

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 26

FINAL READING

Introduced by Wayne, 13; Pahls, 31; Hunt, 8; Hansen, M., 26.

Read first time January 07, 2021

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.41, 77-2713, and 77-27,223, Reissue Revised Statutes of
3 Nebraska, and sections 77-2701, 77-2701.04, and 77-2711, Revised
4 Statutes Cumulative Supplement, 2020; to provide a sales and use tax
5 exemption for residential water service; to harmonize provisions; to
6 provide an operative date; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,
4 77-27,236, 77-27,238, and 77-27,239 and section 4 of this act shall be
5 known and may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Cumulative Supplement,
7 2020, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and
9 77-27,239 and section 4 of this act, unless the context otherwise
10 requires, the definitions found in sections 77-2701.05 to 77-2701.55
11 shall be used.

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

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

16 Sec. 4. Sales and use taxes shall not be imposed on the gross
17 receipts from the sale, lease, or rental of and the storage, use, or
18 other consumption in this state of residential water service.

19 Sec. 5. Section 77-2711, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 77-2711 (1)(a) The Tax Commissioner shall enforce sections
22 77-2701.04 to 77-2713 and section 4 of this act and may prescribe, adopt,
23 and enforce rules and regulations relating to the administration and
24 enforcement of such sections.

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

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

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

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

8 (4) The Tax Commissioner or any person authorized in writing by him
9 or her may examine the books, papers, records, and equipment of any
10 person selling property and any person liable for the use tax and may
11 investigate the character of the business of the person in order to
12 verify the accuracy of any return made or, if no return is made by the
13 person, to ascertain and determine the amount required to be paid. In the
14 examination of any person selling property or of any person liable for
15 the use tax, an inquiry shall be made as to the accuracy of the reporting
16 of city and county sales and use taxes for which the person is liable
17 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
18 and 77-6403 and the accuracy of the allocation made between the various
19 counties, cities, villages, and municipal counties of the tax due. The
20 Tax Commissioner may make or cause to be made copies of resale or
21 exemption certificates and may pay a reasonable amount to the person
22 having custody of the records for providing such copies.

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

26 (6) In administration of the use tax, the Tax Commissioner may
27 require the filing of reports by any person or class of persons having in
28 his, her, or their possession or custody information relating to sales of
29 property, the storage, use, or other consumption of which is subject to
30 the tax. The report shall be filed when the Tax Commissioner requires and
31 shall set forth the names and addresses of purchasers of the property,

1 the sales price of the property, the date of sale, and such other
2 information as the Tax Commissioner may require.

3 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
4 any official or employee of the Tax Commissioner, the State Treasurer, or
5 the Department of Administrative Services to make known in any manner
6 whatever the business affairs, operations, or information obtained by an
7 investigation of records and activities of any retailer or any other
8 person visited or examined in the discharge of official duty or the
9 amount or source of income, profits, losses, expenditures, or any
10 particular thereof, set forth or disclosed in any return, or to permit
11 any return or copy thereof, or any book containing any abstract or
12 particulars thereof to be seen or examined by any person not connected
13 with the Tax Commissioner. Nothing in this section shall be construed to
14 prohibit (a) the delivery to a taxpayer, his or her duly authorized
15 representative, or his or her successors, receivers, trustees, executors,
16 administrators, assignees, or guarantors, if directly interested, of a
17 certified copy of any return or report in connection with his or her tax,
18 (b) the publication of statistics so classified as to prevent the
19 identification of particular reports or returns and the items thereof,
20 (c) the inspection by the Attorney General, other legal representative of
21 the state, or county attorney of the reports or returns of any taxpayer
22 when either (i) information on the reports or returns is considered by
23 the Attorney General to be relevant to any action or proceeding
24 instituted by the taxpayer or against whom an action or proceeding is
25 being considered or has been commenced by any state agency or the county
26 or (ii) the taxpayer has instituted an action to review the tax based
27 thereon or an action or proceeding against the taxpayer for collection of
28 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
29 considered or has been commenced, (d) the furnishing of any information
30 to the United States Government or to states allowing similar privileges
31 to the Tax Commissioner, (e) the disclosure of information and records to

1 a collection agency contracting with the Tax Commissioner pursuant to
2 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
3 transaction of information and records concerning the transaction between
4 the taxpayer and the other party, (g) the disclosure of information
5 pursuant to section 77-27,195, 77-5731, 77-6837, or 77-6839, or (h) the
6 disclosure of information to the Department of Labor necessary for the
7 administration of the Employment Security Law, the Contractor
8 Registration Act, or the Employee Classification Act.

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

19 (9) Notwithstanding the provisions of subsection (7) of this
20 section, the Tax Commissioner may permit other tax officials of this
21 state to inspect the tax returns, reports, and applications filed under
22 sections 77-2701.04 to 77-2713 and section 4 of this act, but such
23 inspection shall be permitted only for purposes of enforcing a tax law
24 and only to the extent and under the conditions prescribed by the rules
25 and regulations of the Tax Commissioner.

26 (10) Notwithstanding the provisions of subsection (7) of this
27 section, the Tax Commissioner may, upon request, provide the county board
28 of any county which has exercised the authority granted by section
29 81-3716 with a list of the names and addresses of the hotels located
30 within the county for which lodging sales tax returns have been filed or
31 for which lodging sales taxes have been remitted for the county's County

1 Visitors Promotion Fund under the Nebraska Visitors Development Act.

2 The information provided by the Tax Commissioner shall indicate only
3 the names and addresses of the hotels located within the requesting
4 county for which lodging sales tax returns have been filed for a
5 specified period and the fact that lodging sales taxes remitted by or on
6 behalf of the hotel have constituted a portion of the total sum remitted
7 by the state to the county for a specified period under the provisions of
8 the Nebraska Visitors Development Act. No additional information shall be
9 revealed.

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

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

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

31 (12) For purposes of this subsection and subsections (11) and (14)

1 of this section:

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

4 (b) Return information means:

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

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

18 (c) Tax return or return means any tax or information return or
19 claim for refund required by, provided for, or permitted under sections
20 77-2701 to 77-2713 and section 4 of this act which is filed with the Tax
21 Commissioner by, on behalf of, or with respect to any person and any
22 amendment or supplement thereto, including supporting schedules,
23 attachments, or lists which are supplemental to or part of the filed
24 return.

25 (13) Notwithstanding the provisions of subsection (7) of this
26 section, the Tax Commissioner shall, upon request, provide any
27 municipality which has adopted the local option sales tax under the Local
28 Option Revenue Act with a list of the names and addresses of the
29 retailers which have collected the local option sales tax for the
30 municipality. The request may be made annually and shall be submitted to
31 the Tax Commissioner on or before June 30 of each year. The information

1 provided by the Tax Commissioner shall indicate only the names and
2 addresses of the retailers. The Tax Commissioner may provide additional
3 information to a municipality so long as the information does not include
4 any data detailing the specific revenue, expenses, or operations of any
5 particular business.

6 (14)(a) Notwithstanding the provisions of subsection (7) of this
7 section, the Tax Commissioner shall, upon written request, provide an
8 individual certified under subdivision (b) of this subsection
9 representing a municipality which has adopted the local option sales and
10 use tax under the Local Option Revenue Act with confidential sales and
11 use tax returns and sales and use tax return information regarding
12 taxpayers that possess a sales tax permit and the amounts remitted by
13 such permit holders at locations within the boundaries of the requesting
14 municipality or with confidential business use tax returns and business
15 use tax return information regarding taxpayers that file a Nebraska and
16 Local Business Use Tax Return and the amounts remitted by such taxpayers
17 at locations within the boundaries of the requesting municipality. Any
18 written request pursuant to this subsection shall provide the Department
19 of Revenue with no less than ten business days to prepare the sales and
20 use tax returns and sales and use tax return information requested. The
21 individual certified under subdivision (b) of this subsection shall
22 review such returns and return information only upon the premises of the
23 department, except that such limitation shall not apply if the certifying
24 municipality has an agreement in effect under the Nebraska Advantage
25 Transformational Tourism and Redevelopment Act. In such case, the
26 individual certified under subdivision (b) of this subsection may request
27 that copies of such returns and return information be sent to him or her
28 by electronic transmission, secured in a manner as determined by the Tax
29 Commissioner.

30 (b) Each municipality that seeks to request information under
31 subdivision (a) of this subsection shall certify to the Department of

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

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

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

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

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

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

30 (b) For purposes of this subsection:

31 (i) Anonymous data means information that does not identify a

1 person;

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

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

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

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

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

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

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

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

31 (v) It provides adequate technical, physical, and administrative

1 safeguards so as to protect personally identifiable information from
2 unauthorized access and disclosure.

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

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

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

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

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

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

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

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

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

31 (iv) Prevent, consistent with federal law, disclosure or misuse of

1 federal return information obtained under a disclosure agreement with the
2 Internal Revenue Service; and

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

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

7 77-2713 (1) Any person required under the provisions of sections
8 77-2701.04 to 77-2713 and section 4 of this act to collect, account for,
9 or pay over any tax imposed by the Nebraska Revenue Act of 1967 who
10 willfully fails to collect or truthfully account for or pay over such tax
11 and any person who willfully attempts in any manner to evade any tax
12 imposed by such provisions of such act or the payment thereof shall, in
13 addition to other penalties provided by law, be guilty of a Class IV
14 felony.

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

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

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

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

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

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

20 77-27,223 A county may raise revenue by levying and collecting a
21 license or occupation tax on any person, partnership, limited liability
22 company, corporation, or business engaged in the sale of admissions to
23 recreational, cultural, entertainment, or concert events that are subject
24 to sales tax under sections 77-2701.04 to 77-2713 and section 4 of this
25 act that occur outside any incorporated municipality, but within the
26 boundary limits of the county. The tax shall be uniform in respect to the
27 class upon which it is imposed. The tax shall be based upon a certain
28 percentage of gross receipts from sales in the county of the person,
29 partnership, limited liability company, corporation, or business, and may
30 include sales of other goods and services at such locations and events,
31 not to exceed one and one-half percent. A county may not impose the tax

1 on sales that are within an incorporated city or village. No county shall
2 levy and collect a license or occupation tax under this section unless
3 approved by a majority of those voting on the question at a special,
4 primary, or general election.

5 Sec. 8. This act becomes operative on October 1, 2021.

6 Sec. 9. Original sections 77-2701.41, 77-2713, and 77-27,223,
7 Reissue Revised Statutes of Nebraska, and sections 77-2701, 77-2701.04,
8 and 77-2711, Revised Statutes Cumulative Supplement, 2020, are repealed.