

LEGISLATIVE BILL 161

Approved by the Governor March 12, 1993

Introduced by Kristensen, 37; Byars, 30

AN ACT relating to debtors and creditors; to amend sections 77-377.01, 77-2710, and 77-27,107, Reissue Revised Statutes of Nebraska, 1943, and section 77-4312, Revised Statutes Supplement, 1992, as amended by section 40, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992; to authorize state agencies and political subdivisions to contract with collection agencies as prescribed; to change provisions relating to the collection of delinquent taxes as prescribed; and to repeal the original sections.

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

Section 1. (1) Any state agency, county, city, village, or other political subdivision may contract to retain a collection agency licensed pursuant to sections 45-601 to 45-622, within or without this state, for the purpose of collecting public debts owed by any person to such state agency, county, city, village, or other political subdivision.

(2) No debt owed pursuant to subsection (1) of this section may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor by first-class mail, postage prepaid, at the last-known address of the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid and (b) at least thirty days have elapsed from the time the notice was sent, except that in the case of an order for support being enforced by a county attorney, authorized attorney, or prosecuting attorney pursuant to Chapter 42 or 43, this notice requirement shall not apply and Title IV-D of the federal Social Security Act, as amended, shall be complied with.

(3) A collection agency which is assigned a debt under this section shall have only those remedies and powers which would be available to it as an assignee of a private creditor. This subsection shall not be construed to in any way limit the remedies and powers available to an authorized attorney as defined in section 43-512.

(4) For purposes of this section, debt shall include all delinquent fees or payments except delinquent property taxes on real estate. In the case of debt arising as a result of an order or judgment of a court in a criminal or traffic matter, a collection fee may be added to the debt. The collection fee shall be twenty-five dollars or four and one-half percent of the debt, whichever is greater. The collection fee shall be paid by the person who owes the debt directly to the person or agency providing the collection service.

Sec. 2. That section 77-377.01, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

77-377.01. The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer ~~not residing or domiciled in this state~~, and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to sections 45-601 to 45-622, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process. For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices requesting payment, one of which shall have been sent by certified or registered mail. The notice sent by certified or registered mail shall include a statement that the matter of such taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

Sec. 3. That section 77-2710, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2710. (1) If the Tax Commissioner finds that a taxpayer is about to depart from the State of Nebraska, remove his or her property therefrom, conceal himself or herself or his or her property therein, or do any other act tending to delay, prejudice, or render wholly or partially ineffectual any proceedings to collect the sales or use tax for the preceding or current taxable year unless such proceedings be brought without delay, the Tax Commissioner shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for immediate payment of any such tax due for this period, whether or not the time otherwise allowed by law for filing returns and paying such tax has expired. Such tax shall thereupon become immediately due and payable. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, such findings of the Tax Commissioner, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(2) The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to the provisions of section 77-2709. He or she shall file the petition for redetermination with the Tax Commissioner within ten days after the service upon him or her of notice of determination or the determination shall become final at the expiration of the ten-day period and the Tax Commissioner shall not reconsider the determination. The person shall also within the ten-day period deposit with the Tax Commissioner such security as the Tax Commissioner may deem necessary to insure compliance with ~~the provisions of~~ the Nebraska Revenue Act of 1967. The security may, if necessary, be sold by the Tax Commissioner in the manner prescribed by the provisions of section 77-27,131.

(3) A taxpayer who is not in default in making any return

or paying any sales or use taxes assessed under ~~the provisions of~~ the Nebraska Revenue Act of 1967 may furnish to the Tax Commissioner, under regulations to be prescribed by the Tax Commissioner, security that ~~he or she~~ will duly make the return next thereafter required to be filed and pay such tax next thereafter required to be paid. The Tax Commissioner may approve and accept in like manner security for return and payment of sales or use taxes made due and payable by virtue of ~~the provisions of~~ this section.

(4) If security is approved and accepted and such further or other security with respect to the tax or taxes covered thereby is given as the Tax Commissioner shall from time to time find necessary, ~~the requirement for and require~~ payment of such taxes shall not be enforced by any proceedings under ~~the provisions of~~ this section prior to the expiration of the time otherwise allowed for paying such taxes.

(5) In the case of a bona fide resident of Nebraska about to depart from the state the Tax Commissioner may waive any or all of the requirements placed upon the taxpayer by ~~the provisions of~~ this section.

(6) If a taxpayer violates or attempts to violate any provision of this section there shall, in addition to all other penalties, be added as part of the tax twenty-five percent of the total amount due or fifty dollars, whichever is greater.

(7) If the taxpayer ~~is not within this state, or has departed from the state and~~ ignores all demands for payment the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Sec. 4. That section 77-27,107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-27,107. When notice and demand for the payment of income tax is given to a ~~nonresident taxpayer~~ and it appears to the Tax Commissioner that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he or she shall send a copy of the notice provided for in the Uniform State Tax Lien Registration and Enforcement Act to the taxpayer at his or her last-known address together with a notice that such notice has been filed with the appropriate filing officer. Thereafter, the Tax Commissioner may authorize the institution of any action or proceeding to collect or enforce such claim in any place and by any procedure that a civil judgment of a court of record of this state could be collected or enforced. The Tax Commissioner may also in his or her discretion designate agents or retain counsel ~~outside this state~~ for the purpose of collecting ~~outside this state~~ any income taxes due under the Nebraska Revenue Act of 1967. ~~He from taxpayers who are not residents of this state, and he~~ or she may fix the compensation of such agents and counsel to be paid out of money appropriated or otherwise lawfully available for payment thereof and he or she may require of them bonds or other security for the faithful performance of their duties. The Tax Commissioner may enter into agreements with the tax departments of other states and the District of Columbia for the collection of income taxes from persons found in those

jurisdictions who are delinquent in the payment of income taxes imposed under such act.

Sec. 5. That section 77-4312, Revised Statutes Supplement, 1992, as amended by section 40, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, be amended to read as follows:

77-4312. (1) Any person who receives a notice of jeopardy determination of the tax imposed by section 77-4303 may petition the Tax Commissioner for a redetermination of the amount of the assessed deficiency.

(2) The petition for redetermination shall be filed within ten days of the receipt of the notice of jeopardy determination whenever service is in person or within ten days of the mailing of such notice by certified or registered mail to the last-known address of the person.

(3) The petition for redetermination shall be in writing and shall state the specific grounds upon which the claim is founded.

(4) The petition for redetermination shall be accompanied by the payment of the tax or suitable security for the payment of the tax.

(5) The consideration of the petition for redetermination shall be made pursuant to the Administrative Procedure Act to the extent the act is not in conflict with sections 77-4301 to 77-4316.

(6) The determination of the amount of the deficiency shall become final and the amount shall be deemed to be assessed on the date provided in subsection (2) of this section if the person fails to file the petition for the redetermination and the appropriate security within the ten-day time period.

(7) When a petition for redetermination and the appropriate security is filed within the ten-day period, the amount of the deficiency shall be deemed to be assessed upon the date the determination of the Tax Commissioner becomes final.

(8) If the amount of the deficiency determined under such sections is not paid upon the receipt of the notice, the deficiency shall accrue interest at the rate specified in section 5 of this act, as such rate may from time to time be adjusted, for the period from the date the tax was due until the date such deficiency is paid.

(9)(a) When a jeopardy determination or any other final determination has been made by the Tax Commissioner, the property seized for collection of the taxes and any penalty shall not be sold until the time has expired for filing an appeal. If an appeal has been filed, no sale shall be made unless the taxes and any penalty remain unpaid for a period of more than thirty days after final determination of the appeal by the district court.

(b) Notwithstanding subdivision (a) of this subsection, seized property may be sold if the taxpayer consents in writing to the sale or the Tax Commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping or that such property cannot be kept without great expense.

(c) The property seized shall be returned by the Tax Commissioner if the owner gives a surety bond equal to the appraised

value of the owner's interest in the property, as determined by the Tax Commissioner, or deposits with the Tax Commissioner security in such form and amount as the Tax Commissioner deems necessary to insure payment of the liability but not more than twice the liability.

(d) Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(e) Any action taken by the Tax Commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

(f) After the Tax Commissioner has seized the property of any person, that person may, upon giving forty-eight hours notice to the Tax Commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court deems equitable.

(10) If the taxpayer ~~is not within this state or has departed from the state and~~ ignores all demands for payment, the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Sec. 6. That original sections 77-377.01, 77-2710, and 77-27,107, Reissue Revised Statutes of Nebraska, 1943, and section 77-4312, Revised Statutes Supplement, 1992, as amended by section 40, Legislative Bill 1, Ninety-second Legislature, Fourth Special Session, 1992, are repealed.