

LEGISLATIVE BILL 653A

Approved by the Governor June 7, 1985

Introduced by DeCamp, 40

AN ACT relating to revenue and taxation; to amend section 77-2608, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2602 and 77-2602.03, Revised Statutes Supplement, 1984; to change provisions regarding the cigarette tax; to change provisions relating to the distribution of revenue received from the cigarette tax; to harmonize provisions; to provide operative dates; to provide severability; and to repeal the original sections.

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

Section 1. That section 77-2602, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2602. Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On all Beginning October 1, 1985, on each package of cigarettes, eighteen cents per package containing not more than twenty cigarettes, an amount equal to the difference between thirty-four cents and the federal excise tax on cigarettes as provided by the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-248, Title II, Subtitle F, Part III, section 283(c), 96 Stat. 569, as amended, but in no case less than eighteen cents and beginning October 1, 1986, on each package of cigarettes containing not more than twenty cigarettes, eighteen cents per package, and on packages containing more than twenty cigarettes the same tax as provided on packages containing not more than twenty cigarettes a tax of eighteen cents for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package. Thirteen cents of such tax shall be placed in the General Fund. The remaining proceeds of such tax shall be distributed in the following order:

First, there shall be placed in the State Office Building Fund the sum of one million two hundred thousand dollars each year for fiscal years 1974-75, 1975-76, 1976-77, and 1977-78 and three million six hundred thousand dollars for each fiscal year beginning with 1978-79 through 1983-84. Such amounts are hereby

appropriated and the unexpended balances existing in such fund at the end of each fiscal year through June 30, 1984, are hereby reappropriated. Money in the State Office Building Fund may be transferred to the General Fund at the direction of the Legislature;

Second, there shall be placed in the Downtown Education Center and Office Rental Fund the sum of nine hundred sixty thousand dollars each year for fiscal years 1976-77 through 1983-84 and two million two hundred eighty thousand dollars each year for fiscal years 1984-85 and 1985-86. Such amounts are hereby appropriated and the unexpended balances existing in such fund at the end of each fiscal year through June 30, 1986, are hereby reappropriated. Money in the Downtown Education Center and Office Rental Fund may be transferred to the General Fund at the direction of the Legislature;

Third, beginning July 1, 1980, the equivalent of one cent of such tax shall be placed in the Nebraska Outdoor Recreation Development Cash Fund. There shall be placed in such fund one million thirty thousand one hundred dollars for fiscal year 1979-80;

Fourth, beginning July 1, 1983, the equivalent of one cent of such tax shall be placed in the Nebraska Cancer Research Fund to carry out the provisions of sections 81-637 to 81-640;

Fifth, there shall be placed in the University Buildings Renovation and Land Acquisition Fund the sum of one million seven hundred sixty-five thousand one hundred fifty-three dollars and in the State College Buildings Renovation and Land Acquisition Fund the sum of three hundred sixty-one thousand two hundred twenty-two dollars each year for fiscal year 1984-85 through fiscal year 1994-95. Such amounts are hereby appropriated and the unexpended balances existing in such funds at the end of each fiscal year through June 30, 1995, are hereby reappropriated. The money in such funds shall be used for payment of the costs of building repair, remodeling, and renovation projects and land acquisition projects of the University of Nebraska and the Nebraska state colleges authorized by sections 85-1,111, 85-1,112, 85-322, and 85-323; and

Sixth, from October 1, 1985, to September 30, 1986, an additional amount which shall be the equivalent of eight cents of such tax or the difference between the special privilege tax on cigarettes and eighteen cents, whichever is less, shall be placed (1) in the Cash Reserve Fund from October 1, 1985, through June 30, 1986, and (2) on and after July 1, 1986, in the General Fund; and

~~Sixth~~ Seventh, the balance of such proceeds shall be placed in a special fund to be known as the Nebraska Capital Construction Fund and disbursements from such fund shall be as the Legislature shall from time to time provide.

Sec. 2. That section 77-2602.03, Revised Statutes Supplement, 1984, be amended to read as follows:

77-2602.03. Sections 77-2602 and 77-2616 shall become operative May 17, 1982. The increase in the tax shall apply to all stamps, meter impressions, and packages of stamped cigarettes owned by cigarette wholesalers at 12:01 a.m. on the day the increase becomes operative. On the operative date of this section, each cigarette wholesaler shall take an inventory of stamps, meter impressions, and packages of stamped cigarettes owned by the cigarette wholesaler at 12:01 a.m. The This additional tax shall be remitted, without discount being allowed, with the return for the last month preceding May 17, 1982 the operative date of this section.

Sec. 3. That section 77-2608, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2608. The Tax Commissioner shall prepare and have suitable stamps for use on each kind of piece or package of cigarettes, except where when cigarette tax meter impressions are affixed. Requisition for the preparation of such stamps shall be made through the office of the State Purchasing Agent as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsman shall be liable for the value of all such stamps delivered to him or her. The Auditor of Public Accounts shall audit annually or as often as the auditor deems advisable the records of the Tax Commissioner with respect to the money received from the sale of stamps and as revenue from tax meter impressions for the purpose of determining the accuracy and correctness of the same. The Tax Commissioner shall sell the stamps only to licensed wholesale dealers, as defined in section 77-2601, and he or she shall keep an accurate record of all stamps coming into and leaving his or her hands. Such stamps shall be sold and accounted for at the face value thereof, except that the Tax Commissioner may, by regulation certified to the State Treasurer, authorize the sale thereof to wholesale dealers in this state or outside of this state at a discount of five per cent of such face value of the tax as a commission for affixing and canceling such stamps, PROVIDED, that any for the first eighteen cents of the total tax per package of twenty cigarettes under section 77-2602 and for any additional tax, up to four cents, a discount of four per cent shall be allowed. A discount shall be allowed for affixing and canceling such stamp on each package containing more than twenty cigarettes, which shall be equal to the amount resulting from the discount allowed on a package of twenty cigarettes plus one-twentieth of such amount for each cigarette in excess of twenty cigarettes in each package. Any wholesale dealer using a tax meter machine shall be entitled to the same discount as allowed a wholesale dealer for affixing and canceling the stamps. The money received by the Tax Commissioner from the sale of

~~said~~ the stamps and as revenue from such tax meter impressions shall be deposited by him or her daily with the State Treasurer, who shall credit such money as provided in section 77-2602. Upon proof by the Tax Commissioner that he or she can affix such stamps or meter impression, warehouse, and distribute such cigarettes and collect such revenue at a cost less than the five per cent discount allowed to wholesale dealers, he or she may then proceed to affix the stamps himself or herself, after giving the wholesale dealers sixty days' notice and purchasing all equipment used by them for the purpose of affixing such stamps or meter impressions at a fair market value.

Sec. 4. Sections 1, 2, 3, and 6 of this act shall become operative on October 1, 1985, or on the date the reduction in the federal excise tax on cigarettes takes effect as provided by the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-248, Title II, Subtitle F, Part III, section 283(c), 96 Stat. 569, as amended, whichever is later. The remaining sections shall become operative on their effective date.

Sec. 5. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 6. That original section 77-2608, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2602 and 77-2602.03, Revised Statutes Supplement, 1984, are repealed.