

LEGISLATIVE BILL 310

Approved by the Governor February 19, 2020

Introduced by Vargas, 7; Howard, 9; Lindstrom, 18; Wayne, 13.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2906, Reissue Revised Statutes of Nebraska, and section 77-5601, Revised Statutes Supplement, 2019; to provide deadlines for the determination of tax credits, change provisions relating to appeals, and provide a fee under the Nebraska Job Creation and Mainstreet Revitalization Act; to authorize the use of certain fees for revenue enforcement; to harmonize provisions; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-2906, Reissue Revised Statutes of Nebraska, is amended to read:

77-2906 (1)(a) ~~(1)~~ Within twelve months after the date on which the historically significant real property is placed in service, a person whose application was approved under section 77-2905 shall file a request for final approval containing all required information with the officer on a form prescribed by the officer and shall include a fee established by the officer pursuant to section 77-2907. The officer shall then determine whether the work substantially conforms to the application approved under section 77-2905. If the work substantially conforms and no other significant improvements have been made to the historically significant real property that do not substantially comply with the standards, the officer shall approve the request for final approval. The person whose request is approved shall then apply and refer the application to the department to determine the amount of eligible expenditures, calculate the amount of the credit, and issue a certificate to the person evidencing the credit. If the work does not substantially conform to the approved application or if other significant improvements have been made to the historically significant real property that do not substantially comply with the standards, the officer shall deny the request for final approval and provide the person with a written explanation of the decision. The officer shall make a determination on the request for final approval in writing within thirty days after the filing of the request. If the officer does not make a determination within thirty days after the filing of the request, the request shall be deemed approved and the person may apply to the department ~~petition the department directly~~ to determine the amount of eligible expenditures, calculate the amount of the credit, and issue a certificate evidencing the credit.

(b) The department shall determine the amount of eligible expenditures, calculate the amount of the credit, and issue one or more certificates evidencing the credit within sixty days after receiving an application pursuant to subdivision (1)(a) of this section. The person filing the application and the department may also agree to extend the sixty-day period, but such extension shall not exceed an additional thirty days. If the department does not determine the amount of eligible expenditures, calculate the amount of the credit, and issue one or more certificates evidencing the credit within such sixty-day period or agreed-upon longer period, the credit shall be deemed to have been issued by the department for the amount requested in such person's application, except that such amount shall not exceed one hundred ten percent of the amount of credits allocated by the officer under section 77-2905 and such amount shall not increase or decrease the total amount of credits that may be allocated by the officer under section 77-2905 in any calendar year.

(c) Any denial of a request for final approval by the officer or any determination of the amount of eligible expenditures or calculation of the amount of the credit by the department pursuant to this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) The department shall divide the credit and issue multiple certificates to a person who qualifies for the credit upon reasonable request.

(3) In calculating the amount of the credits to be issued pursuant to this section, the department may issue credits in an amount that differs from the amount of credits allocated by the officer under section 77-2905 if such credits are supported by eligible expenditures as determined by the department, except that the department shall not issue credits in an amount exceeding one hundred ten percent of the amount of credits allocated by the officer under section 77-2905. If the amount of credits to be issued under this section is more than the amount of credits allocated by the officer pursuant to section 77-2905, the department shall notify the officer of the difference and such amount shall be subtracted from the annual amount available for allocation under section 77-2905. If the amount of credits to be issued under this section is less than the amount of credits allocated by the officer pursuant to section 77-2905, the department shall notify the officer of the difference and such amount shall be added to the annual amount available for allocation under section 77-2905.

(4) The department shall not issue any certificates for credits under this

section until the recipient of the credit has paid to the department:

(a) A fee equal to one-quarter of one percent of the credit amount. The department shall remit such fees to the State Treasurer for credit to the Civic and Community Center Financing Fund; and -

(b) A fee equal to six-tenths of one percent of the credit amount. The department shall remit such fees to the State Treasurer for credit to the Department of Revenue Enforcement Fund.

(5) If the recipient of the credit is (a) a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, (b) a partnership, or (c) a limited liability company, the credit may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the bylaws or other executed agreement of the corporation, partnership, or limited liability company. Credits granted to a partnership, a limited liability company taxed as a partnership, or other multiple owners of property shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting any alternate distribution method.

(6) Subject to section 77-2912, any credit amount that is unused may be carried forward to subsequent tax years until fully utilized.

(7) Credits allowed under this section may be claimed for taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended.

Sec. 2. Section 77-5601, Revised Statutes Supplement, 2019, 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 and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement 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.

(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 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 is 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 (a) under section 77-2703, and such money shall be used by the Department of Revenue to defray the costs incurred to implement Laws 2019, LB237, and (b) under the Mechanical Amusement Device Tax Act, and such money shall be used by the department to defray the costs incurred to implement and enforce Laws 2019, LB538, and any rules and regulations adopted and promulgated to carry out Laws 2019, LB538, and (c) under section 77-2906, 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 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.

(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. Original section 77-2906, Reissue Revised Statutes of Nebraska, and section 77-5601, Revised Statutes Supplement, 2019, are repealed.