

AMENDMENTS TO LB 879

Introduced by Cornett, 45.

1 1. Strike original section 19 and insert the following
2 new sections:

3 Sec. 2. Section 49-801.01, Revised Statutes Supplement,
4 2009, is amended to read:

5 49-801.01 Except as provided by Article VIII, section 1B,
6 of the Constitution of Nebraska and in sections 77-2701.01, 77-2714
7 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509,
8 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728,
9 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the
10 Internal Revenue Code refers to the Internal Revenue Code of 1986
11 as it exists on ~~February 27, 2009.~~ the operative date of this
12 section.

13 Sec. 7. Section 77-1784, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-1784 (1) The Tax Commissioner may accept electronic
16 filing of applications, returns, and any other document required to
17 be filed with the Tax Commissioner.

18 (2) The Tax Commissioner may use electronic fund
19 transfers to collect any taxes, fees, or other amounts required
20 to be paid to or collected by the Tax Commissioner or to pay any
21 refunds of such amounts.

22 (3) The Tax Commissioner may adopt rules and regulations
23 to establish the criteria for acceptability of filing documents

1 and making payments electronically. The criteria may include
2 requirements for electronic signatures, the type of tax for
3 which electronic filings or payments will be accepted, the method
4 of transfer, or minimum amounts which may be transferred. The
5 Tax Commissioner may refuse to accept any electronic filings or
6 payments that do not meet the criteria established.

7 (4) ~~For payments due after January 1, 2006, the~~ The Tax
8 Commissioner may require the use of electronic fund transfers for
9 any taxes, fees, or amounts required to be paid to or collected by
10 the Tax Commissioner for any taxpayer who made payments exceeding
11 ~~twenty thousand~~ five thousand dollars for a tax program in the any
12 prior year for that tax program. The requirement to make electronic
13 fund transfers may be phased in as deemed necessary by the Tax
14 Commissioner. Notice of the requirement to make electronic fund
15 transfers shall be provided at least three months prior to the date
16 the first electronic payment is required to be made.

17 (5) ~~Any~~ Except for individual income tax payments
18 required under section 77-2715 and estimated payments for
19 individuals under section 77-2769, any person who fails to make a
20 required payment by electronic fund transfer shall be subject to a
21 penalty of one hundred dollars for each required payment that was
22 not made by electronic fund transfer. The penalty provided by this
23 section shall be in addition to all other penalties and applies
24 even if payment by some other method is timely made. The Tax
25 Commissioner may waive the penalty provided in this section upon a
26 showing of good cause.

27 (6) The use of electronic filing of documents and

1 electronic fund transfers shall not change the rights of any
2 party from the rights such party would have if a different method
3 of filing or payment were used. Until criteria for electronic
4 signatures are adopted under subsection (3) of this section, the
5 document produced during the electronic filing of a taxpayer's
6 information with the state shall be prima facie evidence for all
7 purposes that the taxpayer's signature accompanied the taxpayer's
8 information in the electronic transmission.

9 (7) For tax returns due on or after January 1, 2010,
10 the Tax Commissioner may require any person that aids, procures,
11 advises, or assists in the preparation of and files any tax return
12 on behalf of any taxpayer for profit to file an electronic return
13 if the person filed twenty-five or more tax returns in the prior
14 calendar year. The requirement to require electronic filing may be
15 phased in as deemed necessary by the Tax Commissioner.

16 Any person that files a tax return on behalf of a
17 taxpayer must disclose in writing to the taxpayer that the return
18 will be filed in an electronic format and in accordance with rules
19 and regulations prescribed by the Tax Commissioner.

20 (8) Any person who fails to file an electronic return
21 as required under subsection (7) of this section shall be subject
22 to a penalty of one hundred dollars for each return that was not
23 properly filed in addition to other penalties provided by law. The
24 Tax Commissioner may waive the penalty provided in this section
25 upon a showing of good cause.

26 (9) The Legislature hereby finds and determines that the
27 development of a comprehensive electronic filing and payment system

1 for all state tax programs and fees administered by the Department
2 of Revenue is of critical importance to the State of Nebraska.
3 It is the intent of the Legislature that the department implement
4 a mandatory electronic filing system for all state tax programs
5 and fees administered by the department as deemed practicable and
6 necessary for the proper administration of the Nebraska Revenue Act
7 of 1967. It is the intent of the Legislature that the department
8 require the use of electronic fund transfers for any taxes, fees,
9 or amounts required to be paid to or collected by the department as
10 deemed practicable and necessary for the proper administration of
11 the Nebraska Revenue Act of 1967.

12 Sec. 11. Section 77-2756, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2756 (1) Except as provided in subsection (2) of this
15 section, every employer or payor required to deduct and withhold
16 income tax under the Nebraska Revenue Act of 1967 shall, for each
17 calendar quarter, on or before the last day of the month following
18 the close of such calendar quarter, file a withholding return
19 as prescribed by the Tax Commissioner and pay over to the Tax
20 Commissioner or to a depository designated by the Tax Commissioner
21 the taxes so required to be deducted and withheld in such form
22 and content as the Tax Commissioner may prescribe and containing
23 such information as the Tax Commissioner deems necessary for the
24 proper administration of the Nebraska Revenue Act of 1967. When
25 the aggregate amount required to be deducted and withheld by any
26 employer or payor for either the first or second month of a
27 calendar quarter exceeds five hundred dollars, the employer or

1 payor shall, by the fifteenth day of the succeeding month, pay over
2 such aggregate amount to the Tax Commissioner or to a depository
3 designated by the Tax Commissioner. The amount so paid shall be
4 allowed as a credit against the liability shown on the employer's
5 or payor's quarterly withholding return required by this section.
6 The Tax Commissioner may, by rule and regulation, provide for the
7 filing of returns and the payment of the tax deducted and withheld
8 on other than a quarterly basis.

9 (2) When the aggregate amount required to be deducted
10 and withheld by any employer or payor for the entire calendar year
11 is less than five hundred dollars or the employer or payor is
12 allowed to file federal withholding returns annually, the employer
13 or payor shall, for each calendar year, on or before the last day
14 of the month following the close of such calendar year, file a
15 withholding return as prescribed by the Tax Commissioner and pay
16 over to the Tax Commissioner or to a depository designated by the
17 Tax Commissioner the taxes so required to be deducted and withheld
18 in such form and content as the Tax Commissioner may prescribe and
19 containing such information as the Tax Commissioner deems necessary
20 for the proper administration of the Nebraska Revenue Act of 1967.
21 The employer or payor may elect or the Tax Commissioner may require
22 the filing of returns and the payment of taxes on a quarterly
23 basis.

24 (3) Whenever any employer or payor fails to collect,
25 truthfully account for, pay over, or make returns of the income
26 tax as required by this section, the Tax Commissioner may serve a
27 notice requiring such employer or payor to collect the taxes which

1 become collectible after service of such notice, to deposit such
2 taxes in a bank approved by the Tax Commissioner in a separate
3 account in trust for and payable to the Tax Commissioner, and to
4 keep the amount of such tax in such account until paid over to the
5 Tax Commissioner. Such notice shall remain in effect until a notice
6 of cancellation is served by the Tax Commissioner.

7 (4) Any employer or payor may appoint an agent in
8 accordance with section 3504 of the Internal Revenue Code of 1986,
9 as amended, for the purpose of withholding, reporting, or making
10 payment of amounts withheld on behalf of the employer or payor.
11 The agent shall be considered an employer or payor for purposes
12 of the Nebraska Revenue Act of 1967 and, with the actual employer
13 or payor, shall be jointly and severally liable for any amount
14 required to be withheld and paid over to the Tax Commissioner and
15 any additions to tax, penalties, and interest with respect thereto.

16 (5) The employer or payor shall also file on or before
17 ~~March 15~~ February 1 of the succeeding year a copy of each statement
18 furnished by such employer or payor to each employee or payee
19 with respect to taxes withheld on wages or payments subject to
20 withholding. Any employer, payor, or agent who furnished more than
21 ~~two hundred~~ fifty statements for a year shall file the required
22 copies electronically in a manner approved by the Tax Commissioner
23 that is compatible with federal electronic filing requirements or
24 methods.

25 Sec. 14. Section 77-2794, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 77-2794 (1) Under regulations prescribed by the Tax

1 Commissioner interest shall be allowed and paid at the rate
2 specified in section 45-104.02, as such rate may from time to time
3 be adjusted, upon any overpayment in respect to the income tax
4 imposed by the Nebraska Revenue Act of 1967.

5 (2) For purposes of this section:

6 (a) The date of overpayment shall be the last day
7 prescribed for filing the original return of such tax;

8 (b) Any return filed before the last day prescribed for
9 the filing thereof, determined without regard to any extension of
10 time to file the return, shall be considered as filed on such last
11 day;

12 (c) Any tax paid by the taxpayer before the last day
13 prescribed for its payment, any income tax withheld from the
14 taxpayer during any calendar year, and any amount paid by the
15 taxpayer as estimated income tax for a taxable year shall be deemed
16 to have been paid on the last day prescribed for filing the return
17 for the taxable year to which such amount constitutes a credit or
18 payment, determined without regard to any extension of time granted
19 the taxpayer;

20 (d) If at the time an overpayment is to be refunded,
21 the taxpayer also has a reported underpayment of the same tax
22 in another year: (i) If the overpayment is for a taxable year
23 ending before the year of underpayment, the overpayment shall be
24 applied to reduce such underpayment as of the last day prescribed
25 for filing the original return of such tax for the year of
26 underpayment; (ii) if the overpayment is for a taxable year ending
27 after the year of underpayment, the overpayment shall be applied to

1 reduce such underpayment as of the last day prescribed for filing
2 the original return of such tax for the year of overpayment; or
3 (iii) if the overpayment is one for which interest is not allowed
4 under this section, the overpayment shall be applied as of the
5 date of the filing of the claim for refund; and interest shall be
6 allowed for any remaining overpayment as provided in subdivision
7 (a) of this subsection;

8 (e) The period of overpayment during which interest
9 shall be allowed shall not include any period during which the
10 overpayment continued due to the unreasonable delay by the taxpayer
11 in filing the claim for refund. For this purpose, the burden of
12 proof shall be on the taxpayer to show that a delay of more than
13 ninety days after all of the facts required to prepare a correct
14 claim for refund are available is not unreasonable; and

15 (f) The period of overpayment during which interest shall
16 be allowed shall not include any period during which an agreement
17 between the taxpayer and the Internal Revenue Service was not filed
18 as required by subsection (6) of section 77-2786 and the first
19 ninety days after such agreement is filed.

20 ~~(3)~~ If (3) (a) Except as provided in subdivision (b) of
21 this subsection, if any overpayment of income tax imposed by the
22 Nebraska Revenue Act of 1967 is refunded within ninety days after
23 the last date prescribed, or permitted by extension of time, for
24 filing the return of such tax or within ninety days after any
25 original return, and any amended return filed to carry back a loss,
26 was filed, whichever is later, no interest shall be allowed under
27 this section on overpayment.

1 (b) If the Tax Commissioner approves and implements an
2 electronic form or method for filing the return and the return is
3 not filed electronically, no interest shall be allowed under this
4 section on overpayment.

5 (c) In the case of amended returns filed for any reason
6 other than to carry back a loss, interest shall be allowed as
7 provided in subsection (1) of this section.

8 Sec. 23. Sections 2, 22, 23, 28, and 30 of this act
9 become operative on their effective date. Sections 1, 21, and 27 of
10 this act become operative on July 1, 2010. Sections 8, 10, 15, 16,
11 and 26 of this act become operative on October 1, 2010. Sections 7,
12 11, 12, 13, 14, 24, and 29 of this act become operative on January
13 1, 2011. The other sections of this act become operative three
14 calendar months after the adjournment of this legislative session.

15 Sec. 28. Original section 49-801.01, Revised Statutes
16 Supplement, 2009, is repealed.

17 Sec. 29. The following section is outright repealed:
18 Section 77-2769.02, Reissue Revised Statutes of Nebraska.

19 2. On page 11, line 19, strike "4" and insert "5".

20 3. On page 66, line 17, strike "4" and insert "5"; and in
21 line 25 strike "77-2789 and 77-2790," and insert "77-1784, 77-2756,
22 77-2789, 77-2790, and 77-2794,".

23 4. Renumber the remaining sections accordingly.