

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 595

Introduced by Albrecht, 17.

Read first time January 20, 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 certain products used in the process of manufacturing
6 ethyl alcohol; to harmonize provisions; to provide an operative
7 date; and to repeal the original sections.
8 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 enzymes, yeast, and related products
19 used in the process of manufacturing ethyl alcohol.

20 Sec. 5. Section 77-2711, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

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

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

28 (2) The Tax Commissioner may employ accountants, auditors,
29 investigators, assistants, and clerks necessary for the efficient
30 administration of the Nebraska Revenue Act of 1967 and may delegate
31 authority to his or her representatives to conduct hearings, prescribe

1 regulations, or perform any other duties imposed by such act.

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

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

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

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

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

1 shall set forth the names and addresses of purchasers of the property,
2 the sales price of the property, the date of sale, and such other
3 information as the Tax Commissioner may require.

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

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

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

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

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

1 for which lodging sales taxes have been remitted for the county's County
2 Visitors Promotion Fund under the Nebraska Visitors Development Act.

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

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

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

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

1 (12) For purposes of this subsection and subsections (11) and (14)
2 of this section:

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

5 (b) Return information means:

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

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

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

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

1 the Tax Commissioner on or before June 30 of each year. The information
2 provided by the Tax Commissioner shall indicate only the names and
3 addresses of the retailers. The Tax Commissioner may provide additional
4 information to a municipality so long as the information does not include
5 any data detailing the specific revenue, expenses, or operations of any
6 particular business.

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

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, 2021.

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