Introduced by Watermeier, 1.

Read first time January 05, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to adopt the Remote Seller Sales Tax Collection Act; and to declare an emergency.

2 Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Remote Seller Sales Tax Collection Act.

Sec. 2. The Legislature finds that:

(1) The inability to effectively collect the sales or use tax from remote sellers who deliver tangible personal property, products delivered electronically, or services directly into Nebraska is seriously eroding Nebraska’s sales tax base, causing revenue losses and imminent harm to the state through the loss of critical funding for state and local services;

(2) The structural advantages of remote sellers, including the absence of point-of-sale tax collection, along with the general growth of online retail, make clear that further erosion of Nebraska’s sales tax base is likely in the near future;

(3) In contrast with the expanding harms caused to Nebraska from the lack of sales tax collection by remote sellers, the costs of that collection have fallen. Given modern computing and software options, it is neither unusually difficult nor burdensome for remote sellers to collect and remit sales taxes associated with sales into Nebraska; and

(4) It is necessary for Nebraska to pass the Remote Seller Sales Tax Collection Act to clarify the obligations of remote sellers with respect to sales made into Nebraska.

Sec. 3. For purposes of the Remote Seller Sales Tax Collection Act:

(1) Delivered electronically has the same meaning as in section 77-2701.49;

(2) Department means the Department of Revenue;

(3) Remote seller means any person who sells tangible personal property, products delivered electronically, or services for delivery into Nebraska and who does not have a physical presence in this state;

(4) Service means a service described in subsection (4) of section 77-2701.16; and

(5) Tangible personal property has the same meaning as in section
Sec. 4. (1) Notwithstanding any other provision of law, a remote seller shall be subject to the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319 and 13-2813, shall remit the sales tax due under such acts and sections, and shall follow all applicable procedures and requirements of law as if the remote seller had a physical presence in this state if the remote seller meets either of the following criteria in the previous or current calendar year:

   (a) The remote seller's gross revenue from the sale of tangible personal property, products delivered electronically, and services delivered into Nebraska exceeds one hundred thousand dollars; or

   (b) The remote seller sold tangible personal property, products delivered electronically, or services for delivery into Nebraska in two hundred or more separate transactions.

(2) No remote seller who remits sales tax under this section shall be liable to a purchaser who claims that the sales tax has been overcollected because this section is later deemed unlawful.

(3) Nothing in this section affects the obligation of any purchaser from this state to remit use tax as to any applicable transaction in which the remote seller does not collect and remit an offsetting sales tax.

Sec. 5. Each remote seller that meets the requirements of subsection (1) of section 4 of this act but refuses to collect Nebraska sales tax in accordance with such section shall:

(1) Notify Nebraska purchasers that sales or use tax is due on certain purchases made from the remote seller and that the State of Nebraska requires the purchaser to file a sales or use tax return. Failure to provide the notice required in this subdivision shall subject the remote seller to a penalty of five dollars for each such failure unless the remote seller shows reasonable cause for such failure;

(2) Send notification to all Nebraska purchasers by January 31 of
each year showing the total amount paid by the purchaser for Nebraska purchases made from the remote seller in the previous calendar year and such other information as the department shall require by rule and regulation. Such notification shall include, if available, the dates of purchases, the amounts of each purchase, and the category of the purchase, including, if known by the remote seller, whether the purchase is exempt or not exempt from taxation. The notification shall state that the State of Nebraska requires a sales or use tax return to be filed and sales or use tax to be paid on certain Nebraska purchases made by the purchaser from the remote seller. The notification shall be sent separately to all Nebraska purchasers by first-class mail and shall not be included with any other shipments. The notification shall include the words “Important Tax Document Enclosed” on the exterior of the mailing. The notification shall include the name of the remote seller. Failure to send the notification required in this subdivision shall subject the remote seller to a penalty of ten dollars for each such failure unless the remote seller shows reasonable cause for such failure; and

(3) File an annual statement for each purchaser with the department on such forms as are provided or approved by the department showing the total amount paid for Nebraska purchases by such purchasers during the preceding calendar year or any portion thereof, and such annual statement shall be filed on or before March 1 of each year. The department may require any remote seller that makes total Nebraska sales of more than one hundred thousand dollars in a year to file the annual statement described in this subdivision electronically for that year. Failure to file the annual statement required in this subdivision shall subject the remote seller to a penalty of ten dollars for each purchaser that should have been included in such annual statement unless the remote seller shows reasonable cause for such failure.

Sec. 6. The department may adopt and promulgate rules and regulations to carry out the Remote Seller Sales Tax Collection Act.
Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.