

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 170

Introduced by Hunt, 8; Morfeld, 46; Pansing Brooks, 28.

Read first time January 11, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701, 77-2701.04, 77-2701.41, 77-2711, 77-2713, and 77-27,223,
3 Reissue Revised Statutes of Nebraska; to provide a sales and use tax
4 exemption for feminine hygiene products; to define terms; to
5 harmonize provisions; to provide an operative date; and to repeal
6 the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
4 77-27,236, and 77-27,238 and section 4 of this act shall be known and may
5 be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and
9 section 4 of this act, unless the context otherwise requires, the
10 definitions found in sections 77-2701.05 to 77-2701.55 shall be used.

11 Sec. 3. Section 77-2701.41, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 77-2701.41 Taxpayer means any person subject to a tax imposed by
14 sections 77-2701 to 77-2713 and section 4 of this act.

15 Sec. 4. (1) Sales and use taxes shall not be imposed on the gross
16 receipts from the sale, storage, use, or other consumption in this state
17 of feminine hygiene products.

18 (2) For purposes of this section:

19 (a) Feminine hygiene products means tampons, panty liners, menstrual
20 cups, sanitary napkins, and other similar tangible personal property
21 designed for feminine hygiene in connection with the human menstrual
22 cycle but does not include grooming and hygiene products; and

23 (b) Grooming and hygiene products means soaps and cleaning
24 solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan
25 lotions and screens, regardless of whether the items meet the definition
26 of over-the-counter drug in section 77-2704.09.

27 Sec. 5. Section 77-2711, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 77-2711 (1)(a) The Tax Commissioner shall enforce sections
30 77-2701.04 to 77-2713 and section 4 of this act and may prescribe, adopt,
31 and enforce rules and regulations relating to the administration and

1 enforcement of such sections.

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

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

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

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

16 (4) The Tax Commissioner or any person authorized in writing by him
17 or her may examine the books, papers, records, and equipment of any
18 person selling property and any person liable for the use tax and may
19 investigate the character of the business of the person in order to
20 verify the accuracy of any return made or, if no return is made by the
21 person, to ascertain and determine the amount required to be paid. In the
22 examination of any person selling property or of any person liable for
23 the use tax, an inquiry shall be made as to the accuracy of the reporting
24 of city sales and use taxes for which the person is liable under the
25 Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the
26 accuracy of the allocation made between the various counties, cities,
27 villages, and municipal counties of the tax due. The Tax Commissioner may
28 make or cause to be made copies of resale or exemption certificates and
29 may pay a reasonable amount to the person having custody of the records
30 for providing such copies.

31 (5) The taxpayer shall have the right to keep or store his or her

1 records at a point outside this state and shall make his or her records
2 available to the Tax Commissioner at all times.

3 (6) In administration of the use tax, the Tax Commissioner may
4 require the filing of reports by any person or class of persons having in
5 his, her, or their possession or custody information relating to sales of
6 property, the storage, use, or other consumption of which is subject to
7 the tax. The report shall be filed when the Tax Commissioner requires and
8 shall set forth the names and addresses of purchasers of the property,
9 the sales price of the property, the date of sale, and such other
10 information as the Tax Commissioner may require.

11 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
12 any official or employee of the Tax Commissioner, the State Treasurer, or
13 the Department of Administrative Services to make known in any manner
14 whatever the business affairs, operations, or information obtained by an
15 investigation of records and activities of any retailer or any other
16 person visited or examined in the discharge of official duty or the
17 amount or source of income, profits, losses, expenditures, or any
18 particular thereof, set forth or disclosed in any return, or to permit
19 any return or copy thereof, or any book containing any abstract or
20 particulars thereof to be seen or examined by any person not connected
21 with the Tax Commissioner. Nothing in this section shall be construed to
22 prohibit (a) the delivery to a taxpayer, his or her duly authorized
23 representative, or his or her successors, receivers, trustees, executors,
24 administrators, assignees, or guarantors, if directly interested, of a
25 certified copy of any return or report in connection with his or her tax,
26 (b) the publication of statistics so classified as to prevent the
27 identification of particular reports or returns and the items thereof,
28 (c) the inspection by the Attorney General, other legal representative of
29 the state, or county attorney of the reports or returns of any taxpayer
30 when either (i) information on the reports or returns is considered by
31 the Attorney General to be relevant to any action or proceeding

1 instituted by the taxpayer or against whom an action or proceeding is
2 being considered or has been commenced by any state agency or the county
3 or (ii) the taxpayer has instituted an action to review the tax based
4 thereon or an action or proceeding against the taxpayer for collection of
5 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
6 considered or has been commenced, (d) the furnishing of any information
7 to the United States Government or to states allowing similar privileges
8 to the Tax Commissioner, (e) the disclosure of information and records to
9 a collection agency contracting with the Tax Commissioner pursuant to
10 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
11 transaction of information and records concerning the transaction between
12 the taxpayer and the other party, (g) the disclosure of information
13 pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of
14 information to the Department of Labor necessary for the administration
15 of the Employment Security Law, the Contractor Registration Act, or the
16 Employee Classification Act.

17 (8) Notwithstanding the provisions of subsection (7) of this
18 section, the Tax Commissioner may permit the Postal Inspector of the
19 United States Postal Service or his or her delegates to inspect the
20 reports or returns of any person filed pursuant to the Nebraska Revenue
21 Act of 1967 when information on the reports or returns is relevant to any
22 action or proceeding instituted or being considered by the United States
23 Postal Service against such person for the fraudulent use of the mails to
24 carry and deliver false and fraudulent tax returns to the Tax
25 Commissioner with the intent to defraud the State of Nebraska or to evade
26 the payment of Nebraska state taxes.

27 (9) Notwithstanding the provisions of subsection (7) of this
28 section, the Tax Commissioner may permit other tax officials of this
29 state to inspect the tax returns, reports, and applications filed under
30 sections 77-2701.04 to 77-2713 and section 4 of this act, but such
31 inspection shall be permitted only for purposes of enforcing a tax law

1 and only to the extent and under the conditions prescribed by the rules
2 and regulations of the Tax Commissioner.

3 (10) Notwithstanding the provisions of subsection (7) of this
4 section, the Tax Commissioner may, upon request, provide the county board
5 of any county which has exercised the authority granted by section
6 81-3716 with a list of the names and addresses of the hotels located
7 within the county for which lodging sales tax returns have been filed or
8 for which lodging sales taxes have been remitted for the county's County
9 Visitors Promotion Fund under the Nebraska Visitors Development Act.

10 The information provided by the Tax Commissioner shall indicate only
11 the names and addresses of the hotels located within the requesting
12 county for which lodging sales tax returns have been filed for a
13 specified period and the fact that lodging sales taxes remitted by or on
14 behalf of the hotel have constituted a portion of the total sum remitted
15 by the state to the county for a specified period under the provisions of
16 the Nebraska Visitors Development Act. No additional information shall be
17 revealed.

18 (11)(a) Notwithstanding the provisions of subsection (7) of this
19 section, the Tax Commissioner shall, upon written request by the Auditor
20 of Public Accounts or the office of Legislative Audit, make tax returns
21 and tax return information open to inspection by or disclosure to the
22 Auditor of Public Accounts or employees of the office of Legislative
23 Audit for the purpose of and to the extent necessary in making an audit
24 of the Department of Revenue pursuant to section 50-1205 or 84-304.
25 Confidential tax returns and tax return information shall be audited only
26 upon the premises of the Department of Revenue. All audit workpapers
27 pertaining to the audit of the Department of Revenue shall be stored in a
28 secure place in the Department of Revenue.

29 (b) No employee of the Auditor of Public Accounts or the office of
30 Legislative Audit shall disclose to any person, other than another
31 Auditor of Public Accounts or office employee whose official duties

1 require such disclosure, any return or return information described in
2 the Nebraska Revenue Act of 1967 in a form which can be associated with
3 or otherwise identify, directly or indirectly, a particular taxpayer.

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

8 (12) For purposes of this subsection and subsections (11) and (14)
9 of this section:

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

12 (b) Return information means:

13 (i) A taxpayer's identification number and (A) the nature, source,
14 or amount of his or her income, payments, receipts, deductions,
15 exemptions, credits, assets, liabilities, net worth, tax liability, tax
16 withheld, deficiencies, overassessments, or tax payments, whether the
17 taxpayer's return was, is being, or will be examined or subject to other
18 investigation or processing or (B) any other data received by, recorded
19 by, prepared by, furnished to, or collected by the Tax Commissioner with
20 respect to a return or the determination of the existence or possible
21 existence of liability or the amount of liability of any person for any
22 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
23 and

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

26 (c) Tax return or return means any tax or information return or
27 claim for refund required by, provided for, or permitted under sections
28 77-2701 to 77-2713 and section 4 of this act which is filed with the Tax
29 Commissioner by, on behalf of, or with respect to any person and any
30 amendment or supplement thereto, including supporting schedules,
31 attachments, or lists which are supplemental to or part of the filed

1 return.

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

14 (14)(a) Notwithstanding the provisions of subsection (7) of this
15 section, the Tax Commissioner shall, upon written request, provide an
16 individual certified under subdivision (b) of this subsection
17 representing a municipality which has adopted the local option sales and
18 use tax under the Local Option Revenue Act with confidential sales and
19 use tax returns and sales and use tax return information regarding
20 taxpayers that possess a sales tax permit and the amounts remitted by
21 such permitholders at locations within the boundaries of the requesting
22 municipality or with confidential business use tax returns and business
23 use tax return information regarding taxpayers that file a Nebraska and
24 Local Business Use Tax Return and the amounts remitted by such taxpayers
25 at locations within the boundaries of the requesting municipality. Any
26 written request pursuant to this subsection shall provide the Department
27 of Revenue with no less than ten business days to prepare the sales and
28 use tax returns and sales and use tax return information requested. Such
29 returns and return information shall be viewed only upon the premises of
30 the department.

31 (b) Each municipality that seeks to request information under

1 subdivision (a) of this subsection shall certify to the Department of
2 Revenue one individual who is authorized by such municipality to make
3 such request and review the documents described in subdivision (a) of
4 this subsection. The individual may be a municipal employee or an
5 individual who contracts with the requesting municipality to provide
6 financial, accounting, or other administrative services.

7 (c) No individual certified by a municipality pursuant to
8 subdivision (b) of this subsection shall disclose to any person any
9 information obtained pursuant to a review under this subsection. An
10 individual certified by a municipality pursuant to subdivision (b) of
11 this subsection shall remain subject to this subsection after he or she
12 (i) is no longer certified or (ii) is no longer in the employment of or
13 under contract with the certifying municipality.

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

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

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

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

31 (b) For purposes of this subsection:

1 (i) Anonymous data means information that does not identify a
2 person;

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

5 (iii) Personally identifiable information means information that
6 identifies a person.

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

12 (d) The governing board of the member states in the streamlined
13 sales and use tax agreement may certify a certified service provider only
14 if that certified service provider certifies that:

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

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

20 (iii) It provides consumers clear and conspicuous notice of its
21 information practices, including what information it collects, how it
22 collects the information, how it uses the information, how long, if at
23 all, it retains the information, and whether it discloses the information
24 to member states. Such notice shall be satisfied by a written privacy
25 policy statement accessible by the public on the web site of the
26 certified service provider;

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

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

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

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

11 (g) When personally identifiable information regarding an individual
12 is retained by or on behalf of the state, it shall provide reasonable
13 access by such individual to his or her own information in the state's
14 possession and a right to correct any inaccurately recorded information.

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

20 (i) This privacy policy is subject to enforcement by the Attorney
21 General.

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

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

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

30 (iii) Prevent, consistent with state law, disclosure of confidential
31 taxpayer information;

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

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

6 Sec. 6. Section 77-2713, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 77-2713 (1) Any person required under the provisions of sections
9 77-2701.04 to 77-2713 and section 4 of this act to collect, account for,
10 or pay over any tax imposed by the Nebraska Revenue Act of 1967 who
11 willfully fails to collect or truthfully account for or pay over such tax
12 and any person who willfully attempts in any manner to evade any tax
13 imposed by such provisions of such act or the payment thereof shall, in
14 addition to other penalties provided by law, be guilty of a Class IV
15 felony.

16 (2) Any person who willfully aids or assists in, procures, counsels,
17 or advises the preparation or presentation of a false or fraudulent
18 return, affidavit, claim, or document under or in connection with any
19 matter arising under sections 77-2701.04 to 77-2713 and section 4 of this
20 act shall, whether or not such falsity or fraud is with the knowledge or
21 consent of the person authorized or required to present such return,
22 affidavit, claim, or document, be guilty of a Class IV felony.

23 (3) A person who engages in business as a retailer in this state
24 without a permit or permits or after a permit has been suspended and each
25 officer of any corporation which so engages in business shall be guilty
26 of a Class IV misdemeanor. Each day of such operation shall constitute a
27 separate offense.

28 (4) Any person who gives a resale certificate to the seller for
29 property which he or she knows, at the time of purchase, is purchased for
30 the purpose of use rather than for the purpose of resale, lease, or
31 rental by him or her in the regular course of business shall be guilty of

1 a Class IV misdemeanor.

2 (5) Any violation of the provisions of sections 77-2701.04 to
3 77-2713 and section 4 of this act, except as otherwise provided, shall be
4 a Class IV misdemeanor.

5 (6) Any prosecution under sections 77-2701.04 to 77-2713 and section
6 4 of this act shall be instituted within three years after the commission
7 of the offense. If such offense is the failure to do an act required by
8 any of such sections to be done before a certain date, a prosecution for
9 such offense may be commenced not later than three years after such date.
10 The failure to do any act required by sections 77-2701.04 to 77-2713 and
11 section 4 of this act shall be deemed an act committed in part at the
12 principal office of the Tax Commissioner. Any prosecution under the
13 provisions of the Nebraska Revenue Act of 1967 may be conducted in any
14 county where the person or corporation to whose liability the proceeding
15 relates resides or has a place of business or in any county in which such
16 criminal act is committed. The Attorney General shall have concurrent
17 jurisdiction with the county attorney in the prosecution of any offenses
18 under the provisions of the Nebraska Revenue Act of 1967.

19 Sec. 7. Section 77-27,223, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 77-27,223 A county may raise revenue by levying and collecting a
22 license or occupation tax on any person, partnership, limited liability
23 company, corporation, or business engaged in the sale of admissions to
24 recreational, cultural, entertainment, or concert events that are subject
25 to sales tax under sections 77-2701.04 to 77-2713 and section 4 of this
26 act that occur outside any incorporated municipality, but within the
27 boundary limits of the county. The tax shall be uniform in respect to the
28 class upon which it is imposed. The tax shall be based upon a certain
29 percentage of gross receipts from sales in the county of the person,
30 partnership, limited liability company, corporation, or business, and may
31 include sales of other goods and services at such locations and events,

1 not to exceed one and one-half percent. A county may not impose the tax
2 on sales that are within an incorporated city or village. No county shall
3 levy and collect a license or occupation tax under this section unless
4 approved by a majority of those voting on the question at a special,
5 primary, or general election.

6 Sec. 8. This act becomes operative on October 1, 2019.

7 Sec. 9. Original sections 77-2701, 77-2701.04, 77-2701.41, 77-2711,
8 77-2713, and 77-27,223, Reissue Revised Statutes of Nebraska, are
9 repealed.