

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1010

Introduced by Hudkins, 21.

Read first time January 16, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2708, Revised Statutes Cumulative Supplement, 2006,
3 and section 77-2703, Revised Statutes Supplement, 2007;
4 to change the sales and use tax collection fees;
5 to repeal the original sections; and to declare an
6 emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Revised Statutes Supplement,
2 2007, is amended to read:

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

23 (a) The tax imposed by this section shall be collected
24 by the retailer from the consumer. It shall constitute a part of
25 the purchase price and until collected shall be a debt from the

1 consumer to the retailer and shall be recoverable at law in the
2 same manner as other debts. The tax required to be collected by the
3 retailer from the consumer constitutes a debt owed by the retailer
4 to this state.

5 (b) It is unlawful for any retailer to advertise, hold
6 out, or state to the public or to any customer, directly or
7 indirectly, that the tax or part thereof will be assumed or
8 absorbed by the retailer, that it will not be added to the selling,
9 renting, or leasing price of the property sold, rented, or leased,
10 or that, if added, it or any part thereof will be refunded. The
11 provisions of this subdivision shall not apply to a public utility.

12 (c) The tax required to be collected by the retailer from
13 the purchaser, unless otherwise provided by statute or by rule and
14 regulation of the Tax Commissioner, shall be displayed separately
15 from the list price, the price advertised in the premises, the
16 marked price, or other price on the sales check or other proof of
17 sales, rentals, or leases.

18 (d) For the purpose of more efficiently securing the
19 payment, collection, and accounting for the sales tax and for the
20 convenience of the retailer in collecting the sales tax, it shall
21 be the duty of the Tax Commissioner to provide a schedule or
22 schedules of the amounts to be collected from the consumer or user
23 to effectuate the computation and collection of the tax imposed
24 by the Nebraska Revenue Act of 1967. Such schedule or schedules
25 shall provide that the tax shall be collected from the consumer

1 or user uniformly on sales according to brackets based on sales
2 prices of the item or items. Retailers may compute the tax due on
3 any transaction on an item or an invoice basis. The rounding rule
4 provided in section 77-3,117 applies.

5 (e) The use of tokens or stamps for the purpose of
6 collecting or enforcing the collection of the taxes imposed in the
7 Nebraska Revenue Act of 1967 or for any other purpose in connection
8 with such taxes is prohibited.

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

24 (g) In the rental or lease of automobiles, trucks,
25 trailers, semitrailers, and truck-tractors as defined in the Motor

1 Vehicle Registration Act, the tax shall be collected by the lessor
2 on the rental or lease price at the tax rate in effect on the date
3 the automobile, truck, trailer, semitrailer, or truck-tractor is
4 delivered to the lessee, except as otherwise provided within this
5 section.

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

12 (i) Notice of the desire to make such election shall
13 be filed with the Tax Commissioner and shall not become effective
14 until the Tax Commissioner is satisfied that the taxpayer has
15 complied with all conditions of this subsection and all rules and
16 regulations of the Tax Commissioner;

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

20 (iii) When such election is made, it shall apply to all
21 vehicles of the lessor rented or leased for periods of one year or
22 more except vehicles to be leased to common or contract carriers
23 who provide to the lessor a valid common or contract carrier
24 exemption certificate. If the lessor rents or leases other vehicles
25 for periods of less than one year, such lessor shall maintain his

1 or her books and records and his or her accounting procedure as the
2 Tax Commissioner prescribes; and

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

10 (i) The tax imposed by this section on the sales of
11 motor vehicles, semitrailers, and trailers as defined in sections
12 60-339, 60-348, and 60-354 shall be the liability of the purchaser
13 and, with the exception of motor vehicles, semitrailers, and
14 trailers registered pursuant to section 60-3,198, the tax shall
15 be collected by the county treasurer or designated county official
16 as provided in the Motor Vehicle Registration Act at the time
17 the purchaser makes application for the registration of the motor
18 vehicle, semitrailer, or trailer for operation upon the highways
19 of this state. The tax imposed by this section on motor vehicles,
20 semitrailers, and trailers registered pursuant to section 60-3,198
21 shall be collected by the Department of Motor Vehicles at the time
22 the purchaser makes application for the registration of the motor
23 vehicle, semitrailer, or trailer for operation upon the highways
24 of this state. At the time of the sale of any motor vehicle,
25 semitrailer, or trailer, the seller shall (i) state on the sales

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

1 designated county official, or Department of Motor Vehicles shall
2 also collect from the purchaser interest from the thirtieth day
3 through the date of payment and sales tax penalties as provided in
4 the Nebraska Revenue Act of 1967. The county treasurer, designated
5 county official, or Department of Motor Vehicles shall report and
6 remit the tax so collected to the Tax Commissioner by the fifteenth
7 day of the following month. The county treasurer or designated
8 county official shall deduct and withhold for the use of the county
9 general fund, from all amounts required to be collected under
10 this subsection, the collection fee permitted to be deducted by
11 any retailer collecting the sales tax. The Department of Motor
12 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
13 Division Cash Fund the collection fee permitted to be deducted by
14 any retailer collecting the sales tax. The collection fee shall
15 be forfeited if the county treasurer, designated county official,
16 or Department of Motor Vehicles violates any rule or regulation
17 pertaining to the collection of the use tax.

18 (j)(i) The tax imposed by this section on the sale of a
19 motorboat as defined in section 37-1204 shall be the liability of
20 the purchaser. The tax shall be collected by the county treasurer
21 or designated county official at the time the purchaser makes
22 application for the registration of the motorboat. At the time
23 of the sale of a motorboat, the seller shall (A) state on the
24 sales invoice the dollar amount of the tax imposed under this
25 section and (B) furnish to the purchaser a certified statement of

1 the transaction, in such form as the Tax Commissioner prescribes,
2 setting forth as a minimum the total sales price, the allowance for
3 any trade-in, and the difference between the two. The sales tax due
4 shall be computed on the difference between the total sales price
5 and the allowance for any trade-in as disclosed by such certified
6 statement. Any seller who willfully understates the amount upon
7 which the sales tax is due shall be subject to a penalty of one
8 thousand dollars. A copy of such certified statement shall also
9 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
12 fine of not less than twenty-five dollars nor more than one hundred
13 dollars. If the seller fails to state on the sales invoice the
14 dollar amount of the tax due, the purchaser shall have the right
15 and authority to rescind any agreement for purchase and to declare
16 the purchase null and void. If the purchaser retains such motorboat
17 in this state and does not register it within thirty days of the
18 purchase thereof, the tax imposed by this section shall immediately
19 thereafter be paid by the purchaser to the county treasurer or
20 designated county official. If the tax is not paid on or before
21 the thirtieth day after its purchase, the county treasurer or
22 designated county official shall also collect from the purchaser
23 interest from the thirtieth day through the date of payment and
24 sales tax penalties as provided in the Nebraska Revenue Act of
25 1967. The county treasurer or designated county official shall

1 report and remit the tax so collected to the Tax Commissioner by
2 the fifteenth day of the following month. The county treasurer or
3 designated county official shall deduct and withhold for the use of
4 the county general fund, from all amounts required to be collected
5 under this subsection, the collection fee permitted to be deducted
6 by any retailer collecting the sales tax. The collection fee shall
7 be forfeited if the county treasurer or designated county official
8 violates any rule or regulation pertaining to the collection of the
9 use tax.

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

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

19 (2) A use tax is hereby imposed on the storage, use, or
20 other consumption in this state of property purchased, leased, or
21 rented from any retailer and on any transaction the gross receipts
22 of which are subject to tax under subsection (1) of this section
23 on or after June 1, 1967, for storage, use, or other consumption
24 in this state at the rate set as provided in subsection (1) of
25 this section on the sales price of the property or, in the case of

1 leases or rentals, of the lease or rental prices.

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

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

24 (c) The Tax Commissioner, in order to facilitate the
25 proper administration of the use tax, may designate such person or

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

14 (d) All persons designated to collect the use tax and all
15 persons required to collect the use tax shall forward the total of
16 such collections to the Tax Commissioner at such time and in such
17 manner as the Tax Commissioner may prescribe. For all use taxes
18 collected ~~prior to October 1, 2002,~~ on and after July 1, 2008, such
19 collectors of the use tax shall deduct and withhold from the amount
20 of taxes collected two and one-half percent of the first three
21 thousand dollars remitted each month and one-half of one percent
22 of all amounts in excess of three thousand dollars remitted each
23 month as reimbursement for the cost of collecting the tax. For
24 use taxes collected on and after October 1, 2002, and before July
25 1, 2008, such collectors of the use tax shall deduct and withhold

1 from the amount of taxes collected two and one-half percent of the
2 first three thousand dollars remitted each month as reimbursement
3 for the cost of collecting the tax. Any such deduction shall be
4 forfeited to the State of Nebraska if such collector violates any
5 rule, regulation, or directive of the Tax Commissioner.

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

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

20 Sec. 2. Section 77-2708, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 77-2708 (1)(a) The sales and use taxes imposed by the
23 Nebraska Revenue Act of 1967 shall be due and payable to the
24 Tax Commissioner monthly on or before the twenty-fifth day of the
25 month next succeeding each monthly period unless otherwise provided

1 pursuant to the Nebraska Revenue Act of 1967.

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

1 subdivision.

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

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

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

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

1 section in an amount not less than two times the amount of tax
2 payable on outstanding accounts receivable held by the subsidiary
3 as of the end of the prior calendar year. Failure to obtain either
4 a sales tax permit or a surety bond in accordance with this section
5 shall result in the payment on the next required filing date of
6 all sales taxes not previously remitted. When the retailer has
7 adopted one basis or the other of reporting credit, conditional, or
8 installment sales and paying the tax thereon, he or she will not be
9 permitted to change from that basis without first having notified
10 the Tax Commissioner.

11 (c) Except as provided in the streamlined sales and use
12 tax agreement, the taxpayer required to file the return shall
13 deliver or mail any required return together with a remittance of
14 the net amount of the tax due to the office of the Tax Commissioner
15 on or before the required filing date. Failure to file the return,
16 filing after the required filing date, failure to remit the net
17 amount of the tax due, or remitting the net amount of the tax due
18 after the required filing date shall be cause for a penalty, in
19 addition to interest, of ten percent of the amount of tax not paid
20 by the required filing date or twenty-five dollars, whichever is
21 greater, unless the penalty is being collected under subdivision
22 (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a
23 designated county official, or the Department of Motor Vehicles, in
24 which case the penalty shall be five dollars.

25 (d) For all sales tax collected ~~prior to October 1,~~

1 ~~2002~~, on and after July 1, 2008, the taxpayer shall deduct and
2 withhold, from the taxes otherwise due from him or her on his
3 or her tax return, two and one-half percent of the first three
4 thousand dollars remitted each month and one-half of one percent
5 of all amounts in excess of three thousand dollars remitted each
6 month to reimburse himself or herself for the cost of collecting
7 the tax. For all sales tax collected on and after October 1, 2002,
8 and before July 1, 2008, the taxpayer shall deduct and withhold,
9 from the taxes otherwise due from him or her on his or her
10 tax return, two and one-half percent of the first three thousand
11 dollars remitted each month to reimburse himself or herself for the
12 cost of collecting the tax. Taxpayers filing a combined return as
13 allowed by subdivision (1)(b)(ii) of this subsection shall compute
14 such collection fees on the basis of the receipts and liability of
15 each licensed location.

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

1 (b) No refund shall be allowed unless a claim therefor
2 is filed with the Tax Commissioner by the person who made the
3 overpayment or his or her attorney, executor, or administrator
4 within three years from the required filing date following the
5 close of the period for which the overpayment was made, within six
6 months after any determination becomes final under section 77-2709,
7 or within six months from the date of overpayment with respect
8 to such determinations, whichever of these three periods expires
9 later, unless the credit relates to a period for which a waiver has
10 been given. Failure to file a claim within the time prescribed in
11 this subsection shall constitute a waiver of any demand against the
12 state on account of overpayment.

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

17 (d) The Tax Commissioner shall allow or disallow a claim
18 within one hundred eighty days after it has been filed. If the Tax
19 Commissioner has neither allowed nor disallowed a claim within such
20 one hundred eighty days, the claim shall be deemed to have been
21 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
2 of the Tax Commissioner's action upon a claim filed pursuant
3 to the Nebraska Revenue Act of 1967, the action of the Tax
4 Commissioner shall be final unless the taxpayer seeks review of the
5 Tax Commissioner's determination as provided in section 77-27,127.

6 (g) Upon the allowance of a credit or refund of any
7 sum erroneously or illegally assessed or collected, of any penalty
8 collected without authority, or of any sum which was excessive
9 or in any manner wrongfully collected, interest shall be allowed
10 and paid on the amount of such credit or refund at the rate
11 specified in section 45-104.02, as such rate may from time to time
12 be adjusted, from the date such sum was paid or from the date the
13 return was required to be filed, whichever date is later, to the
14 date of the allowance of the refund or, in the case of a credit,
15 to the due date of the amount against which the credit is allowed,
16 but in the case of a voluntary and unrequested payment in excess
17 of actual tax liability or a refund under section 77-2708.01, no
18 interest shall be allowed 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
21 erroneously or illegally determined or collected unless a claim
22 for refund or 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
6 to the Nebraska Revenue Act of 1967 on any deduction taken that
7 is attributed to bad debts not including interest. Bad debt has
8 the same meaning as in 26 U.S.C. 166, as such section existed
9 on January 1, 2003. However, the amount calculated pursuant to
10 26 U.S.C. 166 shall be adjusted to exclude: Financing charges
11 or interest; sales or use taxes charged on the purchase price;
12 uncollectible amounts on property that remains in the possession
13 of the seller until the full purchase price is paid; and expenses
14 incurred in attempting to collect any debt and repossessed
15 property.

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

25 (iii) If a deduction is taken for a bad debt and the

1 debt is subsequently collected in whole or in part, the tax on the
2 amount so collected must be paid and reported on the return filed
3 for the period in which the collection is made.

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

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

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

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

25 Sec. 3. Original section 77-2708, Revised Statutes

LB 1010

LB 1010

1 Cumulative Supplement, 2006, and section 77-2703, Revised Statutes
2 Supplement, 2007, are repealed.

3 Sec. 4. Since an emergency exists, this act takes effect
4 when passed and approved according to law.