

LEGISLATIVE BILL 172

Approved by the Governor May 31, 2001

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Dierks, 40; Hartnett, 45; Janssen, 15; Raikes, 25; Landis, 46

AN ACT relating to taxes; to amend section 77-2701, Revised Statutes Supplement, 2000; to adopt the Uniform Sales and Use Tax Administration Act; to authorize an agreement with Indian tribes regarding motor fuel taxes; to harmonize provisions; and to repeal the original section.

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

Section 1. Sections 1 to 9 of this act shall be known and may be cited as the Uniform Sales and Use Tax Administration Act.

Sec. 2. For purposes of the Uniform Sales and Use Tax Administration Act:

(1) Agreement means a streamlined sales and use tax agreement;

(2) Certified automated system means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(3) Certified service provider means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax collection functions;

(4) Person means an individual, a trust, an estate, a fiduciary, a partnership, a limited liability company, a limited liability partnership, a corporation, or any other legal entity;

(5) Sales tax means the tax levied under sections 13-319, 77-2703, and 77-27,142;

(6) Seller means any person making sales, leases, or rentals of personal property or services;

(7) State means any state of the United States and the District of Columbia; and

(8) Use tax means the tax levied under section 77-2703.

Sec. 3. The Legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all sellers to collect this state's sales and use tax. The Legislature further finds that this state should participate in multistate discussions to review or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Sec. 4. The Governor is authorized and directed to enter into the agreement, subject to legislative approval, with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are signatories to the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions permissible under law reasonably required to implement the provisions set forth in the Uniform Sales and Use Tax Administration Act. Other actions authorized by this section include, but are not limited to, the adoption and promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the agreement. The Tax Commissioner or his or her designee is authorized to represent Nebraska before the other states that are signatories to the agreement. Any agreement under this section shall be ratified by the Legislature by legislative bill.

Sec. 5. No provision of the agreement in whole or in part invalidates or amends any provision of the law of Nebraska. Adoption of the agreement by Nebraska does not amend or modify any law of Nebraska. Any provision of the agreement that is in conflict with state law, whether adopted before, at, or after membership of Nebraska in the agreement, shall be implemented by legislation or rule and regulation, as is appropriate.

Sec. 6. The Governor shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(1) Uniform state rate. The agreement shall set restrictions to achieve over time more uniform state rates through the following:

(a) Limiting the number of state rates;

(b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The agreement shall establish uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions;

(b) Administration of exempt sales;

(c) Allowances a seller can take for bad debts; and

(d) Sales and use tax returns and remittances;

(3) Uniform definitions. The agreement shall require states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions;

(4) Central registration. The agreement shall provide an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states;

(5) No nexus attribution. The agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the member states will not be used as a factor in determining whether the seller has constitutional nexus with a state for any tax;

(6) Local sales and use taxes. The agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(a) Restricting variances between the state and local tax bases;

(b) Requiring states to administer all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Providing uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Monetary allowances. The agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes;

(8) State compliance. The agreement shall require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(9) Consumer privacy. The agreement shall require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

(10) Advisory councils. The agreement shall provide for the appointment of an advisory council of private-sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Sec. 7. The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

Sec. 8. (1) The agreement binds and inures only to the benefit of Nebraska and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person is established by the laws of Nebraska and the other member states and not by the terms of the agreement.

(2) No person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of Nebraska, or any political subdivision of Nebraska, on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of Nebraska, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

Sec. 9. (1) A certified service provider is the agent of a seller with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this

section. Notwithstanding the provisions of sections 77-2702.03 to 77-2713 and 77-27,125 to 77-27,135.01, a seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, a seller that contracts with a certified service provider is not subject to audit with regard to transactions processed by the certified service provider. A seller is subject to audit with regard to transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system as provided in section 77-2703. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax as provided in section 77-2703.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed any agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Sec. 10. Section 77-2701, Revised Statutes Supplement, 2000, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and sections 1 to 9 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 11. (1) The Governor or his or her designated representative may negotiate an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation. The agreement shall specify:

(a) Its duration;

(b) Its purpose;

(c) Provisions for administering, collecting, and enforcing the agreement;

(d) Remittance of taxes collected;

(e) The division of the proceeds of the tax between the parties;

(f) The method to be employed in accomplishing the partial or complete termination of the agreement; and

(g) Any other necessary and proper matters.

(2) The agreement shall require that the state motor fuel tax and any tribal motor fuel tax be identical in rate and base of transactions.

(3) An Indian tribe accepting an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of the agreement.

Sec. 12. Original section 77-2701, Revised Statutes Supplement, 2000, is repealed.