

AMENDMENTS TO LB44

(Amendments to Final Reading copy)

Introduced by Watermeier, 1.

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

3 Section 1. Section 77-2701.13, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 77-2701.13 (1) Engaged in business in this state means conducting
6 operations in this state that meet or exceed the level of activity
7 required under the commerce clause and due process clause of the United
8 States Constitution for a state to enforce collection responsibility on a
9 retailer and includes, but is not limited to, any of the following:

10 (a) (1) Maintaining, occupying, or using, permanently or
11 temporarily, directly or indirectly, or through a subsidiary or agent, by
12 whatever name called, an office, place of distribution, sales or sample
13 room or place, warehouse, storage place, or other place of business in
14 this state;

15 (b) (2) Having any representative, agent, salesperson, canvasser, or
16 solicitor operating in this state under the authority of the retailer or
17 its subsidiary for the purpose of selling, delivering, or taking orders
18 for any property;

19 (c) (3) Deriving rentals from a lease of property in this state by
20 any retailer;

21 (d) (4) Soliciting retail sales of property from residents of this
22 state on a continuous, regular, or systematic basis by means of
23 advertising which is broadcast from or relayed from a transmitter within
24 this state or distributed from a location within this state;

25 (e) (5) Soliciting or facilitating orders from or sales to residents
26 of this state ~~for property by mail,~~ if the activities solicitations are

1 continuous, regular, seasonal, or systematic or ~~and~~ if the retailer
2 benefits from any banking, financing, debt collection, or marketing
3 activities occurring in this state or benefits from the location in this
4 state of authorized installation, servicing, or repair facilities;

5 (f) (6) Being owned or controlled by the same interests which own or
6 control any retailer engaged in business in the same or similar line of
7 business in this state; or

8 (g) (7) Maintaining or having a franchisee or licensee operating
9 under the retailer's trade name in this state if the franchisee or
10 licensee is required to collect the tax under the Nebraska Revenue Act of
11 1967.

12 (2) A person who lacks a physical presence in this state and who
13 makes, solicits, or facilitates orders from this state of property
14 subject to state and local sales or use taxes in this state or who makes,
15 solicits, or facilitates retail sales of property subject to state and
16 local sales or use taxes in this state shall be deemed to be engaged in
17 business in this state if:

18 (a) Such person's total retail sales of property subject to state
19 and local sales or use taxes in this state exceeded one hundred thousand
20 dollars in the previous or current calendar year; or

21 (b) Such person made, solicited, or facilitated retail sales subject
22 to state and local sales or use taxes in this state in two hundred or
23 more separate transactions in the previous or current calendar year.

24 (3) The changes made in this section by this legislative bill become
25 operative on the first day of the first calendar quarter after a
26 controlling United States Supreme Court decision or federal legislation
27 abrogates the physical presence requirement of Quill Corp. v. North
28 Dakota, 504 U.S. 298 (1992), or otherwise allows a state to impose sales
29 and use tax collection requirements upon a person who lacks a physical
30 presence in such state in circumstances similar to those specified in
31 subsection (2) of this section.

1 Sec. 2. Section 77-2701.32, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2701.32 (1) Retailer means any seller.

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

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

9 (b) Any person collecting the proceeds of the auction, other than
10 the owner of the property, together with his or her principal, if any,
11 when the person collecting the proceeds of the auction is not the
12 auctioneer or an agent or employee of the auctioneer. The seller does not
13 include the auctioneer in such case;

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

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

18 (e) Every person engaged in the business of providing any service
19 defined in subsection (4) of section 77-2701.16; and -

20 (f) Every person making or facilitating sales in or into this state.

21 (3) For the proper administration of the Nebraska Revenue Act of
22 1967, the following persons do not have the duties and responsibilities
23 of a seller for purposes of sales and use taxes:

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

26 (b) Any person who leases or rents railroad rolling stock
27 interchanged pursuant to the provisions of the federal Interstate
28 Commerce Act;

29 (c) Any person engaged in the business of furnishing rooms in a
30 facility licensed under the Health Care Facility Licensure Act in which
31 rooms, lodgings, or accommodations are regularly furnished for a

1 consideration or a facility operated by an educational institution
2 established under Chapter 79 or Chapter 85 in which rooms are regularly
3 used to house students for a consideration for periods in excess of
4 thirty days; or

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

9 (4) The changes made in this section by this legislative bill become
10 operative on the first day of the first calendar quarter after a
11 controlling United States Supreme Court decision or federal legislation
12 abrogates the physical presence requirement of Quill Corp. v. North
13 Dakota, 504 U.S. 298 (1992), or otherwise allows a state to impose sales
14 and use tax collection requirements upon a person who lacks a physical
15 presence in such state in circumstances similar to those specified in
16 subsection (2) of section 77-2701.13.

17 Sec. 3. Original sections 77-2701.13 and 77-2701.32, Reissue
18 Revised Statutes of Nebraska, are repealed.

19 Sec. 4. Since an emergency exists, this act takes effect when
20 passed and approved according to law.

21 2. On page 1, strike lines 3 through 10 and insert "redefine the
22 term engaged in business in this state for purposes of sales and use
23 taxes; to change the persons who have certain duties and responsibilities
24 relating to sales and use taxes; to provide operative dates for statutory
25 changes as prescribed; to repeal the original sections; and to declare an
26 emergency."