

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 74**

Introduced by Linehan, 39.

Read first time January 05, 2023

Committee: Revenue

1 A BILL FOR AN ACT relating to sales and use taxes; to amend sections  
2 77-2701, 77-2701.04, 77-2701.41, 77-2711, 77-2713, and 77-27,223,  
3 Revised Statutes Cumulative Supplement, 2022; to change provisions  
4 relating to purchasing agents; to harmonize provisions; to provide  
5 an operative date; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Cumulative Supplement,  
2 2022, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235,  
4 77-27,236, and 77-27,238 to 77-27,240 and section 4 of this act shall be  
5 known and may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Cumulative Supplement,  
7 2022, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and  
9 77-27,239 and section 4 of this act, unless the context otherwise  
10 requires, the definitions found in sections 77-2701.05 to 77-2701.55  
11 shall be used.

12 Sec. 3. Section 77-2701.41, Revised Statutes Cumulative Supplement,  
13 2022, is amended to read:

14 77-2701.41 Taxpayer means any person subject to a tax imposed by  
15 sections 77-2701 to 77-2713 and section 4 of this act.

16 Sec. 4. (1) The appointment of purchasing agents shall be  
17 recognized for the purpose of permitting a construction contractor to  
18 purchase materials tax free based on the buyer-based exemption of the  
19 contractor's client for items that are physically annexed to the  
20 structure and which subsequently belong to the client who is eligible for  
21 the buyer-based exemption. The appointment of purchasing agents shall be  
22 in writing and occur prior to having any buyer-based tax-exempt items  
23 annexed to real estate in the construction, improvement, or repair. The  
24 contractor who has been appointed as a purchasing agent may purchase the  
25 materials tax free or may apply for a refund of or use as a credit  
26 against a future use tax liability the tax paid on inventory items  
27 annexed to real estate in the construction, improvement, or repair of a  
28 project that belongs to the client who is eligible for the buyer-based  
29 exemption.

30 (2) A client described in subsection (1) of this section which  
31 enters into a contract of construction, improvement, or repair with

1 respect to buyer-based tax-exempt items annexed to real estate without  
2 first issuing a purchasing agent authorization to a construction  
3 contractor prior to such items being annexed to real estate in the  
4 project may apply to the Tax Commissioner for a refund of any sales and  
5 use tax paid by the contractor on such items physically annexed to real  
6 estate in the construction, improvement, or repair.

7       Sec. 5. Section 77-2711, Revised Statutes Cumulative Supplement,  
8 2022, is amended to read:

9       77-2711 (1)(a) The Tax Commissioner shall enforce sections  
10 77-2701.04 to 77-2713 and section 4 of this act and may prescribe, adopt,  
11 and enforce rules and regulations relating to the administration and  
12 enforcement of such sections.

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

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

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

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

27       (4) The Tax Commissioner or any person authorized in writing by him  
28 or her may examine the books, papers, records, and equipment of any  
29 person selling property and any person liable for the use tax and may  
30 investigate the character of the business of the person in order to  
31 verify the accuracy of any return made or, if no return is made by the

1 person, to ascertain and determine the amount required to be paid. In the  
2 examination of any person selling property or of any person liable for  
3 the use tax, an inquiry shall be made as to the accuracy of the reporting  
4 of city and county sales and use taxes for which the person is liable  
5 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,  
6 and 77-6403 and the accuracy of the allocation made between the various  
7 counties, cities, villages, and municipal counties of the tax due. The  
8 Tax Commissioner may make or cause to be made copies of resale or  
9 exemption certificates and may pay a reasonable amount to the person  
10 having custody of the records for providing such copies.

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

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

22 (7) It shall be a Class I misdemeanor for the Tax Commissioner or  
23 any official or employee of the Tax Commissioner, the State Treasurer, or  
24 the Department of Administrative Services to make known in any manner  
25 whatever the business affairs, operations, or information obtained by an  
26 investigation of records and activities of any retailer or any other  
27 person visited or examined in the discharge of official duty or the  
28 amount or source of income, profits, losses, expenditures, or any  
29 particular thereof, set forth or disclosed in any return, or to permit  
30 any return or copy thereof, or any book containing any abstract or  
31 particulars thereof to be seen or examined by any person not connected

1 with the Tax Commissioner. Nothing in this section shall be construed to  
2 prohibit (a) the delivery to a taxpayer, his or her duly authorized  
3 representative, or his or her successors, receivers, trustees, executors,  
4 administrators, assignees, or guarantors, if directly interested, of a  
5 certified copy of any return or report in connection with his or her tax,  
6 (b) the publication of statistics so classified as to prevent the  
7 identification of particular reports or returns and the items thereof,  
8 (c) the inspection by the Attorney General, other legal representative of  
9 the state, or county attorney of the reports or returns of any taxpayer  
10 when either (i) information on the reports or returns is considered by  
11 the Attorney General to be relevant to any action or proceeding  
12 instituted by the taxpayer or against whom an action or proceeding is  
13 being considered or has been commenced by any state agency or the county  
14 or (ii) the taxpayer has instituted an action to review the tax based  
15 thereon or an action or proceeding against the taxpayer for collection of  
16 tax or failure to comply with the Nebraska Revenue Act of 1967 is being  
17 considered or has been commenced, (d) the furnishing of any information  
18 to the United States Government or to states allowing similar privileges  
19 to the Tax Commissioner, (e) the disclosure of information and records to  
20 a collection agency contracting with the Tax Commissioner pursuant to  
21 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a  
22 transaction of information and records concerning the transaction between  
23 the taxpayer and the other party, (g) the disclosure of information  
24 pursuant to section 77-27,195, 77-5731, 77-6837, 77-6839, or 77-6928, or  
25 (h) the disclosure of information to the Department of Labor necessary  
26 for the administration of the Employment Security Law, the Contractor  
27 Registration Act, or the Employee Classification Act.

28 (8) Notwithstanding the provisions of subsection (7) of this  
29 section, the Tax Commissioner may permit the Postal Inspector of the  
30 United States Postal Service or his or her delegates to inspect the  
31 reports or returns of any person filed pursuant to the Nebraska Revenue

1 Act of 1967 when information on the reports or returns is relevant to any  
2 action or proceeding instituted or being considered by the United States  
3 Postal Service against such person for the fraudulent use of the mails to  
4 carry and deliver false and fraudulent tax returns to the Tax  
5 Commissioner with the intent to defraud the State of Nebraska or to evade  
6 the payment of Nebraska state taxes.

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

14 (10) Notwithstanding the provisions of subsection (7) of this  
15 section, the Tax Commissioner may, upon request, provide the county board  
16 of any county which has exercised the authority granted by section  
17 81-3716 with a list of the names and addresses of the hotels located  
18 within the county for which lodging sales tax returns have been filed or  
19 for which lodging sales taxes have been remitted for the county's County  
20 Visitors Promotion Fund under the Nebraska Visitors Development Act.

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

29 (11)(a) Notwithstanding the provisions of subsection (7) of this  
30 section, the Tax Commissioner shall, upon written request by the Auditor  
31 of Public Accounts or the office of Legislative Audit, make tax returns

1 and tax return information open to inspection by or disclosure to the  
2 Auditor of Public Accounts or employees of the office of Legislative  
3 Audit for the purpose of and to the extent necessary in making an audit  
4 of the Department of Revenue pursuant to section 50-1205 or 84-304.  
5 Confidential tax returns and tax return information shall be audited only  
6 upon the premises of the Department of Revenue. All audit workpapers  
7 pertaining to the audit of the Department of Revenue shall be stored in a  
8 secure place in the Department of Revenue.

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

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

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

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

23 (b) Return information means:

24 (i) A taxpayer's identification number and (A) the nature, source,  
25 or amount of his or her income, payments, receipts, deductions,  
26 exemptions, credits, assets, liabilities, net worth, tax liability, tax  
27 withheld, deficiencies, overassessments, or tax payments, whether the  
28 taxpayer's return was, is being, or will be examined or subject to other  
29 investigation or processing or (B) any other data received by, recorded  
30 by, prepared by, furnished to, or collected by the Tax Commissioner with  
31 respect to a return or the determination of the existence or possible

1 existence of liability or the amount of liability of any person for any  
2 tax, penalty, interest, fine, forfeiture, or other imposition or offense;  
3 and

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

6 (c) Tax return or return means any tax or information return or  
7 claim for refund required by, provided for, or permitted under sections  
8 77-2701 to 77-2713 and section 4 of this act which is filed with the Tax  
9 Commissioner by, on behalf of, or with respect to any person and any  
10 amendment or supplement thereto, including supporting schedules,  
11 attachments, or lists which are supplemental to or part of the filed  
12 return.

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

25 (14)(a) Notwithstanding the provisions of subsection (7) of this  
26 section, the Tax Commissioner shall, upon written request, provide an  
27 individual certified under subdivision (b) of this subsection  
28 representing a municipality which has adopted the local option sales and  
29 use tax under the Local Option Revenue Act with confidential sales and  
30 use tax returns and sales and use tax return information regarding  
31 taxpayers that possess a sales tax permit and the amounts remitted by

1 such permitholders at locations within the boundaries of the requesting  
2 municipality or with confidential business use tax returns and business  
3 use tax return information regarding taxpayers that file a Nebraska and  
4 Local Business Use Tax Return and the amounts remitted by such taxpayers  
5 at locations within the boundaries of the requesting municipality. Any  
6 written request pursuant to this subsection shall provide the Department  
7 of Revenue with no less than ten business days to prepare the sales and  
8 use tax returns and sales and use tax return information requested. The  
9 individual certified under subdivision (b) of this subsection shall  
10 review such returns and return information only upon the premises of the  
11 department, except that such limitation shall not apply if the certifying  
12 municipality has an agreement in effect under the Nebraska Advantage  
13 Transformational Tourism and Redevelopment Act. In such case, the  
14 individual certified under subdivision (b) of this subsection may request  
15 that copies of such returns and return information be sent to him or her  
16 by electronic transmission, secured in a manner as determined by the Tax  
17 Commissioner.

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

25 (c) No individual certified by a municipality pursuant to  
26 subdivision (b) of this subsection shall disclose to any person any  
27 information obtained pursuant to a review under this subsection. An  
28 individual certified by a municipality pursuant to subdivision (b) of  
29 this subsection shall remain subject to this subsection after he or she  
30 (i) is no longer certified or (ii) is no longer in the employment of or  
31 under contract with the certifying municipality.

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

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

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

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

18 (b) For purposes of this subsection:

19 (i) Anonymous data means information that does not identify a  
20 person;

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

23 (iii) Personally identifiable information means information that  
24 identifies a person.

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

30 (d) The governing board of the member states in the streamlined  
31 sales and use tax agreement may certify a certified service provider only

1 if that certified service provider certifies that:

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

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

7 (iii) It provides consumers clear and conspicuous notice of its  
8 information practices, including what information it collects, how it  
9 collects the information, how it uses the information, how long, if at  
10 all, it retains the information, and whether it discloses the information  
11 to member states. Such notice shall be satisfied by a written privacy  
12 policy statement accessible by the public on the website of the certified  
13 service provider;

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

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

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

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

29 (g) When personally identifiable information regarding an individual  
30 is retained by or on behalf of the state, it shall provide reasonable  
31 access by such individual to his or her own information in the state's

1 possession and a right to correct any inaccurately recorded information.

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

7 (i) This privacy policy is subject to enforcement by the Attorney  
8 General.

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

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

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

17 (iii) Prevent, consistent with state law, disclosure of confidential  
18 taxpayer information;

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

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

24 Sec. 6. Section 77-2713, Revised Statutes Cumulative Supplement,  
25 2022, is amended to read:

26 77-2713 (1) Any person required under the provisions of sections  
27 77-2701.04 to 77-2713 and section 4 of this act to collect, account for,  
28 or pay over any tax imposed by the Nebraska Revenue Act of 1967 who  
29 willfully fails to collect or truthfully account for or pay over such tax  
30 and any person who willfully attempts in any manner to evade any tax  
31 imposed by such provisions of such act or the payment thereof shall, in

1 addition to other penalties provided by law, be guilty of a Class IV  
2 felony.

3 (2) Any person who willfully aids or assists in, procures, counsels,  
4 or advises the preparation or presentation of a false or fraudulent  
5 return, affidavit, claim, or document under or in connection with any  
6 matter arising under sections 77-2701.04 to 77-2713 and section 4 of this  
7 act shall, whether or not such falsity or fraud is with the knowledge or  
8 consent of the person authorized or required to present such return,  
9 affidavit, claim, or document, be guilty of a Class IV felony.

10 (3) A person who engages in business as a retailer in this state  
11 without a permit or permits or after a permit has been suspended and each  
12 officer of any corporation which so engages in business shall be guilty  
13 of a Class IV misdemeanor. Each day of such operation shall constitute a  
14 separate offense.

15 (4) Any person who gives a resale certificate to the seller for  
16 property which he or she knows, at the time of purchase, is purchased for  
17 the purpose of use rather than for the purpose of resale, lease, or  
18 rental by him or her in the regular course of business shall be guilty of  
19 a Class IV misdemeanor.

20 (5) Any violation of the provisions of sections 77-2701.04 to  
21 77-2713 and section 4 of this act, except as otherwise provided, shall be  
22 a Class IV misdemeanor.

23 (6) Any prosecution under sections 77-2701.04 to 77-2713 and section  
24 4 of this act shall be instituted within three years after the commission  
25 of the offense. If such offense is the failure to do an act required by  
26 any of such sections to be done before a certain date, a prosecution for  
27 such offense may be commenced not later than three years after such date.  
28 The failure to do any act required by sections 77-2701.04 to 77-2713 and  
29 section 4 of this act shall be deemed an act committed in part at the  
30 principal office of the Tax Commissioner. Any prosecution under the  
31 provisions of the Nebraska Revenue Act of 1967 may be conducted in any

1 county where the person or corporation to whose liability the proceeding  
2 relates resides or has a place of business or in any county in which such  
3 criminal act is committed. The Attorney General shall have concurrent  
4 jurisdiction with the county attorney in the prosecution of any offenses  
5 under the provisions of the Nebraska Revenue Act of 1967.

6 Sec. 7. Section 77-27,223, Revised Statutes Cumulative Supplement,  
7 2022, is amended to read:

8 77-27,223 A county may raise revenue by levying and collecting a  
9 license or occupation tax on any person, partnership, limited liability  
10 company, corporation, or business engaged in the sale of admissions to  
11 recreational, cultural, entertainment, or concert events that are subject  
12 to sales tax under sections 77-2701.04 to 77-2713 and section 4 of this  
13 act that occur outside any incorporated municipality, but within the  
14 boundary limits of the county. The tax shall be uniform in respect to the  
15 class upon which it is imposed. The tax shall be based upon a certain  
16 percentage of gross receipts from sales in the county of the person,  
17 partnership, limited liability company, corporation, or business, and may  
18 include sales of other goods and services at such locations and events,  
19 not to exceed one and one-half percent. A county may not impose the tax  
20 on sales that are within an incorporated city or village. No county shall  
21 levy and collect a license or occupation tax under this section unless  
22 approved by a majority of those voting on the question at a special,  
23 primary, or general election.

24 Sec. 8. This act becomes operative on January 1, 2024.

25 Sec. 9. Original sections 77-2701, 77-2701.04, 77-2701.41, 77-2711,  
26 77-2713, and 77-27,223, Revised Statutes Cumulative Supplement, 2022, are  
27 repealed.