

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 887

FINAL READING

Introduced by Landis, 46

Read first time January 5, 2006

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.14 and 77-2701.43, Reissue Revised Statutes of
3 Nebraska, and sections 13-324, 77-2712.05, and 77-27,143,
4 Revised Statutes Supplement, 2005; to change provisions
5 relating to sales and use tax; to change provisions
6 relating to the streamlined sales and use tax agreement;
7 to harmonize provisions; and to repeal the original
8 sections.

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

1 Section 1. Section 13-324, Revised Statutes Supplement,
2 2005, is amended to read:

3 13-324 (1) The Tax Commissioner shall administer
4 all sales and use taxes adopted under section 13-319. The
5 Tax Commissioner may prescribe forms and adopt and promulgate
6 reasonable rules and regulations in conformity with the Nebraska
7 Revenue Act of 1967, as amended, for the making of returns and
8 for the ascertainment, assessment, and collection of taxes. The
9 county shall furnish a certified copy of the adopting or repealing
10 resolution to the Tax Commissioner in accordance with such rules
11 and regulations. The tax shall begin the first day of the next
12 calendar quarter which is at least one hundred twenty days
13 following receipt by the Tax Commissioner of the certified copy of
14 the adopted resolution. The Tax Commissioner shall provide at least
15 sixty days' notice of the adoption of the tax or a change in the
16 rate to retailers. Notice shall be provided to retailers within the
17 county. Notice to retailers may be provided through the web site of
18 the Department of Revenue or by other electronic means.

19 (2) For resolutions containing a termination date, the
20 termination date is the first day of a calendar quarter. The county
21 shall furnish a certified statement to the Tax Commissioner no
22 more than one hundred eighty days and at least one hundred twenty
23 days before the termination date that the termination date stated
24 in the resolution is still valid. If the certified statement is
25 not furnished within the prescribed time, the tax shall remain

1 in effect, and the Tax Commissioner shall continue to collect the
2 tax until the first day of the calendar quarter which is at least
3 one hundred twenty days after receipt of the certified statement
4 notwithstanding the termination date stated in the resolution. The
5 Tax Commissioner shall provide at least sixty days' notice of the
6 termination of the tax to retailers. Notice shall be provided to
7 retailers within the county. Notice to retailers may be provided
8 through the web site of the department or other electronic means.

9 (3) In the rental or lease of automobiles, trucks,
10 trailers, semitrailers, and truck-tractors as defined in the Motor
11 Vehicle Registration Act, the tax shall be collected by the lessor
12 on the rental or lease price at the tax rate in effect on the date
13 the automobile, truck, trailer, semitrailer, or truck-tractor is
14 delivered to the lessee.

15 (4) The Tax Commissioner shall collect the sales and use
16 tax concurrently with collection of a state tax in the same manner
17 as the state tax is collected. The Tax Commissioner shall remit
18 monthly the proceeds of the tax to the counties imposing the tax,
19 after deducting the amount of refunds made and three percent of
20 the remainder as an administrative fee necessary to defray the
21 cost of collecting the tax and the expenses incident thereto.
22 The Tax Commissioner shall keep full and accurate records of all
23 money received and distributed. All receipts from the three-percent
24 administrative fee shall be deposited in the state General Fund.

25 (5) Upon any claim of illegal assessment and collection,

1 the taxpayer has the same remedies provided for claims of illegal
2 assessment and collection of the state tax. It is the intention
3 of the Legislature that the provisions of law which apply to the
4 recovery of state taxes illegally assessed and collected apply
5 to the recovery of sales and use taxes illegally assessed and
6 collected under section 13-319.

7 (6) Boundary changes or the adoption of a sales and use
8 tax by an incorporated municipality that affects any tax imposed
9 by this section shall be governed as provided in subsections (3)
10 through ~~(9)~~ (10) of section 77-27,143.

11 Sec. 2. Section 77-2701.14, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-2701.14 Entity-based exemption means an exemption
14 based on who purchases the product or who sells the product.
15 An exemption that is available to all individuals shall not be
16 considered an entity-based exemption.

17 Sec. 3. Section 77-2701.43, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2701.43 Use-based exemption means an exemption based
20 on the purchaser's ultimate use of the product a specified use of
21 the product by the purchaser.

22 Sec. 4. Section 77-2712.05, Revised Statutes Supplement,
23 2005, is amended to read:

24 77-2712.05 By agreeing to the terms of the streamlined
25 sales and use tax agreement, this state agrees to abide by the

1 following requirements:

2 (1) Uniform state rate. The state shall comply with
3 restrictions to achieve over time more uniform state rates through
4 the following:

5 (a) Limiting the number of state rates;

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

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

10 (2) Uniform standards. The state hereby establishes
11 uniform standards for the following:

12 (a) Sourcing of transactions to taxing jurisdictions as
13 provided in sections 77-2703.01 to 77-2703.04;

14 (b) Administration of exempt sales as set out by the
15 agreement and using procedures as determined by the governing
16 board;

17 (c) Allowances a seller can take for bad debts as
18 provided in section 77-2708; and

19 (d) Sales and use tax returns and remittances. To comply
20 with the agreement, the Tax Commissioner shall:

21 (i) Require only one remittance for each return except
22 as provided in this subdivision. If any additional remittance is
23 required, it may only be required from retailers that collect more
24 than thirty thousand dollars in sales and use taxes in the state
25 during the preceding calendar year as provided in this subdivision.

1 The amount of ~~the~~ any additional remittance ~~shall~~ may be determined
2 through a calculation method rather than actual collections. Any
3 additional remittance ~~and~~ shall not require the filing of an
4 additional return;

5 (ii) Require, at his or her discretion, all remittances
6 from sellers under models 1, 2, and 3 to be remitted
7 electronically;

8 (iii) Allow for electronic payments by both automated
9 clearinghouse credit and debit;

10 (iv) Provide an alternative method for making same day
11 payments if an electronic funds transfer fails;

12 (v) Provide that if a due date falls on a legal banking
13 holiday, the taxes are due to that state on the next succeeding
14 business day; and

15 (vi) Require that any data that accompanies a remittance
16 be formatted using uniform tax type and payment type codes approved
17 by the governing board of the member states to the streamlined
18 sales and use tax agreement;

19 (3) Uniform definitions. (a) The state shall utilize the
20 uniform definitions of sales and use tax terms as provided in the
21 agreement. The definitions enable Nebraska to preserve its ability
22 to make taxability and exemption choices not inconsistent with the
23 uniform definitions.

24 (b) The state may enact a product-based exemption without
25 restriction if the agreement does not have a definition for the

1 product or for a term that includes the product. If the agreement
2 has a definition for the product or for a term that includes
3 the product, the state may exempt all items included within the
4 definition but shall not exempt only part of the items included
5 within the definition unless the agreement sets out the exemption
6 for part of the items as an acceptable variation.

7 (c) The state may enact an entity-based or a use-based
8 exemption without restriction if the agreement does not have a
9 definition for the product whose use or purchase by a specific
10 entity is exempt or for a term that includes the product. If the
11 agreement has a definition for the product whose use or specific
12 purchase is exempt, states may enact an entity-based or a use-based
13 exemption that applies to that product as long as the exemption
14 utilizes the agreement definition of the product. If the agreement
15 does not have a definition for the product whose use or specific
16 purchase is exempt but has a definition for a term that includes
17 the product, states may enact an entity-based or a use-based
18 exemption for the product without restriction.

19 (d) For purposes of complying with the requirements in
20 this section, the inclusion of a product within the definition of
21 tangible personal property is disregarded;

22 (4) Central registration. The state shall participate in
23 an electronic central registration system that allows a seller to
24 register to collect and remit sales and use taxes for all member
25 states. Under the system:

1 (a) A retailer registering under the agreement is
2 registered in this state;

3 (b) The state agrees not to require the payment of any
4 registration fees or other charges for a retailer to register in
5 the state if the retailer has no legal requirement to register;

6 (c) A written signature from the retailer is not
7 required;

8 (d) An agent may register a retailer under uniform
9 procedures adopted by the member states pursuant to the agreement;

10 (e) A retailer may cancel its registration under the
11 system at any time under uniform procedures adopted by the
12 governing board. Cancellation does not relieve the retailer of its
13 liability for remitting to the proper states any taxes collected;

14 (f) When registering, the retailer that is registered
15 under the agreement may select one of the following methods of
16 remittances or other method allowed by state law to remit the taxes
17 collected:

18 (i) Model 1, wherein a seller selects a certified service
19 provider as an agent to perform all the seller's sales or use tax
20 functions, other than the seller's obligation to remit tax on its
21 own purchases;

22 (ii) Model 2, wherein a seller selects a certified
23 automated system to use which calculates the amount of tax due on a
24 transaction; and

25 (iii) Model 3, wherein a seller utilizes its own

1 proprietary automated sales tax system that has been certified
2 as a certified automated system; and

3 (g) Sellers who register within twelve months after
4 this state's ~~participation in the agreement~~ first approval of a
5 certified service provider are relieved from liability, including
6 the local option tax, for tax not collected or paid if the
7 seller was not registered ~~during the twelve months prior to this~~
8 ~~state's participation in the agreement.~~ between October 1, 2004,
9 and September 30, 2005. Such relief from liability shall be in
10 accordance with the terms of the agreement;

11 (5) No nexus attribution. The state agrees that
12 registration with the central registration system and the
13 collection of sales and use taxes in the state will not be used as
14 a factor in determining whether the seller has nexus with the state
15 for any tax at any time;

16 (6) Local sales and use taxes. The agreement requires
17 the reduction of the burdens of complying with local sales and use
18 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,
19 77-27,142, 77-27,143, and 77-27,144 that require the following:

20 (a) No variation between the state and local tax bases;

21 (b) Statewide administration of all sales and use taxes
22 levied by local jurisdictions within the state so that sellers
23 collecting and remitting these taxes will not have to register or
24 file returns with, remit funds to, or be subject to independent
25 audits from local taxing jurisdictions;

1 (c) Limitations on the frequency of changes in the local
2 sales and use tax rates and setting effective dates for the
3 application of local jurisdictional boundary changes to local sales
4 and use taxes; and

5 (d) Uniform notice of changes in local sales and use
6 tax rates and of changes in the boundaries of local taxing
7 jurisdictions;

8 (7) Complete a taxability matrix approved by the
9 governing board. (a) Notice of changes in the taxability of the
10 products or services listed will be provided as required by the
11 governing board.

12 (b) The entries in the matrix shall be provided and
13 maintained in a data base that is in a downloadable format approved
14 by the governing board.

15 (c) Sellers and certified service providers are relieved
16 from liability, including the local option tax, for having charged
17 and collected the incorrect amount of sales or use tax resulting
18 from the seller or certified service provider relying on erroneous
19 data provided by the member state in the taxability matrix;

20 (8) Monetary allowances. The state agrees to allow any
21 monetary allowances that are to be provided by the states to
22 sellers or certified service providers in exchange for collecting
23 sales and use taxes as provided in Article VI of the agreement;

24 (9) State compliance. The agreement requires the state to
25 certify compliance with the terms of the agreement prior to joining

1 and to maintain compliance, under the laws of the member state,
2 with all provisions of the agreement while a member;

3 (10) Consumer privacy. The state hereby adopts a uniform
4 policy for certified service providers that protects the privacy of
5 consumers and maintains the confidentiality of tax information as
6 provided in section 77-2711; and

7 (11) Advisory councils. The state agrees to
8 the appointment of an advisory council of private-sector
9 representatives and an advisory council of nonmember state
10 representatives to consult with in the administration of the
11 agreement.

12 Sec. 5. Section 77-27,143, Revised Statutes Supplement,
13 2005, is amended to read:

14 77-27,143 (1) The administration of all sales and use
15 taxes adopted under the Local Option Revenue Act shall be by the
16 Tax Commissioner who may prescribe forms and adopt and promulgate
17 reasonable rules and regulations in conformity with the act for
18 the making of returns and for the ascertainment, assessment,
19 and collection of taxes imposed under such act. The incorporated
20 municipality shall furnish a certified copy of the adopting or
21 repealing ordinance to the Tax Commissioner in accordance with such
22 rules and regulations as he or she may adopt and promulgate. For
23 ordinances passed after October 1, 1969, the effective date shall
24 be the first day of the next calendar quarter which is at least
25 one hundred twenty days following receipt by the Tax Commissioner

1 of the certified copy of the ordinance. The Tax Commissioner
2 shall provide at least sixty days' notice of the change in tax
3 to retailers. Notice shall be provided to retailers within the
4 municipality. Notice to retailers may be provided through the web
5 site of the Department of Revenue or by other electronic means.

6 (2) For ordinances containing a termination date and
7 passed after October 1, 1986, the termination date shall be the
8 first day of a calendar quarter. The incorporated municipality
9 shall furnish a certified statement to the Tax Commissioner no
10 more than one hundred eighty days and at least one hundred twenty
11 days prior to the termination date that the termination date stated
12 in the ordinance is still valid. If the certified statement is
13 not furnished within the prescribed time, the tax shall remain
14 in effect, and the Tax Commissioner shall continue to collect the
15 tax until the first day of the calendar quarter which is at least
16 one hundred twenty days after receipt of the certified statement
17 notwithstanding the termination date stated in the ordinance. The
18 Tax Commissioner shall provide at least sixty days' notice of
19 the termination of the tax to retailers. Notice shall be provided
20 to retailers within the municipality. Notice to retailers may
21 be provided through the web site of the department or by other
22 electronic means.

23 (3) For sales and use tax purposes only, local
24 jurisdiction boundary changes apply only on the first day of a
25 calendar quarter after a minimum of one hundred twenty days' notice

1 to the Tax Commissioner and sixty days' notice to sellers.

2 (4) The state shall provide and maintain a data base
3 that describes boundary changes for all local taxing jurisdictions.
4 This data base shall include a description of any change and the
5 effective date of the change for sales and use tax purposes.

6 (5) The state shall provide and maintain a data base of
7 all sales and use tax rates for all of the local jurisdictions
8 levying taxes within the state. For the identification of counties,
9 cities, and villages, codes corresponding to the rates shall be
10 provided according to Federal Information Processing Standards as
11 developed by the National Institute of Standards and Technology.

12 (6) The state shall provide and maintain a data base
13 that assigns each five-digit and nine-digit zip code within the
14 state to the proper tax rates and jurisdictions. For purposes
15 of the streamlined sales and use tax agreement, the data base
16 shall apply the lowest combined tax rate imposed in the zip
17 code area if the area includes more than one tax rate in
18 any level of taxing jurisdictions. If a nine-digit zip code
19 designation is not available for a street address or if a seller
20 is unable to determine the nine-digit zip code designation of a
21 ~~purchase~~ applicable to a purchase after exercising due diligence
22 to determine the designation, the seller or certified service
23 provider may apply the rate for the five-digit zip code area. For
24 purposes of this section, there is a rebuttable presumption that
25 a seller or certified service provider has exercised due diligence

1 if the seller has attempted to determine the nine-digit zip code
2 designation by utilizing software approved by the governing board
3 that makes this designation from the street address and the
4 five-digit zip code ~~of the purchaser~~ applicable to a purchase.

5 (7) For purposes of the streamlined sales and use tax
6 agreement, the state shall participate with other member states
7 in the development of an address-based system for assigning
8 ~~taxing jurisdictions.~~ The system may provide address-based boundary
9 data base records for assigning taxing jurisdictions and their
10 associated rates which shall be in addition to the requirements
11 of subsection (6) of this section. The data base records shall be
12 in the same approved format as the data base records pursuant to
13 subsection (6) of this section and shall meet the requirements
14 developed pursuant to the federal Mobile Telecommunications
15 Sourcing Act, 4 U.S.C. 119(a), as such act existed on January 1,
16 2003. The governing board may allow a member state to require
17 sellers that register under the agreement to use an address-based
18 ~~system~~ boundary data base provided by that member state. If any
19 member state develops an address-based assignment system pursuant
20 ~~to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C.~~
21 ~~119, as such act existed on January 1, 2003,~~ a seller may use
22 that system in place of the system provided for in subsection
23 ~~(6) of this section~~ addressed-based boundary data base pursuant
24 to the agreement, a seller or certified service provider may
25 use those data base records in place of the five-digit and

1 nine-digit zip code data base records provided for in subsection
2 (6) of this section. If a seller or certified service provider is
3 unable to determine the applicable rate and jurisdiction using an
4 address-based boundary data base after exercising due diligence,
5 the seller or certified service provider may apply the nine-digit
6 zip code designation applicable to a purchase. If a nine-digit zip
7 code designation is not available for a street address or if a
8 seller or certified service provider is unable to determine the
9 nine-digit zip code designation applicable to a purchase after
10 exercising due diligence to determine the designation, the seller
11 or certified service provider may apply the rate for the five-digit
12 zip code area. For the purposes of this section, there is a
13 rebuttable presumption that a seller or certified service provider
14 has exercised due diligence if the seller or certified service
15 provider has attempted to determine the tax rate and jurisdiction
16 by utilizing software approved by the governing board that
17 makes this assignment from the address and zip code information
18 applicable to the purchase.

19 (8) The state may certify vendor-provided address-based
20 boundary data bases for assigning tax rates and jurisdictions.
21 The data bases shall be in the same approved format as the
22 data base records pursuant to subsection (7) of this section and
23 shall meet the requirements developed pursuant to the federal
24 Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act
25 existed on January 1, 2003. If a state certifies a vendor-provided

1 address-based boundary data base, a seller or certified service
2 provider may use that data base in place of the data base provided
3 for in subsection (6) or (7) of this section. Vendors providing
4 address-based boundary data bases may request certification of
5 their data bases from the governing board. Certification by the
6 governing board does not replace the requirement that the data
7 bases be certified by the states individually.

8 ~~(8)~~ (9) Pursuant to the streamlined sales and use tax
9 agreement, the state shall relieve retailers and certified service
10 providers using data bases pursuant to subsection (6) or (7) of
11 this section from liability to the state and local jurisdictions
12 for having charged and collected the incorrect amount of sales or
13 use tax resulting from the retailer or certified service provider
14 relying on erroneous data provided by a member state on tax
15 rates, boundaries, or taxing jurisdiction assignments. A After
16 providing adequate notice determined by the governing board, a
17 member state that provides an address-based ~~system~~ boundary data
18 base for assigning taxing jurisdictions pursuant to subsection
19 (7) or (8) of this section ~~or pursuant to the federal Mobile~~
20 ~~Telecommunications Sourcing Act, 4 U.S.C. 119, as such act existed~~
21 ~~on January 1, 2003, will not be required to provide liability~~
22 ~~relief for errors resulting from the reliance on the information~~
23 ~~provided by the member state under the provisions of subsection (6)~~
24 ~~of this section~~ may cease providing liability relief for errors
25 resulting from the reliance on the data base provided by the member

1 state under the provisions of subsection (6) of this section. If
2 a seller demonstrates that requiring the use of the address-based
3 boundary data base would create an undue hardship, the state and
4 the governing board may extend the relief of liability to such
5 seller for a designated period of time.

6 ~~(9)~~ (10) The electronic data bases provided for in this
7 section shall be in a downloadable format approved by the governing
8 board pursuant to the streamlined sales and use tax agreement. The
9 data bases may be directly provided by the state or provided by a
10 vendor as designated by the state. A data base provided by a vendor
11 as designated by a state shall be applicable to and subject to all
12 provisions of this section. The data bases shall be provided at no
13 cost to the user of the data base. The provisions of subsections
14 (6) and (7) of this section do not apply when the purchased product
15 is received by the purchaser at the business location of the
16 seller.

17 ~~(10)~~ (11) In the rental or lease of automobiles, trucks,
18 trailers, semitrailers, and truck-tractors as defined in the Motor
19 Vehicle Registration Act, the tax shall be collected by the lessor
20 on the rental or lease price at the tax rate in effect on the date
21 the automobile, truck, trailer, semitrailer, or truck-tractor is
22 delivered to the lessee.

23 (12) A seller that did not have a requirement to register
24 in this state prior to registering pursuant to the agreement or
25 a certified service provider shall not be required to collect

1 sales or use taxes for a state until the first day of the
2 calendar quarter commencing more than sixty days after the state
3 has provided the data bases required by this section.

4 Sec. 6. Original sections 77-2701.14 and 77-2701.43,
5 Reissue Revised Statutes of Nebraska, and sections 13-324,
6 77-2712.05, and 77-27,143, Revised Statutes Supplement, 2005, are
7 repealed.