

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1310

Introduced by Albrecht, 17.

Read first time January 17, 2024

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-3005, Reissue Revised Statutes of Nebraska, and section 77-382,
- 3 Revised Statutes Cumulative Supplement, 2022; to adopt the
- 4 Advertising Services Tax Act; to eliminate certain sales and use tax
- 5 exemptions; to harmonize provisions; to provide an operative date;
- 6 to repeal the original sections; to outright repeal section
- 7 77-2704.38, Reissue Revised Statutes of Nebraska; and to declare an
- 8 emergency.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and may be
2 cited as the Advertising Services Tax Act.

3 Sec. 2. For purposes of the Advertising Services Tax Act:

4 (1) Any term shall have the same meaning as used in Chapter 77,
5 article 27, except as otherwise defined in the Advertising Services Tax
6 Act;

7 (2) Advertising services means all services, including digital
8 advertising services, directly related to the creation, preparation,
9 production, or dissemination of advertisements. The term includes, but is
10 not limited to, layout, art direction, graphic design, mechanical
11 preparation, production supervision, placement, and rendering advice to a
12 client concerning the best methods of advertising that client's products
13 or services. The term also includes online referrals, search engine
14 marketing and lead generation optimization, web campaign planning, the
15 acquisition of advertising space in the Internet media, and the
16 monitoring and evaluation of website traffic for purposes of determining
17 the effectiveness of an advertising campaign. The term does not include
18 web hosting services and domain name registration or the services of a
19 news media entity;

20 (3) Assessable base means the portion of gross advertising revenue
21 that is derived from sales to customers in Nebraska which are delivered
22 or provided to a location within Nebraska according to the sourcing rules
23 in subsections (2) and (3) of section 77-2734.14. A digital advertising
24 service shall be deemed to have been provided within Nebraska if it is
25 received on a user's device having an IP address located within Nebraska;

26 (4) Digital advertising services means advertising services on a
27 digital interface. The term includes advertisements in the form of banner
28 advertising, search engine advertising, interstitial advertising, and
29 other comparable advertising services;

30 (5) Digital interface means any type of software, including any part
31 of an Internet website or application that a user is able to access;

1 (6) Gross advertising revenue means income or revenue from
2 advertising services sourced to the United States using the sourcing
3 rules described in subdivision (3) of this section before any expenses or
4 taxes, computed according to generally accepted accounting principles;

5 (7) IP address means a unique string of characters or other
6 identifier assigned to each device connected to a network for
7 communication;

8 (8) News media entity means an entity engaged primarily in the
9 business of news gathering, reporting, or publishing articles or
10 commentary about news, current events, culture, or other matters of
11 public interest. The term does not include an entity that is primarily an
12 aggregator or republisher of third-party content;

13 (9) Person has the same meaning as in section 77-2701.25;

14 (10) Reporting period means the calendar year on which a report is
15 based; and

16 (11) User means a person or individual who accesses a digital
17 interface with a device.

18 Sec. 3. (1) A tax is imposed on a person that is subject to the
19 Internal Revenue Code or a group of persons subject to the Internal
20 Revenue Code that are part of the same unitary group or would otherwise
21 be members of the same unitary group, if incorporated, that are doing
22 business in Nebraska and whose combined gross advertising revenue exceeds
23 one billion dollars.

24 (2) The rate of the tax imposed under this section is seven and one-
25 half percent of a person's assessable base for the reporting period.

26 Sec. 4. The provisions of sections 77-2714 to 77-27,135 relating to
27 deficiencies, penalties, interest, the collection of delinquent amounts,
28 confidentiality, refunds, and appeal procedures for the tax imposed by
29 section 77-2734.02 shall also apply to the tax imposed by section 3 of
30 this act.

31 Sec. 5. The Tax Commissioner may adopt and promulgate rules and

1 regulations necessary to implement, administer, and enforce the
2 Advertising Services Tax Act.

3 Sec. 6. Section 77-382, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 77-382 (1) The department shall prepare a tax expenditure report
6 describing (a) the basic provisions of the Nebraska tax laws, (b) the
7 actual or estimated revenue loss caused by the exemptions, deductions,
8 exclusions, deferrals, credits, and preferential rates in effect on July
9 1 of each year and allowed under Nebraska's tax structure and in the
10 property tax, (c) the actual or estimated revenue loss caused by failure
11 to impose sales and use tax on services purchased for nonbusiness use,
12 and (d) the elements which make up the tax base for state and local
13 income, including income, sales and use, property, and miscellaneous
14 taxes.

15 (2) The department shall review the major tax exemptions for which
16 state general funds are used to reduce the impact of revenue lost due to
17 a tax expenditure. The report shall indicate an estimate of the amount of
18 the reduction in revenue resulting from the operation of all tax
19 expenditures. The report shall list each tax expenditure relating to
20 sales and use tax under the following categories:

21 (a) Agriculture, which shall include a separate listing for the
22 following items: Agricultural machinery; agricultural chemicals; seeds
23 sold to commercial producers; water for irrigation and manufacturing;
24 commercial artificial insemination; mineral oil as dust suppressant;
25 animal grooming; oxygen for use in aquaculture; animal life whose
26 products constitute food for human consumption; and grains;

27 (b) Business across state lines, which shall include a separate
28 listing for the following items: Property shipped out-of-state;
29 fabrication labor for items to be shipped out-of-state; property to be
30 transported out-of-state; property purchased in other states to be used
31 in Nebraska; aircraft delivery to an out-of-state resident or business;

1 state reciprocal agreements for industrial machinery; and property taxed
2 in another state;

3 (c) Common carrier and logistics, which shall include a separate
4 listing for the following items: Railroad rolling stock and repair parts
5 and services; common or contract carriers and repair parts and services;
6 common or contract carrier accessories; and common or contract carrier
7 safety equipment;

8 (d) Consumer goods, which shall include a separate listing for the
9 following items: Motor vehicles and motorboat trade-ins; merchandise
10 trade-ins; certain medical equipment and medicine; newspapers;
11 laundromats; telefloral deliveries; motor vehicle discounts for the
12 disabled; and political campaign fundraisers;

13 (e) Energy, which shall include a separate listing for the following
14 items: Motor fuels; energy used in industry; energy used in agriculture;
15 aviation fuel; and minerals, oil, and gas severed from real property;

16 (f) Food, which shall include a separate listing for the following
17 items: Food for home consumption; Supplemental Nutrition Assistance
18 Program; school lunches; meals sold by hospitals; meals sold by
19 institutions at a flat rate; food for the elderly, handicapped, and
20 Supplemental Security Income recipients; and meals sold by churches;

21 (g) General business, which shall include a separate listing for the
22 following items: Component and ingredient parts; manufacturing machinery;
23 containers; film rentals; molds and dies; syndicated programming;
24 intercompany sales; intercompany leases; sale of a business or farm
25 machinery; and transfer of property in a change of business ownership;

26 (h) Lodging and shelter, which shall include a separate listing for
27 the following item: Room rentals by certain institutions;

28 (i) Miscellaneous, which shall include a separate listing for the
29 following items: Cash discounts and coupons; separately stated finance
30 charges; casual sales; lease-to-purchase agreements; and separately
31 stated taxes;

1 (j) Nonprofits, governments, and exempt entities, which shall
2 include a separate listing for the following items: Purchases by
3 political subdivisions of the state; purchases by churches and nonprofit
4 colleges and medical facilities; purchasing agents for public real estate
5 construction improvements; contractor as purchasing agent for public
6 agencies; ~~Nebraska lottery~~; admissions to school events; sales on Native
7 American Indian reservations; school-supporting fundraisers; fine art
8 purchases by a museum; purchases by the Nebraska State Fair Board;
9 purchases by the Nebraska Investment Finance Authority and licensees of
10 the State Racing and Gaming Commission; purchases by the United States
11 Government; public records; and sales by religious organizations;

12 (k) Recent sales tax expenditures, which shall include a separate
13 listing for each sales tax expenditure created by statute or rule and
14 regulation after July 19, 2012;

15 (l) Services purchased for nonbusiness use, which shall include a
16 separate listing for each such service, including, but not limited to,
17 the following items: Motor vehicle cleaning, maintenance, and repair
18 services; cleaning and repair of clothing; cleaning, maintenance, and
19 repair of other tangible personal property; maintenance, painting, and
20 repair of real property; entertainment admissions; personal care
21 services; lawn care, gardening, and landscaping services; pet-related
22 services; storage and moving services; household utilities; other
23 personal services; taxi, limousine, and other transportation services;
24 legal services; accounting services; other professional services; and
25 other real estate services; and

26 (m) Telecommunications, which shall include a separate listing for
27 the following items: Telecommunications access charges; prepaid calling
28 arrangements; conference bridging services; and nonvoice data services.

29 (3) It is the intent of the Legislature that nothing in the Tax
30 Expenditure Reporting Act shall cause the valuation or assessment of any
31 property exempt from taxation on the basis of its use exclusively for

1 religious, educational, or charitable purposes.

2 Sec. 7. Section 77-3005, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 77-3005 (1) The occupation tax levied and imposed by the Mechanical
5 Amusement Device Tax Act shall be in addition to any and all taxes or
6 fees, of any form whatsoever, now imposed by the State of Nebraska or any
7 of its subdivisions, upon the business of operating or distributing
8 mechanical amusement devices as defined in section 77-3001, or otherwise
9 defined by the subdivisions and municipalities of the State of Nebraska,
10 except as provided in subsection (2) of this section.

11 (2) Payment that ~~payment~~ of the tax and license fees due and owing
12 on or before the licensing date of each year shall exempt any such
13 mechanical amusement device from the application of the sales tax which
14 would or could otherwise be imposed under the Nebraska Revenue Act of
15 1967, except that such exemption shall not apply to any cash device.

16 (3) Nonpayment of the taxes or fees due and owing on or before the
17 licensing date of each year shall render the exemption provided by
18 subsection (2) of this section inapplicable and the particular machines
19 or devices shall then be subject to all the provisions of the Nebraska
20 Revenue Act of 1967, including the penalty provisions pertaining to the
21 owner or operator of such machines or devices.

22 Sec. 8. This act becomes operative on July 1, 2024.

23 Sec. 9. Original section 77-3005, Reissue Revised Statutes of
24 Nebraska, and section 77-382, Revised Statutes Cumulative Supplement,
25 2022, are repealed.

26 Sec. 10. The following section is outright repealed: Section
27 77-2704.38, Reissue Revised Statutes of Nebraska.

28 Sec. 11. Since an emergency exists, this act takes effect when
29 passed and approved according to law.