

AMENDMENTS TO LB1074

Introduced by Linehan, 39.

1 1. Insert the following new sections:

2 Sec. 2. Section 77-2601, Revised Statutes Supplement, 2019, is
3 amended to read:

4 77-2601 For purposes of sections 77-2601 to 77-2615:

5 (1) Person means and includes every individual, firm, association,
6 joint-stock company, partnership, limited liability company, syndicate,
7 corporation, trustee, or other legal entity, including any Indian tribe
8 or instrumentality thereof;

9 (2) Wholesale dealer means a person who sells cigarettes to licensed
10 retail dealers other than branch stores operated by or connected with
11 such wholesale dealer for purposes of resale and is licensed under
12 section 28-1423;

13 (3) Retail dealer includes every person other than a wholesale
14 dealer engaged in the business of selling cigarettes in this state
15 irrespective of quantity, amount, or number of sales thereof;

16 (4) Tax Commissioner means the Tax Commissioner of the State of
17 Nebraska;

18 (5) Cigarette means any product that contains nicotine, is intended
19 to be burned or heated under ordinary conditions of use, and consists of
20 or contains (a) any roll of tobacco wrapped in paper or in any substance
21 not containing tobacco; (b) tobacco, in any form, that is functional in
22 the product, which, because of its appearance, the type of tobacco used
23 in the filler, or its packaging and labeling, is likely to be offered to,
24 or purchased by, consumers as a cigarette; or (c) any roll of tobacco
25 wrapped in any substance containing tobacco which, because of its
26 appearance, the type of tobacco used in the filler, or its packaging and
27 labeling, is likely to be offered to, or purchased by, consumers as a

1 cigarette described in subdivision (5)(a) of this section. Cigarette does
2 not mean any product that is taxed as a cigar under Title 26 of the
3 United States Code, as such title existed on January 1, 2020;

4 (6) Consumer means any person, firm, association, partnership,
5 limited liability company, joint-stock company, syndicate, or corporation
6 not having a license to sell cigarettes;

7 (7) Sales entity affiliate means an entity that (a) sells cigarettes
8 that it acquires directly from a manufacturer or importer and (b) is
9 affiliated with that manufacturer or importer. Entities are affiliated
10 with each other if one directly, or indirectly through one or more
11 intermediaries, controls or is controlled by or is under common control
12 with the other. Unless provided otherwise, manufacturer or importer
13 includes any sales entity affiliate of that manufacturer or importer;

14 (8) Stamping agent has the same meaning as in section 69-2705; and

15 (9) Indian country means (a) all land in this state within the
16 limits of any Indian reservation under the jurisdiction of the United
17 States, notwithstanding the issuance of any patent, including rights-of-
18 way running through the reservation, (b) all dependent Indian communities
19 within the borders of this state, and (c) all Indian allotments in this
20 state, the Indian titles to which have not been extinguished, including
21 rights-of-way running through such allotments.

22 Sec. 3. Section 77-2602.05, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 77-2602.05 (1) A person that paid taxes applicable under section
25 77-2602 on cigarettes sold in an exempt transaction shall be eligible for
26 a refund of the taxes paid on those cigarettes.

27 (2) Exempt transactions, for purposes of this section and section
28 69-2703, are defined as:

29 (a) Cigarette sales on a federal installation in a transaction that
30 is exempt from state taxation under federal law; and

31 (b) Cigarette sales on an Indian tribe's Indian country to its

1 tribal members where state taxation is precluded by federal law.

2 (3) Except as provided in subsection (5) of this section, the person
3 seeking a refund of taxes shall submit an application to the Tax
4 Commissioner providing documentation sufficient to demonstrate (a) that
5 the cigarettes were sold in a package bearing the correct stamp required
6 under section 77-2603 or 77-2603.01 and that the stamp was one that
7 required payment of tax, (b) that the person paid the applicable taxes in
8 question, (c) that the cigarettes were sold in an exempt transaction, and
9 (d) that the person has not previously obtained the refund on the
10 cigarettes. The documentation shall include, in addition to information
11 necessary to meet the requirements of subdivisions (3)(a) through (d) of
12 this section and any other information that the Tax Commissioner may
13 reasonably require, documents showing the identity of the seller and
14 purchaser and the places of shipment and delivery of the cigarettes. The
15 Tax Commissioner shall verify the accuracy and completeness of the
16 required documentation and information before granting the requested
17 refund.

18 (4) If a meritorious refund claim under subsection (3) of this
19 section is not paid within sixty days after submission of the required
20 documentation, the refund shall include interest on the amount of such
21 refund at the rate specified in section 45-104.02 as such rate existed at
22 the date of submission of the required documentation.

23 (5) The Tax Commissioner and an Indian tribe may agree upon a tax
24 refund formula to operate in lieu of application for refunds under
25 subsection (3) of this section. The aggregate refund provided to an
26 Indian tribe under a formula for a year shall not exceed the aggregate
27 tax paid by entities owned and operated by that tribe or a member of that
28 tribe on cigarettes sold in exempt transactions on that tribe's Indian
29 country during that year. Refunds of taxes under subsection (3) of this
30 section shall not be available for cigarettes sold in exempt transactions
31 on an Indian tribe's Indian country by an Indian tribe that agrees upon a

1 refund formula under this subsection. Nothing in this subsection shall
2 limit the state's authority to enter into an agreement pursuant to
3 section 77-2602.06 pertaining to the collection and dissemination of any
4 cigarette taxes which may otherwise be inconsistent with this subsection.

5 (6) Any product that is taxed as a cigar under Title 26 of the
6 United States Code, as such title existed on January 1, 2020, shall not
7 be treated as a cigarette for purposes of subdivision (4) of section
8 69-2702 and the Master Settlement Agreement as defined in section
9 69-2702.

10 2. Renumber the remaining sections and correct the repealer
11 accordingly.