

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 789**

Introduced by Ebke, 32.

Read first time January 04, 2018

Committee: Revenue

1 A BILL FOR AN ACT relating to the marijuana and controlled substances  
2 tax; to amend section 28-1439.02, Reissue Revised Statutes of  
3 Nebraska, and section 77-3906, Revised Statutes Cumulative  
4 Supplement, 2016; to eliminate the tax; to harmonize provisions; to  
5 repeal the original sections; and to outright repeal sections  
6 77-4301, 77-4302, 77-4303, 77-4304, 77-4305, 77-4306, 77-4307,  
7 77-4308, 77-4309, 77-4310, 77-4310.01, 77-4310.02, 77-4311, 77-4313,  
8 77-4314, 77-4315, and 77-4316, Reissue Revised Statutes of Nebraska,  
9 and sections 77-4310.03 and 77-4312, Revised Statutes Cumulative  
10 Supplement, 2016.

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

1 Section 1. Section 28-1439.02, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 28-1439.02 ~~(1)~~—The proceeds from any sale ordered pursuant to  
4 section 28-431, less legal costs, charges, and claims allowed, and any  
5 money forfeited pursuant to section 28-431 shall be paid to the county  
6 treasurer of the county in which the seizure was made. The county  
7 treasurer shall dispose of all such proceeds from property forfeited  
8 pursuant to subdivision (1)(g) of section 28-431 and fifty percent of the  
9 money forfeited pursuant to subdivision (1)(h) of section 28-431 in the  
10 manner provided for disposition of fines, penalties, and license money  
11 under the Constitution of Nebraska. The county treasurer shall disburse  
12 the remaining fifty percent of the money forfeited pursuant to  
13 subdivision (1)(h) of section 28-431 to his or her respective County Drug  
14 Law Enforcement and Education Fund. Each county shall create a County  
15 Drug Law Enforcement and Education Fund.

16 ~~(2) Money remitted to any county pursuant to section 77-4310.01~~  
17 ~~shall be credited by the county treasurer of such county to the County~~  
18 ~~Drug Law Enforcement and Education Fund.~~

19 Sec. 2. Section 77-3906, Revised Statutes Cumulative Supplement,  
20 2016, is amended to read:

21 77-3906 (1) In addition to all other remedies or actions provided by  
22 law under any tax program administered by the Tax Commissioner or  
23 Commissioner of Labor, it shall be lawful for the Tax Commissioner or  
24 Commissioner of Labor, after making demand for payment, to collect any  
25 delinquent taxes, together with any interest, penalties, and additions to  
26 such tax by distraint and sale of the real and personal property of the  
27 taxpayer. If the Tax Commissioner finds that the collection of any tax is  
28 in jeopardy pursuant to section 77-2710, or 77-27,111, ~~or 77-4311~~, notice  
29 and demand for immediate payment of such tax may be made by the Tax  
30 Commissioner and, upon failure or refusal to pay such tax, collection by  
31 levy shall be lawful.

1           (2)(a) In case of failure to pay taxes or deficiencies, the Tax  
2 Commissioner, or his or her authorized employee, may levy or, by warrant  
3 issued under his or her own hand, authorize a sheriff or duly authorized  
4 employee of the Tax Commissioner to levy upon, seize, and sell such real  
5 and personal property belonging to the taxpayer, except exempt property,  
6 as is necessary to satisfy the liability for the payment of the amount  
7 due. The Tax Commissioner may also issue a levy to a financial  
8 institution pursuant to section 77-3910.

9           (b) In case of failure to pay taxes or deficiencies, the  
10 Commissioner of Labor, or his or her authorized employee, may levy or, by  
11 warrant issued under his or her own hand, authorize a sheriff or duly  
12 authorized employee of the Department of Labor to levy upon, seize, and  
13 sell such real and personal property belonging to the taxpayer, except  
14 exempt property, as is necessary to satisfy the liability for the payment  
15 of the amount due.

16           (c) As used in this section, exempt property shall mean such  
17 property as is exempt from execution under the laws of this state.

18           (3) When a warrant is issued or a levy is made by the Tax  
19 Commissioner or Commissioner of Labor, or his or her duly authorized  
20 employee, for the collection of any tax and any interest, penalty, or  
21 addition to such tax imposed by law under any tax program administered by  
22 the Tax Commissioner or Commissioner of Labor or for the enforcement of  
23 any tax lien authorized by the Uniform State Tax Lien Registration and  
24 Enforcement Act, such warrant or levy shall have the same force and  
25 effect of a levy and sale pursuant to a writ of execution. Such warrant  
26 or levy may be issued and sale made pursuant to it in the same manner and  
27 with the same force and effect of a levy and sale pursuant to a writ of  
28 execution. The Tax Commissioner or Commissioner of Labor shall pay the  
29 financial institution in accordance with section 77-3910 or the levying  
30 sheriff the same fees, commissions, and expenses pursuant to such warrant  
31 as are provided by law for similar services pursuant to a writ of

1 execution, except that fees for publications in a newspaper shall be  
2 subject to approval by the Tax Commissioner or Commissioner of Labor.  
3 Such fees, commissions, and expenses shall be an obligation of the  
4 taxpayer and may be collected from the taxpayer by virtue of the warrant.  
5 Any such warrant shall show the name and last-known address of the  
6 taxpayer, the identity of the tax program, the year for which such tax  
7 and any interest, penalty, or addition to such tax is due and the amount  
8 thereof, the fact that the Tax Commissioner or Commissioner of Labor has  
9 complied with all provisions of the law for the applicable tax program  
10 which he or she administers in the determination of the amount required  
11 to be paid, and that the tax and any interest, penalty, or addition to  
12 such tax is due and payable according to law.

13 (4)(a) Any person upon whom a levy is served who fails or refuses to  
14 honor the levy without cause may be held liable for the amount of the  
15 levy up to the value of the assets of the taxpayer under his or her  
16 control at the time the levy was served or thereafter. Such person may be  
17 subject to collection provisions as set forth in the act.

18 (b) The effect of a levy on salary, wages, or other regular payments  
19 due to or received by a taxpayer shall be continuous from the date the  
20 levy is served until the amount of the levy, with accrued interest, is  
21 satisfied.

22 (5) Notice of the sale and the time and place of the sale shall be  
23 given, to the delinquent taxpayer and to any other person with an  
24 interest in the property who has filed for record with the appropriate  
25 filing officer on such property, in writing at least twenty days prior to  
26 the date of such sale in the following manner: The notice shall be mailed  
27 to the taxpayer and to any other person with such interest at his or her  
28 last-known residence or place of business in this state. The notice shall  
29 also be given by publication at least once each week for four weeks prior  
30 to the date of the sale in the newspaper of general circulation published  
31 in the county in which the property seized is to be sold. If there is no

1 newspaper of general circulation in the county, notice shall be posted in  
2 three public places in the county twenty days prior to the date of the  
3 sale. The notice shall contain a description of the property to be sold,  
4 a statement of the type of tax due and of the amount due, including  
5 interest, penalties, additions to tax, and costs, the name of the  
6 delinquent taxpayer, and the further statement that unless the amount  
7 due, including interest, penalties, additions to tax, and costs, is paid  
8 on or before the time fixed in the notice for the sale or such security  
9 as may be determined by the Tax Commissioner or Commissioner of Labor is  
10 placed with the Tax Commissioner or Commissioner of Labor, or his or her  
11 duly authorized representative, on or before such time, the property, or  
12 so much of it as may be necessary, will be sold in accordance with law  
13 and the notice.

14 (6) At the sale the Tax Commissioner or Commissioner of Labor, or  
15 his or her duly authorized representative, shall sell the property in  
16 accordance with law and the notice and shall deliver to the purchaser a  
17 bill of sale for the property. The bill of sale shall vest the interest  
18 or title of the person liable for the amount in the purchaser. The unsold  
19 portion of any property seized shall remain in the custody and control of  
20 the Tax Commissioner or Commissioner of Labor, or his or her duly  
21 authorized representative, until offered for sale again in accordance  
22 with this section or redeemed by the taxpayer.

23 (7) Whenever any property which is seized and sold under this  
24 section is not sufficient to satisfy the claim of the state for which  
25 distraint or seizure is made, the sheriff or duly authorized employee of  
26 the Tax Commissioner or Department of Labor may thereafter, and as often  
27 as the same may be necessary, proceed to seize and sell in like manner  
28 any other property liable to seizure of the taxpayer against whom such  
29 claim exists until the amount due from such taxpayer, together with all  
30 expenses, is fully paid.

31 (8) If after the sale the money received exceeds the total of all

1 amounts due the state, including any interest, penalties, additions to  
2 tax, and costs, and if there is no other interest in or lien upon such  
3 money received, the Tax Commissioner or Commissioner of Labor shall  
4 return the excess to the person liable for the amounts and obtain a  
5 receipt. If any person having an interest or lien upon the property files  
6 with the Tax Commissioner or Commissioner of Labor prior to the sale  
7 notice of his or her interest or lien, the Tax Commissioner or  
8 Commissioner of Labor shall withhold any excess pending a determination  
9 of the rights of the respective parties thereto by a court of competent  
10 jurisdiction. If for any reason the receipt of the person liable for the  
11 amount is not available, the Tax Commissioner or Commissioner of Labor  
12 shall deposit the excess money with the State Treasurer, as trustee for  
13 the owner, subject to the order of the person liable for the amount or  
14 his or her heirs, successors, or assigns. No interest earned, if any,  
15 shall become the property of the person liable for the amount.

16 (9) All persons and officers of companies or corporations shall, on  
17 demand of a sheriff or duly authorized employee of the Tax Commissioner  
18 or Department of Labor about to distraint or having distrained any  
19 property or right to property, exhibit all books containing evidence or  
20 statements relating to the property or rights of property liable to  
21 distraint for the tax due.

22 Sec. 3. Original section 28-1439.02, Reissue Revised Statutes of  
23 Nebraska, and section 77-3906, Revised Statutes Cumulative Supplement,  
24 2016, are repealed.

25 Sec. 4. The following sections are outright repealed: Sections  
26 77-4301, 77-4302, 77-4303, 77-4304, 77-4305, 77-4306, 77-4307, 77-4308,  
27 77-4309, 77-4310, 77-4310.01, 77-4310.02, 77-4311, 77-4313, 77-4314,  
28 77-4315, and 77-4316, Reissue Revised Statutes of Nebraska, and sections  
29 77-4310.03 and 77-4312, Revised Statutes Cumulative Supplement, 2016.