

ONE HUNDRED FOURTH LEGISLATURE

SECOND SESSION

LEGISLATIVE RESOLUTION 511

Introduced by Davis, 43; Baker, 30; Bolz, 29; Brasch, 16; Cook, 13; Groene, 42; Haar, 21; Harr, 8; Hilkemann, 4; Howard, 9; Kolowski, 31; Krist, 10; Kuehn, 38; Mello, 5; Morfeld, 46; Pansing Brooks, 28; Scheer, 19; Schnoor, 15; Schumacher, 22; Smith, 14; Stinner, 48; Sullivan, 41; Watermeier, 1.

PURPOSE: The purpose of this interim study is to examine existing law governing the collection of sales and use tax on remote sales-those sales where the seller does not have a physical presence in Nebraska-and determine whether and how existing law can be improved to increase collection of these legally due and payable but generally uncollected taxes.

Under existing United States Supreme Court precedent, a state cannot require a business to collect use taxes if the business does not have a physical presence in the state. However, in a concurring opinion in *Direct Marketing Association v. Brohl*, 135 S. Ct. 1124, 1135 (2015) ("Brohl II"), Justice Anthony Kennedy urged the Supreme Court to reconsider this precedent, stating that there "is a powerful case to be made that a retailer doing extensive business within a state has a sufficiently 'substantial nexus' to justify imposing some minor tax-collection duty, even if that business is done through mail or the Internet."

On remand from the United States Supreme Court, in *Direct Marketing Association v. Brohl*, case no. 12-1175 (Feb. 22, 2016) ("Brohl III"), the United States Court of Appeals for the Tenth Circuit upheld as constitutional a Colorado law that requires retailers who do not collect sales tax to instead provide notices regarding use taxes to purchasers and make an annual report to the state that will facilitate the collection of use taxes.

In light of these legal developments, the study committee shall conduct an examination that includes, but is not limited to, the following issues:

(1) Examining whether Nebraska's sales and use tax nexus law allows the state to require remote sellers to collect sales tax to the fullest extent

permitted by the Constitution of the United States, as interpreted by existing United States Supreme Court precedent, including *Quill v. North Dakota*, 504 U.S. 298 (1992); *Tyler Pipe Industries v. Washington State Department of Revenue*, 483 U.S. 232 (1987); and *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960);

(2) Considering, in light of Justice Kennedy's concurring opinion in *Brohl II*, whether Nebraska should require all sellers to collect sales and use tax regardless of whether a nexus would be found under existing United States Supreme Court precedent; and

(3) Considering, in light of the Tenth Circuit's decision in *Brohl III*, whether Nebraska should require all sellers who do not collect sales and use taxes to provide notices on use tax to their purchasers and provide reports to the state that will facilitate the collection of use taxes from those purchasers.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Revenue Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.