

Revised due to adoption of amendment.

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2018-19		FY 2019-20	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	\$309,600	See Below	\$193,900	See Below
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$309,600	See Below	\$193,900	See Below

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 44, as amended by AM1822, adopts the Noncollecting Retailer Notice and Reporting Act.

A “noncollecting retailer” is defined as a retailer who sells taxable items to Nebraska purchasers and does not collect sales or use tax. A retailer who does collect Nebraska sales or use tax is not a noncollecting retailer regardless of whether the retailer is obligated to collect the tax or voluntarily collects the tax.

A noncollecting retailer is subject to the Act if:

- Its total sales of taxable items to Nebraska purchasers exceeded \$100,000 in the previous or current calendar year; OR
- It sold taxable items to Nebraska purchasers in 200 or more separate transactions in the previous or current calendar year.

A noncollecting retailer is obligated to notify Nebraska purchasers that sales or use tax is due on purchases of taxable items made from that noncollecting retailers and that the taxpayer is required to remit the taxes due by filing a sales and use tax return or through their income tax return. The noncollecting retailer is also required to send a notification by first-class mail to all Nebraska purchasers showing the total amount paid by the purchaser in the previous calendar year. Failure to send the notification subjects the noncollecting retailer to a penalty of \$10,000. In addition, they are to send an annual report to the Department of Revenue showing the amount paid for purchases by Nebraska purchasers. Failure to submit the annual report subjects the noncollecting retailer to a penalty of \$2,500.

The Act terminates on the later of the following:

- July 1, 2018; OR
- The first day of the first calendar quarter after a controlling court decision or federal legislation abrogates the physical presence requirement of Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

The bill also amends Section 77-2701.13 to provide that a person who lacks a physical presence in this state and who makes retail sales of property to purchasers in this state shall be deemed to be engaged in business in this state if:

- Such person’s total retail sales to purchasers in this state exceeded \$100,000 in the previous or current calendar year; OR
- Such person made retail sales to purchasers in this state in 200 or more separate transactions in the previous or current calendar year.

Section 77-2701.32 is amended regarding the definition of retailer to provide that the term retailer includes a person who lacks a physical presence in Nebraska and who makes retail sales of property to Nebraska purchasers if:

- Such person’s total retail sales to purchasers in this state exceeded \$100,000 in the previous or current calendar year; OR
- Such person made retail sales to purchasers in this state in 200 or more separate transactions in the previous or current calendar year.

LB 44(03)

The bill contains the emergency clause and the severability clause.

Assuming federal law allows the State of Nebraska to require remote sellers to collect and remit sales tax on purchases made by Nebraska residents, the State is projected to collect an additional \$30-\$40 million of sales tax revenue annually.

The Department of Revenue indicates that they will require 4.0 FTE for an Office Clerk, Revenue Auditor III, Revenue Agent, and Revenue Operations Clerk II. Total expenditure for FY2018-19 is \$309,600 with PSL of \$142,600 and for FY2019-20 total expenditure is \$193,900 with PSL of \$145,800.

We have no basis to disagree with the Department of Revenue's estimate of cost.

State Agency Estimate

State Agency Name: Department of Revenue		Date Due LFA: 3/9/2018	
Approved by: Tony Fulton		Phone: 471-5896	
FY 2018-2019		FY 2019-2020	
<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>
General Funds	\$ 309,600	See Below	
Cash Funds			
Federal Funds			
Other Funds			
Total Funds	\$ 309,600	See Below	

AM 1822 to LB 44 adopts the Noncollecting Retailer Notice and Reporting Act (Act). The Act provides definitions, including noncollecting retailer as any retailer that makes taxable sales to Nebraska residents and is not collecting sales taxes, whether required to or not. A noncollecting retailer is subject to the notice and reporting requirements if its total sales of taxable items exceeds \$100,000 or if it sold taxable items to Nebraska purchasers in 200 or more separate transactions in the current or previous calendar year.

Noncollecting retailers are subject to the following requirements:

- 1) Notify Nebraska purchasers that sales or use tax is due on their purchases of taxable items and they may file a return to report the taxes due;
- 2) Notify all its Nebraska customers by January 31 of each year of the total amount paid by the purchaser for taxable items and other information that the Department may require by rule or regulation. This notification must also state that Nebraska requires that sales tax be paid on purchases of taxable items from the noncollecting retailer.
Notification must be sent by first class mail. Absent reasonable cause, failure to send the notice subjects the noncollecting retailer to a penalty of \$10,000; and
- 3) Submit an annual report to the Department on forms approved by the Department that shows the total amount paid by Nebraska purchasers on taxable items during the previous year. This form is due in the Department by March 1. If the total sales of taxable items exceeds \$100,000 annually, the Department may require the report to be filed electronically.

The Department is given regulation authority. This Act terminates on the later of July 1, 2018 or the first day of the first calendar quarter after a controlling court decision or federal legislation abrogates the physical presence requirement of Quill Corp v. North Dakota, 504 U.S. 298 (1992).

AM 1822 amends Neb. Rev. Stat. § 77-2701.13, the definition of “engaged in business in this state” and § 77-2701.32, the definition of “retailer” to include in both sections a person who makes retail sales of property to purchasers in this state, but lacks physical presence if the sellers total retail sales of property exceeded \$100,000 or 200 transactions in the previous or current calendar year. The Department is given regulation authority. The changes in these two definitions become operative on the later of July 1, 2018 or the first day of the first calendar quarter after a controlling court decision or federal legislation abrogates the physical presence requirement of Quill Corp v. North Dakota, 504 U.S. 298 (1992).

Assuming that federal law allows the State to require remote sellers to collect and remit sales tax on purchases made by Nebraska residents, the State is projected to collect an additional \$30 - \$40 million of sales tax annually.

The new reporting requirement in AM 1822 requires a one-time programming charge of \$50,000 paid to the OCIO for mainframe development. The Department would also need to hire IT contractors to create an IT application for AM 1822 to track and match the data. The OCIO estimates this additional cost as \$50,000.

To enforce the reporting requirement, and to license, accommodate, and enforce collection against many new retailers, the Department will need a Revenue Auditor III, a Revenue Agent, a Revenue Operations Clerk II and an Office Clerk III.

Major Objects of Expenditure

Class Code	Classification Title	18-19	19-20	20-21	18-19	19-20	20-21
		FTE	FTE	FTE	Expenditures	Expenditures	Expenditures
R01113	Office Clerk	1.0	1.0	1.0	\$ 25,200	\$ 25,800	\$ 26,200
A21253	Revenue Auditor III	1.0	1.0	1.0	\$ 51,400	\$ 52,500	\$ 53,300
X29222	Revenue Agent	1.0	1.0	1.0	\$ 35,200	\$ 36,000	\$ 36,500
S29112	Revenue Operations Clerk II	1.0	1.0	1.0	\$ 30,800	\$ 31,500	\$ 31,900
Benefits.....					\$ 47,000	\$ 48,100	\$ 48,800
Operating Costs.....					\$ 100,000		
Travel.....							
Capital Outlay.....					\$ 20,000		
Capital Improvements.....							
Total.....					\$ 309,600	\$ 193,900	\$ 196,700