

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 498

Introduced by Hadley, 37.

Read first time January 21, 2015

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2703 and 77-2708, Revised Statutes Cumulative Supplement, 2014;
- 3 to change sales and use tax provisions relating to all-terrain
- 4 vehicles and utility-type vehicles; to harmonize provisions; to
- 5 provide an operative date; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 77-2703 (1) There is hereby imposed a tax at the rate provided in
4 section 77-2701.02 upon the gross receipts from all sales of tangible
5 personal property sold at retail in this state; the gross receipts of
6 every person engaged as a public utility, as a community antenna
7 television service operator, or as a satellite service operator, any
8 person involved in the connecting and installing of the services defined
9 in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every
10 person engaged as a retailer of intellectual or entertainment properties
11 referred to in subsection (3) of section 77-2701.16; the gross receipts
12 from the sale of admissions in this state; the gross receipts from the
13 sale of warranties, guarantees, service agreements, or maintenance
14 agreements when the items covered are subject to tax under this section;
15 beginning January 1, 2008, the gross receipts from the sale of bundled
16 transactions when one or more of the products included in the bundle are
17 taxable; the gross receipts from the provision of services defined in
18 subsection (4) of section 77-2701.16; and the gross receipts from the
19 sale of products delivered electronically as described in subsection (9)
20 of section 77-2701.16. Except as provided in section 77-2701.03, when
21 there is a sale, the tax shall be imposed at the rate in effect at the
22 time the gross receipts are realized under the accounting basis used by
23 the retailer to maintain his or her books and records.

24 (a) The tax imposed by this section shall be collected by the
25 retailer from the consumer. It shall constitute a part of the purchase
26 price and until collected shall be a debt from the consumer to the
27 retailer and shall be recoverable at law in the same manner as other
28 debts. The tax required to be collected by the retailer from the consumer
29 constitutes a debt owed by the retailer to this state.

30 (b) It is unlawful for any retailer to advertise, hold out, or state
31 to the public or to any customer, directly or indirectly, that the tax or

1 part thereof will be assumed or absorbed by the retailer, that it will
2 not be added to the selling, renting, or leasing price of the property
3 sold, rented, or leased, or that, if added, it or any part thereof will
4 be refunded. The provisions of this subdivision shall not apply to a
5 public utility.

6 (c) The tax required to be collected by the retailer from the
7 purchaser, unless otherwise provided by statute or by rule and regulation
8 of the Tax Commissioner, shall be displayed separately from the list
9 price, the price advertised in the premises, the marked price, or other
10 price on the sales check or other proof of sales, rentals, or leases.

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

22 (e) The use of tokens or stamps for the purpose of collecting or
23 enforcing the collection of the taxes imposed in the Nebraska Revenue Act
24 of 1967 or for any other purpose in connection with such taxes is
25 prohibited.

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

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

8 (g) In the rental or lease of automobiles, trucks, trailers,
9 semitrailers, and truck-tractors as defined in the Motor Vehicle
10 Registration Act, the tax shall be collected by the lessor on the rental
11 or lease price, except as otherwise provided within this section.

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

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

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

26 (iii) When such election is made, it shall apply to all vehicles of
27 the lessor rented or leased for periods of one year or more except
28 vehicles to be leased to common or contract carriers who provide to the
29 lessor a valid common or contract carrier exemption certificate. If the
30 lessor rents or leases other vehicles for periods of less than one year,
31 such lessor shall maintain his or her books and records and his or her

1 accounting procedure as the Tax Commissioner prescribes; and

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

8 (i) The tax imposed by this section on the sales of motor vehicles,
9 semitrailers, and trailers as defined in sections 60-339, 60-348, and
10 60-354 shall be the liability of the purchaser and, with the exception of
11 motor vehicles, semitrailers, and trailers registered pursuant to section
12 60-3,198, the tax shall be collected by the county treasurer as provided
13 in the Motor Vehicle Registration Act at the time the purchaser makes
14 application for the registration of the motor vehicle, semitrailer, or
15 trailer for operation upon the highways of this state. The tax imposed by
16 this section on motor vehicles, semitrailers, and trailers registered
17 pursuant to section 60-3,198 shall be collected by the Department of
18 Motor Vehicles at the time the purchaser makes application for the
19 registration of the motor vehicle, semitrailer, or trailer for operation
20 upon the highways of this state. At the time of the sale of any motor
21 vehicle, semitrailer, or trailer, the seller shall (i) state on the sales
22 invoice the dollar amount of the tax imposed under this section and (ii)
23 furnish to the purchaser a certified statement of the transaction, in
24 such form as the Tax Commissioner prescribes, setting forth as a minimum
25 the total sales price, the allowance for any trade-in, and the difference
26 between the two. The sales tax due shall be computed on the difference
27 between the total sales price and the allowance for any trade-in as
28 disclosed by such certified statement. Any seller who willfully
29 understates the amount upon which the sales tax is due shall be subject
30 to a penalty of one thousand dollars. A copy of such certified statement
31 shall also be furnished to the Tax Commissioner. Any seller who fails or

1 refuses to furnish such certified statement shall be guilty of a
2 misdemeanor and shall, upon conviction thereof, be punished by a fine of
3 not less than twenty-five dollars nor more than one hundred dollars. If
4 the purchaser does not register such motor vehicle, semitrailer, or
5 trailer for operation on the highways of this state within thirty days of
6 the purchase thereof, the tax imposed by this section shall immediately
7 thereafter be paid by the purchaser to the county treasurer or the
8 Department of Motor Vehicles. If the tax is not paid on or before the
9 thirtieth day after its purchase, the county treasurer or Department of
10 Motor Vehicles shall also collect from the purchaser interest from the
11 thirtieth day through the date of payment and sales tax penalties as
12 provided in the Nebraska Revenue Act of 1967. The county treasurer or
13 Department of Motor Vehicles shall report and remit the tax so collected
14 to the Tax Commissioner by the fifteenth day of the following month. The
15 county treasurer shall deduct and withhold for the use of the county
16 general fund, from all amounts required to be collected under this
17 subsection, the collection fee permitted to be deducted by any retailer
18 collecting the sales tax. The Department of Motor Vehicles shall deduct,
19 withhold, and deposit in the Motor Carrier Division Cash Fund the
20 collection fee permitted to be deducted by any retailer collecting the
21 sales tax. The collection fee shall be forfeited if the county treasurer
22 or Department of Motor Vehicles violates any rule or regulation
23 pertaining to the collection of the use tax.

24 (j)(i) The tax imposed by this section on the sale of a motorboat as
25 defined in section 37-1204 shall be the liability of the purchaser. The
26 tax shall be collected by the county treasurer at the time the purchaser
27 makes application for the registration of the motorboat. At the time of
28 the sale of a motorboat, the seller shall (A) state on the sales invoice
29 the dollar amount of the tax imposed under this section and (B) furnish
30 to the purchaser a certified statement of the transaction, in such form
31 as the Tax Commissioner prescribes, setting forth as a minimum the total

1 sales price, the allowance for any trade-in, and the difference between
2 the two. The sales tax due shall be computed on the difference between
3 the total sales price and the allowance for any trade-in as disclosed by
4 such certified statement. Any seller who willfully understates the amount
5 upon which the sales tax is due shall be subject to a penalty of one
6 thousand dollars. A copy of such certified statement shall also be
7 furnished to the Tax Commissioner. Any seller who fails or refuses to
8 furnish such certified statement shall be guilty of a misdemeanor and
9 shall, upon conviction thereof, be punished by a fine of not less than
10 twenty-five dollars nor more than one hundred dollars. If the purchaser
11 does not register such motorboat within thirty days of the purchase
12 thereof, the tax imposed by this section shall immediately thereafter be
13 paid by the purchaser to the county treasurer. If the tax is not paid on
14 or before the thirtieth day after its purchase, the county treasurer
15 shall also collect from the purchaser interest from the thirtieth day
16 through the date of payment and sales tax penalties as provided in the
17 Nebraska Revenue Act of 1967. The county treasurer shall report and remit
18 the tax so collected to the Tax Commissioner by the fifteenth day of the
19 following month. The county treasurer shall deduct and withhold for the
20 use of the county general fund, from all amounts required to be collected
21 under this subsection, the collection fee permitted to be deducted by any
22 retailer collecting the sales tax. The collection fee shall be forfeited
23 if the county treasurer violates any rule or regulation pertaining to the
24 collection of the use tax.

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

27 ~~(k)(i) The tax imposed by this section on the sale of an all-terrain~~
28 ~~vehicle as defined in section 60-103 or a utility-type vehicle as defined~~
29 ~~in section 60-135.01 shall be the liability of the purchaser. The tax~~
30 ~~shall be collected by the county treasurer at the time the purchaser~~
31 ~~makes application for the certificate of title for the all-terrain~~

1 ~~vehicle or utility-type vehicle. At the time of the sale of an all-~~
2 ~~terrain vehicle or a utility-type vehicle, the seller shall (A) state on~~
3 ~~the sales invoice the dollar amount of the tax imposed under this section~~
4 ~~and (B) furnish to the purchaser a certified statement of the~~
5 ~~transaction, in such form as the Tax Commissioner prescribes, setting~~
6 ~~forth as a minimum the total sales price, the allowance for any trade-in,~~
7 ~~and the difference between the two. The sales tax due shall be computed~~
8 ~~on the difference between the total sales price and the allowance for any~~
9 ~~trade-in as disclosed by such certified statement. Any seller who~~
10 ~~willfully understates the amount upon which the sales tax is due shall be~~
11 ~~subject to a penalty of one thousand dollars. A copy of such certified~~
12 ~~statement shall also be furnished to the Tax Commissioner. Any seller who~~
13 ~~fails or refuses to furnish such certified statement shall be guilty of a~~
14 ~~misdemeanor and shall, upon conviction thereof, be punished by a fine of~~
15 ~~not less than twenty-five dollars nor more than one hundred dollars. If~~
16 ~~the purchaser does not obtain a certificate of title for such all-terrain~~
17 ~~vehicle or utility-type vehicle within thirty days of the purchase~~
18 ~~thereof, the tax imposed by this section shall immediately thereafter be~~
19 ~~paid by the purchaser to the county treasurer. If the tax is not paid on~~
20 ~~or before the thirtieth day after its purchase, the county treasurer~~
21 ~~shall also collect from the purchaser interest from the thirtieth day~~
22 ~~through the date of payment and sales tax penalties as provided in the~~
23 ~~Nebraska Revenue Act of 1967. The county treasurer shall report and remit~~
24 ~~the tax so collected to the Tax Commissioner by the fifteenth day of the~~
25 ~~following month. The county treasurer shall deduct and withhold for the~~
26 ~~use of the county general fund, from all amounts required to be collected~~
27 ~~under this subsection, the collection fee permitted to be deducted by any~~
28 ~~retailer collecting the sales tax. The collection fee shall be forfeited~~
29 ~~if the county treasurer violates any rule or regulation pertaining to the~~
30 ~~collection of the use tax.~~

31 (ii) ~~In the rental or lease of an all-terrain vehicle or a utility-~~

1 ~~type vehicle, the tax shall be collected by the lessor on the rental or~~
2 ~~lease price.~~

3 ~~(iii) County treasurers are appointed as sales and use tax~~
4 ~~collectors for all sales of all-terrain vehicles or utility-type vehicles~~
5 ~~made outside of this state to purchasers or users of all-terrain vehicles~~
6 ~~or utility-type vehicles which are required to have a certificate of~~
7 ~~title in this state. The county treasurer shall collect the applicable~~
8 ~~use tax from the purchaser of an all-terrain vehicle or a utility-type~~
9 ~~vehicle purchased outside of this state at the time application for a~~
10 ~~certificate of title is made. The full use tax on the purchase price~~
11 ~~shall be collected by the county treasurer if a sales or occupation tax~~
12 ~~was not paid by the purchaser in the state of purchase. If a sales or~~
13 ~~occupation tax was lawfully paid in the state of purchase at a rate less~~
14 ~~than the tax imposed in this state, use tax must be collected on the~~
15 ~~difference as a condition for obtaining a certificate of title in this~~
16 ~~state.~~

17 ~~(k 1) The Tax Commissioner shall adopt and promulgate necessary~~
18 ~~rules and regulations for determining the amount subject to the taxes~~
19 ~~imposed by this section so as to insure that the full amount of any~~
20 ~~applicable tax is paid in cases in which a sale is made of which a part~~
21 ~~is subject to the taxes imposed by this section and a part of which is~~
22 ~~not so subject and a separate accounting is not practical or economical.~~

23 ~~(2) A use tax is hereby imposed on the storage, use, or other~~
24 ~~consumption in this state of property purchased, leased, or rented from~~
25 ~~any retailer and on any transaction the gross receipts of which are~~
26 ~~subject to tax under subsection (1) of this section on or after June 1,~~
27 ~~1967, for storage, use, or other consumption in this state at the rate~~
28 ~~set as provided in subsection (1) of this section on the sales price of~~
29 ~~the property or, in the case of leases or rentals, of the lease or rental~~
30 ~~prices.~~

31 ~~(a) Every person storing, using, or otherwise consuming in this~~

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

15 (b) Every retailer engaged in business in this state and selling,
16 leasing, or renting property for storage, use, or other consumption in
17 this state shall, at the time of making any sale, collect any tax which
18 may be due from the purchaser and shall give to the purchaser, upon
19 request, a receipt therefor in the manner and form prescribed by the Tax
20 Commissioner.

21 (c) The Tax Commissioner, in order to facilitate the proper
22 administration of the use tax, may designate such person or persons as he
23 or she may deem necessary to be use tax collectors and delegate to such
24 persons such authority as is necessary to collect any use tax which is
25 due and payable to the State of Nebraska. The Tax Commissioner may
26 require of all persons so designated a surety bond in favor of the State
27 of Nebraska to insure against any misappropriation of state funds so
28 collected. The Tax Commissioner may require any tax official, city,
29 county, or state, to collect the use tax on behalf of the state. All
30 persons designated to or required to collect the use tax shall account
31 for such collections in the manner prescribed by the Tax Commissioner.

1 Nothing in this subdivision shall be so construed as to prevent the Tax
2 Commissioner or his or her employees from collecting any use taxes due
3 and payable to the State of Nebraska.

4 (d) All persons designated to collect the use tax and all persons
5 required to collect the use tax shall forward the total of such
6 collections to the Tax Commissioner at such time and in such manner as
7 the Tax Commissioner may prescribe. For all use taxes collected prior to
8 October 1, 2002, such collectors of the use tax shall deduct and withhold
9 from the amount of taxes collected two and one-half percent of the first
10 three thousand dollars remitted each month and one-half of one percent of
11 all amounts in excess of three thousand dollars remitted each month as
12 reimbursement for the cost of collecting the tax. For use taxes collected
13 on and after October 1, 2002, such collectors of the use tax shall deduct
14 and withhold from the amount of taxes collected two and one-half percent
15 of the first three thousand dollars remitted each month as reimbursement
16 for the cost of collecting the tax. Any such deduction shall be forfeited
17 to the State of Nebraska if such collector violates any rule, regulation,
18 or directive of the Tax Commissioner.

19 (e) For the purpose of the proper administration of the Nebraska
20 Revenue Act of 1967 and to prevent evasion of the use tax, it shall be
21 presumed that property sold, leased, or rented by any person for delivery
22 in this state is sold, leased, or rented for storage, use, or other
23 consumption in this state until the contrary is established. The burden
24 of proving the contrary is upon the person who purchases, leases, or
25 rents the property.

26 (f) For the purpose of the proper administration of the Nebraska
27 Revenue Act of 1967 and to prevent evasion of the use tax, for the sale
28 of property to an advertising agency which purchases the property as an
29 agent for a disclosed or undisclosed principal, the advertising agency is
30 and remains liable for the sales and use tax on the purchase the same as
31 if the principal had made the purchase directly.

1 Sec. 2. Section 77-2708, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 77-2708 (1)(a) The sales and use taxes imposed by the Nebraska
4 Revenue Act of 1967 shall be due and payable to the Tax Commissioner
5 monthly on or before the twentieth day of the month next succeeding each
6 monthly period unless otherwise provided pursuant to the Nebraska Revenue
7 Act of 1967.

8 (b)(i) On or before the twentieth day of the month following each
9 monthly period or such other period as the Tax Commissioner may require,
10 a return for such period, along with all taxes due, shall be filed with
11 the Tax Commissioner in such form and content as the Tax Commissioner may
12 prescribe and containing such information as the Tax Commissioner deems
13 necessary for the proper administration of the Nebraska Revenue Act of
14 1967. The Tax Commissioner, if he or she deems it necessary in order to
15 insure payment to or facilitate the collection by the state of the amount
16 of sales or use taxes due, may require returns and payment of the amount
17 of such taxes for periods other than monthly periods in the case of a
18 particular seller, retailer, or purchaser, as the case may be. The Tax
19 Commissioner shall by rule and regulation require reports and tax
20 payments from sellers, retailers, or purchasers depending on their yearly
21 tax liability. Except as required by the streamlined sales and use tax
22 agreement, annual returns shall be required if such sellers', retailers',
23 or purchasers' yearly tax liability is less than nine hundred dollars,
24 quarterly returns shall be required if their yearly tax liability is nine
25 hundred dollars or more and less than three thousand dollars, and monthly
26 returns shall be required if their yearly tax liability is three thousand
27 dollars or more. The Tax Commissioner shall have the discretion to allow
28 an annual return for seasonal retailers, even when their yearly tax
29 liability exceeds the amounts listed in this subdivision.

30 The Tax Commissioner may adopt and promulgate rules and regulations
31 to allow annual, semiannual, or quarterly returns for any retailer making

1 monthly remittances or payments of sales and use taxes by electronic
2 funds transfer or for any retailer remitting tax to the state pursuant to
3 the streamlined sales and use tax agreement. Such rules and regulations
4 may establish a method of determining the amount of the payment that will
5 result in substantially all of the tax liability being paid each quarter.
6 At least once each year, the difference between the amount paid and the
7 amount due shall be reconciled. If the difference is more than ten
8 percent of the amount paid, a penalty of fifty percent of the unpaid
9 amount shall be imposed.

10 (ii) For purposes of the sales tax, a return shall be filed by every
11 retailer liable for collection from a purchaser and payment to the state
12 of the tax, except that a combined sales tax return may be filed for all
13 licensed locations which are subject to common ownership. For purposes of
14 this subdivision, common ownership means the same person or persons own
15 eighty percent or more of each licensed location. For purposes of the use
16 tax, a return shall be filed by every retailer engaged in business in
17 this state and by every person who has purchased property, the storage,
18 use, or other consumption of which is subject to the use tax, but who has
19 not paid the use tax due to a retailer required to collect the tax.

20 (iii) The Tax Commissioner may require that returns be signed by the
21 person required to file the return or by his or her duly authorized agent
22 but need not be verified by oath.

23 (iv) A taxpayer who keeps his or her regular books and records on a
24 cash basis, an accrual basis, or any generally recognized accounting
25 basis which correctly reflects the operation of the business may file the
26 sales and use tax returns required by the Nebraska Revenue Act of 1967 on
27 the same accounting basis that is used for the regular books and records,
28 except that on credit, conditional, and installment sales, the retailer
29 who keeps his or her books on an accrual basis may report such sales on
30 the cash basis and pay the tax upon the collections made during each
31 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of

1 an account receivable, he or she shall be deemed to have received the
2 full balance of the consideration for the original sale and shall be
3 liable for the remittance of the sales tax on the balance of the total
4 sale price not previously reported, except that such transfer, sale,
5 assignment, or other disposition of an account receivable by a retailer
6 to a subsidiary shall not be deemed to require the retailer to pay the
7 sales tax on the credit sale represented by the account transferred prior
8 to the time the customer makes payment on such account. If the subsidiary
9 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a
10 surety bond in favor of the State of Nebraska to insure payment of the
11 tax and any interest and penalty imposed thereon under this section in an
12 amount not less than two times the amount of tax payable on outstanding
13 accounts receivable held by the subsidiary as of the end of the prior
14 calendar year. Failure to obtain either a sales tax permit or a surety
15 bond in accordance with this section shall result in the payment on the
16 next required filing date of all sales taxes not previously remitted.
17 When the retailer has adopted one basis or the other of reporting credit,
18 conditional, or installment sales and paying the tax thereon, he or she
19 will not be permitted to change from that basis without first having
20 notified the Tax Commissioner.

21 (c) Except as provided in the streamlined sales and use tax
22 agreement, the taxpayer required to file the return shall deliver or mail
23 any required return together with a remittance of the net amount of the
24 tax due to the office of the Tax Commissioner on or before the required
25 filing date. Failure to file the return, filing after the required filing
26 date, failure to remit the net amount of the tax due, or remitting the
27 net amount of the tax due after the required filing date shall be cause
28 for a penalty, in addition to interest, of ten percent of the amount of
29 tax not paid by the required filing date or twenty-five dollars,
30 whichever is greater, unless the penalty is being collected under
31 subdivision (1)(i) or ~~(1)(j)(i), or (1)(k)(i)~~ of section 77-2703 by a

1 county treasurer or the Department of Motor Vehicles, in which case the
2 penalty shall be five dollars.

3 (d) The taxpayer shall deduct and withhold, from the taxes otherwise
4 due from him or her on his or her tax return, two and one-half percent of
5 the first three thousand dollars remitted each month to reimburse himself
6 or herself for the cost of collecting the tax. Taxpayers filing a
7 combined return as allowed by subdivision (1)(b)(ii) of this subsection
8 shall compute such collection fees on the basis of the receipts and
9 liability of each licensed location.

10 (2)(a) If the Tax Commissioner determines that any sales or use tax
11 amount, penalty, or interest has been paid more than once, has been
12 erroneously or illegally collected or computed, or has been paid and the
13 purchaser qualifies for a refund under section 77-2708.01, the Tax
14 Commissioner shall set forth that fact in his or her records and the
15 excess amount collected or paid may be credited on any sales, use, or
16 income tax amounts then due and payable from the person under the
17 Nebraska Revenue Act of 1967. Any balance may be refunded to the person
18 by whom it was paid or his or her successors, administrators, or
19 executors.

20 (b) No refund shall be allowed unless a claim therefor is filed with
21 the Tax Commissioner by the person who made the overpayment or his or her
22 attorney, executor, or administrator within three years from the required
23 filing date following the close of the period for which the overpayment
24 was made, within six months after any determination becomes final under
25 section 77-2709, or within six months from the date of overpayment with
26 respect to such determinations, whichever of these three periods expires
27 later, unless the credit relates to a period for which a waiver has been
28 given. Failure to file a claim within the time prescribed in this
29 subsection shall constitute a waiver of any demand against the state on
30 account of overpayment.

31 (c) Every claim shall be in writing on forms prescribed by the Tax

1 Commissioner and shall state the specific amount and grounds upon which
2 the claim is founded. No refund shall be made in any amount less than two
3 dollars.

4 (d) The Tax Commissioner shall allow or disallow a claim within one
5 hundred eighty days after it has been filed. A request for a hearing
6 shall constitute a waiver of the one-hundred-eighty-day period. The
7 claimant and the Tax Commissioner may also agree to extend the one-
8 hundred-eighty-day period. If a hearing has not been requested and the
9 Tax Commissioner has neither allowed nor disallowed a claim within either
10 the one hundred eighty days or the period agreed to by the claimant and
11 the Tax Commissioner, the claim shall be deemed to have been allowed.

12 (e) Within thirty days after disallowing any claim in whole or in
13 part, the Tax Commissioner shall serve notice of his or her action on the
14 claimant in the manner prescribed for service of notice of a deficiency
15 determination.

16 (f) Within thirty days after the mailing of the notice of the Tax
17 Commissioner's action upon a claim filed pursuant to the Nebraska Revenue
18 Act of 1967, the action of the Tax Commissioner shall be final unless the
19 taxpayer seeks review of the Tax Commissioner's determination as provided
20 in section 77-27,127.

21 (g) Upon the allowance of a credit or refund of any sum erroneously
22 or illegally assessed or collected, of any penalty collected without
23 authority, or of any sum which was excessive or in any manner wrongfully
24 collected, interest shall be allowed and paid on the amount of such
25 credit or refund at the rate specified in section 45-104.02, as such rate
26 may from time to time be adjusted, from the date such sum was paid or
27 from the date the return was required to be filed, whichever date is
28 later, to the date of the allowance of the refund or, in the case of a
29 credit, to the due date of the amount against which the credit is
30 allowed, but in the case of a voluntary and unrequested payment in excess
31 of actual tax liability or a refund under section 77-2708.01, no interest

1 shall be allowed when such excess is refunded or credited.

2 (h) No suit or proceeding shall be maintained in any court for the
3 recovery of any amount alleged to have been erroneously or illegally
4 determined or collected unless a claim for refund or credit has been duly
5 filed.

6 (i) The Tax Commissioner may recover any refund or part thereof
7 which is erroneously made and any credit or part thereof which is
8 erroneously allowed by issuing a deficiency determination within one year
9 from the date of refund or credit or within the period otherwise allowed
10 for issuing a deficiency determination, whichever expires later.

11 (j)(i) Credit shall be allowed to the retailer, contractor, or
12 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue
13 Act of 1967 on any deduction taken that is attributed to bad debts not
14 including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as
15 such section existed on January 1, 2003. However, the amount calculated
16 pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges
17 or interest; sales or use taxes charged on the purchase price;
18 uncollectible amounts on property that remains in the possession of the
19 seller until the full purchase price is paid; and expenses incurred in
20 attempting to collect any debt and repossessed property.

21 (ii) Bad debts may be deducted on the return for the period during
22 which the bad debt is written off as uncollectible in the claimant's
23 books and records and is eligible to be deducted for federal income tax
24 purposes. A claimant who is not required to file federal income tax
25 returns may deduct a bad debt on a return filed for the period in which
26 the bad debt is written off as uncollectible in the claimant's books and
27 records and would be eligible for a bad debt deduction for federal income
28 tax purposes if the claimant was required to file a federal income tax
29 return.

30 (iii) If a deduction is taken for a bad debt and the debt is
31 subsequently collected in whole or in part, the tax on the amount so

1 collected must be paid and reported on the return filed for the period in
2 which the collection is made.

3 (iv) When the amount of bad debt exceeds the amount of taxable sales
4 for the period during which the bad debt is written off, a refund claim
5 may be filed within the otherwise applicable statute of limitations for
6 refund claims. The statute of limitations shall be measured from the due
7 date of the return on which the bad debt could first be claimed.

8 (v) If filing responsibilities have been assumed by a certified
9 service provider, the service provider may claim, on behalf of the
10 retailer, any bad debt allowance provided by this section. The certified
11 service provider shall credit or refund the full amount of any bad debt
12 allowance or refund received to the retailer.

13 (vi) For purposes of reporting a payment received on a previously
14 claimed bad debt, any payments made on a debt or account are applied
15 first proportionally to the taxable price of the property or service and
16 the sales tax thereon, and secondly to interest, service charges, and any
17 other charges.

18 (vii) In situations in which the books and records of the party
19 claiming the bad debt allowance support an allocation of the bad debts
20 among the member states in the streamlined sales and use tax agreement,
21 the state shall permit the allocation.

22 Sec. 3. This act becomes operative on October 1, 2015.

23 Sec. 4. Original sections 77-2703 and 77-2708, Revised Statutes
24 Cumulative Supplement, 2014, are repealed.