

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 423

Introduced by Burling, 33; Johnson, 37; Louden, 49;

Read first time January 16, 2007

Committee: Revenue

A BILL

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

1 Section 1. Section 77-2703, Revised Statutes Cumulative
2 Supplement, 2006, 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 (2)(a), (b), or (d) of section 77-2701.16 until
10 January 1, 2004, and the services defined in subdivision (8)(a),
11 (b), (d), or (e) of section 77-2701.16 beginning on January 1,
12 2004, or as a retailer of intellectual or entertainment properties
13 referred to in subsection (3) of section 77-2701.16 until January
14 1, 2004, and subsection (9) of section 77-2701.16 beginning on
15 January 1, 2004, the gross receipts from the sale of admissions
16 in this state, the gross receipts from the sale of warranties,
17 guarantees, service agreements, or maintenance agreements when the
18 items covered are subject to tax under this section, and the gross
19 receipts from the provision of services defined in subsection (4)
20 of section 77-2701.16 until January 1, 2004, and services defined
21 in subsection (10) of section 77-2701.16 beginning on January 1,
22 2004. Except as provided in section 77-2701.03, when there is a
23 sale, the tax shall be imposed at the rate in effect at the
24 time the gross receipts are realized under the accounting basis
25 used by the retailer to maintain his or her books and records

1 or for a contractor when the payment or payments are received
2 for construction services. For purposes of this subsection until
3 January 1, 2004, the provision of services shall be deemed to
4 be in this state for services provided to real estate if the
5 real estate is located in this state; for services provided to
6 personal property or animals if the personal property or animal is
7 located in this state and the service is rendered for use in this
8 state; for detective services under subdivision (4)(i) of section
9 77-2701.16, in the case of a customer who is an individual, if the
10 individual is residing in this state, or in the case of a business
11 customer, if the principal place of the business is located in this
12 state; and for computer software training under subdivision (4)(c)
13 of section 77-2701.16 if the training is performed at a location
14 that is within this state for a customer located within this state.

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

22 (b) It is unlawful for any retailer to advertise, hold
23 out, or state to the public or to any customer, directly or
24 indirectly, that the tax or part thereof will be assumed or
25 absorbed by the retailer, that it will not be added to the selling,

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

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

10 (d) For the purpose of more efficiently securing the
11 payment, collection, and accounting for the sales tax and for the
12 convenience of the retailer in collecting the sales tax, it shall
13 be the duty of the Tax Commissioner to provide a schedule or
14 schedules of the amounts to be collected from the consumer or user
15 to effectuate the computation and collection of the tax imposed
16 by the Nebraska Revenue Act of 1967. Such schedule or schedules
17 shall provide that the tax shall be collected from the consumer
18 or user uniformly on sales according to brackets based on sales
19 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
23 collecting or enforcing the collection of the taxes imposed in the
24 Nebraska Revenue Act of 1967 or for any other purpose in connection
25 with such taxes is prohibited.

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

16 (g) In the rental or lease of automobiles, trucks,
17 trailers, semitrailers, and truck-tractors as defined in the Motor
18 Vehicle Registration Act, the tax shall be collected by the lessor
19 on the rental or lease price at the tax rate in effect on the date
20 the automobile, truck, trailer, semitrailer, or truck-tractor is
21 delivered to the lessee, except as otherwise provided within this
22 section.

23 (h) In the rental or lease of automobiles, trucks,
24 trailers, semitrailers, and truck-tractors as defined in the act,
25 for periods of one year or more, the lessor may elect not to

1 collect and remit the sales tax on the gross receipts and instead
2 pay a sales tax on the cost of such vehicle. If such election is
3 made, it shall be made pursuant to the following conditions:

4 (i) Notice of the desire to make such election shall
5 be filed with the Tax Commissioner and shall not become effective
6 until the Tax Commissioner is satisfied that the taxpayer has
7 complied with all conditions of this subsection and all rules and
8 regulations of the Tax Commissioner;

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

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

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

1 administration of this subdivision.

2 (i) The tax imposed by this section on the sales of
3 motor vehicles, semitrailers, and trailers as defined in sections
4 60-339, 60-348, and 60-354 shall be the liability of the purchaser
5 and, with the exception of motor vehicles, semitrailers, and
6 trailers registered pursuant to section 60-3,198, the tax shall
7 be collected by the county treasurer or designated county official
8 as provided in the Motor Vehicle Registration Act at the time
9 the purchaser makes application for the registration of the motor
10 vehicle, semitrailer, or trailer for operation upon the highways
11 of this state. The tax imposed by this section on motor vehicles,
12 semitrailers, and trailers registered pursuant to section 60-3,198
13 shall be collected by the Department of Motor Vehicles at the time
14 the purchaser makes application for the registration of the motor
15 vehicle, semitrailer, or trailer for operation upon the highways
16 of this state. At the time of the sale of any motor vehicle,
17 semitrailer, or trailer, the seller shall (i) state on the sales
18 invoice the dollar amount of the tax imposed under this section
19 and (ii) furnish to the purchaser a certified statement of the
20 transaction, in such form as the Tax Commissioner prescribes,
21 setting forth as a minimum the total sales price, the allowance for
22 any trade-in, and the difference between the two. The sales tax due
23 shall be computed on the difference between the total sales price
24 and the allowance for any trade-in as disclosed by such certified
25 statement. Any seller who willfully understates the amount upon

1 which the sales tax is due shall be subject to a penalty of one
2 thousand dollars. A copy of such certified statement shall also
3 be furnished to the Tax Commissioner. Any seller who fails or
4 refuses to furnish such certified statement shall be guilty of
5 a misdemeanor and shall, upon conviction thereof, be punished by
6 a fine of not less than twenty-five dollars nor more than one
7 hundred dollars. If the seller fails to state on the sales invoice
8 the dollar amount of the tax due, the purchaser shall have the
9 right and authority to rescind any agreement for purchase and
10 to declare the purchase null and void. If the purchaser retains
11 such motor vehicle, semitrailer, or trailer in this state and
12 does not register it for operation on the highways of this state
13 within thirty days of the purchase thereof, the tax imposed by
14 this section shall immediately thereafter be paid by the purchaser
15 to the county treasurer, the designated county official, or the
16 Department of Motor Vehicles. If the tax is not paid on or
17 before the thirtieth day after its purchase, the county treasurer,
18 designated county official, or Department of Motor Vehicles shall
19 also collect from the purchaser interest from the thirtieth day
20 through the date of payment and sales tax penalties as provided in
21 the Nebraska Revenue Act of 1967. The county treasurer, designated
22 county official, or Department of Motor Vehicles shall report and
23 remit the tax so collected to the Tax Commissioner by the fifteenth
24 day of the following month. The county treasurer or designated
25 county official shall deduct and withhold for the use of the county

1 general fund, from all amounts required to be collected under
2 this subsection, the collection fee permitted to be deducted by
3 any retailer collecting the sales tax. The Department of Motor
4 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
5 Division Cash Fund the collection fee permitted to be deducted by
6 any retailer collecting the sales tax. The collection fee shall
7 be forfeited if the county treasurer, designated county official,
8 or Department of Motor Vehicles violates any rule or regulation
9 pertaining to the collection of the use tax.

10 (j)(i) The tax imposed by this section on the sale of a
11 motorboat as defined in section 37-1204 shall be the liability of
12 the purchaser. The tax shall be collected by the county treasurer
13 or designated county official at the time the purchaser makes
14 application for the registration of the motorboat. At the time
15 of the sale of a motorboat, the seller shall (A) state on the
16 sales invoice the dollar amount of the tax imposed under this
17 section and (B) furnish to the purchaser a certified statement of
18 the transaction, in such form as the Tax Commissioner prescribes,
19 setting forth as a minimum the total sales price, the allowance for
20 any trade-in, and the difference between the two. The sales tax due
21 shall be computed on the difference between the total sales price
22 and the allowance for any trade-in as disclosed by such certified
23 statement. Any seller who willfully understates the amount upon
24 which the sales tax is due shall be subject to a penalty of one
25 thousand dollars. A copy of such certified statement shall also

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

1 use tax.

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

4 (k) The Tax Commissioner shall adopt and promulgate
5 necessary rules and regulations for determining the amount subject
6 to the taxes imposed by this section so as to insure that the
7 full amount of any applicable tax is paid in cases in which a
8 sale is made of which a part is subject to the taxes imposed by
9 this section and a part of which is not so subject and a separate
10 accounting is not practical or economical.

11 (2) A use tax is hereby imposed on the storage, use, or
12 other consumption in this state of property purchased, leased, or
13 rented from any retailer and on any transaction the gross receipts
14 of which are subject to tax under subsection (1) of this section
15 on or after June 1, 1967, for storage, use, or other consumption
16 in this state at the rate set as provided in subsection (1) of
17 this section on the sales price of the property or, in the case of
18 leases or rentals, of the lease or rental prices.

19 (a) Every person storing, using, or otherwise consuming
20 in this state property purchased from a retailer or leased or
21 rented from another person for such purpose shall be liable for the
22 use tax at the rate in effect when his or her liability for the
23 use tax becomes certain under the accounting basis used to maintain
24 his or her books and records. His or her liability shall not be
25 extinguished until the use tax has been paid to this state, except

1 that a receipt from a retailer engaged in business in this state
2 or from a retailer who is authorized by the Tax Commissioner, under
3 such rules and regulations as he or she may prescribe, to collect
4 the sales tax and who is, for the purposes of the Nebraska Revenue
5 Act of 1967 relating to the sales tax, regarded as a retailer
6 engaged in business in this state, which receipt is given to the
7 purchaser pursuant to subdivision (b) of this subsection, shall be
8 sufficient to relieve the purchaser from further liability for the
9 tax to which the receipt refers.

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

16 (c) The Tax Commissioner, in order to facilitate the
17 proper administration of the use tax, may designate such person or
18 persons as he or she may deem necessary to be use tax collectors
19 and delegate to such persons such authority as is necessary to
20 collect any use tax which is due and payable to the State of
21 Nebraska. The Tax Commissioner may require of all persons so
22 designated a surety bond in favor of the State of Nebraska to
23 insure against any misappropriation of state funds so collected.
24 The Tax Commissioner may require any tax official, city, county, or
25 state, to collect the use tax on behalf of the state. All persons

1 designated to or required to collect the use tax shall account for
2 such collections in the manner prescribed by the Tax Commissioner.
3 Nothing in this subdivision shall be so construed as to prevent the
4 Tax Commissioner or his or her employees from collecting any use
5 taxes due and payable to the State of Nebraska.

6 (d) All persons designated to collect the use tax and
7 all persons required to collect the use tax shall forward the
8 total of such collections to the Tax Commissioner at such time
9 and in such manner as the Tax Commissioner may prescribe. For all
10 use taxes collected prior to October 1, 2002, such collectors of
11 the use tax shall deduct and withhold from the amount of taxes
12 collected two and one-half percent of the first three thousand
13 dollars remitted each month and one-half of one percent of all
14 amounts in excess of three thousand dollars remitted each month as
15 reimbursement for the cost of collecting the tax. For use taxes
16 collected on and after October 1, 2002, and before July 1, 2007,
17 such collectors of the use tax shall deduct and withhold from the
18 amount of taxes collected two and one-half percent of the first
19 three thousand dollars remitted each month as reimbursement for
20 the cost of collecting the tax. For all use tax collected on and
21 after July 1, 2007, such collectors of the use tax shall deduct
22 and withhold from the amount of taxes collected two and one-half
23 percent of the first three thousand dollars remitted each month
24 and one percent of all amounts in excess of three thousand dollars
25 remitted each month as reimbursement for the cost of collecting the

1 tax. Any such deduction shall be forfeited to the State of Nebraska
2 if such collector violates any rule, regulation, or directive of
3 the Tax Commissioner.

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

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

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

20 77-2708 (1)(a) The sales and use taxes imposed by the
21 Nebraska Revenue Act of 1967 shall be due and payable to the
22 Tax Commissioner monthly on or before the twenty-fifth day of the
23 month next succeeding each monthly period unless otherwise provided
24 pursuant to the Nebraska Revenue Act of 1967.

25 (b)(i) On or before the twenty-fifth day of the month

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

25 The Tax Commissioner may adopt and promulgate rules

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

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

24 (iii) The Tax Commissioner may require that returns be
25 signed by the person required to file the return or by his or her

1 duly authorized agent but need not be verified by oath.

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

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

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

23 (d) For all sales tax collected prior to October 1, 2002,
24 the taxpayer shall deduct and withhold, from the taxes otherwise
25 due from him or her on his or her tax return, two and one-half

1 percent of the first three thousand dollars remitted each month and
2 one-half of one percent of all amounts in excess of three thousand
3 dollars remitted each month to reimburse himself or herself for
4 the cost of collecting the tax. For all sales tax collected on
5 and after October 1, 2002, and before July 1, 2007, the taxpayer
6 shall deduct and withhold, from the taxes otherwise due from him
7 or her on his or her tax return, two and one-half percent of
8 the first three thousand dollars remitted each month to reimburse
9 himself or herself for the cost of collecting the tax. For all
10 sales tax collected on and after July 1, 2007, the taxpayer shall
11 deduct and withhold, from the taxes otherwise due from him or her
12 on his or her tax return, two and one-half percent of the first
13 three thousand dollars remitted each month and one percent of all
14 amounts in excess of three thousand dollars remitted each month
15 to reimburse himself or herself for the cost of collecting the
16 tax. Taxpayers filing a combined return as allowed by subdivision
17 (1)(b)(ii) of this subsection shall compute such collection fees on
18 the basis of the receipts and liability of each licensed location.

19 (2)(a) If the Tax Commissioner determines that any sales
20 or use tax amount, penalty, or interest has been paid more than
21 once, has been erroneously or illegally collected or computed,
22 or has been paid and the purchaser qualifies for a refund under
23 section 77-2708.01, the Tax Commissioner shall set forth that fact
24 in his or her records and the excess amount collected or paid may
25 be credited on any sales, use, or income tax amounts then due and

1 payable from the person under the Nebraska Revenue Act of 1967. Any
2 balance may be refunded to the person by whom it was paid or his or
3 her successors, administrators, or executors.

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

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

20 (d) The Tax Commissioner shall allow or disallow a claim
21 within one hundred eighty days after it has been filed. If the Tax
22 Commissioner has neither allowed nor disallowed a claim within such
23 one hundred eighty days, the claim shall be deemed to have been
24 allowed.

25 (e) Within thirty days after disallowing any claim in

1 whole or in part, the Tax Commissioner shall serve notice of his or
2 her action on the claimant in the manner prescribed for service of
3 notice of a deficiency determination.

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

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

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

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

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

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

1 eligible for a bad debt deduction for federal income tax purposes
2 if the claimant was required to file a federal income tax return.

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

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

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

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

24 (vii) In situations in which the books and records of the
25 party claiming the bad debt allowance support an allocation of the

1 bad debts among the member states in the streamlined sales and use
2 tax agreement, the state shall permit the allocation.

3 Sec. 3. Original sections 77-2703 and 77-2708, Revised
4 Statutes Cumulative Supplement, 2006, are repealed.

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