made to (i) a person that provides the payor with a statement
10 that the income earned is not subject to tax because of a treaty
11 obligation of the United States, (ii) a contractor if such a payment or
12 payments does not exceed six hundred dollars, or (iii) a contractor when
13 the payor contractor determines that the payee contractor is in the data
14 base required by section 48-2117.

15 (c) Any contractor who determines that a contractor is in the data
16 base is relieved from liability for withholding under this subsection for
17 any future payments on a contract in existence at the time the
18 determination is made or made during the same calendar year as such
19 determination is made.

20 (d) Withholding required by this subsection shall be considered to
21 be withholding of income tax for purposes of the Nebraska Revenue Act of
22 1967.

23 (e) For purposes of this subsection:

24 (i) Construction services means services that are provided as a
25 contractor; and

26 (ii) Contractor has the same meaning as in section 48-2103.

27 (5 ~~4~~) The Tax Commissioner may enter into agreements with the tax
28 departments of other states, which require income tax to be withheld from
29 the payment of wages, salaries, and such other payments, so as to govern
30 the amounts to be withheld from the wages and salaries of and other
31 payments to residents of such states. Such agreements may provide for

1 recognition of anticipated tax credits in determining the amounts to be
2 withheld and, under rules and regulations adopted and promulgated by the
3 Tax Commissioner, may relieve employers and payors in this state from
4 withholding income tax on wages, salaries, and such other payments paid
5 to nonresident employees and payees. The agreements authorized by this
6 subsection shall be subject to the condition that the tax department of
7 such other states grant similar treatment to residents of this state.

8 (6 ~~5~~) The Tax Commissioner shall enter into an agreement with the
9 United States Office of Personnel Management for the withholding of
10 income tax imposed on individuals by the Nebraska Revenue Act of 1967 on
11 civil service annuity payments for those recipients who voluntarily
12 request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and
13 the rules and regulations adopted and promulgated by the Tax
14 Commissioner.

15 (7 ~~6~~) Wages and other payments subject to withholding shall mean
16 payments that are subject to withholding under the Internal Revenue Code
17 of 1986 and are (a) payments made by employers to employees, except such
18 payments subject to 26 U.S.C. 3406, (b) payments of gambling winnings,
19 (c) pension or annuity payments when the recipient has requested the
20 payor to withhold from such payments, or (d) payments to independent
21 contractors.

22 Sec. 2. Original section 77-2753, Reissue Revised Statutes of
23 Nebraska, is repealed.