

AMENDMENTS TO LB44

Introduced by Watermeier, 1.

1           1. Strike the original sections and insert the following new  
2 sections:

3           Section 1. Sections 1 to 8 of this act shall be known and may be  
4 cited as the Noncollecting Retailer Notice and Reporting Act.

5           Sec. 2. For purposes of the Noncollecting Retailer Notice and  
6 Reporting Act:

7           (1) Department means the Department of Revenue;

8           (2) Noncollecting retailer means a retailer that sells taxable items  
9 to Nebraska purchasers and does not collect Nebraska sales or use tax. A  
10 retailer that does collect Nebraska sales or use tax is not a  
11 noncollecting retailer regardless of whether the retailer is obligated to  
12 collect the tax or voluntarily collects the tax; and

13           (3) Taxable item means any tangible or intangible property, product,  
14 service, or other item that is subject to tax under subsection (1) of  
15 section 77-2703.

16           Sec. 3. A noncollecting retailer shall be subject to the  
17 Noncollecting Retailer Notice and Reporting Act if:

18           (1) Its total sales of taxable items to Nebraska purchasers exceeded  
19 one hundred thousand dollars in the previous or current calendar year; or

20           (2) It sold taxable items to Nebraska purchasers in two hundred or  
21 more separate transactions in the previous or current calendar year.

22           Sec. 4. A noncollecting retailer shall notify Nebraska purchasers  
23 that sales or use tax is due on purchases of taxable items made from the  
24 noncollecting retailer and that the State of Nebraska requires the  
25 purchaser to remit any tax due either by filing a sales or use tax return  
26 or by paying the tax through the individual income tax return that  
27 coincides with the calendar year in which the purchase was made.

1           Sec. 5. (1) A noncollecting retailer shall send a notification to  
2 all Nebraska purchasers by January 31 of each year showing the total  
3 amount paid by the purchaser for purchases of taxable items made from the  
4 noncollecting retailer in the previous calendar year and such other  
5 information as the department may require by rule and regulation. The  
6 notification shall include, if available, the date of each purchase, the  
7 amount of each purchase, and a brief description of the taxable item  
8 purchased. The notification shall also include the name of the  
9 noncollecting retailer.

10           (2) The notification shall state, in fourteen-point, boldface type,  
11 that (a) the State of Nebraska requires sales or use tax to be paid on  
12 purchases of taxable items made by the purchaser from the noncollecting  
13 retailer, (b) any tax due must be remitted either by filing a sales or  
14 use tax return or by paying the tax through the individual income tax  
15 return that coincides with the calendar year in which the purchase was  
16 made, and (c) any purchaser who fails to remit the tax due shall be  
17 subject to penalties under Nebraska law.

18           (3) The notification shall be sent separately to all Nebraska  
19 purchasers by first-class mail and shall not be included with any other  
20 shipments. The notification shall include the words "Important Tax  
21 Document Enclosed" on the exterior of the mailing.

22           (4) A noncollecting retailer that fails to send the notifications  
23 required in this section shall be subject to a penalty of ten thousand  
24 dollars unless the noncollecting retailer shows reasonable cause for such  
25 failure.

26           Sec. 6. (1) A noncollecting retailer shall submit an annual report  
27 to the department on such forms as are provided or approved by the  
28 department showing the total amount paid by Nebraska purchasers for  
29 purchases of taxable items made from the noncollecting retailer in the  
30 previous calendar year. The annual report shall be submitted on or before  
31 March 1 of each year.

1       (2) The department may require a noncollecting retailer to submit  
2 the annual report electronically if the noncollecting retailer's total  
3 sales of taxable items to Nebraska purchasers during the previous  
4 calendar year exceeded one hundred thousand dollars.

5       (3) A noncollecting retailer that fails to submit the annual report  
6 required in this section shall be subject to a penalty of two thousand  
7 five hundred dollars unless the noncollecting retailer shows reasonable  
8 cause for such failure.

9       Sec. 7. The department may adopt and promulgate rules and  
10 regulations to carry out the Noncollecting Retailer Notice and Reporting  
11 Act.

12       Sec. 8. The Noncollecting Retailer Notice and Reporting Act  
13 terminates on the later of July 1, 2018, or the first day of the first  
14 calendar quarter after a controlling court decision or federal  
15 legislation abrogates the physical presence requirement of Quill Corp. v.  
16 North Dakota, 504 U.S. 298 (1992).

17       Sec. 9. Section 77-2701.13, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19       77-2701.13 (1) Engaged in business in this state means any of the  
20 following:

21       (a) ~~(1)~~ Maintaining, occupying, or using, permanently or  
22 temporarily, directly or indirectly, or through a subsidiary or agent, by  
23 whatever name called, an office, place of distribution, sales or sample  
24 room or place, warehouse, storage place, or other place of business in  
25 this state;

26       (b) ~~(2)~~ Having any representative, agent, salesperson, canvasser, or  
27 solicitor operating in this state under the authority of the retailer or  
28 its subsidiary for the purpose of selling, delivering, or taking orders  
29 for any property;

30       (c) ~~(3)~~ Deriving rentals from a lease of property in this state by  
31 any retailer;

1           (d) ~~(4)~~ Soliciting retail sales of property from residents of this  
2 state on a continuous, regular, or systematic basis by means of  
3 advertising which is broadcast from or relayed from a transmitter within  
4 this state or distributed from a location within this state;

5           (e) ~~(5)~~ Soliciting orders from residents of this state for property  
6 by mail, if the solicitations are continuous, regular, seasonal, or  
7 systematic and if the retailer benefits from any banking, financing, debt  
8 collection, or marketing activities occurring in this state or benefits  
9 from the location in this state of authorized installation, servicing, or  
10 repair facilities;

11           (f) ~~(6)~~ Being owned or controlled by the same interests which own or  
12 control any retailer engaged in business in the same or similar line of  
13 business in this state; or

14           (g) ~~(7)~~ Maintaining or having a franchisee or licensee operating  
15 under the retailer's trade name in this state if the franchisee or  
16 licensee is required to collect the tax under the Nebraska Revenue Act of  
17 1967.

18           (2)(a) This subsection becomes operative on the later of July 1,  
19 2018, or the first day of the first calendar quarter after a controlling  
20 court decision or federal legislation abrogates the physical presence  
21 requirement of Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

22           (b) A person who lacks a physical presence in this state and who  
23 makes retail sales of property to purchasers in this state shall be  
24 deemed to be engaged in business in this state if:

25           (i) Such person's total retail sales of property to purchasers in  
26 this state exceeded one hundred thousand dollars in the previous or  
27 current calendar year; or

28           (ii) Such person made retail sales of property to purchasers in this  
29 state in two hundred or more separate transactions in the previous or  
30 current calendar year.

31           (c) The Department of Revenue may adopt and promulgate rules and

1 regulations to carry out this subsection.

2       Sec. 10. Section 77-2701.32, Reissue Revised Statutes of Nebraska,  
3 is amended to read:

4       77-2701.32 (1) Retailer means any seller.

5       (2) To facilitate the proper administration of the Nebraska Revenue  
6 Act of 1967, the following persons have the duties and responsibilities  
7 of sellers for the purposes of sales and use taxes:

8       (a) Any person in the business of making sales subject to tax under  
9 section 77-2703 at auction of property owned by the person or others;

10       (b) Any person collecting the proceeds of the auction, other than  
11 the owner of the property, together with his or her principal, if any,  
12 when the person collecting the proceeds of the auction is not the  
13 auctioneer or an agent or employee of the auctioneer. The seller does not  
14 include the auctioneer in such case;

15       (c) Every person who has elected to be considered a retailer  
16 pursuant to subdivision (1) of section 77-2701.10;

17       (d) Every person operating, organizing, or promoting a flea market,  
18 craft show, fair, or similar event; and

19       (e) Every person engaged in the business of providing any service  
20 defined in subsection (4) of section 77-2701.16.

21       (3) For the proper administration of the Nebraska Revenue Act of  
22 1967, the following persons do not have the duties and responsibilities  
23 of a seller for purposes of sales and use taxes:

24       (a) Any person who leases or rents films when an admission tax is  
25 charged under the Nebraska Revenue Act of 1967;

26       (b) Any person who leases or rents railroad rolling stock  
27 interchanged pursuant to the provisions of the federal Interstate  
28 Commerce Act;

29       (c) Any person engaged in the business of furnishing rooms in a  
30 facility licensed under the Health Care Facility Licensure Act in which  
31 rooms, lodgings, or accommodations are regularly furnished for a

1 consideration or a facility operated by an educational institution  
2 established under Chapter 79 or Chapter 85 in which rooms are regularly  
3 used to house students for a consideration for periods in excess of  
4 thirty days; or

5 (d) Any person making sales at a flea market, craft show, fair, or  
6 similar event when such person does not have a sales tax permit and has  
7 arranged to pay sales taxes collected to the person operating,  
8 organizing, or promoting such event.

9 (4)(a) This subsection becomes operative on the later of July 1,  
10 2018, or the first day of the first calendar quarter after a controlling  
11 court decision or federal legislation abrogates the physical presence  
12 requirement of Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

13 (b) The term retailer includes, but is not limited to, a person who  
14 lacks a physical presence in this state and who makes retail sales of  
15 property to purchasers in this state if:

16 (i) Such person's total retail sales of property to purchasers in  
17 this state exceeded one hundred thousand dollars in the previous or  
18 current calendar year; or

19 (ii) Such person made retail sales of property to purchasers in this  
20 state in two hundred or more separate transactions in the previous or  
21 current calendar year.

22 (c) The Department of Revenue may adopt and promulgate rules and  
23 regulations to carry out this subsection.

24 Sec. 11. If any section in this act or any part of any section is  
25 declared invalid or unconstitutional, the declaration shall not affect  
26 the validity or constitutionality of the remaining portions.

27 Sec. 12. Original sections 77-2701.13 and 77-2701.32, Reissue  
28 Revised Statutes of Nebraska, are repealed.

29 Sec. 13. Since an emergency exists, this act takes effect when  
30 passed and approved according to law.