

LEGISLATIVE BILL 887

Approved by the Governor March 6, 2006

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 77-2701.14 and 77-2701.43, Reissue Revised Statutes of Nebraska, and sections 13-324, 77-2712.05, and 77-27,143, Revised Statutes Supplement, 2005; to change provisions relating to sales and use tax; to change provisions relating to the streamlined sales and use tax agreement; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 13-324, Revised Statutes Supplement, 2005, is amended to read:

13-324 (1) The Tax Commissioner shall administer all sales and use taxes adopted under section 13-319. The Tax Commissioner may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The county shall furnish a certified copy of the adopting or repealing resolution to the Tax Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the adopted resolution. The Tax Commissioner shall provide at least sixty days' notice of the adoption of the tax or a change in the rate to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The county shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days before the termination date that the termination date stated in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the resolution. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the department or other electronic means.

(3) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee.

(4) The Tax Commissioner shall collect the sales and use tax concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the counties imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three-percent administrative fee shall be deposited in the state General Fund.

(5) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 13-319.

(6) Boundary changes or the adoption of a sales and use tax by an incorporated municipality that affects any tax imposed by this section shall be governed as provided in subsections (3) through ~~(9)~~ (10) of section 77-27,143.

Sec. 2. Section 77-2701.14, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.14 Entity-based exemption means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

Sec. 3. Section 77-2701.43, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.43 Use-based exemption means an exemption based on the ~~purchaser's ultimate use of the product~~ a specified use of the product by the purchaser.

Sec. 4. Section 77-2712.05, Revised Statutes Supplement, 2005, is amended to read:

77-2712.05 By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

(a) Limiting the number of state rates;

(b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;

(b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;

(c) Allowances a seller can take for bad debts as provided in section 77-2708; and

(d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

(i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of ~~the~~ any additional remittance ~~shall~~ may be determined through a calculation method rather than actual collections. Any additional remittance and shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to

collect and remit sales and use taxes for all member states. Under the system:

- (a) A retailer registering under the agreement is registered in this state;
- (b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;
- (c) A written signature from the retailer is not required;
- (d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;
- (e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the retailer of its liability for remitting to the proper states any taxes collected;
- (f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:
 - (i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;
 - (ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and
 - (iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; and
- (g) Sellers who register within twelve months after this state's participation in the agreement first approval of a certified service provider are relieved from liability, including the local option tax, for tax not collected or paid if the seller was not registered during the twelve months prior to this state's participation in the agreement, between October 1, 2004, and September 30, 2005. Such relief from liability shall be in accordance with the terms of the agreement;
- (5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;
- (6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144 that require the following:
 - (a) No variation between the state and local tax bases;
 - (b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
 - (c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and
 - (d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;
- (7) Complete a taxability matrix approved by the governing board.
 - (a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.
 - (b) The entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board.
 - (c) Sellers and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix;
- (8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;
- (9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;
- (10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and
- (11) Advisory councils. The state agrees to the appointment of an

advisory council of private-sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Sec. 5. Section 77-27,143, Revised Statutes Supplement, 2005, is amended to read:

77-27,143 (1) The administration of all sales and use taxes adopted under the Local Option Revenue Act shall be by the Tax Commissioner who may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the act for the making of returns and for the ascertainment, assessment, and collection of taxes imposed under such act. The incorporated municipality shall furnish a certified copy of the adopting or repealing ordinance to the Tax Commissioner in accordance with such rules and regulations as he or she may adopt and promulgate. For ordinances passed after October 1, 1969, the effective date shall be the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the change in tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For ordinances containing a termination date and passed after October 1, 1986, the termination date shall be the first day of a calendar quarter. The incorporated municipality shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days prior to the termination date that the termination date stated in the ordinance is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the department or by other electronic means.

(3) For sales and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the Tax Commissioner and sixty days' notice to sellers.

(4) The state shall provide and maintain a data base that describes boundary changes for all local taxing jurisdictions. This data base shall include a description of any change and the effective date of the change for sales and use tax purposes.

(5) The state shall provide and maintain a data base of all sales and use tax rates for all of the local jurisdictions levying taxes within the state. For the identification of counties, cities, and villages, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology.

(6) The state shall provide and maintain a data base that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. For purposes of the streamlined sales and use tax agreement, the data base shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code of the purchaser applicable to a purchase.

(7) For purposes of the streamlined sales and use tax agreement, the state shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system may provide address-based boundary data base records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (6) of this section. The data base records shall be in the same approved format as the data base records pursuant to subsection (6) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a), as such

act existed on January 1, 2003. The governing board may allow a member state to require sellers that register under the agreement to use an address-based system boundary data base provided by that member state. If any member state develops an address-based assignment system pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119, as such act existed on January 1, 2003, a seller may use that system in place of the system provided for in subsection (6) of this section addressed-based boundary data base pursuant to the agreement, a seller or certified service provider may use those data base records in place of the five-digit and nine-digit zip code data base records provided for in subsection (6) of this section. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based boundary data base after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

(8) The state may certify vendor-provided address-based boundary data bases for assigning tax rates and jurisdictions. The data bases shall be in the same approved format as the data base records pursuant to subsection (7) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act existed on January 1, 2003. If a state certifies a vendor-provided address-based boundary data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection (6) or (7) of this section. Vendors providing address-based boundary data bases may request certification of their data bases from the governing board. Certification by the governing board does not replace the requirement that the data bases be certified by the states individually.

~~(8)~~ (9) Pursuant to the streamlined sales and use tax agreement, the state shall relieve retailers and certified service providers using data bases pursuant to subsection (6) or (7) of this section from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the retailer or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. A After providing adequate notice determined by the governing board, a member state that provides an address-based system boundary data base for assigning taxing jurisdictions pursuant to subsection (7) or (8) of this section or pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119, as such act existed on January 1, 2003, will not be required to provide liability relief for errors resulting from the reliance on the information provided by the member state under the provisions of subsection (6) of this section may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection (6) of this section. If a seller demonstrates that requiring the use of the address-based boundary data base would create an undue hardship, the state and the governing board may extend the relief of liability to such seller for a designated period of time.

~~(9)~~ (10) The electronic data bases provided for in this section shall be in a downloadable format approved by the governing board pursuant to the streamlined sales and use tax agreement. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to and subject to all provisions of this section. The data bases shall be provided at no cost to the user of the data base. The provisions of subsections (6) and (7) of this section do not apply when the purchased product is received by the purchaser at the business location of the seller.

~~(10)~~ (11) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee.

(12) A seller that did not have a requirement to register in this state prior to registering pursuant to the agreement or a certified service

provider shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by this section.

Sec. 6. Original sections 77-2701.14 and 77-2701.43, Reissue Revised Statutes of Nebraska, and sections 13-324, 77-2712.05, and 77-27,143, Revised Statutes Supplement, 2005, are repealed.