

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 814**

Final Reading

Introduced by Avery, 28; Brasch, 16; Carlson, 38; Haar, 21; Johnson, 23; Kolowski, 31; Schilz, 47; Wallman, 30; Watermeier, 1; Smith, 14; Kintner, 2.

Read first time January 10, 2014

Committee: Revenue

A BILL

1 FOR AN ACT relating to law; to amend sections 60-103, 60-305, and  
2 77-2701.35, Reissue Revised Statutes of Nebraska,  
3 sections 37-201, 77-2703, 77-2708, and 77-27,132, Revised  
4 Statutes Cumulative Supplement, 2012, and sections  
5 60-135.01, 60-358.01, and 60-6,355, Revised Statutes  
6 Supplement, 2013; to create a fund; to redefine all-  
7 terrain vehicle and utility-type vehicle for the Motor  
8 Vehicle Certificate of Title Act, the Motor Vehicle  
9 Registration Act, and the Nebraska Rules of the Road; to  
10 redefine sales price; to change sales and use tax  
11 provisions relating to all-terrain vehicles and utility-  
12 type vehicles; to change duties of sellers and the  
13 distribution of sales and use tax revenue; to provide  
14 funding for infrastructure administered by the Game and  
15 Parks Commission; to harmonize provisions; to provide an

1                   operative date; and to repeal the original sections.

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

1           Section 1. Section 37-201, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3           37-201 Sections 37-201 to 37-811 and 37-1501 to 37-1510  
4 and section 2 of this act shall be known and may be cited as the Game  
5 Law.

6           Sec. 2. The Game and Parks Commission Capital Maintenance  
7 Fund is created. The fund shall consist of money credited to the fund  
8 pursuant to section 77-27,132, transfers authorized by the  
9 Legislature, and any gifts, grants, bequests, or donations to the  
10 fund. The fund shall be administered by the commission and shall be  
11 used to build, repair, renovate, rehabilitate, restore, modify, or  
12 improve any infrastructure within the statutory authority and  
13 administration of the commission. Any money in the fund available for  
14 investment shall be invested by the state investment officer pursuant  
15 to the Nebraska Capital Expansion Act and the Nebraska State Funds  
16 Investment Act.

17           Sec. 3. Section 60-103, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           60-103 All-terrain vehicle means any motorized off-  
20 highway device which (1) is fifty inches or less in width, (2) has a  
21 dry weight of ~~nine~~ twelve hundred pounds or less, (3) travels on  
22 three or more ~~low-pressure nonhighway~~ tires, and (4) is designed for  
23 operator use only with no passengers or is specifically designed by  
24 the original manufacturer for the operator and one passenger, ~~—(5)~~  
25 ~~has a seat or saddle designed to be straddled by the operator, and~~

1 ~~(6) has handlebars or any other steering assembly for steering~~  
2 ~~control.~~

3           Sec. 4. Section 60-135.01, Revised Statutes Supplement,  
4 2013, is amended to read:

5           60-135.01 (1) Utility-type vehicle means any motorized  
6 off-highway device which (a) is ~~not less than forty eight inches nor~~  
7 ~~more than seventy-four inches in width~~ or less, (b) is not more than  
8 one hundred eighty inches, including the bumper, in length, (c) has a  
9 dry weight of ~~not less than nine hundred pounds nor more than two~~  
10 ~~thousand pounds~~ or less, and (d) travels on four or more ~~low pressure~~  
11 nonhighway tires, ~~and (e) is equipped with a steering wheel and~~  
12 ~~bench or bucket type seating designed for at least two people to sit~~  
13 ~~side by side.~~

14           (2) Utility-type vehicle does not include all-terrain  
15 vehicles, golf car vehicles, or low-speed vehicles.

16           Sec. 5. Section 60-305, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           60-305 All-terrain vehicle means any motorized off-  
19 highway vehicle which (1) is fifty inches or less in width, (2) has a  
20 dry weight of ~~nine~~ twelve hundred pounds or less, (3) travels on  
21 three or more ~~low pressure~~ nonhighway tires, and (4) is designed for  
22 operator use only with no passengers or is specifically designed by  
23 the original manufacturer for the operator and one passenger. All-  
24 terrain vehicles which have been modified or retrofitted with after-  
25 market parts to include additional equipment not required by sections

1 60-6,357 and 60-6,358 shall not be registered under the Motor Vehicle  
2 Registration Act, nor shall such modified or retrofitted vehicles be  
3 eligible for registration in any other category of vehicle defined in  
4 the act. , (5) has a seat or saddle designed to be straddled by the  
5 operator, and (6) has handlebars or any other steering assembly for  
6 steering control.

7           Sec. 6. Section 60-358.01, Revised Statutes Supplement,  
8 2013, is amended to read:

9           60-358.01 (1) Utility-type vehicle means any motorized  
10 off-highway vehicle which (a) is ~~not less than forty-eight inches nor~~  
11 ~~more than seventy-four inches in width~~ or less, (b) is not more than  
12 one hundred eighty inches, including the bumper, in length, (c) has a  
13 dry weight of ~~not less than nine hundred pounds nor more than two~~  
14 ~~thousand pounds~~ or less, and (d) travels on four or more ~~low pressure~~  
15 nonhighway tires. Utility-type vehicles which have been modified or  
16 retrofitted with after-market parts to include additional equipment  
17 not required by sections 60-6,357 and 60-6,358 shall not be  
18 registered under the Motor Vehicle Registration Act, nor shall such  
19 modified or retrofitted vehicles be eligible for registration in any  
20 other category of vehicle defined in the act. , ~~and (e) is equipped~~  
21 ~~with a steering wheel and bench or bucket type seating designed for~~  
22 ~~at least two people to sit side-by-side.~~

23           (2) Utility-type vehicle does not include all-terrain  
24 vehicles, golf car vehicles, or low-speed vehicles.

25           Sec. 7. Section 60-6,355, Revised Statutes Supplement,

1 2013, is amended to read:

2 60-6,355 (1) For purposes of sections 60-6,355 to  
3 60-6,362:

4 (a) All-terrain vehicle means any motorized off-highway  
5 vehicle which (i) is fifty inches or less in width, (ii) has a dry  
6 weight of ~~nine~~twelve hundred pounds or less, (iii) travels on three  
7 or more ~~low-pressure~~nonhighway tires, and (iv) is designed for  
8 operator use only with no passengers or is specifically designed by  
9 the original manufacturer for the operator and one passenger,  ~~, (v)~~  
10 ~~has a seat or saddle designed to be straddled by the operator, and~~  
11 ~~(vi) has handlebars or any other steering assembly for steering~~  
12 ~~control; and~~

13 (b)(i) Utility-type vehicle means any motorized off-  
14 highway vehicle which (A) is ~~not less than forty eight inches nor~~  
15 ~~more than seventy-four inches in width~~ or less, (B) is not more than  
16 one hundred eighty inches, including the bumper, in length, (C) has a  
17 dry weight of ~~not less than nine hundred pounds nor more than two~~  
18 ~~thousand pounds~~ or less, (D) travels on four or more ~~low-pressure~~  
19 nonhighway tires,  ~~, and (E) is equipped with a steering wheel and~~  
20 ~~bench or bucket type seating designed for at least two people to sit~~  
21 ~~side by side.~~

22 (ii) Utility-type vehicle does not include all-terrain  
23 vehicles, golf car vehicles, or low-speed vehicles.

24 (2) All-terrain vehicles and utility-type vehicles which  
25 have been modified or retrofitted with after-market parts to include

1 additional equipment not required by sections 60-6,357 and 60-6,358  
2 shall not be ~~required to be~~ registered under the Motor Vehicle  
3 Registration Act, nor shall such modified or retrofitted vehicles be  
4 eligible for registration in any other category of vehicle defined in  
5 the act.

6 Sec. 8. Section 77-2701.35, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 77-2701.35 (1) Sales price applies to the measure subject  
9 to sales tax and means the total amount of consideration, including  
10 cash, credit, property, and services, for which personal property or  
11 services are sold, leased, or rented, valued in money, whether  
12 received in money or otherwise, without any deduction for the  
13 following:

14 (a) The seller's cost of the property sold;

15 (b) The cost of materials used, the cost of labor or  
16 service, interest, losses, all costs of transportation to the seller,  
17 all taxes imposed on the seller, and any other expense of the seller;

18 (c) Charges by the seller for any services necessary to  
19 complete the sale;

20 (d) Delivery charges; and

21 (e) Installation charges.

22 (2) Sales price includes consideration received by the  
23 seller from third parties if:

24 (a) The seller actually receives consideration from a  
25 party other than the purchaser and the consideration is directly

1 related to a price reduction or discount on the sale;

2 (b) The seller has an obligation to pass the price  
3 reduction or discount through to the purchaser;

4 (c) The amount of the consideration attributable to the  
5 sale is fixed and determinable by the seller at the time of the sale  
6 of the item to the purchaser; and

7 (d) One of the following criteria is met:

8 (i) The purchaser presents a coupon, certificate, or  
9 other documentation to the seller to claim a price reduction or  
10 discount when the coupon, certificate, or documentation is  
11 authorized, distributed, or granted by a third party with the  
12 understanding that the third party will reimburse any seller to whom  
13 the coupon, certificate, or documentation is presented;

14 (ii) The purchaser identifies himself or herself to the  
15 seller as a member of a group or organization entitled to a price  
16 reduction or discount. A preferred customer card that is available to  
17 any patron does not constitute membership in such a group; or

18 (iii) The price reduction or discount is identified as a  
19 third-party price reduction or discount on the invoice received by  
20 the purchaser or on a coupon, certificate, or other documentation  
21 presented by the purchaser.

22 (3) Sales price does not include:

23 (a) Any discounts, including cash, terms, or coupons that  
24 are not reimbursed by a third party that are allowed by a seller and  
25 taken by a purchaser on a sale;

1           (b) Interest, financing, and carrying charges from credit  
2 extended on the sale of personal property or services, if the amount  
3 is separately stated on the invoice, bill of sale, or similar  
4 document given to the purchaser;

5           (c) Any taxes legally imposed directly on the consumer  
6 that are separately stated on the invoice, bill of sale, or similar  
7 document given to the purchaser; and

8           (d) Credit for any trade-in as follows:

9           (i) The value of property taken by a seller in trade as  
10 all or a part of the consideration for a sale of property of any kind  
11 or nature; or

12           (ii) The value of a motor vehicle, ~~or~~ motorboat, all-  
13 terrain vehicle, or utility-type vehicle taken by any person in trade  
14 as all or a part of the consideration for a sale of another motor  
15 vehicle, ~~or~~ motorboat, all-terrain vehicle, or utility-type vehicle.

16           Sec. 9. Section 77-2703, Revised Statutes Cumulative  
17 Supplement, 2012, is amended to read:

18           77-2703 (1) There is hereby imposed a tax at the rate  
19 provided in section 77-2701.02 upon the gross receipts from all sales  
20 of tangible personal property sold at retail in this state; the gross  
21 receipts of every person engaged as a public utility, as a community  
22 antenna television service operator, or as a satellite service  
23 operator, any person involved in the connecting and installing of the  
24 services defined in subdivision (2)(a), (b), (d), or (e) of section  
25 77-2701.16, or every person engaged as a retailer of intellectual or

1 entertainment properties referred to in subsection (3) of section  
2 77-2701.16; the gross receipts from the sale of admissions in this  
3 state; the gross receipts from the sale of warranties, guarantees,  
4 service agreements, or maintenance agreements when the items covered  
5 are subject to tax under this section; beginning January 1, 2008, the  
6 gross receipts from the sale of bundled transactions when one or more  
7 of the products included in the bundle are taxable; the gross  
8 receipts from the provision of services defined in subsection (4) of  
9 section 77-2701.16; and the gross receipts from the sale of products  
10 delivered electronically as described in subsection (9) of section  
11 77-2701.16. Except as provided in section 77-2701.03, when there is a  
12 sale, the tax shall be imposed at the rate in effect at the time the  
13 gross receipts are realized under the accounting basis used by the  
14 retailer to maintain his or her books and records.

15 (a) The tax imposed by this section shall be collected by  
16 the retailer from the consumer. It shall constitute a part of the  
17 purchase price and until collected shall be a debt from the consumer  
18 to the retailer and shall be recoverable at law in the same manner as  
19 other debts. The tax required to be collected by the retailer from  
20 the consumer constitutes a debt owed by the retailer to this state.

21 (b) It is unlawful for any retailer to advertise, hold  
22 out, or state to the public or to any customer, directly or  
23 indirectly, that the tax or part thereof will be assumed or absorbed  
24 by the retailer, that it will not be added to the selling, renting,  
25 or leasing price of the property sold, rented, or leased, or that, if

1 added, it or any part thereof will be refunded. The provisions of  
2 this subdivision shall not apply to a public utility.

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

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

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

25 (f) For the purpose of the proper administration of the

1 provisions of the Nebraska Revenue Act of 1967 and to prevent evasion  
2 of the retail sales tax, it shall be presumed that all gross receipts  
3 are subject to the tax until the contrary is established. The burden  
4 of proving that a sale of property is not a sale at retail is upon  
5 the person who makes the sale unless he or she takes from the  
6 purchaser (i) a resale certificate to the effect that the property is  
7 purchased for the purpose of reselling, leasing, or renting it, (ii)  
8 an exemption certificate pursuant to subsection (7) of section  
9 77-2705, or (iii) a direct payment permit pursuant to sections  
10 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption  
11 certificate, or direct payment permit shall be conclusive proof for  
12 the seller that the sale was made for resale or was exempt or that  
13 the tax will be paid directly to the state.

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

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

25 (i) Notice of the desire to make such election shall be

1 filed with the Tax Commissioner and shall not become effective until  
2 the Tax Commissioner is satisfied that the taxpayer has complied with  
3 all conditions of this subsection and all rules and regulations of  
4 the Tax Commissioner;

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

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

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

23 (i) The tax imposed by this section on the sales of motor  
24 vehicles, semitrailers, and trailers as defined in sections 60-339,  
25 60-348, and 60-354 shall be the liability of the purchaser and, with

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

1 five dollars nor more than one hundred dollars. ~~If the seller fails~~  
2 ~~to state on the sales invoice the dollar amount of the tax due, the~~  
3 ~~purchaser shall have the right and authority to rescind any agreement~~  
4 ~~for purchase and to declare the purchase null and void. If the~~  
5 ~~purchaser retains such motor vehicle, semitrailer, or trailer in this~~  
6 ~~state and does not register it~~ such motor vehicle, semitrailer, or  
7 trailer for operation on the highways of this state within thirty  
8 days of the purchase thereof, the tax imposed by this section shall  
9 immediately thereafter be paid by the purchaser to the county  
10 treasurer or the Department of Motor Vehicles. If the tax is not paid  
11 on or before the thirtieth day after its purchase, the county  
12 treasurer or Department of Motor Vehicles shall also collect from the  
13 purchaser interest from the thirtieth day through the date of payment  
14 and sales tax penalties as provided in the Nebraska Revenue Act of  
15 1967. The county treasurer or Department of Motor Vehicles shall  
16 report and remit the tax so collected to the Tax Commissioner by the  
17 fifteenth day of the following month. The county treasurer shall  
18 deduct and withhold for the use of the county general fund, from all  
19 amounts required to be collected under this subsection, the  
20 collection fee permitted to be deducted by any retailer collecting  
21 the sales tax. The Department of Motor Vehicles shall deduct,  
22 withhold, and deposit in the Motor Carrier Division Cash Fund the  
23 collection fee permitted to be deducted by any retailer collecting  
24 the sales tax. The collection fee shall be forfeited if the county  
25 treasurer or Department of Motor Vehicles violates any rule or

1 regulation pertaining to the collection of the use tax.

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

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

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

17           (k)(i) The tax imposed by this section on the sale of an  
18   all-terrain vehicle as defined in section 60-103 or a utility-type  
19   vehicle as defined in section 60-135.01 shall be the liability of the  
20   purchaser. The tax shall be collected by the county treasurer at the  
21   time the purchaser makes application for the certificate of title for  
22   the all-terrain vehicle or utility-type vehicle. At the time of the  
23   sale of an all-terrain vehicle or a utility-type vehicle, the seller  
24   shall (A) state on the sales invoice the dollar amount of the tax  
25   imposed under this section and (B) furnish to the purchaser a

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

1 deducted by any retailer collecting the sales tax. The collection fee  
2 shall be forfeited if the county treasurer violates any rule or  
3 regulation pertaining to the collection of the use tax.

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

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

21 (\*)-(1) The Tax Commissioner shall adopt and promulgate  
22 necessary rules and regulations for determining the amount subject to  
23 the taxes imposed by this section so as to insure that the full  
24 amount of any applicable tax is paid in cases in which a sale is made  
25 of which a part is subject to the taxes imposed by this section and a

1 part of which is not so subject and a separate accounting is not  
2 practical or economical.

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

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

1 refers.

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

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

23 (d) All persons designated to collect the use tax and all  
24 persons required to collect the use tax shall forward the total of  
25 such collections to the Tax Commissioner at such time and in such

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

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

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

1 the purchase the same as if the principal had made the purchase  
2 directly.

3           Sec. 10. Section 77-2708, Revised Statutes Cumulative  
4 Supplement, 2012, is amended to read:

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

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

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

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

21           (ii) For purposes of the sales tax, a return shall be  
22 filed by every retailer liable for collection from a purchaser and  
23 payment to the state of the tax, except that a combined sales tax  
24 return may be filed for all licensed locations which are subject to  
25 common ownership. For purposes of this subdivision, common ownership

1 means the same person or persons own eighty percent or more of each  
2 licensed location. For purposes of the use tax, a return shall be  
3 filed by every retailer engaged in business in this state and by  
4 every person who has purchased property, the storage, use, or other  
5 consumption of which is subject to the use tax, but who has not paid  
6 the use tax due to a retailer required to collect the tax.

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

10 (iv) A taxpayer who keeps his or her regular books and  
11 records on a cash basis, an accrual basis, or any generally  
12 recognized accounting basis which correctly reflects the operation of  
13 the business may file the sales and use tax returns required by the  
14 Nebraska Revenue Act of 1967 on the same accounting basis that is  
15 used for the regular books and records, except that on credit,  
16 conditional, and installment sales, the retailer who keeps his or her  
17 books on an accrual basis may report such sales on the cash basis and  
18 pay the tax upon the collections made during each month. If a  
19 taxpayer transfers, sells, assigns, or otherwise disposes of an  
20 account receivable, he or she shall be deemed to have received the  
21 full balance of the consideration for the original sale and shall be  
22 liable for the remittance of the sales tax on the balance of the  
23 total sale price not previously reported, except that such transfer,  
24 sale, assignment, or other disposition of an account receivable by a  
25 retailer to a subsidiary shall not be deemed to require the retailer

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

16 (c) Except as provided in the streamlined sales and use  
17 tax agreement, the taxpayer required to file the return shall deliver  
18 or mail any required return together with a remittance of the net  
19 amount of the tax due to the office of the Tax Commissioner on or  
20 before the required filing date. Failure to file the return, filing  
21 after the required filing date, failure to remit the net amount of  
22 the tax due, or remitting the net amount of the tax due after the  
23 required filing date shall be cause for a penalty, in addition to  
24 interest, of ten percent of the amount of tax not paid by the  
25 required filing date or twenty-five dollars, whichever is greater,

1 unless the penalty is being collected under subdivision (1)(i), ~~or~~  
2 (1)(j)(i), or (1)(k)(i) of section 77-2703 by a county treasurer or  
3 the Department of Motor Vehicles, in which case the penalty shall be  
4 five dollars.

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

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

22 (b) No refund shall be allowed unless a claim therefor is  
23 filed with the Tax Commissioner by the person who made the  
24 overpayment or his or her attorney, executor, or administrator within  
25 three years from the required filing date following the close of the

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

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

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

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

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

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

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

23           (i) The Tax Commissioner may recover any refund or part  
24 thereof which is erroneously made and any credit or part thereof  
25 which is erroneously allowed by issuing a deficiency determination

1 within one year from the date of refund or credit or within the  
2 period otherwise allowed for issuing a deficiency determination,  
3 whichever expires later.

4 (j)(i) Credit shall be allowed to the retailer,  
5 contractor, or repairperson for sales or use taxes paid pursuant to  
6 the Nebraska Revenue Act of 1967 on any deduction taken that is  
7 attributed to bad debts not including interest. Bad debt has the same  
8 meaning as in 26 U.S.C. 166, as such section existed on January 1,  
9 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall  
10 be adjusted to exclude: Financing charges or interest; sales or use  
11 taxes charged on the purchase price; uncollectible amounts on  
12 property that remains in the possession of the seller until the full  
13 purchase price is paid; and expenses incurred in attempting to  
14 collect any debt and repossessed property.

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

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

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

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

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

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

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

23 Sec. 11. Section 77-27,132, Revised Statutes Cumulative  
24 Supplement, 2012, is amended to read:

25 77-27,132 (1) There is hereby created a fund to be

1 designated the Revenue Distribution Fund which shall be set apart and  
2 maintained by the Tax Commissioner. Revenue not required to be  
3 credited to the General Fund or any other specified fund may be  
4 credited to the Revenue Distribution Fund. Credits and refunds of  
5 such revenue shall be paid from the Revenue Distribution Fund. The  
6 balance of the amount credited, after credits and refunds, shall be  
7 allocated as provided by the statutes creating such revenue.

8 (2) The Tax Commissioner shall pay to a depository bank  
9 designated by the State Treasurer all amounts collected under the  
10 Nebraska Revenue Act of 1967. The Tax Commissioner shall present to  
11 the State Treasurer bank receipts showing amounts so deposited in the  
12 bank, and of the amounts so deposited the State Treasurer shall:

13 (a) For transactions occurring on or after October 1,  
14 2014, and before October 1, 2019, credit to the Game and Parks  
15 Commission Capital Maintenance Fund all of the proceeds of the sales  
16 and use taxes imposed pursuant to section 77-2703 on the sale or  
17 lease of motorboats as defined in section 37-1204, personal  
18 watercraft as defined in section 37-1204.01, all-terrain vehicles as  
19 defined in section 60-103, and utility-type vehicles as defined in  
20 section 60-135.01;

21 ~~(a)~~ (b) Credit to the Highway Trust Fund all of the  
22 proceeds of the sales and use taxes derived from the sale or lease  
23 for periods of more than thirty-one days of motor vehicles, trailers,  
24 and semitrailers, except that the proceeds equal to any sales tax  
25 rate provided for in section 77-2701.02 that is in excess of five

1 percent derived from the sale or lease for periods of more than  
2 thirty-one days of motor vehicles, trailers, and semitrailers shall  
3 be credited to the Highway Allocation Fund; and

4           ~~(b)~~-(c) For transactions occurring on or after July 1,  
5 2013, and before July 1, 2033, of the proceeds of the sales and use  
6 taxes derived from transactions other than those listed in  
7 ~~subdivision~~ subdivisions (2)(a) and (b) of this section from a sales  
8 tax rate of one-quarter of one percent, credit monthly eighty-five  
9 percent to the State Highway Capital Improvement Fund and fifteen  
10 percent to the Highway Allocation Fund.

11           The balance of all amounts collected under the Nebraska  
12 Revenue Act of 1967 shall be credited to the General Fund.

13           Sec. 12. This act becomes operative on October 1, 2014.

14           Sec. 13. Original sections 60-103, 60-305, and  
15 77-2701.35, Reissue Revised Statutes of Nebraska, sections 37-201,  
16 77-2703, 77-2708, and 77-27,132, Revised Statutes Cumulative  
17 Supplement, 2012, and sections 60-135.01, 60-358.01, and 60-6,355,  
18 Revised Statutes Supplement, 2013, are repealed.