

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 310

FINAL READING

Introduced by Vargas, 7; Howard, 9; Lindstrom, 18; Wayne, 13.

Read first time January 15, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-2906, Reissue Revised Statutes of Nebraska, and section 77-5601,
3 Revised Statutes Supplement, 2019; to provide deadlines for the
4 determination of tax credits, change provisions relating to appeals,
5 and provide a fee under the Nebraska Job Creation and Mainstreet
6 Revitalization Act; to authorize the use of certain fees for revenue
7 enforcement; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2906, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2906 (1)(a) ~~(1)~~ Within twelve months after the date on which the
4 historically significant real property is placed in service, a person
5 whose application was approved under section 77-2905 shall file a request
6 for final approval containing all required information with the officer
7 on a form prescribed by the officer and shall include a fee established
8 by the officer pursuant to section 77-2907. The officer shall then
9 determine whether the work substantially conforms to the application
10 approved under section 77-2905. If the work substantially conforms and no
11 other significant improvements have been made to the historically
12 significant real property that do not substantially comply with the
13 standards, the officer shall approve the request for final approval. The
14 person whose request is approved shall then apply and refer the
15 application to the department to determine the amount of eligible
16 expenditures, calculate the amount of the credit, and issue a certificate
17 to the person evidencing the credit. If the work does not substantially
18 conform to the approved application or if other significant improvements
19 have been made to the historically significant real property that do not
20 substantially comply with the standards, the officer shall deny the
21 request for final approval and provide the person with a written
22 explanation of the decision. The officer shall make a determination on
23 the request for final approval in writing within thirty days after the
24 filing of the request. If the officer does not make a determination
25 within thirty days after the filing of the request, the request shall be
26 deemed approved and the person may apply to the department ~~petition the~~
27 ~~department directly~~ to determine the amount of eligible expenditures,
28 calculate the amount of the credit, and issue a certificate evidencing
29 the credit.

30 (b) The department shall determine the amount of eligible
31 expenditures, calculate the amount of the credit, and issue one or more

1 certificates evidencing the credit within sixty days after receiving an
2 application pursuant to subdivision (1)(a) of this section. The person
3 filing the application and the department may also agree to extend the
4 sixty-day period, but such extension shall not exceed an additional
5 thirty days. If the department does not determine the amount of eligible
6 expenditures, calculate the amount of the credit, and issue one or more
7 certificates evidencing the credit within such sixty-day period or
8 agreed-upon longer period, the credit shall be deemed to have been issued
9 by the department for the amount requested in such person's application,
10 except that such amount shall not exceed one hundred ten percent of the
11 amount of credits allocated by the officer under section 77-2905 and such
12 amount shall not increase or decrease the total amount of credits that
13 may be allocated by the officer under section 77-2905 in any calendar
14 year.

15 (c) Any denial of a request for final approval by the officer or any
16 determination of the amount of eligible expenditures or calculation of
17 the amount of the credit by the department pursuant to this section may
18 be appealed, and the appeal shall be in accordance with the
19 Administrative Procedure Act.

20 (2) The department shall divide the credit and issue multiple
21 certificates to a person who qualifies for the credit upon reasonable
22 request.

23 (3) In calculating the amount of the credits to be issued pursuant
24 to this section, the department may issue credits in an amount that
25 differs from the amount of credits allocated by the officer under section
26 77-2905 if such credits are supported by eligible expenditures as
27 determined by the department, except that the department shall not issue
28 credits in an amount exceeding one hundred ten percent of the amount of
29 credits allocated by the officer under section 77-2905. If the amount of
30 credits to be issued under this section is more than the amount of
31 credits allocated by the officer pursuant to section 77-2905, the

1 department shall notify the officer of the difference and such amount
2 shall be subtracted from the annual amount available for allocation under
3 section 77-2905. If the amount of credits to be issued under this section
4 is less than the amount of credits allocated by the officer pursuant to
5 section 77-2905, the department shall notify the officer of the
6 difference and such amount shall be added to the annual amount available
7 for allocation under section 77-2905.

8 (4) The department shall not issue any certificates for credits
9 under this section until the recipient of the credit has paid to the
10 department;

11 (a) A a fee equal to one-quarter of one percent of the credit
12 amount. The department shall remit such fees to the State Treasurer for
13 credit to the Civic and Community Center Financing Fund; and -

14 (b) A fee equal to six-tenths of one percent of the credit amount.
15 The department shall remit such fees to the State Treasurer for credit to
16 the Department of Revenue Enforcement Fund.

17 (5) If the recipient of the credit is (a) a corporation having an
18 election in effect under subchapter S of the Internal Revenue Code of
19 1986, as amended, (b) a partnership, or (c) a limited liability company,
20 the credit may be claimed by the shareholders of the corporation, the
21 partners of the partnership, or the members of the limited liability
22 company in the same manner as those shareholders, partners, or members
23 account for their proportionate shares of the income or losses of the
24 corporation, partnership, or limited liability company, or as provided in
25 the bylaws or other executed agreement of the corporation, partnership,
26 or limited liability company. Credits granted to a partnership, a limited
27 liability company taxed as a partnership, or other multiple owners of
28 property shall be passed through to the partners, members, or owners,
29 respectively, on a pro rata basis or pursuant to an executed agreement
30 among the partners, members, or owners documenting any alternate
31 distribution method.

1 (6) Subject to section 77-2912, any credit amount that is unused may
2 be carried forward to subsequent tax years until fully utilized.

3 (7) Credits allowed under this section may be claimed for taxable
4 years beginning or deemed to begin on or after January 1, 2015, under the
5 Internal Revenue Code of 1986, as amended.

6 Sec. 2. Section 77-5601, Revised Statutes Supplement, 2019, is
7 amended to read:

8 77-5601 (1) From August 1, 2004, through October 31, 2004, there
9 shall be conducted a tax amnesty program with regard to taxes due and
10 owing that have not been reported to the Department of Revenue. Any
11 person applying for tax amnesty shall pay all unreported taxes that were
12 due on or before April 1, 2004. Any person that applies for tax amnesty
13 and is accepted by the Tax Commissioner shall have any penalties and
14 interest waived on unreported and delinquent taxes notwithstanding any
15 other provisions of law to the contrary.

16 (2) To be eligible for the tax amnesty provided by this section, the
17 person shall apply for amnesty within the amnesty period, file a return
18 for each taxable period for which the amnesty is requested by December
19 31, 2004, if no return has been filed, and pay in full all taxes for
20 which amnesty is sought with the return or within thirty days after the
21 application if a return was filed prior to the amnesty period. Tax
22 amnesty shall not be available for any person that is under civil or
23 criminal audit, investigation, or prosecution for unreported or
24 delinquent taxes by this state or the United States Government on or
25 before April 16, 2004.

26 (3) The department shall not seek civil or criminal prosecution
27 against any person for any taxable period for which amnesty has been
28 granted. The Tax Commissioner shall develop forms for applying for the
29 tax amnesty program, develop procedures for qualification for tax
30 amnesty, and conduct a public awareness campaign publicizing the program.

31 (4) If a person elects to participate in the amnesty program, the

1 election shall constitute an express and irrevocable relinquishment of
2 all administrative and judicial rights to challenge the imposition of the
3 tax or its amount. Nothing in this section shall prohibit the department
4 from adjusting a return as a result of any state or federal audit.

5 (5)(a) Except for any local option sales tax collected and returned
6 to the appropriate municipality and any motor vehicle fuel, diesel fuel,
7 and compressed fuel taxes, which shall be deposited in the Highway Trust
8 Fund or Highway Allocation Fund as provided by law, no less than eighty
9 percent of all revenue received pursuant to the tax amnesty program shall
10 be deposited in the General Fund and ten percent, not to exceed five
11 hundred thousand dollars, shall be deposited in the Department of Revenue
12 Enforcement Fund. Any amount that would otherwise be deposited in the
13 Department of Revenue Enforcement Fund that is in excess of the five-
14 hundred-thousand-dollar limitation shall be deposited in the General
15 Fund.

16 (b) For fiscal year 2005-06, all proceeds in the Department of
17 Revenue Enforcement Fund shall be appropriated to the department for
18 purposes of employing investigators, agents, and auditors and otherwise
19 increasing personnel for enforcement of the Nebraska Revenue Act of 1967.

20 (c) For fiscal years after fiscal year 2005-06, twenty percent of
21 all proceeds received during the previous calendar year due to the
22 efforts of auditors and investigators hired pursuant to subdivision (5)
23 (b) of this section, not to exceed seven hundred fifty thousand dollars,
24 shall be deposited in the Department of Revenue Enforcement Fund for
25 purposes of employing investigators and auditors or continuing such
26 employment for purposes of increasing enforcement of the act.

27 (d) Ten percent of all proceeds received during each calendar year
28 due to the contracts entered into pursuant to section 77-367 shall be
29 deposited in the Department of Revenue Enforcement Fund for purposes of
30 identifying nonfilers of returns, underreporters, nonpayers of taxes, and
31 improper or fraudulent payments.

1 (6)(a) The department shall prepare a report by April 1, 2005, and
2 by February 1 of each year thereafter detailing the results of the tax
3 amnesty program and the subsequent enforcement efforts. For the report
4 due April 1, 2005, the report shall include (i) the amount of revenue
5 obtained as a result of the tax amnesty program broken down by tax
6 program, (ii) the amount obtained from instate taxpayers and from out-of-
7 state taxpayers, and (iii) the amount obtained from individual taxpayers
8 and from business enterprises.

9 (b) For reports due in subsequent years, the report shall include
10 (i) the number of personnel hired for purposes of subdivision (5)(b) of
11 this section and their duties, (ii) a description of lists, software,
12 programming, computer equipment, and other technological methods acquired
13 and the purposes of each, and (iii) the amount of new revenue obtained as
14 a result of the new personnel and acquisitions during the prior calendar
15 year, broken down into the same categories as described in subdivision
16 (6)(a) of this section.

17 (7) The Department of Revenue Enforcement Fund is created. Transfers
18 may be made from the Department of Revenue Enforcement Fund to the
19 General Fund at the direction of the Legislature. The Department of
20 Revenue Enforcement Fund may receive transfers from the Civic and
21 Community Center Financing Fund at the direction of the Legislature for
22 the purpose of administering the Sports Arena Facility Financing
23 Assistance Act. The Department of Revenue Enforcement Fund shall include
24 any money credited to the fund (a) under section 77-2703, and such money
25 shall be used by the Department of Revenue to defray the costs incurred
26 to implement Laws 2019, LB237, and (b) under the Mechanical Amusement
27 Device Tax Act, and such money shall be used by the department to defray
28 the costs incurred to implement and enforce Laws 2019, LB538, and any
29 rules and regulations adopted and promulgated to carry out Laws 2019,
30 LB538, and (c) under section 77-2906, and such money shall be used by the
31 Department of Revenue to defray the costs incurred to implement this

1 legislative bill. Any money in the Department of Revenue Enforcement Fund
2 available for investment shall be invested by the state investment
3 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
4 State Funds Investment Act.

5 (8) For purposes of this section, taxes mean any taxes collected by
6 the department, including, but not limited to state and local sales and
7 use taxes, individual and corporate income taxes, financial institutions
8 deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel
9 taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

10 Sec. 3. Original section 77-2906, Reissue Revised Statutes of
11 Nebraska, and section 77-5601, Revised Statutes Supplement, 2019, are
12 repealed.