

E AND R AMENDMENTS TO LB 236

Introduced by Slama, 1, Chairman Enrollment and Review

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

3 Section 1. Section 77-2711, Revised Statutes Supplement, 2019, is
4 amended to read:

5 77-2711 (1)(a) The Tax Commissioner shall enforce sections
6 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and
7 regulations relating to the administration and enforcement of such
8 sections.

9 (b) The Tax Commissioner may prescribe the extent to which any
10 ruling or regulation shall be applied without retroactive effect.

11 (2) The Tax Commissioner may employ accountants, auditors,
12 investigators, assistants, and clerks necessary for the efficient
13 administration of the Nebraska Revenue Act of 1967 and may delegate
14 authority to his or her representatives to conduct hearings, prescribe
15 regulations, or perform any other duties imposed by such act.

16 (3)(a) Every seller, every retailer, and every person storing,
17 using, or otherwise consuming in this state property purchased from a
18 retailer shall keep such records, receipts, invoices, and other pertinent
19 papers in such form as the Tax Commissioner may reasonably require.

20 (b) Every such seller, retailer, or person shall keep such records
21 for not less than three years from the making of such records unless the
22 Tax Commissioner in writing sooner authorized their destruction.

23 (4) The Tax Commissioner or any person authorized in writing by him
24 or her may examine the books, papers, records, and equipment of any
25 person selling property and any person liable for the use tax and may
26 investigate the character of the business of the person in order to
27 verify the accuracy of any return made or, if no return is made by the

1 person, to ascertain and determine the amount required to be paid. In the
2 examination of any person selling property or of any person liable for
3 the use tax, an inquiry shall be made as to the accuracy of the reporting
4 of city and county sales and use taxes for which the person is liable
5 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
6 and 77-6403 and the accuracy of the allocation made between the various
7 counties, cities, villages, and municipal counties of the tax due. The
8 Tax Commissioner may make or cause to be made copies of resale or
9 exemption certificates and may pay a reasonable amount to the person
10 having custody of the records for providing such copies.

11 (5) The taxpayer shall have the right to keep or store his or her
12 records at a point outside this state and shall make his or her records
13 available to the Tax Commissioner at all times.

14 (6) In administration of the use tax, the Tax Commissioner may
15 require the filing of reports by any person or class of persons having in
16 his, her, or their possession or custody information relating to sales of
17 property, the storage, use, or other consumption of which is subject to
18 the tax. The report shall be filed when the Tax Commissioner requires and
19 shall set forth the names and addresses of purchasers of the property,
20 the sales price of the property, the date of sale, and such other
21 information as the Tax Commissioner may require.

22 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
23 any official or employee of the Tax Commissioner, the State Treasurer, or
24 the Department of Administrative Services to make known in any manner
25 whatever the business affairs, operations, or information obtained by an
26 investigation of records and activities of any retailer or any other
27 person visited or examined in the discharge of official duty or the
28 amount or source of income, profits, losses, expenditures, or any
29 particular thereof, set forth or disclosed in any return, or to permit
30 any return or copy thereof, or any book containing any abstract or
31 particulars thereof to be seen or examined by any person not connected

1 with the Tax Commissioner. Nothing in this section shall be construed to
2 prohibit (a) the delivery to a taxpayer, his or her duly authorized
3 representative, or his or her successors, receivers, trustees, executors,
4 administrators, assignees, or guarantors, if directly interested, of a
5 certified copy of any return or report in connection with his or her tax,
6 (b) the publication of statistics so classified as to prevent the
7 identification of particular reports or returns and the items thereof,
8 (c) the inspection by the Attorney General, other legal representative of
9 the state, or county attorney of the reports or returns of any taxpayer
10 when either (i) information on the reports or returns is considered by
11 the Attorney General to be relevant to any action or proceeding
12 instituted by the taxpayer or against whom an action or proceeding is
13 being considered or has been commenced by any state agency or the county
14 or (ii) the taxpayer has instituted an action to review the tax based
15 thereon or an action or proceeding against the taxpayer for collection of
16 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
17 considered or has been commenced, (d) the furnishing of any information
18 to the United States Government or to states allowing similar privileges
19 to the Tax Commissioner, (e) the disclosure of information and records to
20 a collection agency contracting with the Tax Commissioner pursuant to
21 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
22 transaction of information and records concerning the transaction between
23 the taxpayer and the other party, (g) the disclosure of information
24 pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of
25 information to the Department of Labor necessary for the administration
26 of the Employment Security Law, the Contractor Registration Act, or the
27 Employee Classification Act.

28 (8) Notwithstanding the provisions of subsection (7) of this
29 section, the Tax Commissioner may permit the Postal Inspector of the
30 United States Postal Service or his or her delegates to inspect the
31 reports or returns of any person filed pursuant to the Nebraska Revenue

1 Act of 1967 when information on the reports or returns is relevant to any
2 action or proceeding instituted or being considered by the United States
3 Postal Service against such person for the fraudulent use of the mails to
4 carry and deliver false and fraudulent tax returns to the Tax
5 Commissioner with the intent to defraud the State of Nebraska or to evade
6 the payment of Nebraska state taxes.

7 (9) Notwithstanding the provisions of subsection (7) of this
8 section, the Tax Commissioner may permit other tax officials of this
9 state to inspect the tax returns, reports, and applications filed under
10 sections 77-2701.04 to 77-2713, but such inspection shall be permitted
11 only for purposes of enforcing a tax law and only to the extent and under
12 the conditions prescribed by the rules and regulations of the Tax
13 Commissioner.

14 (10) Notwithstanding the provisions of subsection (7) of this
15 section, the Tax Commissioner may, upon request, provide the county board
16 of any county which has exercised the authority granted by section
17 81-3716 with a list of the names and addresses of the hotels located
18 within the county for which lodging sales tax returns have been filed or
19 for which lodging sales taxes have been remitted for the county's County
20 Visitors Promotion Fund under the Nebraska Visitors Development Act.

21 The information provided by the Tax Commissioner shall indicate only
22 the names and addresses of the hotels located within the requesting
23 county for which lodging sales tax returns have been filed for a
24 specified period and the fact that lodging sales taxes remitted by or on
25 behalf of the hotel have constituted a portion of the total sum remitted
26 by the state to the county for a specified period under the provisions of
27 the Nebraska Visitors Development Act. No additional information shall be
28 revealed.

29 (11)(a) Notwithstanding the provisions of subsection (7) of this
30 section, the Tax Commissioner shall, upon written request by the Auditor
31 of Public Accounts or the office of Legislative Audit, make tax returns

1 and tax return information open to inspection by or disclosure to the
2 Auditor of Public Accounts or employees of the office of Legislative
3 Audit for the purpose of and to the extent necessary in making an audit
4 of the Department of Revenue pursuant to section 50-1205 or 84-304.
5 Confidential tax returns and tax return information shall be audited only
6 upon the premises of the Department of Revenue. All audit workpapers
7 pertaining to the audit of the Department of Revenue shall be stored in a
8 secure place in the Department of Revenue.

9 (b) No employee of the Auditor of Public Accounts or the office of
10 Legislative Audit shall disclose to any person, other than another
11 Auditor of Public Accounts or office employee whose official duties
12 require such disclosure, any return or return information described in
13 the Nebraska Revenue Act of 1967 in a form which can be associated with
14 or otherwise identify, directly or indirectly, a particular taxpayer.

15 (c) Any person who violates the provisions of this subsection shall
16 be guilty of a Class I misdemeanor. For purposes of this subsection,
17 employee includes a former Auditor of Public Accounts or office of
18 Legislative Audit employee.

19 (12) For purposes of this subsection and subsections (11) and (14)
20 of this section:

21 (a) Disclosure means the making known to any person in any manner a
22 tax return or return information;

23 (b) Return information means:

24 (i) A taxpayer's identification number and (A) the nature, source,
25 or amount of his or her income, payments, receipts, deductions,
26 exemptions, credits, assets, liabilities, net worth, tax liability, tax
27 withheld, deficiencies, overassessments, or tax payments, whether the
28 taxpayer's return was, is being, or will be examined or subject to other
29 investigation or processing or (B) any other data received by, recorded
30 by, prepared by, furnished to, or collected by the Tax Commissioner with
31 respect to a return or the determination of the existence or possible

1 existence of liability or the amount of liability of any person for any
2 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
3 and

4 (ii) Any part of any written determination or any background file
5 document relating to such written determination; and

6 (c) Tax return or return means any tax or information return or
7 claim for refund required by, provided for, or permitted under sections
8 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf
9 of, or with respect to any person and any amendment or supplement
10 thereto, including supporting schedules, attachments, or lists which are
11 supplemental to or part of the filed return.

12 (13) Notwithstanding the provisions of subsection (7) of this
13 section, the Tax Commissioner shall, upon request, provide any
14 municipality which has adopted the local option sales tax under the Local
15 Option Revenue Act with a list of the names and addresses of the
16 retailers which have collected the local option sales tax for the
17 municipality. The request may be made annually and shall be submitted to
18 the Tax Commissioner on or before June 30 of each year. The information
19 provided by the Tax Commissioner shall indicate only the names and
20 addresses of the retailers. The Tax Commissioner may provide additional
21 information to a municipality so long as the information does not include
22 any data detailing the specific revenue, expenses, or operations of any
23 particular business.

24 (14)(a) Notwithstanding the provisions of subsection (7) of this
25 section, the Tax Commissioner shall, upon written request, provide an
26 individual certified under subdivision (b) of this subsection
27 representing a municipality which has adopted the local option sales and
28 use tax under the Local Option Revenue Act with confidential sales and
29 use tax returns and sales and use tax return information regarding
30 taxpayers that possess a sales tax permit and the amounts remitted by
31 such permitholders at locations within the boundaries of the requesting

1 municipality or with confidential business use tax returns and business
2 use tax return information regarding taxpayers that file a Nebraska and
3 Local Business Use Tax Return and the amounts remitted by such taxpayers
4 at locations within the boundaries of the requesting municipality. Any
5 written request pursuant to this subsection shall provide the Department
6 of Revenue with no less than ten business days to prepare the sales and
7 use tax returns and sales and use tax return information requested. The
8 individual certified under subdivision (b) of this subsection shall
9 review such returns and return information only upon the premises of the
10 department, except that such limitation shall not apply if the certifying
11 municipality has an agreement in effect under the Nebraska Advantage
12 Transformational Tourism and Redevelopment Act. In such case, the
13 individual certified under subdivision (b) of this subsection may request
14 that copies of such returns and return information be sent to him or her
15 by electronic transmission, secured in a manner as determined by the Tax
16 Commissioner ~~Such returns and return information shall be viewed only~~
17 ~~upon the premises of the department.~~

18 (b) Each municipality that seeks to request information under
19 subdivision (a) of this subsection shall certify to the Department of
20 Revenue one individual who is authorized by such municipality to make
21 such request and review the documents described in subdivision (a) of
22 this subsection. The individual may be a municipal employee or an
23 individual who contracts with the requesting municipality to provide
24 financial, accounting, or other administrative services.

25 (c) No individual certified by a municipality pursuant to
26 subdivision (b) of this subsection shall disclose to any person any
27 information obtained pursuant to a review under this subsection. An
28 individual certified by a municipality pursuant to subdivision (b) of
29 this subsection shall remain subject to this subsection after he or she
30 (i) is no longer certified or (ii) is no longer in the employment of or
31 under contract with the certifying municipality.

1 (d) Any person who violates the provisions of this subsection shall
2 be guilty of a Class I misdemeanor.

3 (e) The Department of Revenue shall not be held liable by any person
4 for an impermissible disclosure by a municipality or any agent or
5 employee thereof of any information obtained pursuant to a review under
6 this subsection.

7 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
8 Tax Commissioner may act for and on behalf of the people of the State of
9 Nebraska. The Tax Commissioner in his or her discretion may waive all or
10 part of any penalties provided by the provisions of such act or interest
11 on delinquent taxes specified in section 45-104.02, as such rate may from
12 time to time be adjusted.

13 (16)(a) The purpose of this subsection is to set forth the state's
14 policy for the protection of the confidentiality rights of all
15 participants in the system operated pursuant to the streamlined sales and
16 use tax agreement and of the privacy interests of consumers who deal with
17 model 1 sellers.

18 (b) For purposes of this subsection:

19 (i) Anonymous data means information that does not identify a
20 person;

21 (ii) Confidential taxpayer information means all information that is
22 protected under a member state's laws, regulations, and privileges; and

23 (iii) Personally identifiable information means information that
24 identifies a person.

25 (c) The state agrees that a fundamental precept for model 1 sellers
26 is to preserve the privacy of consumers by protecting their anonymity.
27 With very limited exceptions, a certified service provider shall perform
28 its tax calculation, remittance, and reporting functions without
29 retaining the personally identifiable information of consumers.

30 (d) The governing board of the member states in the streamlined
31 sales and use tax agreement may certify a certified service provider only

1 if that certified service provider certifies that:

2 (i) Its system has been designed and tested to ensure that the
3 fundamental precept of anonymity is respected;

4 (ii) Personally identifiable information is only used and retained
5 to the extent necessary for the administration of model 1 with respect to
6 exempt purchasers;

7 (iii) It provides consumers clear and conspicuous notice of its
8 information practices, including what information it collects, how it
9 collects the information, how it uses the information, how long, if at
10 all, it retains the information, and whether it discloses the information
11 to member states. Such notice shall be satisfied by a written privacy
12 policy statement accessible by the public on the web site of the
13 certified service provider;

14 (iv) Its collection, use, and retention of personally identifiable
15 information is limited to that required by the member states to ensure
16 the validity of exemptions from taxation that are claimed by reason of a
17 consumer's status or the intended use of the goods or services purchased;
18 and

19 (v) It provides adequate technical, physical, and administrative
20 safeguards so as to protect personally identifiable information from
21 unauthorized access and disclosure.

22 (e) The state shall provide public notification to consumers,
23 including exempt purchasers, of the state's practices relating to the
24 collection, use, and retention of personally identifiable information.

25 (f) When any personally identifiable information that has been
26 collected and retained is no longer required for the purposes set forth
27 in subdivision (16)(d)(iv) of this section, such information shall no
28 longer be retained by the member states.

29 (g) When personally identifiable information regarding an individual
30 is retained by or on behalf of the state, it shall provide reasonable
31 access by such individual to his or her own information in the state's

1 possession and a right to correct any inaccurately recorded information.

2 (h) If anyone other than a member state, or a person authorized by
3 that state's law or the agreement, seeks to discover personally
4 identifiable information, the state from whom the information is sought
5 should make a reasonable and timely effort to notify the individual of
6 such request.

7 (i) This privacy policy is subject to enforcement by the Attorney
8 General.

9 (j) All other laws and regulations regarding the collection, use,
10 and maintenance of confidential taxpayer information remain fully
11 applicable and binding. Without limitation, this subsection does not
12 enlarge or limit the state's authority to:

13 (i) Conduct audits or other reviews as provided under the agreement
14 and state law;

15 (ii) Provide records pursuant to the federal Freedom of Information
16 Act, disclosure laws with governmental agencies, or other regulations;

17 (iii) Prevent, consistent with state law, disclosure of confidential
18 taxpayer information;

19 (iv) Prevent, consistent with federal law, disclosure or misuse of
20 federal return information obtained under a disclosure agreement with the
21 Internal Revenue Service; and

22 (v) Collect, disclose, disseminate, or otherwise use anonymous data
23 for governmental purposes.

24 Sec. 2. Original section 77-2711, Revised Statutes Supplement, 2019,
25 is repealed.

26 2. On page 1, line 2, strike beginning with "Reissue" through
27 "Nebraska" and insert "Revised Statutes Supplement, 2019".