

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 44**

FINAL READING

Introduced by Watermeier, 1; McCollister, 20.

Read first time January 05, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701.13 and 77-2701.32, Reissue Revised Statutes of Nebraska; to  
3 adopt the Noncollecting Retailer Notice and Reporting Act; to  
4 provide civil penalties; to require taxpayer notice and reporting to  
5 the Department of Revenue as prescribed; to provide for taxation of  
6 certain business entities that lack a physical presence in this  
7 state; to provide for termination and operative dates for notice,  
8 reporting, and taxation provisions as prescribed; to provide  
9 severability; to repeal the original sections; and to declare an  
10 emergency.  
11 Be it enacted by the people of the State of Nebraska,

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

3           Sec. 2. For purposes of the Noncollecting Retailer Notice and  
4 Reporting Act:

5           (1) Department means the Department of Revenue;

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

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

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

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

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

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

26           Sec. 5. (1) A noncollecting retailer shall send a notification to  
27 all Nebraska purchasers by January 31 of each year showing the total  
28 amount paid by the purchaser for purchases of taxable items made from the  
29 noncollecting retailer in the previous calendar year and such other  
30 information as the department may require by rule and regulation. The  
31 notification shall include, if available, the date of each purchase, the

1 amount of each purchase, and a brief description of the taxable item  
2 purchased. The notification shall also include the name of the  
3 noncollecting retailer.

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

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

16 (4) A noncollecting retailer that fails to send the notifications  
17 required in this section shall be subject to a penalty of ten thousand  
18 dollars unless the noncollecting retailer shows reasonable cause for such  
19 failure.

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

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

30 (3) A noncollecting retailer that fails to submit the annual report  
31 required in this section shall be subject to a penalty of two thousand

1 five hundred dollars unless the noncollecting retailer shows reasonable  
2 cause for such failure.

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

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

11       Sec. 9. Section 77-2701.13, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13       77-2701.13 (1) Engaged in business in this state means any of the  
14 following:

15       (a) ~~(1)~~ Maintaining, occupying, or using, permanently or  
16 temporarily, directly or indirectly, or through a subsidiary or agent, by  
17 whatever name called, an office, place of distribution, sales or sample  
18 room or place, warehouse, storage place, or other place of business in  
19 this state;

20       (b) ~~(2)~~ Having any representative, agent, salesperson, canvasser, or  
21 solicitor operating in this state under the authority of the retailer or  
22 its subsidiary for the purpose of selling, delivering, or taking orders  
23 for any property;

24       (c) ~~(3)~~ Deriving rentals from a lease of property in this state by  
25 any retailer;

26       (d) ~~(4)~~ Soliciting retail sales of property from residents of this  
27 state on a continuous, regular, or systematic basis by means of  
28 advertising which is broadcast from or relayed from a transmitter within  
29 this state or distributed from a location within this state;

30       (e) ~~(5)~~ Soliciting orders from residents of this state for property  
31 by mail, if the solicitations are continuous, regular, seasonal, or

1 systematic and if the retailer benefits from any banking, financing, debt  
2 collection, or marketing activities occurring in this state or benefits  
3 from the location in this state of authorized installation, servicing, or  
4 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) This subsection becomes operative on the later of July 1,  
13 2018, or the first day of the first calendar quarter after a controlling  
14 court decision or federal legislation abrogates the physical presence  
15 requirement of Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

16 (b) A person who lacks a physical presence in this state and who  
17 makes retail sales of property to purchasers in this state shall be  
18 deemed to be engaged in business in this state if:

19 (i) Such person's total retail sales of property to purchasers in  
20 this state exceeded one hundred thousand dollars in the previous or  
21 current calendar year; or

22 (ii) Such person made retail sales of property to purchasers in this  
23 state in two hundred or more separate transactions in the previous or  
24 current calendar year.

25 (c) The Department of Revenue may adopt and promulgate rules and  
26 regulations to carry out this subsection.

27 Sec. 10. Section 77-2701.32, Reissue Revised Statutes of Nebraska,  
28 is amended to read:

29 77-2701.32 (1) Retailer means any seller.

30 (2) To facilitate the proper administration of the Nebraska Revenue  
31 Act of 1967, the following persons have the duties and responsibilities

1 of sellers for the purposes of sales and use taxes:

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

4 (b) Any person collecting the proceeds of the auction, other than  
5 the owner of the property, together with his or her principal, if any,  
6 when the person collecting the proceeds of the auction is not the  
7 auctioneer or an agent or employee of the auctioneer. The seller does not  
8 include the auctioneer in such case;

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

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

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

15 (3) For the proper administration of the Nebraska Revenue Act of  
16 1967, the following persons do not have the duties and responsibilities  
17 of a seller for purposes of sales and use taxes:

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

20 (b) Any person who leases or rents railroad rolling stock  
21 interchanged pursuant to the provisions of the federal Interstate  
22 Commerce Act;

23 (c) Any person engaged in the business of furnishing rooms in a  
24 facility licensed under the Health Care Facility Licensure Act in which  
25 rooms, lodgings, or accommodations are regularly furnished for a  
26 consideration or a facility operated by an educational institution  
27 established under Chapter 79 or Chapter 85 in which rooms are regularly  
28 used to house students for a consideration for periods in excess of  
29 thirty days; or

30 (d) Any person making sales at a flea market, craft show, fair, or  
31 similar event when such person does not have a sales tax permit and has

1 arranged to pay sales taxes collected to the person operating,  
2 organizing, or promoting such event.

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

7 (b) The term retailer includes, but is not limited to, a person who  
8 lacks a physical presence in this state and who makes retail sales of  
9 property to purchasers in this state if:

10 (i) Such person's total retail sales of property to purchasers in  
11 this state exceeded one hundred thousand dollars in the previous or  
12 current calendar year; or

13 (ii) Such person made retail sales of property to purchasers in this  
14 state in two hundred or more separate transactions in the previous or  
15 current calendar year.

16 (c) The Department of Revenue may adopt and promulgate rules and  
17 regulations to carry out this subsection.

18 Sec. 11. If any section in this act or any part of any section is  
19 declared invalid or unconstitutional, the declaration shall not affect  
20 the validity or constitutionality of the remaining portions.

21 Sec. 12. Original sections 77-2701.13 and 77-2701.32, Reissue  
22 Revised Statutes of Nebraska, are repealed.

23 Sec. 13. Since an emergency exists, this act takes effect when  
24 passed and approved according to law.