

# Statutory Responsibilities for Collecting, Reporting, and Remitting Nebraska Taxes

## ADMINISTRATION OF NEBRASKA TAX LAWS

The State Tax Commissioner and the Nebraska Department of Revenue seek to assist the taxpayer or permitholder in fulfilling his or her statutory duties in the collection, reporting, and remittance of Nebraska taxes. The cooperation of each taxpayer is required in fulfilling these duties and in achieving the voluntary compliance of all taxpayers for payment of Nebraska taxes.

Under Nebraska's revenue laws, state tax licensees or taxpayers are statutorily liable for the payment of Nebraska sales and withholding taxes. As a Nebraska tax licensee, the retailer, employer, or business acts as an agent of the State of Nebraska and the State Tax Commissioner in collecting, accounting for, and paying over sales and withholding taxes to the Nebraska Department of Revenue.

The specific statutory duties of Nebraska taxpayers, licenseholders, or permitholders are set out below.

## COLLECTION OF TAXES

The retailer shall collect from the consumer the sales tax and other taxes imposed on retail sales of tangible personal property and certain services. The tax required to be collected from the consumer in such instances constitutes a debt owed by the retailer to the State of Nebraska. See Section 77-2703, R.S.Supp., 2007.

Every employer and payor doing business in this state shall deduct and withhold Nebraska state income tax from any wages or payments to an employee, including employer-sponsored pension and annuity payments, in this state during each payroll period. Payments to a nonresident performing personal services in Nebraska may be subject to withholding. See Section 77-2753, R.S.Supp. 2007.

## TRUST FUND TAXES

Sales and other taxes collected are owned by the State of Nebraska at the time of collection and must be held in trust by the retailer pending payment or transfer to the Nebraska Department of Revenue. The retailer must segregate these trust funds or taxes from all other business receipts. Such taxes should be retained or deposited in a separate account and not commingled with any other receipts or monies. See Section 77-3905(6), R.S.Supp. 2007.

Every employer required to deduct and withhold Nebraska state income taxes shall be liable for the payment of such taxes to the Department of Revenue. Such withholding taxes constitute a trust fund held by the employer on behalf of the State of Nebraska, and shall be owned by the state at the time they are deducted and withheld from the employee's wages. These taxes should be retained or deposited in a separate account and not commingled with any other receipts or monies. See Section 77-3905(6), R.S.Supp. 2007.

## REPORTING AND REMITTANCE OF TAXES

Nebraska's revenue laws require that taxpayers give an accurate accounting of Nebraska taxes collected through the course of operating their business. Along with this requirement, tax returns must be filed and taxes remitted in a timely manner.

The taxes collected by each retailer for the monthly tax period shall be due and payable to the Department of Revenue by the 25th day of the following month. Permitholders on a quarterly or annual filing basis will have their sales taxes due and payable by the 25th day of the month following the close of the quarter or year. The permitholder shall deliver or mail each sales tax return, together with the amount of taxes due, on or before the required filing date. See Section 77-2708, Cum.Supp. 2006.

Every employer or agent of the employer required to deduct and withhold Nebraska state income tax shall report and remit such tax, along with a withholding tax return, for each calendar quarter on or before the last day of the month following the close of the quarter. Employers who have been licensed as annual filers for withholding must report and remit such taxes on the last day of the month following the close of the calendar year. See Section 77-2756, R.S.Supp. 2007.

## RECORDKEEPING REQUIREMENTS

Every retailer shall keep such records, receipts, invoices, or other pertinent information as may be required by the State Tax Commissioner for the proper administration and enforcement of Nebraska's tax laws. The State Tax Commissioner, or authorized representative, may examine such records to determine or verify the required amounts to be paid to the State of Nebraska. See Section 77-2711, R.S.Supp. 2007.

Every employer or business shall keep such records as the State Tax Commissioner may deem sufficient to establish the correct amount of withholding tax due and owing to the State of Nebraska. Those records are subject to examination by the State Tax Commissioner or authorized representative. See Section 77-2772, R.R.S. 2003.

## **ASSESSMENT OF TAXES**

If the State Tax Commissioner is not satisfied with any tax return or the amount of tax required to be paid, the State Tax Commissioner may compute the amount due and may issue a deficiency determination setting forth the amount of tax to be paid by the retailer or business. If any person fails to file a return, the State Tax Commissioner may make an estimate of the gross receipts. See Section 77-2709, R.R.S. 2003. Assessed taxes may be subject to greater penalties.

If an employer fails to file a return, the State Tax Commissioner shall determine the tax liability from any available records and issue a deficiency determination for that amount. See Section 77-2776, Cum.Supp. 2006.

## **ENFORCEMENT OF DELINQUENT TAX LIABILITIES**

If any taxpayer fails to pay any tax due and owing to the State of Nebraska, that amount of tax plus penalty and interest shall be a lien upon all property or rights to property belonging to the taxpayer or permitholder. Such taxes or liens may be enforced the same as a writ of execution issued from a judgment, such as by the distraint or sale of personal property, or any other remedy provided by law. See Sections 77-3904 through 77-3906, R.S.Supp. 2007.

## **PERSONAL LIABILITY**

Any corporate officer or employee with the duty to pay taxes imposed upon a corporation or any member or manager, including members acting as managers, of a limited liability company with the duty to pay taxes imposed on the company shall be personally liable for the payment of the taxes, penalties and interest in the event of willful failure on his or her part to have the corporation or limited liability company pay the tax. See Section 77-1783.01, R.R.S. 2003, and Section 21-2612(2), Cum. Supp. 2006.

## **CRIMINAL SANCTIONS**

If any person willfully fails to collect, report, pay over, or in any manner evade sales taxes imposed under Nebraska sales tax laws, such person shall be guilty of a Class IV felony, subject to a maximum imprisonment of five years or a \$10,000.00 fine, or both. See Section 77-2713, R.R.S. 2003.

Any person who engages in business as a retailer in this state without a proper Nebraska sales tax permit or following revocation of such permit shall be guilty of a Class IV misdemeanor upon conviction. Each day of operation represents a separate offense and is subject to a fine of \$500.00 per day. See Section 77-2713(3), R.R.S. 2003, and Section 28-106, Cum.Supp., 2006.

Any employer or business required to deduct Nebraska withholding tax who willfully fails to collect, report or pay over such tax shall be guilty of a Class IV felony, subject to a maximum imprisonment of five years or a \$10,000.00 fine, or both. See Section 77-27,114, R.R.S. 2003, and Section 28-105, Cum.Supp., 2006.

## **REVOCAION OF A SALES TAX PERMIT**

If a sales tax licensee fails to collect, report, or pay over sales tax to the State of Nebraska, the permitholder shall be given 20 days notice to appear at a formal hearing. At that hearing he or she must show cause why his or her license should not be revoked or suspended for failure to comply with the statutory requirements imposed under Nebraska's sales tax laws for the timely reporting and remittance of such taxes. See Section 77-2705(6), R.R.S. 2003.

Following the revocation of a sales tax permit, the State Tax Commissioner will consider issuance of another permit only if all tax liabilities, including interest and penalty, have been paid in full, and sufficient security has been posted with the Department of Revenue to ensure future compliance. See Section 77-27,131, R.S.Supp. 2007.

## **SECURITY**

Whenever the State Tax Commissioner believes it is necessary to insure compliance, a permitholder may be required to post a security deposit of up to three times the average reporting period liability.

In situations where the permitholder is habitually delinquent in the filing and/or payment of Nebraska taxes, a security deposit of five times the average reporting period liability may be required. See Section 77-27,131, R.S.Supp. 2007.

## **BANKRUPTCY**

Those permitholders that file Bankruptcy under Title 11 of the United States Code, and continue to operate their business, are required to segregate and hold in trust, in a separate account designated as Nebraska state tax funds, all taxes imposed on the debtor under Nebraska's revenue laws or any taxes collected by the debtor from other persons under such laws.

Trustees in a Chapter 7 Bankruptcy proceeding are deemed to be retailers and must collect and remit sales tax on any inventory liquidation sale.