

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 211

Introduced by Cornett, 45.

Read first time January 10, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 13-324, 13-2814, 77-2703, 77-2703.03, 77-2704.10, and
3 77-27,143, Reissue Revised Statutes of Nebraska, and
4 section 77-2712.03, Revised Statutes Cumulative
5 Supplement, 2010; to change provisions relating to
6 collection of sales tax on rented and leased motor
7 vehicles, direct mail sourcing, a sales and use tax
8 exemption for certain food, and the streamlined sales and
9 use tax agreement; to provide an operative date; and to
10 repeal the original sections.

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

1 Section 1. Section 13-324, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 13-324 (1) The Tax Commissioner shall administer all
4 sales and use taxes adopted under section 13-319. The Tax
5 Commissioner may prescribe forms and adopt and promulgate reasonable
6 rules and regulations in conformity with the Nebraska Revenue Act of
7 1967, as amended, for the making of returns and for the
8 ascertainment, assessment, and collection of taxes. The county shall
9 furnish a certified copy of the adopting or repealing resolution to
10 the Tax Commissioner in accordance with such rules and regulations.
11 The tax shall begin the first day of the next calendar quarter which
12 is at least one hundred twenty days following receipt by the Tax
13 Commissioner of the certified copy of the adopted resolution. The Tax
14 Commissioner shall provide at least sixty days' notice of the
15 adoption of the tax or a change in the rate to retailers. Notice
16 shall be provided to retailers within the county. Notice to retailers
17 may be provided through the web site of the Department of Revenue or
18 by other electronic means.

19 (2) For resolutions containing a termination date, the
20 termination date is the first day of a calendar quarter. The county
21 shall furnish a certified statement to the Tax Commissioner no more
22 than one hundred eighty days and at least one hundred twenty days
23 before the termination date that the termination date stated in the
24 resolution is still valid. If the certified statement is not
25 furnished within the prescribed time, the tax shall remain in effect,

1 and the Tax Commissioner shall continue to collect the tax until the
2 first day of the calendar quarter which is at least one hundred
3 twenty days after receipt of the certified statement notwithstanding
4 the termination date stated in the resolution. The Tax Commissioner
5 shall provide at least sixty days' notice of the termination of the
6 tax to retailers. Notice shall be provided to retailers within the
7 county. Notice to retailers may be provided through the web site of
8 the department or other electronic means.

9 ~~(3) In the rental or lease of automobiles, trucks,~~
10 ~~trailers, semitrailers, and truck tractors as defined in the Motor~~
11 ~~Vehicle Registration Act, the tax shall be collected by the lessor on~~
12 ~~the rental or lease price at the tax rate in effect on the date the~~
13 ~~automobile, truck, trailer, semitrailer, or truck tractor is~~
14 ~~delivered to the lessee.~~

15 ~~(4)~~(3) The Tax Commissioner shall collect the sales and
16 use tax concurrently with collection of a state tax in the same
17 manner as the state tax is collected. The Tax Commissioner shall
18 remit monthly the proceeds of the tax to the counties imposing the
19 tax, after deducting the amount of refunds made and three percent of
20 the remainder as an administrative fee necessary to defray the cost
21 of collecting the tax and the expenses incident thereto. The Tax
22 Commissioner shall keep full and accurate records of all money
23 received and distributed. All receipts from the three-percent
24 administrative fee shall be deposited in the state General Fund.

25 ~~(5)~~(4) Upon any claim of illegal assessment and

1 collection, the taxpayer has the same remedies provided for claims of
2 illegal assessment and collection of the state tax. It is the
3 intention of the Legislature that the provisions of law which apply
4 to the recovery of state taxes illegally assessed and collected apply
5 to the recovery of sales and use taxes illegally assessed and
6 collected under section 13-319.

7 ~~(6)~~ (5) Boundary changes or the adoption of a sales and
8 use tax by an incorporated municipality that affects any tax imposed
9 by this section shall be governed as provided in subsections (3)
10 through (10) of section 77-27,143.

11 Sec. 2. Section 13-2814, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 13-2814 (1) The Tax Commissioner shall administer all
14 sales and use taxes adopted under section 13-2813. The Tax
15 Commissioner may prescribe forms and adopt and promulgate rules and
16 regulations in conformity with the Nebraska Revenue Act of 1967, as
17 amended, for the making of returns and for the ascertainment,
18 assessment, and collection of taxes. The council shall furnish a
19 certified copy of the adopting or repealing resolution to the Tax
20 Commissioner in accordance with such rules and regulations. The tax
21 shall begin the first day of the next calendar quarter following
22 receipt by the Tax Commissioner of the certified copy of the adopted
23 resolution if the certified copy of the adopted resolution is
24 received sixty days prior to the start of the next calendar quarter.

25 (2) For resolutions containing a termination date, the

1 termination date is the first day of a calendar quarter. The council
2 shall furnish a certified statement to the Tax Commissioner no more
3 than one hundred twenty days and at least sixty days before the
4 termination date stating that the termination date in the resolution
5 is still valid. If the certified statement is not furnished within
6 the prescribed time, the tax shall remain in effect and the Tax
7 Commissioner shall continue to collect the tax until the first day of
8 the calendar quarter which is at least sixty days after receipt of
9 the certified statement notwithstanding the termination date stated
10 in the resolution.

11 ~~(3) In the rental or lease of automobiles, trucks,~~
12 ~~trailers, semitrailers, and truck tractors as defined in the Motor~~
13 ~~Vehicle Registration Act, the tax shall be collected by the lessor on~~
14 ~~the rental or lease price at the tax rate in effect on the date the~~
15 ~~automobile, truck, trailer, semitrailer, or truck tractor is~~
16 ~~delivered to the lessee.~~

17 ~~(4)~~(3) The Tax Commissioner shall collect the sales and
18 use tax concurrently with collection of a state tax in the same
19 manner as the state tax is collected. The Tax Commissioner shall
20 remit monthly the proceeds of the tax to the municipal county
21 imposing the tax, after deducting the amount of refunds made and
22 three percent of the remainder as an administrative fee necessary to
23 defray the cost of collecting the tax and the expenses incident
24 thereto. The Tax Commissioner shall keep full and accurate records of
25 all money received and distributed. All receipts from the three

1 percent administrative fee shall be deposited in the Municipal
2 Equalization Fund.

3 ~~(5)~~—(4) Upon any claim of illegal assessment and
4 collection, the taxpayer has the same remedies as provided for claims
5 of illegal assessment and collection of the state tax. It is the
6 intention of the Legislature that the provisions of law which apply
7 to the recovery of state taxes illegally assessed and collected apply
8 to the recovery of sales and use taxes illegally assessed and
9 collected under section 13-2813.

10 Sec. 3. Section 77-2703, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-2703 (1) There is hereby imposed a tax at the rate
13 provided in section 77-2701.02 upon the gross receipts from all sales
14 of tangible personal property sold at retail in this state; the gross
15 receipts of every person engaged as a public utility, as a community
16 antenna television service operator, or as a satellite service
17 operator, any person involved in the connecting and installing of the
18 services defined in subdivision (2)(a), (b), (d), or (e) of section
19 77-2701.16, or every person engaged as a retailer of intellectual or
20 entertainment properties referred to in subsection (3) of section
21 77-2701.16; the gross receipts from the sale of admissions in this
22 state; the gross receipts from the sale of warranties, guarantees,
23 service agreements, or maintenance agreements when the items covered
24 are subject to tax under this section; beginning January 1, 2008, the
25 gross receipts from the sale of bundled transactions when one or more

1 of the products included in the bundle are taxable; the gross
2 receipts from the provision of services defined in subsection (4) of
3 section 77-2701.16; and the gross receipts from the sale of products
4 delivered electronically as described in subsection (9) of section
5 77-2701.16. Except as provided in section 77-2701.03, when there is a
6 sale, the tax shall be imposed at the rate in effect at the time the
7 gross receipts are realized under the accounting basis used by the
8 retailer to maintain his or her books and records.

9 (a) The tax imposed by this section shall be collected by
10 the retailer from the consumer. It shall constitute a part of the
11 purchase price and until collected shall be a debt from the consumer
12 to the retailer and shall be recoverable at law in the same manner as
13 other debts. The tax required to be collected by the retailer from
14 the consumer constitutes a debt owed by the retailer to this state.

15 (b) It is unlawful for any retailer to advertise, hold
16 out, or state to the public or to any customer, directly or
17 indirectly, that the tax or part thereof will be assumed or absorbed
18 by the retailer, that it will not be added to the selling, renting,
19 or leasing price of the property sold, rented, or leased, or that, if
20 added, it or any part thereof will be refunded. The provisions of
21 this subdivision shall not apply to a public utility.

22 (c) The tax required to be collected by the retailer from
23 the purchaser, unless otherwise provided by statute or by rule and
24 regulation of the Tax Commissioner, shall be displayed separately
25 from the list price, the price advertised in the premises, the marked

1 price, or other price on the sales check or other proof of sales,
2 rentals, or leases.

3 (d) For the purpose of more efficiently securing the
4 payment, collection, and accounting for the sales tax and for the
5 convenience of the retailer in collecting the sales tax, it shall be
6 the duty of the Tax Commissioner to provide a schedule or schedules
7 of the amounts to be collected from the consumer or user to
8 effectuate the computation and collection of the tax imposed by the
9 Nebraska Revenue Act of 1967. Such schedule or schedules shall
10 provide that the tax shall be collected from the consumer or user
11 uniformly on sales according to brackets based on sales prices of the
12 item or items. Retailers may compute the tax due on any transaction
13 on an item or an invoice basis. The rounding rule provided in section
14 77-3,117 applies.

15 (e) The use of tokens or stamps for the purpose of
16 collecting or enforcing the collection of the taxes imposed in the
17 Nebraska Revenue Act of 1967 or for any other purpose in connection
18 with such taxes is prohibited.

19 (f) For the purpose of the proper administration of the
20 provisions of the Nebraska Revenue Act of 1967 and to prevent evasion
21 of the retail sales tax, it shall be presumed that all gross receipts
22 are subject to the tax until the contrary is established. The burden
23 of proving that a sale of property is not a sale at retail is upon
24 the person who makes the sale unless he or she takes from the
25 purchaser (i) a resale certificate to the effect that the property is

1 purchased for the purpose of reselling, leasing, or renting it, (ii)
2 an exemption certificate pursuant to subsection (7) of section
3 77-2705, or (iii) a direct payment permit pursuant to sections
4 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption
5 certificate, or direct payment permit shall be conclusive proof for
6 the seller that the sale was made for resale or was exempt or that
7 the tax will be paid directly to the state.

8 (g) In the rental or lease of automobiles, trucks,
9 trailers, semitrailers, and truck-tractors as defined in the Motor
10 Vehicle Registration Act, the tax shall be collected by the lessor on
11 the rental or lease price, ~~at the tax rate in effect on the date the~~
12 ~~automobile, truck, trailer, semitrailer, or truck tractor is~~
13 ~~delivered to the lessee,~~ except as otherwise provided within this
14 section.

15 (h) In the rental or lease of automobiles, trucks,
16 trailers, semitrailers, and truck-tractors as defined in the act, for
17 periods of one year or more, the lessor may elect not to collect and
18 remit the sales tax on the gross receipts and instead pay a sales tax
19 on the cost of such vehicle. If such election is made, it shall be
20 made pursuant to the following conditions:

21 (i) Notice of the desire to make such election shall be
22 filed with the Tax Commissioner and shall not become effective until
23 the Tax Commissioner is satisfied that the taxpayer has complied with
24 all conditions of this subsection and all rules and regulations of
25 the Tax Commissioner;

1 (ii) Such election when made shall continue in force and
2 effect for a period of not less than two years and thereafter until
3 such time as the lessor elects to terminate the election;

4 (iii) When such election is made, it shall apply to all
5 vehicles of the lessor rented or leased for periods of one year or
6 more except vehicles to be leased to common or contract carriers who
7 provide to the lessor a valid common or contract carrier exemption
8 certificate. If the lessor rents or leases other vehicles for periods
9 of less than one year, such lessor shall maintain his or her books
10 and records and his or her accounting procedure as the Tax
11 Commissioner prescribes; and

12 (iv) The Tax Commissioner by rule and regulation shall
13 prescribe the contents and form of the notice of election, a
14 procedure for the determination of the tax base of vehicles which are
15 under an existing lease at the time such election becomes effective,
16 the method and manner for terminating such election, and such other
17 rules and regulations as may be necessary for the proper
18 administration of this subdivision.

19 (i) The tax imposed by this section on the sales of motor
20 vehicles, semitrailers, and trailers as defined in sections 60-339,
21 60-348, and 60-354 shall be the liability of the purchaser and, with
22 the exception of motor vehicles, semitrailers, and trailers
23 registered pursuant to section 60-3,198, the tax shall be collected
24 by the county treasurer or designated county official as provided in
25 the Motor Vehicle Registration Act at the time the purchaser makes

1 application for the registration of the motor vehicle, semitrailer,
2 or trailer for operation upon the highways of this state. The tax
3 imposed by this section on motor vehicles, semitrailers, and trailers
4 registered pursuant to section 60-3,198 shall be collected by the
5 Department of Motor Vehicles at the time the purchaser makes
6 application for the registration of the motor vehicle, semitrailer,
7 or trailer for operation upon the highways of this state. At the time
8 of the sale of any motor vehicle, semitrailer, or trailer, the seller
9 shall (i) state on the sales invoice the dollar amount of the tax
10 imposed under this section and (ii) furnish to the purchaser a
11 certified statement of the transaction, in such form as the Tax
12 Commissioner prescribes, setting forth as a minimum the total sales
13 price, the allowance for any trade-in, and the difference between the
14 two. The sales tax due shall be computed on the difference between
15 the total sales price and the allowance for any trade-in as disclosed
16 by such certified statement. Any seller who willfully understates the
17 amount upon which the sales tax is due shall be subject to a penalty
18 of one thousand dollars. A copy of such certified statement shall
19 also be furnished to the Tax Commissioner. Any seller who fails or
20 refuses to furnish such certified statement shall be guilty of a
21 misdemeanor and shall, upon conviction thereof, be punished by a fine
22 of not less than twenty-five dollars nor more than one hundred
23 dollars. If the seller fails to state on the sales invoice the dollar
24 amount of the tax due, the purchaser shall have the right and
25 authority to rescind any agreement for purchase and to declare the

1 purchase null and void. If the purchaser retains such motor vehicle,
2 semitrailer, or trailer in this state and does not register it for
3 operation on the highways of this state within thirty days of the
4 purchase thereof, the tax imposed by this section shall immediately
5 thereafter be paid by the purchaser to the county treasurer, the
6 designated county official, or the Department of Motor Vehicles. If
7 the tax is not paid on or before the thirtieth day after its
8 purchase, the county treasurer, designated county official, or
9 Department of Motor Vehicles shall also collect from the purchaser
10 interest from the thirtieth day through the date of payment and sales
11 tax penalties as provided in the Nebraska Revenue Act of 1967. The
12 county treasurer, designated county official, or Department of Motor
13 Vehicles shall report and remit the tax so collected to the Tax
14 Commissioner by the fifteenth day of the following month. The county
15 treasurer or designated county official shall deduct and withhold for
16 the use of the county general fund, from all amounts required to be
17 collected under this subsection, the collection fee permitted to be
18 deducted by any retailer collecting the sales tax. The Department of
19 Motor Vehicles shall deduct, withhold, and deposit in the Motor
20 Carrier Division Cash Fund the collection fee permitted to be
21 deducted by any retailer collecting the sales tax. The collection fee
22 shall be forfeited if the county treasurer, designated county
23 official, or Department of Motor Vehicles violates any rule or
24 regulation pertaining to the collection of the use tax.

25 (j)(i) The tax imposed by this section on the sale of a

1 motorboat as defined in section 37-1204 shall be the liability of the
2 purchaser. The tax shall be collected by the county treasurer or
3 designated county official at the time the purchaser makes
4 application for the registration of the motorboat. At the time of the
5 sale of a motorboat, the seller shall (A) state on the sales invoice
6 the dollar amount of the tax imposed under this section and (B)
7 furnish to the purchaser a certified statement of the transaction, in
8 such form as the Tax Commissioner prescribes, setting forth as a
9 minimum the total sales price, the allowance for any trade-in, and
10 the difference between the two. The sales tax due shall be computed
11 on the difference between the total sales price and the allowance for
12 any trade-in as disclosed by such certified statement. Any seller who
13 willfully understates the amount upon which the sales tax is due
14 shall be subject to a penalty of one thousand dollars. A copy of such
15 certified statement shall also be furnished to the Tax Commissioner.
16 Any seller who fails or refuses to furnish such certified statement
17 shall be guilty of a misdemeanor and shall, upon conviction thereof,
18 be punished by a fine of not less than twenty-five dollars nor more
19 than one hundred dollars. If the seller fails to state on the sales
20 invoice the dollar amount of the tax due, the purchaser shall have
21 the right and authority to rescind any agreement for purchase and to
22 declare the purchase null and void. If the purchaser retains such
23 motorboat in this state and does not register it within thirty days
24 of the purchase thereof, the tax imposed by this section shall
25 immediately thereafter be paid by the purchaser to the county

1 treasurer or designated county official. If the tax is not paid on or
2 before the thirtieth day after its purchase, the county treasurer or
3 designated county official shall also collect from the purchaser
4 interest from the thirtieth day through the date of payment and sales
5 tax penalties as provided in the Nebraska Revenue Act of 1967. The
6 county treasurer or designated county official shall report and remit
7 the tax so collected to the Tax Commissioner by the fifteenth day of
8 the following month. The county treasurer or designated county
9 official shall deduct and withhold for the use of the county general
10 fund, from all amounts required to be collected under this
11 subsection, the collection fee permitted to be deducted by any
12 retailer collecting the sales tax. The collection fee shall be
13 forfeited if the county treasurer or designated county official
14 violates any rule or regulation pertaining to the collection of the
15 use tax.

16 (ii) In the rental or lease of motorboats, the tax shall
17 be collected by the lessor on the rental or lease price.

18 (k) The Tax Commissioner shall adopt and promulgate
19 necessary rules and regulations for determining the amount subject to
20 the taxes imposed by this section so as to insure that the full
21 amount of any applicable tax is paid in cases in which a sale is made
22 of which a part is subject to the taxes imposed by this section and a
23 part of which is not so subject and a separate accounting is not
24 practical or economical.

25 (2) A use tax is hereby imposed on the storage, use, or

1 other consumption in this state of property purchased, leased, or
2 rented from any retailer and on any transaction the gross receipts of
3 which are subject to tax under subsection (1) of this section on or
4 after June 1, 1967, for storage, use, or other consumption in this
5 state at the rate set as provided in subsection (1) of this section
6 on the sales price of the property or, in the case of leases or
7 rentals, of the lease or rental prices.

8 (a) Every person storing, using, or otherwise consuming
9 in this state property purchased from a retailer or leased or rented
10 from another person for such purpose shall be liable for the use tax
11 at the rate in effect when his or her liability for the use tax
12 becomes certain under the accounting basis used to maintain his or
13 her books and records. His or her liability shall not be extinguished
14 until the use tax has been paid to this state, except that a receipt
15 from a retailer engaged in business in this state or from a retailer
16 who is authorized by the Tax Commissioner, under such rules and
17 regulations as he or she may prescribe, to collect the sales tax and
18 who is, for the purposes of the Nebraska Revenue Act of 1967 relating
19 to the sales tax, regarded as a retailer engaged in business in this
20 state, which receipt is given to the purchaser pursuant to
21 subdivision (b) of this subsection, shall be sufficient to relieve
22 the purchaser from further liability for the tax to which the receipt
23 refers.

24 (b) Every retailer engaged in business in this state and
25 selling, leasing, or renting property for storage, use, or other

1 consumption in this state shall, at the time of making any sale,
2 collect any tax which may be due from the purchaser and shall give to
3 the purchaser, upon request, a receipt therefor in the manner and
4 form prescribed by the Tax Commissioner.

5 (c) The Tax Commissioner, in order to facilitate the
6 proper administration of the use tax, may designate such person or
7 persons as he or she may deem necessary to be use tax collectors and
8 delegate to such persons such authority as is necessary to collect
9 any use tax which is due and payable to the State of Nebraska. The
10 Tax Commissioner may require of all persons so designated a surety
11 bond in favor of the State of Nebraska to insure against any
12 misappropriation of state funds so collected. The Tax Commissioner
13 may require any tax official, city, county, or state, to collect the
14 use tax on behalf of the state. All persons designated to or required
15 to collect the use tax shall account for such collections in the
16 manner prescribed by the Tax Commissioner. Nothing in this
17 subdivision shall be so construed as to prevent the Tax Commissioner
18 or his or her employees from collecting any use taxes due and payable
19 to the State of Nebraska.

20 (d) All persons designated to collect the use tax and all
21 persons required to collect the use tax shall forward the total of
22 such collections to the Tax Commissioner at such time and in such
23 manner as the Tax Commissioner may prescribe. For all use taxes
24 collected prior to October 1, 2002, such collectors of the use tax
25 shall deduct and withhold from the amount of taxes collected two and

1 one-half percent of the first three thousand dollars remitted each
2 month and one-half of one percent of all amounts in excess of three
3 thousand dollars remitted each month as reimbursement for the cost of
4 collecting the tax. For use taxes collected on and after October 1,
5 2002, such collectors of the use tax shall deduct and withhold from
6 the amount of taxes collected two and one-half percent of the first
7 three thousand dollars remitted each month as reimbursement for the
8 cost of collecting the tax. Any such deduction shall be forfeited to
9 the State of Nebraska if such collector violates any rule,
10 regulation, or directive of the Tax Commissioner.

11 (e) For the purpose of the proper administration of the
12 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
13 it shall be presumed that property sold, leased, or rented by any
14 person for delivery in this state is sold, leased, or rented for
15 storage, use, or other consumption in this state until the contrary
16 is established. The burden of proving the contrary is upon the person
17 who purchases, leases, or rents the property.

18 (f) For the purpose of the proper administration of the
19 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
20 for the sale of property to an advertising agency which purchases the
21 property as an agent for a disclosed or undisclosed principal, the
22 advertising agency is and remains liable for the sales and use tax on
23 the purchase the same as if the principal had made the purchase
24 directly.

25 Sec. 4. Section 77-2703.03, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2703.03 ~~(1) Notwithstanding section 77-2703.01, a~~
3 ~~purchaser of direct mail that is not a holder of a direct payment~~
4 ~~permit shall provide to the seller in conjunction with the purchase~~
5 ~~either a direct mail form or information to show the jurisdictions to~~
6 ~~which the direct mail is delivered to recipients.~~

7 ~~(2) Upon receipt of the direct mail form, the seller is~~
8 ~~relieved of all obligations to collect, pay, or remit the applicable~~
9 ~~tax and the purchaser is obligated to pay or remit the applicable tax~~
10 ~~on a direct pay basis. A direct mail form shall remain in effect for~~
11 ~~all future sales of direct mail by the seller to the purchaser until~~
12 ~~it is revoked in writing.~~

13 ~~(3) Upon receipt of information from the purchaser~~
14 ~~showing the jurisdictions to which the direct mail is delivered to~~
15 ~~recipients, the seller shall collect the tax according to the~~
16 ~~delivery information provided by the purchaser. In the absence of bad~~
17 ~~faith, the seller is relieved of any further obligation to collect~~
18 ~~tax on any transaction where the seller has collected tax pursuant to~~
19 ~~the delivery information provided by the purchaser.~~

20 ~~(4) If the purchaser of direct mail does not have a~~
21 ~~direct payment permit and does not provide the seller with either a~~
22 ~~direct mail form or delivery information as required by subsection~~
23 ~~(1) of this section, the seller shall collect the tax according to~~
24 ~~subsection (6) of section 77-2703.01. Nothing in this subsection~~
25 ~~shall limit a purchaser's obligation for sales or use tax to any~~

1 ~~state to which the direct mail is delivered.~~

2 ~~(5) If a purchaser of direct mail provides the seller~~
3 ~~with documentation of direct pay authority, the purchaser shall not~~
4 ~~be required to provide a direct mail form or delivery information to~~
5 ~~the seller.~~

6 (1) This section applies when sourcing sales of direct
7 mail. For purposes of this section:

8 (a) Advertising and promotional direct mail means direct
9 mail that has the primary purpose of attracting public attention to a
10 product, person, business, or organization or attempting to sell,
11 popularize, or secure financial support for a product, person,
12 business, or organization; and

13 (b)(i) Other direct mail means any direct mail that is
14 not advertising and promotional direct mail, regardless of whether
15 advertising and promotional direct mail is included in the same
16 mailing.

17 (ii) Other direct mail includes, but is not limited to:

18 (A) Transactional direct mail that contains personal
19 information specific to the addressee, including, but not limited to,
20 invoices, bills, statements of account, and payroll advices;

21 (B) Any legally required mailings, including, but not
22 limited to, privacy notices, tax reports, and stockholder reports;
23 and

24 (C) Other nonpromotional direct mail delivered to
25 existing or former shareholders, customers, employees, or agents,

1 including, but not limited to, newsletters and informational pieces.

2 (iii) Other direct mail does not include the development
3 of billing information or any data processing service that is more
4 than incidental.

5 (2) The sale of advertising and promotional direct mail
6 shall be sourced as follows:

7 (a) If the purchaser of advertising and promotional
8 direct mail provides the retailer with a direct payment permit,
9 certificate of exemption authorized by the streamlined sales and use
10 tax agreement, or written statement claiming exemption that has been
11 approved, authorized, or accepted by the Tax Commissioner, the
12 purchaser shall source the sale to the jurisdictions to which the
13 advertising and promotional direct mail is to be delivered to
14 recipients and shall report and pay any applicable tax due. In the
15 absence of bad faith, the retailer is relieved of all obligations to
16 collect, pay, or remit any tax on any transaction involving
17 advertising and promotional direct mail to which the direct payment
18 permit, certificate of exemption, or written statement applies;

19 (b) If the purchaser of advertising and promotional
20 direct mail provides the retailer with information showing the
21 jurisdictions to which the advertising and promotional direct mail is
22 to be delivered to recipients, the retailer shall source the sale to
23 the jurisdictions to which the advertising and promotional direct
24 mail is to be delivered to recipients and shall collect and remit the
25 applicable tax. In the absence of bad faith, the retailer is relieved

1 of any further obligation to collect any additional tax on the sale
2 of advertising and promotional direct mail; or

3 (c) If neither subdivision (a) of this subsection nor
4 subdivision (b) of this subsection applies, then the sale of
5 advertising and promotional direct mail shall be sourced according to
6 subsection (6) of section 77-2703.01. The tax paid shall not
7 constitute a properly paid tax for purposes of allowing credit
8 against state and local option sales and use tax due.

9 (3) The sale of other direct mail shall be sourced as
10 follows:

11 (a) If the purchaser of other direct mail provides the
12 retailer with a direct payment permit, certificate of exemption
13 authorized by the streamlined sales and use tax agreement, or written
14 statement claiming exemption that has been approved, authorized, or
15 accepted by the Tax Commissioner, the purchaser shall source the sale
16 to the jurisdictions to which the other direct mail is to be
17 delivered to recipients and shall report and pay any applicable tax
18 due. In the absence of bad faith, the retailer is relieved of all
19 obligations to collect, pay, or remit any tax on any transaction
20 involving other direct mail to which the direct payment permit,
21 certificate of exemption, or written statement applies;

22 (b) If the purchaser of other direct mail provides the
23 retailer with information showing the jurisdictions to which the
24 other direct mail is to be delivered to recipients, the retailer
25 shall source the sale to the jurisdictions to which the other direct

1 mail is to be delivered to recipients and shall collect and remit the
2 applicable tax. In the absence of bad faith, the retailer is relieved
3 of any further obligation to collect any additional tax on the sale
4 of other direct mail; or

5 (c) If neither subdivision (a) of this subsection nor
6 subdivision (b) of this subsection applies, then the sale of other
7 direct mail shall be sourced according to subsection (4) of section
8 77-2703.01. The tax paid shall not constitute a properly paid tax for
9 purposes of allowing credit against state and local option sales and
10 use tax due.

11 (4) This section applies to transactions characterized
12 under state law as sales of services only if the service is an
13 integral part of the production and distribution of direct mail.

14 (5) If a transaction is a bundled transaction that
15 includes advertising and promotional direct mail, this section
16 applies only if the primary purpose of the transaction is the sale of
17 advertising and promotional direct mail.

18 (6) This section does not apply to any transaction that
19 includes the development of billing information or the provision of
20 any data processing service that is more than incidental, regardless
21 of whether advertising and promotional direct mail is included in the
22 same mailing.

23 Sec. 5. Section 77-2704.10, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-2704.10 Sales and use taxes shall not be imposed on

1 the gross receipts from the sale, lease, or rental of and the
2 storage, use, or other consumption in this state of:

3 (1) ~~Meals and food products, including soft drinks and~~
4 ~~candy, for human consumption~~ Prepared food and food and food
5 ingredients served by public or private schools, school districts,
6 student organizations, or parent-teacher associations pursuant to an
7 agreement with the proper school authorities, in an elementary or
8 secondary school or at any institution of higher education, public or
9 private, during the regular school day or at an approved function of
10 any such school or institution, but such exemption shall not apply to
11 sales at any facility or function which is open to the general
12 public, except that concession sales by elementary and secondary
13 schools, public or private, shall be exempt;

14 (2) ~~Meals and food products, including soft drinks and~~
15 ~~candy, for human consumption when~~ Prepared food and food and food
16 ingredients sold by a church at a function of such church;

17 (3) ~~Meals and food products, including soft drinks and~~
18 ~~candy, for human consumption when~~ Prepared food and food and food
19 ingredients served to patients and inmates of hospitals and other
20 institutions licensed by the state for the care of human beings;

21 (4) ~~Meals and food products, including soft drinks and~~
22 ~~candy, for human consumption when~~ Prepared food and food and food
23 ingredients sold at a political event by ballot question committees,
24 candidate committees, independent committees, and political party
25 committees as defined in the Nebraska Political Accountability and

1 Disclosure Act or fees and admissions charged for such political
2 event;

3 (5) ~~Meals and food products~~ Prepared food and food and
4 food ingredients sold to the elderly, handicapped, or recipients of
5 Supplemental Security Income by an organization that actually accepts
6 electronic benefits transfer ~~or food coupons~~ under regulations issued
7 by the United States Department of Agriculture although it is not
8 necessary for the purchaser to use electronic benefits transfer ~~or~~
9 ~~food coupons~~ to pay for the ~~meal~~; prepared food and food and food
10 ingredients; and

11 (6) Fees and admissions charged by a public or private
12 elementary or secondary school and fees and admissions charged by a
13 school district, student organization, or parent-teacher association,
14 pursuant to an agreement with the proper school authorities, in a
15 public or private elementary or secondary school during the regular
16 school day or at an approved function of any such school.

17 Sec. 6. Section 77-2712.03, Revised Statutes Cumulative
18 Supplement, 2010, is amended to read:

19 77-2712.03 (1) The streamlined sales and use tax
20 agreement, as adopted by the streamlined sales tax implementing
21 states on November 12, 2002, including amendments through December
22 31, ~~2009~~, 2010, is hereby ratified by the Legislature. The Governor
23 shall enter into the agreement with one or more states to simplify
24 and modernize sales and use tax administration in order to
25 substantially reduce the burden of tax compliance for all sellers and

1 for all types of commerce. In furtherance of the agreement, the
2 Department of Revenue is authorized to act jointly with other states
3 that are members under Articles VII or VIII of the agreement to
4 establish standards for certification of a certified service provider
5 and certified automated system and establish performance standards
6 for multistate sellers. The department is further authorized to take
7 other actions permissible under law reasonably required to implement
8 the provisions set forth in the agreement. Other actions authorized
9 by this section include, but are not limited to, the adoption and
10 promulgation of rules and regulations and the joint procurement, with
11 other member states, of goods and services in furtherance of the
12 agreement.

13 (2) The Tax Commissioner or his or her designee and two
14 representatives of the Legislature appointed by the Executive Board
15 of the Legislative Council are authorized to represent Nebraska
16 before the other member states under the agreement. The state also
17 agrees to participate in and comply with the procedures of and
18 decisions made by the governing board of the member states. These
19 provisions of the agreement include the creation of the organization
20 as provided in Article VII of the agreement, the requirements for
21 state entry and withdrawal as provided in Article VIII of the
22 agreement, amendments to the agreement as provided in Article IX of
23 the agreement, and a dispute resolution process as provided in
24 Article X of the agreement.

25 Sec. 7. Section 77-27,143, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-27,143 (1) The administration of all sales and use
3 taxes adopted under the Local Option Revenue Act shall be by the Tax
4 Commissioner who may prescribe forms and adopt and promulgate
5 reasonable rules and regulations in conformity with the act for the
6 making of returns and for the ascertainment, assessment, and
7 collection of taxes imposed under such act. The incorporated
8 municipality shall furnish a certified copy of the adopting or
9 repealing ordinance to the Tax Commissioner in accordance with such
10 rules and regulations as he or she may adopt and promulgate. For
11 ordinances passed after October 1, 1969, the effective date shall be
12 the first day of the next calendar quarter which is at least one
13 hundred twenty days following receipt by the Tax Commissioner of the
14 certified copy of the ordinance. The Tax Commissioner shall provide
15 at least sixty days' notice of the change in tax to retailers. Notice
16 shall be provided to retailers within the municipality. Notice to
17 retailers may be provided through the web site of the Department of
18 Revenue or by other electronic means.

19 (2) For ordinances containing a termination date and
20 passed after October 1, 1986, the termination date shall be the first
21 day of a calendar quarter. The incorporated municipality shall
22 furnish a certified statement to the Tax Commissioner no more than
23 one hundred eighty days and at least one hundred twenty days prior to
24 the termination date that the termination date stated in the
25 ordinance is still valid. If the certified statement is not furnished

1 within the prescribed time, the tax shall remain in effect, and the
2 Tax Commissioner shall continue to collect the tax until the first
3 day of the calendar quarter which is at least one hundred twenty days
4 after receipt of the certified statement notwithstanding the
5 termination date stated in the ordinance. The Tax Commissioner shall
6 provide at least sixty days' notice of the termination of the tax to
7 retailers. Notice shall be provided to retailers within the
8 municipality. Notice to retailers may be provided through the web
9 site of the department or by other electronic means.

10 (3) For sales and use tax purposes only, local
11 jurisdiction boundary changes apply only on the first day of a
12 calendar quarter after a minimum of one hundred twenty days' notice
13 to the Tax Commissioner and sixty days' notice to sellers.

14 (4) The state shall provide and maintain a data base that
15 describes boundary changes for all local taxing jurisdictions. This
16 data base shall include a description of any change and the effective
17 date of the change for sales and use tax purposes.

18 (5) The state shall provide and maintain a data base of
19 all sales and use tax rates for all of the local jurisdictions
20 levying taxes within the state. For the identification of counties,
21 cities, and villages, codes corresponding to the rates shall be
22 provided according to Federal Information Processing Standards as
23 developed by the National Institute of Standards and Technology.

24 (6) The state shall provide and maintain a data base that
25 assigns each five-digit and nine-digit zip code within the state to

1 the proper tax rates and jurisdictions. For purposes of the
2 streamlined sales and use tax agreement, the data base shall apply
3 the lowest combined tax rate imposed in the zip code area if the area
4 includes more than one tax rate in any level of taxing jurisdictions.
5 If a nine-digit zip code designation is not available for a street
6 address or if a seller is unable to determine the nine-digit zip code
7 designation applicable to a purchase after exercising due diligence
8 to determine the designation, the seller or certified service
9 provider may apply the rate for the five-digit zip code area. For
10 purposes of this section, there is a rebuttable presumption that a
11 seller or certified service provider has exercised due diligence if
12 the seller has attempted to determine the nine-digit zip code
13 designation by utilizing software approved by the governing board
14 that makes this designation from the street address and the five-
15 digit zip code applicable to a purchase.

16 (7) For purposes of the streamlined sales and use tax
17 agreement, the state may provide address-based boundary data base
18 records for assigning taxing jurisdictions and their associated rates
19 which shall be in addition to the requirements of subsection (6) of
20 this section. The data base records shall be in the same approved
21 format as the data base records pursuant to subsection (6) of this
22 section and shall meet the requirements developed pursuant to the
23 federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a), as
24 such act existed on January 1, 2003. The governing board may allow a
25 member state to require sellers that register under the agreement to

1 use an address-based boundary data base provided by that member
2 state. If any member state develops an addressed-based boundary data
3 base pursuant to the agreement, a seller or certified service
4 provider may use those data base records in place of the five-digit
5 and nine-digit zip code data base records provided for in subsection
6 (6) of this section. If a seller or certified service provider is
7 unable to determine the applicable rate and jurisdiction using an
8 address-based boundary data base after exercising due diligence, the
9 seller or certified service provider may apply the nine-digit zip
10 code designation applicable to a purchase. If a nine-digit zip code
11 designation is not available for a street address or if a seller or
12 certified service provider is unable to determine the nine-digit zip
13 code designation applicable to a purchase after exercising due
14 diligence to determine the designation, the seller or certified
15 service provider may apply the rate for the five-digit zip code area.
16 For the purposes of this section, there is a rebuttable presumption
17 that a seller or certified service provider has exercised due
18 diligence if the seller or certified service provider has attempted
19 to determine the tax rate and jurisdiction by utilizing software
20 approved by the governing board that makes this assignment from the
21 address and zip code information applicable to the purchase.

22 (8) The state may certify vendor-provided address-based
23 boundary data bases for assigning tax rates and jurisdictions. The
24 data bases shall be in the same approved format as the data base
25 records pursuant to subsection (7) of this section and shall meet the

1 requirements developed pursuant to the federal Mobile
2 Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act existed
3 on January 1, 2003. If a state certifies a vendor-provided address-
4 based boundary data base, a seller or certified service provider may
5 use that data base in place of the data base provided for in
6 subsection (6) or (7) of this section. Vendors providing address-
7 based boundary data bases may request certification of their data
8 bases from the governing board. Certification by the governing board
9 does not replace the requirement that the data bases be certified by
10 the states individually.

11 (9) Pursuant to the streamlined sales and use tax
12 agreement, the state shall relieve retailers and certified service
13 providers using data bases pursuant to subsection (6) or (7) of this
14 section from liability to the state and local jurisdictions for
15 having charged and collected the incorrect amount of sales or use tax
16 resulting from the retailer or certified service provider relying on
17 erroneous data provided by a member state on tax rates, boundaries,
18 or taxing jurisdiction assignments. After providing adequate notice
19 determined by the governing board, a member state that provides an
20 address-based boundary data base for assigning taxing jurisdictions
21 pursuant to subsection (7) or (8) of this section may cease providing
22 liability relief for errors resulting from the reliance on the data
23 base provided by the member state under the provisions of subsection
24 (6) of this section. If a seller demonstrates that requiring the use
25 of the address-based boundary data base would create an undue

1 hardship, the state and the governing board may extend the relief of
2 liability to such seller for a designated period of time.

3 (10) The data bases provided for in this section shall be
4 in a downloadable format approved by the governing board pursuant to
5 the streamlined sales and use tax agreement. The data bases may be
6 directly provided by the state or provided by a vendor as designated
7 by the state. A data base provided by a vendor as designated by a
8 state shall be applicable to and subject to all provisions of this
9 section. The data bases shall be provided at no cost to the user of
10 the data base. The provisions of subsections (6) and (7) of this
11 section do not apply when the purchased product is received by the
12 purchaser at the business location of the seller.

13 ~~(11) In the rental or lease of automobiles, trucks,~~
14 ~~trailers, semitrailers, and truck tractors as defined in the Motor~~
15 ~~Vehicle Registration Act, the tax shall be collected by the lessor on~~
16 ~~the rental or lease price at the tax rate in effect on the date the~~
17 ~~automobile, truck, trailer, semitrailer, or truck tractor is~~
18 ~~delivered to the lessee.~~

19 ~~(12)~~(11) A seller that did not have a requirement to
20 register in this state prior to registering pursuant to the agreement
21 or a certified service provider shall not be required to collect
22 sales or use taxes for a state until the first day of the calendar
23 quarter commencing more than sixty days after the state has provided
24 the data bases required by this section.

25 Sec. 8. This act becomes operative on October 1, 2011.

1 Sec. 9. Original sections 13-324, 13-2814, 77-2703,
2 77-2703.03, 77-2704.10, and 77-27,143, Reissue Revised Statutes of
3 Nebraska, and section 77-2712.03, Revised Statutes Cumulative
4 Supplement, 2010, are repealed.