

AMENDMENTS TO LB44

Introduced by Watermeier, 1.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Sections 1 to 8 of this act shall be known and may be  
4 cited as the Noncollecting Retailer Notice and Reporting Act.

5           Sec. 2. For purposes of the Noncollecting Retailer Notice and  
6 Reporting Act:

7           (1) Department means the Department of Revenue;

8           (2) Noncollecting retailer means a retailer that sells taxable items  
9 to Nebraska purchasers and does not collect Nebraska sales or use tax. A  
10 retailer that does collect Nebraska sales or use tax is not a  
11 noncollecting retailer regardless of whether the retailer is obligated to  
12 collect the tax or voluntarily collects the tax; and

13           (3) Taxable item means any tangible or intangible property, product,  
14 service, or other item that is subject to tax under subsection (1) of  
15 section 77-2703.

16           Sec. 3. A noncollecting retailer shall be subject to the  
17 Noncollecting Retailer Notice and Reporting Act if:

18           (1) Its total sales of taxable items to Nebraska purchasers exceeded  
19 one hundred thousand dollars in the previous or current calendar year; or

20           (2) It sold taxable items to Nebraska purchasers in two hundred or  
21 more separate transactions in the previous or current calendar year.

22           Sec. 4. A noncollecting retailer shall notify Nebraska purchasers  
23 that sales or use tax is due on purchases of taxable items made from the  
24 noncollecting retailer and that the State of Nebraska requires the  
25 purchaser to remit any tax due either by filing a sales or use tax return  
26 or by paying the tax through the individual income tax return that  
27 coincides with the calendar year in which the purchase was made.

1           Sec. 5. (1) A noncollecting retailer shall send a notification to  
2 all Nebraska purchasers by January 31 of each year showing the total  
3 amount paid by the purchaser for purchases of taxable items made from the  
4 noncollecting retailer in the previous calendar year and such other  
5 information as the department may require by rule and regulation. The  
6 notification shall include, if available, the date of each purchase, the  
7 amount of each purchase, and a brief description of the taxable item  
8 purchased. The notification shall also include the name of the  
9 noncollecting retailer.

10           (2) The notification shall state, in fourteen-point, boldface type,  
11 that (a) the State of Nebraska requires sales or use tax to be paid on  
12 purchases of taxable items made by the purchaser from the noncollecting  
13 retailer, (b) any tax due must be remitted either by filing a sales or  
14 use tax return or by paying the tax through the individual income tax  
15 return that coincides with the calendar year in which the purchase was  
16 made, and (c) any purchaser who fails to remit the tax due shall be  
17 subject to penalties under Nebraska law.

18           (3) The notification shall be sent separately to all Nebraska  
19 purchasers by first-class mail and shall not be included with any other  
20 shipments. The notification shall include the words "Important Tax  
21 Document Enclosed" on the exterior of the mailing.

22           Sec. 6. (1) A noncollecting retailer shall submit an annual report  
23 to the department on such forms as are provided or approved by the  
24 department showing the total amount paid by Nebraska purchasers for  
25 purchases of taxable items made from the noncollecting retailer in the  
26 previous calendar year. The annual report shall be submitted on or before  
27 March 1 of each year.

28           (2) The department may require a noncollecting retailer to submit  
29 the annual report electronically if the noncollecting retailer's total  
30 sales of taxable items to Nebraska purchasers during the previous  
31 calendar year exceeded one hundred thousand dollars.

1           (3) A noncollecting retailer that fails to submit the annual report  
2 required in this section shall be subject to a penalty of ten thousand  
3 dollars unless the noncollecting retailer shows reasonable cause for such  
4 failure.

5           Sec. 7.    The department may adopt and promulgate rules and  
6 regulations to carry out the Noncollecting Retailer Notice and Reporting  
7 Act.

8           Sec. 8.    The Noncollecting Retailer Notice and Reporting Act  
9 terminates on the later of July 1, 2018, or the first day of the first  
10 calendar quarter after a controlling court decision or federal  
11 legislation abrogates the physical presence requirement of Quill Corp. v.  
12 North Dakota, 504 U.S. 298 (1992).

13           Sec. 9. Section 77-2701.32, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15           77-2701.32 (1) Retailer means any seller.

16           (2) To facilitate the proper administration of the Nebraska Revenue  
17 Act of 1967, the following persons have the duties and responsibilities  
18 of sellers for the purposes of sales and use taxes:

19           (a) Any person in the business of making sales subject to tax under  
20 section 77-2703 at auction of property owned by the person or others;

21           (b) Any person collecting the proceeds of the auction, other than  
22 the owner of the property, together with his or her principal, if any,  
23 when the person collecting the proceeds of the auction is not the  
24 auctioneer or an agent or employee of the auctioneer. The seller does not  
25 include the auctioneer in such case;

26           (c) Every person who has elected to be considered a retailer  
27 pursuant to subdivision (1) of section 77-2701.10;

28           (d) Every person operating, organizing, or promoting a flea market,  
29 craft show, fair, or similar event; and

30           (e) Every person engaged in the business of providing any service  
31 defined in subsection (4) of section 77-2701.16.

1 (3) For the proper administration of the Nebraska Revenue Act of  
2 1967, the following persons do not have the duties and responsibilities  
3 of a seller for purposes of sales and use taxes:

4 (a) Any person who leases or rents films when an admission tax is  
5 charged under the Nebraska Revenue Act of 1967;

6 (b) Any person who leases or rents railroad rolling stock  
7 interchanged pursuant to the provisions of the federal Interstate  
8 Commerce Act;

9 (c) Any person engaged in the business of furnishing rooms in a  
10 facility licensed under the Health Care Facility Licensure Act in which  
11 rooms, lodgings, or accommodations are regularly furnished for a  
12 consideration or a facility operated by an educational institution  
13 established under Chapter 79 or Chapter 85 in which rooms are regularly  
14 used to house students for a consideration for periods in excess of  
15 thirty days; or

16 (d) Any person making sales at a flea market, craft show, fair, or  
17 similar event when such person does not have a sales tax permit and has  
18 arranged to pay sales taxes collected to the person operating,  
19 organizing, or promoting such event.

20 (4)(a) This subsection becomes operative on the later of July 1,  
21 2018, or the first day of the first calendar quarter after a controlling  
22 court decision or federal legislation abrogates the physical presence  
23 requirement of Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

24 (b) A person who lacks a physical presence in this state and who  
25 makes retail sales of property to purchasers in this state shall have the  
26 duties and responsibilities of a seller for the purposes of sales and use  
27 taxes if such person meets either of the following criteria in the  
28 previous or current calendar year:

29 (i) The person made retail sales of property to purchasers in this  
30 state totaling one hundred thousand dollars or more; or

31 (ii) The person made retail sales of property to purchasers in this

1 state in two hundred or more separate transactions.

2       Sec. 10. If any section in this act or any part of any section is  
3 declared invalid or unconstitutional, the declaration shall not affect  
4 the validity or constitutionality of the remaining portions.

5       Sec. 11. Original section 77-2701.32, Reissue Revised Statutes of  
6 Nebraska, is repealed.

7       Sec. 12. Since an emergency exists, this act takes effect when  
8 passed and approved according to law.