

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 950

Introduced by Harr, 8.

Read first time January 13, 2016

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-4014, Reissue Revised Statutes of Nebraska, and section 77-2604,
- 3 Revised Statutes Supplement, 2015; to allow a bad debt deduction
- 4 relating to cigarette and tobacco product taxes; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2604, Revised Statutes Supplement, 2015, is
2 amended to read:

3 77-2604 (1) Every stamping agent, wholesale dealer, and retail
4 dealer who is subject to sections 77-2601 to 77-2622 shall make and file
5 with the Tax Commissioner, on or before the fifteenth day of each
6 calendar month on blanks furnished by the Tax Commissioner, true,
7 correct, and sworn reports covering, for the last preceding calendar
8 month, the number of cigarettes purchased, from whom purchased, the
9 specific kinds and brands thereof, the manufacturer, if known, and such
10 other matters and in such detail as the Tax Commissioner may require.

11 (2)(a) Each manufacturer and importer that sells cigarettes in or
12 into the state shall, within fifteen days following the end of each
13 month, file a report on a form and in the manner prescribed by the Tax
14 Commissioner and certify to the state that the report is complete and
15 accurate.

16 (b) The report shall contain the following information: The total
17 number of cigarettes sold by that manufacturer or importer in or into the
18 state during that month and identifying by name and number of cigarettes,
19 (i) the manufacturers of those cigarettes, (ii) the brand families of
20 those cigarettes, and (iii) the purchasers of those cigarettes. A
21 manufacturer's or importer's report shall include cigarettes sold in or
22 into the state through its sales entity affiliate.

23 (c) The requirements of this subsection shall be satisfied and no
24 further report shall be required under this section with respect to
25 cigarettes if the manufacturer or importer timely submits to the Tax
26 Commissioner the report or reports required to be submitted by it with
27 respect to those cigarettes under 15 U.S.C. 376 to the Tax Commissioner
28 and certifies to the state that the reports are complete and accurate.

29 (d) Upon request by the Tax Commissioner, a manufacturer or importer
30 shall provide copies of all sales reports referenced in subdivisions (2)
31 (a) and (b) of this section that it filed in other states.

1 (e) Each manufacturer and importer that sells cigarettes in or into
2 the state shall either (i) submit its federal excise tax returns and all
3 monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau
4 Form 5210.5 and all adjustments, changes, and amendments to such reports
5 to the Tax Commissioner no later than sixty days after the close of the
6 quarter in which the returns were filed or (ii) submit to the United
7 States Treasury a request or consent under section 6103(c) of the
8 Internal Revenue Code of 1986 as defined in section 49-801.01 authorizing
9 the federal Alcohol and Tobacco Tax and Trade Bureau and, in the case of
10 a foreign manufacturer or importer, the United States Customs Service to
11 disclose the manufacturer's or importer's federal returns to the Tax
12 Commissioner as of sixty days after the close of the quarter in which the
13 returns were filed.

14 (3)(a) Every licensed stamping agent engaged in distributing or
15 selling cigarettes at wholesale may deduct the amount of bad debts from
16 the tax imposed by section 77-2602. The amount deducted must be charged
17 off as uncollectible on the books of the stamping agent. If a person pays
18 all or part of a bad debt with respect to which a stamping agent claimed
19 a deduction under this subsection, the stamping agent shall be liable for
20 the amount of taxes deducted in connection with that portion of the debt
21 for which payment is received and shall remit such taxes at the time the
22 stamping agent submits the next report due under this section.

23 (b) Any claim for a bad debt deduction under this subsection shall
24 be supported by all of the following:

25 (i) A copy of the original invoice;

26 (ii) Evidence that the cigarettes described in the invoice were
27 delivered to the person who ordered them; and

28 (iii) Evidence that the person who ordered and received the
29 cigarettes did not pay the stamping agent for the cigarettes and that the
30 stamping agent used reasonable collection practices in attempting to
31 collect the debt.

1 (c) For purposes of this subsection, bad debt means the taxes
2 attributable to any portion of a debt that is related to a sale of
3 cigarettes subject to tax under section 77-2602 that is not otherwise
4 deductible or excludable, that has become worthless or uncollectible
5 since the stamping agent filed its most recent report under this section,
6 and that is eligible to be claimed, or could be eligible to be claimed if
7 the stamping agent kept accounts on an accrual basis, as a deduction
8 pursuant to 26 U.S.C. 166. A bad debt shall not include any interest on
9 the wholesale price of a cigarette, uncollectible amounts on cigarettes
10 that remain in the possession of the stamping agent until the full
11 purchase price is paid, expenses incurred in attempting to collect any
12 account receivable or any portion of the debt recovered, any accounts
13 receivable that have been sold to a third party for collection, or
14 repossessed cigarettes.

15 Sec. 2. Section 77-4014, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 77-4014 (1) On or before the tenth day of each calendar month, every
18 person licensed under subsection (1) of section 77-4009 shall file a
19 return with the Tax Commissioner showing either the quantity and the
20 price of each tobacco product brought or caused to be brought into this
21 state for sale or the quantity and the price of each tobacco product
22 made, manufactured, or fabricated in this state for sale in this state,
23 whichever is applicable, during the preceding calendar month. For snuff,
24 such return shall also include the net weight as listed by the
25 manufacturer.

26 (2) Every person licensed pursuant to subsection (2) of section
27 77-4009 shall, in the manner described in subsection (1) of this section,
28 file a return showing in detail the different kinds, quantity, and
29 wholesale sales price of each tobacco product shipped or transported to
30 retailers in this state to be sold by such retailers during the preceding
31 calendar month. For snuff, such return shall also include the net weight

1 as listed by the manufacturer.

2 (3) Returns shall be made upon forms furnished and prescribed by the
3 Tax Commissioner. Each return shall be accompanied by a remittance for
4 the full tax liability shown, less an amount of such liability equal to
5 any amount allowed a payer of the sales and use tax pursuant to
6 subdivision (1)(d) of section 77-2708 as compensation to reimburse the
7 licensee for his or her expenses incurred in complying with the Tobacco
8 Products Tax Act.

9 (4)(a) Every licensee filing a return under this section may deduct
10 the amount of bad debts from the tax liability shown on such return. The
11 amount deducted must be charged off as uncollectible on the books of the
12 licensee. If a person pays all or part of a bad debt with respect to
13 which a licensee claimed a deduction under this subsection, the licensee
14 shall be liable for the amount of taxes deducted in connection with that
15 portion of the debt for which payment is received and shall remit such
16 taxes at the time the licensee submits the next return due under this
17 section.

18 (b) Any claim for a bad debt deduction under this subsection shall
19 be supported by all of the following:

20 (i) A copy of the original invoice;

21 (ii) Evidence that the tobacco products described in the invoice
22 were delivered to the person who ordered them; and

23 (iii) Evidence that the person who ordered and received the tobacco
24 products did not pay the licensee for the tobacco products and that the
25 licensee used reasonable collection practices in attempting to collect
26 the debt.

27 (c) For purposes of this subsection, bad debt means the taxes
28 attributable to any portion of a debt that is related to a sale of
29 tobacco products that is not otherwise deductible or excludable, that has
30 become worthless or uncollectible since the licensee filed his or her
31 most recent return under this section, and that is eligible to be

1 claimed, or could be eligible to be claimed if the licensee kept accounts
2 on an accrual basis, as a deduction pursuant to 26 U.S.C. 166. A bad debt
3 shall not include any interest on the wholesale price of tobacco
4 products, uncollectible amounts on tobacco products that remain in the
5 possession of the licensee until the full purchase price is paid,
6 expenses incurred in attempting to collect any account receivable or any
7 portion of the debt recovered, any accounts receivable that have been
8 sold to a third party for collection, or repossessed tobacco products.

9 Sec. 3. Original section 77-4014, Reissue Revised Statutes of
10 Nebraska, and section 77-2604, Revised Statutes Supplement, 2015, are
11 repealed.