

LEGISLATIVE BILL 237

Approved by the Governor May 08, 2019

Introduced by Crawford, 45; Blood, 3.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2703 and 77-5601, Reissue Revised Statutes of Nebraska; to change provisions relating to sales and use tax collection fees; to authorize the use of certain fees for revenue enforcement; 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 77-2703, Reissue Revised Statutes of Nebraska, is amended to read:

77-2703 (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state; the gross receipts of every person engaged as a public utility, as a community antenna television service operator, or as a satellite service operator, any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2701.16; the gross receipts from the sale of admissions in this state; the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; the gross receipts from the provision of services defined in subsection (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) of section 77-2701.16. Except as provided in section 77-2701.03, when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) 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, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, for periods of one year or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer as provided in the Motor Vehicle Registration Act or by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not register such motor vehicle, semitrailer, or trailer for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax, all of which shall be deposited in the county general fund, plus an additional amount equal to one-half of one percent of all amounts in excess of six thousand dollars remitted each month. Prior to January 1, 2023, fifty percent of such additional amount shall be deposited in the county general fund and fifty percent of such additional amount shall be deposited in the county road fund. On and after January 1, 2023, seventy-five percent of such additional amount shall be deposited in the county general fund and twenty-five percent of such additional amount shall be deposited in the county road fund. In any county with a population of one hundred fifty thousand inhabitants or more, the county treasurer shall remit one dollar of his or her collection fee for each of the first five thousand motor vehicles, semitrailers, or trailers registered with such county treasurer on or after January 1, 2020, to the State Treasurer for credit to the Department of Revenue Enforcement Fund. The Department of Motor Vehicles, for its collection fee, shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales

tax. The collection fee for the county treasurer or the Department of Motor Vehicles shall be forfeited if the county treasurer or ~~department~~ ~~Department of Motor Vehicles~~ violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not register such motorboat within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k)(i) The tax imposed by this section on the sale of an all-terrain vehicle as defined in section 60-103 or a utility-type vehicle as defined in section 60-135.01 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 at the time the purchaser makes application for the certificate of title for the all-terrain vehicle or utility-type vehicle. At the time of the sale of an all-terrain vehicle or a utility-type vehicle, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not obtain a certificate of title for such all-terrain vehicle or utility-type vehicle within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of an all-terrain vehicle or a utility-type vehicle, the tax shall be collected by the lessor on the rental or lease price.

(iii) County treasurers are appointed as sales and use tax collectors for all sales of all-terrain vehicles or utility-type vehicles made outside of this state to purchasers or users of all-terrain vehicles or utility-type vehicles which are required to have a certificate of title in this state. The county treasurer shall collect the applicable use tax from the purchaser of an all-terrain vehicle or a utility-type vehicle purchased outside of this state at the time application for a certificate of title is made. The full use tax on the purchase price shall be collected by the county treasurer if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate

less than the tax imposed in this state, use tax must be collected on the difference as a condition for obtaining a certificate of title in this state.

(1) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal, the advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly.

Sec. 2. Section 77-5601, Reissue Revised Statutes of Nebraska, is amended to read:

77-5601 (1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the

person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(d) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to section 77-367 shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers of returns, underreporters, nonpayers of taxes, and improper or fraudulent payments.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from in-state taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Transfers may be made from the Department of Revenue Enforcement Fund to the General Fund at the direction of the Legislature. The Department of Revenue Enforcement Fund may receive transfers from the Civic and Community Center Financing Fund at the direction of the Legislature for the purpose of administering the Sports Arena Facility Financing Assistance Act. The Department of Revenue Enforcement Fund shall include any money credited to the fund under section 77-2703, and such money shall be used by the Department of Revenue to defray the costs incurred to implement this legislative bill. Any money in the Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology 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. The Department of Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes,

individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Sec. 3. This act becomes operative on January 1, 2020.

Sec. 4. Original sections 77-2703 and 77-5601, Reissue Revised Statutes of Nebraska, are repealed.