

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 349

Introduced by Friesen, 34.

Read first time January 16, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2703 and 77-2708, Reissue Revised Statutes of Nebraska; to
- 3 provide sales and use tax collection duties for certain peer-to-peer
- 4 rentals of vehicles; to harmonize provisions; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Reissue Revised Statutes of Nebraska, is
2 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 peer-to-peer rentals of automobiles, trucks, trailers,
13 semitrailers, and truck-tractors as defined in the Motor Vehicle
14 Registration Act which are made through a digital platform or other
15 digital medium, the tax shall be collected on the rental price by the
16 party facilitating the rental. For purposes of this subdivision, peer-to-
17 peer rental means a rental transaction in which one individual rents his
18 or her personal property to another individual for short-term use.

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

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

30 (ii) Such election when made shall continue in force and effect for
31 a period of not less than two years and thereafter until such time as the

1 lessor elects to terminate the election;

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

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

15 (j) ~~(i)~~ The tax imposed by this section on the sales of motor
16 vehicles, semitrailers, and trailers as defined in sections 60-339,
17 60-348, and 60-354 shall be the liability of the purchaser and, with the
18 exception of motor vehicles, semitrailers, and trailers registered
19 pursuant to section 60-3,198, the tax shall be collected by the county
20 treasurer as provided in the Motor Vehicle Registration Act or by an
21 approved licensed dealer participating in the electronic dealer services
22 system pursuant to section 60-1507 at the time the purchaser makes
23 application for the registration of the motor vehicle, semitrailer, or
24 trailer for operation upon the highways of this state. The tax imposed by
25 this section on motor vehicles, semitrailers, and trailers registered
26 pursuant to section 60-3,198 shall be collected by the Department of
27 Motor Vehicles at the time the purchaser makes application for the
28 registration of the motor vehicle, semitrailer, or trailer for operation
29 upon the highways of this state. At the time of the sale of any motor
30 vehicle, semitrailer, or trailer, the seller shall (i) state on the sales
31 invoice the dollar amount of the tax imposed under this section and (ii)

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

1 pertaining to the collection of the use tax.

2 ~~(k)(i)~~ ~~(j)(i)~~ The tax imposed by this section on the sale of a
3 motorboat as defined in section 37-1204 shall be the liability of the
4 purchaser. The tax shall be collected by the county treasurer at the time
5 the purchaser makes application for the registration of the motorboat. At
6 the time of the sale of a motorboat, the seller shall (A) state on the
7 sales invoice the dollar amount of the tax imposed under this section and
8 (B) furnish to the purchaser a certified statement of the transaction, in
9 such form as the Tax Commissioner prescribes, setting forth as a minimum
10 the total sales price, the allowance for any trade-in, and the difference
11 between the two. The sales tax due shall be computed on the difference
12 between the total sales price and the allowance for any trade-in as
13 disclosed by such certified statement. Any seller who willfully
14 understates the amount upon which the sales tax is due shall be subject
15 to a penalty of one thousand dollars. A copy of such certified statement
16 shall also be furnished to the Tax Commissioner. Any seller who fails or
17 refuses to furnish such certified statement shall be guilty of a
18 misdemeanor and shall, upon conviction thereof, be punished by a fine of
19 not less than twenty-five dollars nor more than one hundred dollars. If
20 the purchaser does not register such motorboat within thirty days of the
21 purchase thereof, the tax imposed by this section shall immediately
22 thereafter be paid by the purchaser to the county treasurer. If the tax
23 is not paid on or before the thirtieth day after its purchase, the county
24 treasurer shall also collect from the purchaser interest from the
25 thirtieth day through the date of payment and sales tax penalties as
26 provided in the Nebraska Revenue Act of 1967. The county treasurer shall
27 report and remit the tax so collected to the Tax Commissioner by the
28 fifteenth day of the following month. The county treasurer shall deduct
29 and withhold for the use of the county general fund, from all amounts
30 required to be collected under this subsection, the collection fee
31 permitted to be deducted by any retailer collecting the sales tax. The

1 collection fee shall be forfeited if the county treasurer violates any
2 rule or regulation pertaining to the collection of the use tax.

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

5 ~~(1)(i)~~ ~~(k)(i)~~ The tax imposed by this section on the sale of an all-
6 terrain vehicle as defined in section 60-103 or a utility-type vehicle as
7 defined in section 60-135.01 shall be the liability of the purchaser. The
8 tax shall be collected by the county treasurer or by an approved licensed
9 dealer participating in the electronic dealer services system pursuant to
10 section 60-1507 at the time the purchaser makes application for the
11 certificate of title for the all-terrain vehicle or utility-type vehicle.
12 At the time of the sale of an all-terrain vehicle or a utility-type
13 vehicle, the seller shall (A) state on the sales invoice the dollar
14 amount of the tax imposed under this section and (B) furnish to the
15 purchaser a certified statement of the transaction, in such form as the
16 Tax Commissioner prescribes, setting forth as a minimum the total sales
17 price, the allowance for any trade-in, and the difference between the
18 two. The sales tax due shall be computed on the difference between the
19 total sales price and the allowance for any trade-in as disclosed by such
20 certified statement. Any seller who willfully understates the amount upon
21 which the sales tax is due shall be subject to a penalty of one thousand
22 dollars. A copy of such certified statement shall also be furnished to
23 the Tax Commissioner. Any seller who fails or refuses to furnish such
24 certified statement shall be guilty of a misdemeanor and shall, upon
25 conviction thereof, be punished by a fine of not less than twenty-five
26 dollars nor more than one hundred dollars. If the purchaser does not
27 obtain a certificate of title for such all-terrain vehicle or utility-
28 type vehicle within thirty days of the purchase thereof, the tax imposed
29 by this section shall immediately thereafter be paid by the purchaser to
30 the county treasurer. If the tax is not paid on or before the thirtieth
31 day after its purchase, the county treasurer shall also collect from the

1 purchaser interest from the thirtieth day through the date of payment and
2 sales tax penalties as provided in the Nebraska Revenue Act of 1967. The
3 county treasurer shall report and remit the tax so collected to the Tax
4 Commissioner by the fifteenth day of the following month. The county
5 treasurer shall deduct and withhold for the use of the county general
6 fund, from all amounts required to be collected under this subsection,
7 the collection fee permitted to be deducted by any retailer collecting
8 the sales tax. The collection fee shall be forfeited if the county
9 treasurer violates any rule or regulation pertaining to the collection of
10 the use tax.

11 (ii) In the rental or lease of an all-terrain vehicle or a utility-
12 type vehicle, the tax shall be collected by the lessor on the rental or
13 lease price.

14 (iii) County treasurers are appointed as sales and use tax
15 collectors for all sales of all-terrain vehicles or utility-type vehicles
16 made outside of this state to purchasers or users of all-terrain vehicles
17 or utility-type vehicles which are required to have a certificate of
18 title in this state. The county treasurer shall collect the applicable
19 use tax from the purchaser of an all-terrain vehicle or a utility-type
20 vehicle purchased outside of this state at the time application for a
21 certificate of title is made. The full use tax on the purchase price
22 shall be collected by the county treasurer if a sales or occupation tax
23 was not paid by the purchaser in the state of purchase. If a sales or
24 occupation tax was lawfully paid in the state of purchase at a rate less
25 than the tax imposed in this state, use tax must be collected on the
26 difference as a condition for obtaining a certificate of title in this
27 state.

28 (m) ~~(l)~~ The Tax Commissioner shall adopt and promulgate necessary
29 rules and regulations for determining the amount subject to the taxes
30 imposed by this section so as to insure that the full amount of any
31 applicable tax is paid in cases in which a sale is made of which a part

1 is subject to the taxes imposed by this section and a part of which is
2 not so subject and a separate accounting is not practical or economical.

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

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

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

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

15 (d) All persons designated to collect the use tax and all persons
16 required to collect the use tax shall forward the total of such
17 collections to the Tax Commissioner at such time and in such manner as
18 the Tax Commissioner may prescribe. For all use taxes collected prior to
19 October 1, 2002, such collectors of the use tax shall deduct and withhold
20 from the amount of taxes collected two and one-half percent of the first
21 three thousand dollars remitted each month and one-half of one percent of
22 all amounts in excess of three thousand dollars remitted each month as
23 reimbursement for the cost of collecting the tax. For use taxes collected
24 on and after October 1, 2002, such collectors of the use tax shall deduct
25 and withhold from the amount of taxes collected two and one-half percent
26 of the first three thousand dollars remitted each month as reimbursement
27 for the cost of collecting the tax. Any such deduction shall be forfeited
28 to the State of Nebraska if such collector violates any rule, regulation,
29 or directive of the Tax Commissioner.

30 (e) For the purpose of the proper administration of the Nebraska
31 Revenue Act of 1967 and to prevent evasion of the use tax, it shall be

1 presumed that property sold, leased, or rented by any person for delivery
2 in this state is sold, leased, or rented for storage, use, or other
3 consumption in this state until the contrary is established. The burden
4 of proving the contrary is upon the person who purchases, leases, or
5 rents the property.

6 (f) For the purpose of the proper administration of the Nebraska
7 Revenue Act of 1967 and to prevent evasion of the use tax, for the sale
8 of property to an advertising agency which purchases the property as an
9 agent for a disclosed or undisclosed principal, the advertising agency is
10 and remains liable for the sales and use tax on the purchase the same as
11 if the principal had made the purchase directly.

12 Sec. 2. Section 77-2708, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 77-2708 (1)(a) The sales and use taxes imposed by the Nebraska
15 Revenue Act of 1967 shall be due and payable to the Tax Commissioner
16 monthly on or before the twentieth day of the month next succeeding each
17 monthly period unless otherwise provided pursuant to the Nebraska Revenue
18 Act of 1967.

19 (b)(i) On or before the twentieth day of the month following each
20 monthly period or such other period as the Tax Commissioner may require,
21 a return for such period, along with all taxes due, shall be filed with
22 the Tax Commissioner in such form and content as the Tax Commissioner may
23 prescribe and containing such information as the Tax Commissioner deems
24 necessary for the proper administration of the Nebraska Revenue Act of
25 1967. The Tax Commissioner, if he or she deems it necessary in order to
26 insure payment to or facilitate the collection by the state of the amount
27 of sales or use taxes due, may require returns and payment of the amount
28 of such taxes for periods other than monthly periods in the case of a
29 particular seller, retailer, or purchaser, as the case may be. The Tax
30 Commissioner shall by rule and regulation require reports and tax
31 payments from sellers, retailers, or purchasers depending on their yearly

1 tax liability. Except as required by the streamlined sales and use tax
2 agreement, annual returns shall be required if such sellers', retailers',
3 or purchasers' yearly tax liability is less than nine hundred dollars,
4 quarterly returns shall be required if their yearly tax liability is nine
5 hundred dollars or more and less than three thousand dollars, and monthly
6 returns shall be required if their yearly tax liability is three thousand
7 dollars or more. The Tax Commissioner shall have the discretion to allow
8 an annual return for seasonal retailers, even when their yearly tax
9 liability exceeds the amounts listed in this subdivision.

10 The Tax Commissioner may adopt and promulgate rules and regulations
11 to allow annual, semiannual, or quarterly returns for any retailer making
12 monthly remittances or payments of sales and use taxes by electronic
13 funds transfer or for any retailer remitting tax to the state pursuant to
14 the streamlined sales and use tax agreement. Such rules and regulations
15 may establish a method of determining the amount of the payment that will
16 result in substantially all of the tax liability being paid each quarter.
17 At least once each year, the difference between the amount paid and the
18 amount due shall be reconciled. If the difference is more than ten
19 percent of the amount paid, a penalty of fifty percent of the unpaid
20 amount shall be imposed.

21 (ii) For purposes of the sales tax, a return shall be filed by every
22 retailer liable for collection from a purchaser and payment to the state
23 of the tax, except that a combined sales tax return may be filed for all
24 licensed locations which are subject to common ownership. For purposes of
25 this subdivision, common ownership means the same person or persons own
26 eighty percent or more of each licensed location. For purposes of the use
27 tax, a return shall be filed by every retailer engaged in business in
28 this state and by every person who has purchased property, the storage,
29 use, or other consumption of which is subject to the use tax, but who has
30 not paid the use tax due to a retailer required to collect the tax.

31 (iii) The Tax Commissioner may require that returns be signed by the

1 person required to file the return or by his or her duly authorized agent
2 but need not be verified by oath.

3 (iv) A taxpayer who keeps his or her regular books and records on a
4 cash basis, an accrual basis, or any generally recognized accounting
5 basis which correctly reflects the operation of the business may file the
6 sales and use tax returns required by the Nebraska Revenue Act of 1967 on
7 the same accounting basis that is used for the regular books and records,
8 except that on credit, conditional, and installment sales, the retailer
9 who keeps his or her books on an accrual basis may report such sales on
10 the cash basis and pay the tax upon the collections made during each
11 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of
12 an account receivable, he or she shall be deemed to have received the
13 full balance of the consideration for the original sale and shall be
14 liable for the remittance of the sales tax on the balance of the total
15 sale price not previously reported, except that such transfer, sale,
16 assignment, or other disposition of an account receivable by a retailer
17 to a subsidiary shall not be deemed to require the retailer to pay the
18 sales tax on the credit sale represented by the account transferred prior
19 to the time the customer makes payment on such account. If the subsidiary
20 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a
21 surety bond in favor of the State of Nebraska to insure payment of the
22 tax and any interest and penalty imposed thereon under this section in an
23 amount not less than two times the amount of tax payable on outstanding
24 accounts receivable held by the subsidiary as of the end of the prior
25 calendar year. Failure to obtain either a sales tax permit or a surety
26 bond in accordance with this section shall result in the payment on the
27 next required filing date of all sales taxes not previously remitted.
28 When the retailer has adopted one basis or the other of reporting credit,
29 conditional, or installment sales and paying the tax thereon, he or she
30 will not be permitted to change from that basis without first having
31 notified the Tax Commissioner.

1 (c) Except as provided in the streamlined sales and use tax
2 agreement, the taxpayer required to file the return shall deliver or mail
3 any required return together with a remittance of the net amount of the
4 tax due to the office of the Tax Commissioner on or before the required
5 filing date. Failure to file the return, filing after the required filing
6 date, failure to remit the net amount of the tax due, or remitting the
7 net amount of the tax due after the required filing date shall be cause
8 for a penalty, in addition to interest, of ten percent of the amount of
9 tax not paid by the required filing date or twenty-five dollars,
10 whichever is greater, unless the penalty is being collected under
11 subdivision ~~(1)(j), (1)(k)(i), or (1)(l)(i)~~ ~~(1)(i), (1)(j)(i), or (1)(k)~~
12 ~~(i)~~ of section 77-2703 by a county treasurer or the Department of Motor
13 Vehicles, in which case the penalty shall be five dollars.

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

21 (2)(a) If the Tax Commissioner determines that any sales or use tax
22 amount, penalty, or interest has been paid more than once, has been
23 erroneously or illegally collected or computed, or has been paid and the
24 purchaser qualifies for a refund under section 77-2708.01, the Tax
25 Commissioner shall set forth that fact in his or her records and the
26 excess amount collected or paid may be credited on any sales, use, or
27 income tax amounts then due and payable from the person under the
28 Nebraska Revenue Act of 1967. Any balance may be refunded to the person
29 by whom it was paid or his or her successors, administrators, or
30 executors.

31 (b) No refund shall be allowed unless a claim therefor is filed with

1 the Tax Commissioner by the person who made the overpayment or his or her
2 attorney, executor, or administrator within three years from the required
3 filing date following the close of the period for which the overpayment
4 was made, within six months after any determination becomes final under
5 section 77-2709, or within six months from the date of overpayment with
6 respect to such determinations, whichever of these three periods expires
7 later, unless the credit relates to a period for which a waiver has been
8 given. Failure to file a claim within the time prescribed in this
9 subsection shall constitute a waiver of any demand against the state on
10 account of overpayment.

11 (c) Every claim shall be in writing on forms prescribed by the Tax
12 Commissioner and shall state the specific amount and grounds upon which
13 the claim is founded. No refund shall be made in any amount less than two
14 dollars.

15 (d) The Tax Commissioner shall allow or disallow a claim within one
16 hundred eighty days after it has been filed. A request for a hearing
17 shall constitute a waiver of the one-hundred-eighty-day period. The
18 claimant and the Tax Commissioner may also agree to extend the one-
19 hundred-eighty-day period. If a hearing has not been requested and the
20 Tax Commissioner has neither allowed nor disallowed a claim within either
21 the one hundred eighty days or the period agreed to by the claimant and
22 the Tax Commissioner, the claim shall be deemed to have been allowed.

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

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

1 (g) Upon the allowance of a credit or refund of any sum erroneously
2 or illegally assessed or collected, of any penalty collected without
3 authority, or of any sum which was excessive or in any manner wrongfully
4 collected, interest shall be allowed and paid on the amount of such
5 credit or refund at the rate specified in section 45-104.02, as such rate
6 may from time to time be adjusted, from the date such sum was paid or
7 from the date the return was required to be filed, whichever date is
8 later, to the date of the allowance of the refund or, in the case of a
9 credit, to the due date of the amount against which the credit is
10 allowed, but in the case of a voluntary and unrequested payment in excess
11 of actual tax liability or a refund under section 77-2708.01, no interest
12 shall be allowed when such excess is refunded or credited.

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

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

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

1 (ii) Bad debts may be deducted on the return for the period during
2 which the bad debt is written off as uncollectible in the claimant's
3 books and records and is eligible to be deducted for federal income tax
4 purposes. A claimant who is not required to file federal income tax
5 returns may deduct a bad debt on a return filed for the period in which
6 the bad debt is written off as uncollectible in the claimant's books and
7 records and would be eligible for a bad debt deduction for federal income
8 tax purposes if the claimant was required to file a federal income tax
9 return.

10 (iii) If a deduction is taken for a bad debt and the debt is
11 subsequently collected in whole or in part, the tax on the amount so
12 collected must be paid and reported on the return filed for the period in
13 which the collection is made.

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

19 (v) If filing responsibilities have been assumed by a certified
20 service provider, the service provider may claim, on behalf of the
21 retailer, any bad debt allowance provided by this section. The certified
22 service provider shall credit or refund the full amount of any bad debt
23 allowance or refund received to the retailer.

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

29 (vii) In situations in which the books and records of the party
30 claiming the bad debt allowance support an allocation of the bad debts
31 among the member states in the streamlined sales and use tax agreement,

1 the state shall permit the allocation.

2 (3) Beginning July 1, 2020, if a refund claim under this section
3 involves a refund of a tax imposed under the Local Option Revenue Act or
4 section 13-319 or 13-2813 and the amount of such tax to be refunded is at
5 least five thousand dollars, the Tax Commissioner shall notify the
6 affected city, village, county, or municipal county of such claim within
7 twenty days after receiving the claim. If the Tax Commissioner allows the
8 claim and the refund of such tax is at least five thousand dollars, the
9 Tax Commissioner shall notify the affected city, village, county, or
10 municipal county of such refund and shall give the city, village, county,
11 or municipal county the option of having such refund deducted from its
12 tax proceeds in one lump sum or in twelve equal monthly installments. The
13 city, village, county, or municipal county shall make its selection and
14 shall certify the selection to the Tax Commissioner within twenty days
15 after receiving notice of the refund. The Tax Commissioner shall then
16 deduct such refund from the applicable tax proceeds in accordance with
17 the selection when he or she deducts refunds pursuant to section 13-324,
18 13-2814, or 77-27,144, whichever is applicable.

19 Sec. 3. Original sections 77-2703 and 77-2708, Reissue Revised
20 Statutes of Nebraska, are repealed.