

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 44

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
- 2 Seller Sales Tax Collection Act; and to declare an emergency.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Remote Seller Sales Tax Collection Act.

3 Sec. 2. The Legislature finds that:

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

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

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

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

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

23 (1) Delivered electronically has the same meaning as in section
24 77-2701.49;

25 (2) Department means the Department of Revenue;

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

29 (4) Service means a service described in subsection (4) of section
30 77-2701.16; and

31 (5) Tangible personal property has the same meaning as in section

1 77-2701.39.

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

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

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

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

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

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

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

31 (2) Send notification to all Nebraska purchasers by January 31 of

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

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

30 Sec. 6. The department may adopt and promulgate rules and
31 regulations to carry out the Remote Seller Sales Tax Collection Act.

1 Sec. 7. Since an emergency exists, this act takes effect when
2 passed and approved according to law.