

LEGISLATIVE BILL 101

Approved by the Governor February 24, 1983

Introduced by Landis, 46

AN ACT to amend sections 77-2708, 77-27,127, and 77-27,128, Reissue Revised Statutes of Nebraska, 1943, relating to revenue and taxation; to change the time period for allowing or disallowing a claim; to modify the method of appeal; to repeal the original sections; and also to repeal section 77-27,126, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 77-2708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2708. (1)(a) The sales and use taxes imposed by the provisions of sections 77-2701 to 77-27,135 shall be due and payable to the Tax Commissioner monthly on or before the last day of the month next succeeding each monthly period, unless otherwise provided pursuant to the provisions of sections 77-2701 to 77-27,135.

(b)(i) On or before the last day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe, and containing such information as the Tax Commissioner deems necessary for the proper administration of the provisions of sections 77-2701 to 77-27,135. ~~The ; Provided, the Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods, in the case of a particular seller, retailer, or purchaser, as the case may be. The ; and provided further, the Tax Commissioner may by rule and regulation permit or require quarterly, semiannual, or annual reports and tax payments from sellers, retailers, or purchasers as the case may be who have small tax liabilities, but no such reports or payments may be permitted or required when the tax liability exceeds sixty dollars in any quarter, one hundred twenty dollars in any~~

semiannual period, or two hundred forty dollars in any year;

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax. For purposes of the use tax a return shall be filed by every retailer engaged in business in this state and by every person who has purchased tangible personal property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax;

(iii) Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath; and

(iv) A taxpayer who keeps his or her regular books and records on a cash basis or on an accrual basis or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the sales and use tax returns required by sections 77-2701 to 77-27,135 on the same accounting basis that is used for the regular books and records. ~~Provided, that on~~ On credit, conditional, and installment sales the retailer may elect to pay the tax upon the collections made during each month if this accounting method correctly reflects the operation of the business and is the same accounting method used for the regular books and records. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having obtained the permission of the Tax Commissioner.

(c) The taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty of forfeiture of the collection fee allowed pursuant to subdivision (d) of this subsection or five dollars, whichever is greater.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, three per cent thereof to reimburse himself or herself for the cost of collecting the tax.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, or has been erroneously or illegally collected or computed, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person

under the provisions of sections 77-2701 to 77-27,135. Any balance may be refunded to the person by whom it was paid, or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, assignee, executor, or administrator, within three years from the last day of the month following the close of the period for which the overpayment was made, or within six months after any determination becomes final under the provisions of section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(d) The Tax Commissioner shall allow or disallow a claim within ~~ninety one hundred eighty~~ days after it has been filed. If the Tax Commissioner has neither allowed nor disallowed a claim within such ~~ninety one hundred eighty~~ days, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the provisions of sections 77-2701 to 77-27,135, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as ~~hereinafter~~ provided in section ~~77-27,126~~ 77-27,127.

(g) Upon the allowance of a credit or refund, of any sum erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess

is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within one year from the date of refund or credit, in the name of the state, in a court of competent jurisdiction in the county in which the taxpayer involved is located.

(j) The action shall be tried in the county in which the taxpayer involved is a resident unless the court orders a change of place of trial.

(k) The Attorney General shall prosecute the action provided for in subdivision (i) of this subsection, and the provisions of state law and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(l) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to sections 77-2701 to 77-27,135 on (i) sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes. If ; Provided, that if such accounts are thereafter collected by the retailer, contractor, or repairperson, a tax shall be paid upon the amount so collected; or (ii) on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

Sec. 2. That section 77-27,127, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~77-27,127. Any final decision of the State Board of Equalization and Assessment shall be subject to judicial review as provided in sections 84-917 to 84-919. Any final action of the Tax Commissioner, if the person aggrieved thereby elects not to appeal first to the State Board of Equalization and Assessment, shall be subject to judicial review as provided in sections 84-917 to 84-919, ; as though it were a final decision of the State Board of Equalization and Assessment. The review provided by this section shall be the exclusive remedy available to any taxpayer and no other legal or equitable proceedings shall issue to prevent or enjoin the assessment or collection of any tax imposed under the provisions of sections 77-2701 to 77-27,135.~~

Sec. 3. That section 77-27,128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~77-27,128. The review provided by sections 77-27,126 and section 77-27,127 shall be the exclusive remedies~~ remedy available to any taxpayer for the review

of the action in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of this state to prevent or enjoin the assessment or collection of any tax imposed under the provisions of sections 77-2701 to 77-27,135.

Sec. 4. That original sections 77-2708, 77-27,127, and 77-27,128, Reissue Revised Statutes of Nebraska, 1943, and also section 77-27,126, Reissue Revised Statutes of Nebraska, 1943, are repealed.