

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 236

FINAL READING

Introduced by Crawford, 45; Blood, 3; Clements, 2.

Read first time January 14, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2711, Revised Statutes Supplement, 2019; to change provisions
- 3 relating to access to sales and use tax information by
- 4 municipalities; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2711, Revised Statutes Supplement, 2019, is
2 amended to read:

3 77-2711 (1)(a) The Tax Commissioner shall enforce sections
4 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and
5 regulations relating to the administration and enforcement of such
6 sections.

7 (b) The Tax Commissioner may prescribe the extent to which any
8 ruling or regulation shall be applied without retroactive effect.

9 (2) The Tax Commissioner may employ accountants, auditors,
10 investigators, assistants, and clerks necessary for the efficient
11 administration of the Nebraska Revenue Act of 1967 and may delegate
12 authority to his or her representatives to conduct hearings, prescribe
13 regulations, or perform any other duties imposed by such act.

14 (3)(a) Every seller, every retailer, and every person storing,
15 using, or otherwise consuming in this state property purchased from a
16 retailer shall keep such records, receipts, invoices, and other pertinent
17 papers in such form as the Tax Commissioner may reasonably require.

18 (b) Every such seller, retailer, or person shall keep such records
19 for not less than three years from the making of such records unless the
20 Tax Commissioner in writing sooner authorized their destruction.

21 (4) The Tax Commissioner or any person authorized in writing by him
22 or her may examine the books, papers, records, and equipment of any
23 person selling property and any person liable for the use tax and may
24 investigate the character of the business of the person in order to
25 verify the accuracy of any return made or, if no return is made by the
26 person, to ascertain and determine the amount required to be paid. In the
27 examination of any person selling property or of any person liable for
28 the use tax, an inquiry shall be made as to the accuracy of the reporting
29 of city and county sales and use taxes for which the person is liable
30 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
31 and 77-6403 and the accuracy of the allocation made between the various

1 counties, cities, villages, and municipal counties of the tax due. The
2 Tax Commissioner may make or cause to be made copies of resale or
3 exemption certificates and may pay a reasonable amount to the person
4 having custody of the records for providing such copies.

5 (5) The taxpayer shall have the right to keep or store his or her
6 records at a point outside this state and shall make his or her records
7 available to the Tax Commissioner at all times.

8 (6) In administration of the use tax, the Tax Commissioner may
9 require the filing of reports by any person or class of persons having in
10 his, her, or their possession or custody information relating to sales of
11 property, the storage, use, or other consumption of which is subject to
12 the tax. The report shall be filed when the Tax Commissioner requires and
13 shall set forth the names and addresses of purchasers of the property,
14 the sales price of the property, the date of sale, and such other
15 information as the Tax Commissioner may require.

16 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
17 any official or employee of the Tax Commissioner, the State Treasurer, or
18 the Department of Administrative Services to make known in any manner
19 whatever the business affairs, operations, or information obtained by an
20 investigation of records and activities of any retailer or any other
21 person visited or examined in the discharge of official duty or the
22 amount or source of income, profits, losses, expenditures, or any
23 particular thereof, set forth or disclosed in any return, or to permit
24 any return or copy thereof, or any book containing any abstract or
25 particulars thereof to be seen or examined by any person not connected
26 with the Tax Commissioner. Nothing in this section shall be construed to
27 prohibit (a) the delivery to a taxpayer, his or her duly authorized
28 representative, or his or her successors, receivers, trustees, executors,
29 administrators, assignees, or guarantors, if directly interested, of a
30 certified copy of any return or report in connection with his or her tax,
31 (b) the publication of statistics so classified as to prevent the

1 identification of particular reports or returns and the items thereof,
2 (c) the inspection by the Attorney General, other legal representative of
3 the state, or county attorney of the reports or returns of any taxpayer
4 when either (i) information on the reports or returns is considered by
5 the Attorney General to be relevant to any action or proceeding
6 instituted by the taxpayer or against whom an action or proceeding is
7 being considered or has been commenced by any state agency or the county
8 or (ii) the taxpayer has instituted an action to review the tax based
9 thereon or an action or proceeding against the taxpayer for collection of
10 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
11 considered or has been commenced, (d) the furnishing of any information
12 to the United States Government or to states allowing similar privileges
13 to the Tax Commissioner, (e) the disclosure of information and records to
14 a collection agency contracting with the Tax Commissioner pursuant to
15 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
16 transaction of information and records concerning the transaction between
17 the taxpayer and the other party, (g) the disclosure of information
18 pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of
19 information to the Department of Labor necessary for the administration
20 of the Employment Security Law, the Contractor Registration Act, or the
21 Employee Classification Act.

22 (8) Notwithstanding the provisions of subsection (7) of this
23 section, the Tax Commissioner may permit the Postal Inspector of the
24 United States Postal Service or his or her delegates to inspect the
25 reports or returns of any person filed pursuant to the Nebraska Revenue
26 Act of 1967 when information on the reports or returns is relevant to any
27 action or proceeding instituted or being considered by the United States
28 Postal Service against such person for the fraudulent use of the mails to
29 carry and deliver false and fraudulent tax returns to the Tax
30 Commissioner with the intent to defraud the State of Nebraska or to evade
31 the payment of Nebraska state taxes.

1 (9) Notwithstanding the provisions of subsection (7) of this
2 section, the Tax Commissioner may permit other tax officials of this
3 state to inspect the tax returns, reports, and applications filed under
4 sections 77-2701.04 to 77-2713, but such inspection shall be permitted
5 only for purposes of enforcing a tax law and only to the extent and under
6 the conditions prescribed by the rules and regulations of the Tax
7 Commissioner.

8 (10) Notwithstanding the provisions of subsection (7) of this
9 section, the Tax Commissioner may, upon request, provide the county board
10 of any county which has exercised the authority granted by section
11 81-3716 with a list of the names and addresses of the hotels located
12 within the county for which lodging sales tax returns have been filed or
13 for which lodging sales taxes have been remitted for the county's County
14 Visitors Promotion Fund under the Nebraska Visitors Development Act.

15 The information provided by the Tax Commissioner shall indicate only
16 the names and addresses of the hotels located within the requesting
17 county for which lodging sales tax returns have been filed for a
18 specified period and the fact that lodging sales taxes remitted by or on
19 behalf of the hotel have constituted a portion of the total sum remitted
20 by the state to the county for a specified period under the provisions of
21 the Nebraska Visitors Development Act. No additional information shall be
22 revealed.

23 (11)(a) Notwithstanding the provisions of subsection (7) of this
24 section, the Tax Commissioner shall, upon written request by the Auditor
25 of Public Accounts or the office of Legislative Audit, make tax returns
26 and tax return information open to inspection by or disclosure to the
27 Auditor of Public Accounts or employees of the office of Legislative
28 Audit for the purpose of and to the extent necessary in making an audit
29 of the Department of Revenue pursuant to section 50-1205 or 84-304.
30 Confidential tax returns and tax return information shall be audited only
31 upon the premises of the Department of Revenue. All audit workpapers

1 pertaining to the audit of the Department of Revenue shall be stored in a
2 secure place in the Department of Revenue.

3 (b) No employee of the Auditor of Public Accounts or the office of
4 Legislative Audit shall disclose to any person, other than another
5 Auditor of Public Accounts or office employee whose official duties
6 require such disclosure, any return or return information described in
7 the Nebraska Revenue Act of 1967 in a form which can be associated with
8 or otherwise identify, directly or indirectly, a particular taxpayer.

9 (c) Any person who violates the provisions of this subsection shall
10 be guilty of a Class I misdemeanor. For purposes of this subsection,
11 employee includes a former Auditor of Public Accounts or office of
12 Legislative Audit employee.

13 (12) For purposes of this subsection and subsections (11) and (14)
14 of this section:

15 (a) Disclosure means the making known to any person in any manner a
16 tax return or return information;

17 (b) Return information means:

18 (i) A taxpayer's identification number and (A) the nature, source,
19 or amount of his or her income, payments, receipts, deductions,
20 exemptions, credits, assets, liabilities, net worth, tax liability, tax
21 withheld, deficiencies, overassessments, or tax payments, whether the
22 taxpayer's return was, is being, or will be examined or subject to other
23 investigation or processing or (B) any other data received by, recorded
24 by, prepared by, furnished to, or collected by the Tax Commissioner with
25 respect to a return or the determination of the existence or possible
26 existence of liability or the amount of liability of any person for any
27 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
28 and

29 (ii) Any part of any written determination or any background file
30 document relating to such written determination; and

31 (c) Tax return or return means any tax or information return or

1 claim for refund required by, provided for, or permitted under sections
2 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf
3 of, or with respect to any person and any amendment or supplement
4 thereto, including supporting schedules, attachments, or lists which are
5 supplemental to or part of the filed return.

6 (13) Notwithstanding the provisions of subsection (7) of this
7 section, the Tax Commissioner shall, upon request, provide any
8 municipality which has adopted the local option sales tax under the Local
9 Option Revenue Act with a list of the names and addresses of the
10 retailers which have collected the local option sales tax for the
11 municipality. The request may be made annually and shall be submitted to
12 the Tax Commissioner on or before June 30 of each year. The information
13 provided by the Tax Commissioner shall indicate only the names and
14 addresses of the retailers. The Tax Commissioner may provide additional
15 information to a municipality so long as the information does not include
16 any data detailing the specific revenue, expenses, or operations of any
17 particular business.

18 (14)(a) Notwithstanding the provisions of subsection (7) of this
19 section, the Tax Commissioner shall, upon written request, provide an
20 individual certified under subdivision (b) of this subsection
21 representing a municipality which has adopted the local option sales and
22 use tax under the Local Option Revenue Act with confidential sales and
23 use tax returns and sales and use tax return information regarding
24 taxpayers that possess a sales tax permit and the amounts remitted by
25 such permitholders at locations within the boundaries of the requesting
26 municipality or with confidential business use tax returns and business
27 use tax return information regarding taxpayers that file a Nebraska and
28 Local Business Use Tax Return and the amounts remitted by such taxpayers
29 at locations within the boundaries of the requesting municipality. Any
30 written request pursuant to this subsection shall provide the Department
31 of Revenue with no less than ten business days to prepare the sales and

1 use tax returns and sales and use tax return information requested. The
2 individual certified under subdivision (b) of this subsection shall
3 review such returns and return information only upon the premises of the
4 department, except that such limitation shall not apply if the certifying
5 municipality has an agreement in effect under the Nebraska Advantage
6 Transformational Tourism and Redevelopment Act. In such case, the
7 individual certified under subdivision (b) of this subsection may request
8 that copies of such returns and return information be sent to him or her
9 by electronic transmission, secured in a manner as determined by the Tax
10 Commissioner ~~Such returns and return information shall be viewed only~~
11 ~~upon the premises of the department.~~

12 (b) Each municipality that seeks to request information under
13 subdivision (a) of this subsection shall certify to the Department of
14 Revenue one individual who is authorized by such municipality to make
15 such request and review the documents described in subdivision (a) of
16 this subsection. The individual may be a municipal employee or an
17 individual who contracts with the requesting municipality to provide
18 financial, accounting, or other administrative services.

19 (c) No individual certified by a municipality pursuant to
20 subdivision (b) of this subsection shall disclose to any person any
21 information obtained pursuant to a review under this subsection. An
22 individual certified by a municipality pursuant to subdivision (b) of
23 this subsection shall remain subject to this subsection after he or she
24 (i) is no longer certified or (ii) is no longer in the employment of or
25 under contract with the certifying municipality.

26 (d) Any person who violates the provisions of this subsection shall
27 be guilty of a Class I misdemeanor.

28 (e) The Department of Revenue shall not be held liable by any person
29 for an impermissible disclosure by a municipality or any agent or
30 employee thereof of any information obtained pursuant to a review under
31 this subsection.

1 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
2 Tax Commissioner may act for and on behalf of the people of the State of
3 Nebraska. The Tax Commissioner in his or her discretion may waive all or
4 part of any penalties provided by the provisions of such act or interest
5 on delinquent taxes specified in section 45-104.02, as such rate may from
6 time to time be adjusted.

7 (16)(a) The purpose of this subsection is to set forth the state's
8 policy for the protection of the confidentiality rights of all
9 participants in the system operated pursuant to the streamlined sales and
10 use tax agreement and of the privacy interests of consumers who deal with
11 model 1 sellers.

12 (b) For purposes of this subsection:

13 (i) Anonymous data means information that does not identify a
14 person;

15 (ii) Confidential taxpayer information means all information that is
16 protected under a member state's laws, regulations, and privileges; and

17 (iii) Personally identifiable information means information that
18 identifies a person.

19 (c) The state agrees that a fundamental precept for model 1 sellers
20 is to preserve the privacy of consumers by protecting their anonymity.
21 With very limited exceptions, a certified service provider shall perform
22 its tax calculation, remittance, and reporting functions without
23 retaining the personally identifiable information of consumers.

24 (d) The governing board of the member states in the streamlined
25 sales and use tax agreement may certify a certified service provider only
26 if that certified service provider certifies that:

27 (i) Its system has been designed and tested to ensure that the
28 fundamental precept of anonymity is respected;

29 (ii) Personally identifiable information is only used and retained
30 to the extent necessary for the administration of model 1 with respect to
31 exempt purchasers;

1 (iii) It provides consumers clear and conspicuous notice of its
2 information practices, including what information it collects, how it
3 collects the information, how it uses the information, how long, if at
4 all, it retains the information, and whether it discloses the information
5 to member states. Such notice shall be satisfied by a written privacy
6 policy statement accessible by the public on the web site of the
7 certified service provider;

8 (iv) Its collection, use, and retention of personally identifiable
9 information is limited to that required by the member states to ensure
10 the validity of exemptions from taxation that are claimed by reason of a
11 consumer's status or the intended use of the goods or services purchased;
12 and

13 (v) It provides adequate technical, physical, and administrative
14 safeguards so as to protect personally identifiable information from
15 unauthorized access and disclosure.

16 (e) The state shall provide public notification to consumers,
17 including exempt purchasers, of the state's practices relating to the
18 collection, use, and retention of personally identifiable information.

19 (f) When any personally identifiable information that has been
20 collected and retained is no longer required for the purposes set forth
21 in subdivision (16)(d)(iv) of this section, such information shall no
22 longer be retained by the member states.

23 (g) When personally identifiable information regarding an individual
24 is retained by or on behalf of the state, it shall provide reasonable
25 access by such individual to his or her own information in the state's
26 possession and a right to correct any inaccurately recorded information.

27 (h) If anyone other than a member state, or a person authorized by
28 that state's law or the agreement, seeks to discover personally
29 identifiable information, the state from whom the information is sought
30 should make a reasonable and timely effort to notify the individual of
31 such request.

1 (i) This privacy policy is subject to enforcement by the Attorney
2 General.

3 (j) All other laws and regulations regarding the collection, use,
4 and maintenance of confidential taxpayer information remain fully
5 applicable and binding. Without limitation, this subsection does not
6 enlarge or limit the state's authority to:

7 (i) Conduct audits or other reviews as provided under the agreement
8 and state law;

9 (ii) Provide records pursuant to the federal Freedom of Information
10 Act, disclosure laws with governmental agencies, or other regulations;

11 (iii) Prevent, consistent with state law, disclosure of confidential
12 taxpayer information;

13 (iv) Prevent, consistent with federal law, disclosure or misuse of
14 federal return information obtained under a disclosure agreement with the
15 Internal Revenue Service; and

16 (v) Collect, disclose, disseminate, or otherwise use anonymous data
17 for governmental purposes.

18 Sec. 2. Original section 77-2711, Revised Statutes Supplement,
19 2019, is repealed.