

LEGISLATIVE BILL 89

Approved by the Governor March 18, 2009

Introduced by Cornett, 45.

FOR AN ACT relating to the Tobacco Products Tax Act; to amend sections 77-4001, 77-4002, 77-4008, 77-4014, 77-4017, and 77-4025, Reissue Revised Statutes of Nebraska; to change the tax on snuff; to define a term; to eliminate obsolete provisions; to harmonize provisions; to provide an operative date; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-4001, Reissue Revised Statutes of Nebraska, is amended to read:

77-4001 Sections 77-4001 to 77-4025 and section 3 of this act shall be known and may be cited as the Tobacco Products Tax Act.

Sec. 2. Section 77-4002, Reissue Revised Statutes of Nebraska, is amended to read:

77-4002 For purposes of the Tobacco Products Tax Act, unless the context otherwise requires, the definitions found in sections 77-4003 to 77-4007 and section 3 of this act shall be used.

Sec. 3. Snuff means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Sec. 4. Section 77-4008, Reissue Revised Statutes of Nebraska, is amended to read:

77-4008 ~~(1)~~ (1)(a) A tax is hereby imposed upon the first owner of tobacco products to be sold in this state. ~~The tax~~

(b) The tax on snuff shall be forty-four cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce. Such tax shall be computed based on the net weight as listed by the manufacturer.

(c) The tax on tobacco products other than snuff shall be twenty percent of ~~(a)~~ (i) the purchase price of such tobacco products paid by the first owner or ~~(b)~~ (ii) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others. Such tax

(d) The tax on tobacco products shall be in addition to all other taxes.

(2) Whenever any person who is licensed under section 77-4009 purchases tobacco products from another person licensed under section 77-4009, the seller shall be liable for the payment of the tax.

(3) ~~On and after October 1, 2002, and continuing until October 1, 2004, the Tax Commissioner shall remit the amount collected pursuant to this section to the State Treasurer, and the State Treasurer shall credit three-fourths of such amount to the General Fund and one-fourth of such amount to the Cash Reserve Fund. On and after October 1, 2004, amounts collected~~ Amounts collected pursuant to this section shall be used and distributed pursuant to section 77-4025.

Sec. 5. Section 77-4014, Reissue Revised Statutes of Nebraska, is amended to read:

77-4014 (1) ~~On or before the tenth day of each calendar month, commencing on or after January 1, 1988,~~ every person licensed under subsection (1) of section 77-4009 shall file a return with the Tax Commissioner showing either the quantity and the price of each tobacco product brought or caused to be brought into this state for sale or the quantity and the price of each tobacco product made, manufactured, or fabricated in this state for sale in this state, whichever is applicable, during the preceding calendar month. For snuff, such return shall also include the net weight as listed by the manufacturer.

(2) Every person licensed pursuant to subsection (2) of section 77-4009 shall, in the manner described in subsection (1) of this section, file a return showing in detail the different kinds, quantity, and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by such retailers during the preceding calendar month. For snuff, such return shall also include the net weight as listed by the manufacturer.

(3) Returns shall be made upon forms furnished and prescribed by the Tax Commissioner. Each return shall be accompanied by a remittance for the full tax liability shown, less an amount of such liability equal to any amount allowed a payer of the sales and use tax pursuant to subdivision (1)(d) of section 77-2708 as compensation to reimburse the licensee for his or her expenses incurred in complying with the Tobacco Products Tax Act.

Sec. 6. Section 77-4017, Reissue Revised Statutes of Nebraska, is amended to read:

77-4017 (1) Every licensee shall keep complete and accurate records for all places of business, including itemized invoices of tobacco products (a) held, purchased, manufactured, or brought in or caused to be brought into this state or (b) for a licensee located outside of this state, shipped or transported to retailers in this state. For snuff, such records shall also include the net weight as listed by the manufacturer.

(2) All books, records, and other papers and documents required to be kept by this section shall be preserved for a period of at least three years after the due date of the tax imposed by the Tobacco Products Tax Act unless the Tax Commissioner, in writing, authorizes their destruction or disposal at an earlier date.

(3) At any time during usual business hours, duly authorized agents or employees of the Tax Commissioner may enter any place of business of a licensee and inspect the premises, the records required to be kept pursuant to this section, and the tobacco products contained in such place of business for purposes of determining whether or not such licensee is in full compliance with the act. Refusal to permit such inspection by a duly authorized agent or employee of the Tax Commissioner shall be grounds for revocation, cancellation, or suspension of the license.

Sec. 7. Section 77-4025, Reissue Revised Statutes of Nebraska, is amended to read:

77-4025 There is hereby created a cash fund in the Department of Revenue to be known as the Tobacco Products Administration Cash Fund. ~~Except as otherwise provided in section 77-4008, all~~ All revenue collected or received by the Tax Commissioner from the license fees and taxes imposed by the Tobacco Products Tax Act shall be remitted to the State Treasurer for credit to the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund. Credits and refunds allowed under the act shall be paid from the Tobacco Products Administration Cash Fund. Any receipts, after credits and refunds, in excess of the amounts sufficient to cover the costs of administration may be transferred to the General Fund at the direction of the Legislature. ~~The State Treasurer shall transfer two million five hundred thousand dollars from the Tobacco Products Administration Cash Fund to the General Fund within fifteen days after November 1, 2002.~~ Any money in the Tobacco Products Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 8. This act becomes operative on October 1, 2009.

Sec. 9. Original sections 77-4001, 77-4002, 77-4008, 77-4014, 77-4017, and 77-4025, Reissue Revised Statutes of Nebraska, are repealed.