

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 186**

Introduced by Karpisek, 32; Fulton, 29.

Read first time January 12, 2009

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, 2008; to change sales and use tax collection  
4 fees; to provide an operative date; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2703, Revised Statutes Cumulative  
2 Supplement, 2008, 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 as a  
8 satellite service operator, any person involved in the connecting  
9 and installing of the services defined in subdivision (2)(a), (b),  
10 (d), or (e) of section 77-2701.16, or every person engaged as  
11 a retailer of intellectual or entertainment properties referred  
12 to in subsection (3) of section 77-2701.16; the gross receipts  
13 from the sale of admissions in this state; the gross receipts  
14 from the sale of warranties, guarantees, service agreements, or  
15 maintenance agreements when the items covered are subject to tax  
16 under this section; beginning January 1, 2008, the gross receipts  
17 from the sale of bundled transactions when one or more of the  
18 products included in the bundle are taxable; the gross receipts  
19 from the provision of services defined in subsection (4) of section  
20 77-2701.16; and the gross receipts from the sale of products  
21 delivered electronically as described in subsection (9) of section  
22 77-2701.16. Except as provided in section 77-2701.03, when there is  
23 a sale, the tax shall be imposed at the rate in effect at the time  
24 the gross receipts are realized under the accounting basis used by  
25 the retailer to maintain his or her books and records.

1           (a) The tax imposed by this section shall be collected  
2 by the retailer from the consumer. It shall constitute a part of  
3 the purchase price and until collected shall be a debt from the  
4 consumer to the retailer and shall be recoverable at law in the  
5 same manner as other debts. The tax required to be collected by the  
6 retailer from the consumer constitutes a debt owed by the retailer  
7 to this state.

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

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

21           (d) For the purpose of more efficiently securing the  
22 payment, collection, and accounting for the sales tax and for the  
23 convenience of the retailer in collecting the sales tax, it shall  
24 be the duty of the Tax Commissioner to provide a schedule or  
25 schedules of the amounts to be collected from the consumer or user

1 to effectuate the computation and collection of the tax imposed  
2 by the Nebraska Revenue Act of 1967. Such schedule or schedules  
3 shall provide that the tax shall be collected from the consumer  
4 or user uniformly on sales according to brackets based on sales  
5 prices of the item or items. Retailers may compute the tax due on  
6 any transaction on an item or an invoice basis. The rounding rule  
7 provided in section 77-3,117 applies.

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

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

1 state.

2 (g) In the rental or lease of automobiles, trucks,  
3 trailers, semitrailers, and truck-tractors as defined in the Motor  
4 Vehicle Registration Act, the tax shall be collected by the lessor  
5 on the rental or lease price at the tax rate in effect on the date  
6 the automobile, truck, trailer, semitrailer, or truck-tractor is  
7 delivered to the lessee, except as otherwise provided within this  
8 section.

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

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

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

23 (iii) When such election is made, it shall apply to all  
24 vehicles of the lessor rented or leased for periods of one year or  
25 more except vehicles to be leased to common or contract carriers

1 who provide to the lessor a valid common or contract carrier  
2 exemption certificate. If the lessor rents or leases other vehicles  
3 for periods of less than one year, such lessor shall maintain his  
4 or her books and records and his or her accounting procedure as the  
5 Tax Commissioner prescribes; and

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

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

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

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

21 (j)(i) The tax imposed by this section on the sale of a  
22 motorboat as defined in section 37-1204 shall be the liability of  
23 the purchaser. The tax shall be collected by the county treasurer  
24 or designated county official at the time the purchaser makes  
25 application for the registration of the motorboat. At the time



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

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

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

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

22 (2) A use tax is hereby imposed on the storage, use, or  
23 other consumption in this state of property purchased, leased, or  
24 rented from any retailer and on any transaction the gross receipts  
25 of which are subject to tax under subsection (1) of this section

1 on or after June 1, 1967, for storage, use, or other consumption  
2 in this state at the rate set as provided in subsection (1) of  
3 this section on the sales price of the property or, in the case of  
4 leases or rentals, of the lease or rental prices.

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

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

1 and form prescribed by the Tax Commissioner.

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

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

1 ~~the cost of collecting the tax. For use taxes collected on and~~  
2 ~~after October 1, 2002, such collectors~~ Collectors of the use tax  
3 shall deduct and withhold from the amount of taxes collected two  
4 and one-half percent of the first three thousand dollars remitted  
5 each month as reimbursement for the cost of collecting the tax.  
6 Collectors of the use tax shall also deduct and withhold, from  
7 the amount of taxes collected an amount equal to any fees charged  
8 or deducted on the tax collected from payment card sales by the  
9 issuers of the payment cards for processing the payment card  
10 transactions. The payment card transaction fee deduction shall be  
11 calculated by multiplying the percentage of the payment card fee  
12 by the amount of tax on each payment card transaction. Any such  
13 deduction shall be forfeited to the State of Nebraska if such  
14 collector violates any rule, regulation, or directive of the Tax  
15 Commissioner.

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

23 (f) For the purpose of the proper administration of the  
24 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
25 for the sale of property to an advertising agency which purchases

1 the property as an agent for a disclosed or undisclosed principal,  
2 the advertising agency is and remains liable for the sales and  
3 use tax on the purchase the same as if the principal had made the  
4 purchase directly.

5 Sec. 2. Section 77-2708, Revised Statutes Cumulative  
6 Supplement, 2008, is amended to read:

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

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

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

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

24           (ii) For purposes of the sales tax, a return shall be  
25 filed by every retailer liable for collection from a purchaser and

1 payment to the state of the tax, except that a combined sales tax  
2 return may be filed for all licensed locations which are subject  
3 to common ownership. For purposes of this subdivision, common  
4 ownership means the same person or persons own eighty percent or  
5 more of each licensed location. For purposes of the use tax, a  
6 return shall be filed by every retailer engaged in business in this  
7 state and by every person who has purchased property, the storage,  
8 use, or other consumption of which is subject to the use tax, but  
9 who has not paid the use tax due to a retailer required to collect  
10 the tax.

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

14 (iv) A taxpayer who keeps his or her regular books  
15 and records on a cash basis, an accrual basis, or any generally  
16 recognized accounting basis which correctly reflects the operation  
17 of the business may file the sales and use tax returns required  
18 by the Nebraska Revenue Act of 1967 on the same accounting basis  
19 that is used for the regular books and records, except that on  
20 credit, conditional, and installment sales, the retailer who keeps  
21 his or her books on an accrual basis may report such sales on  
22 the cash basis and pay the tax upon the collections made during  
23 each month. If a taxpayer transfers, sells, assigns, or otherwise  
24 disposes of an account receivable, he or she shall be deemed  
25 to have received the full balance of the consideration for the



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

21 (c) Except as provided in the streamlined sales and use  
22 tax agreement, the taxpayer required to file the return shall  
23 deliver or mail any required return together with a remittance of  
24 the net amount of the tax due to the office of the Tax Commissioner  
25 on or before the required filing date. Failure to file the return,

1 filing after the required filing date, failure to remit the net  
2 amount of the tax due, or remitting the net amount of the tax due  
3 after the required filing date shall be cause for a penalty, in  
4 addition to interest, of ten percent of the amount of tax not paid  
5 by the required filing date or twenty-five dollars, whichever is  
6 greater, unless the penalty is being collected under subdivision  
7 (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a  
8 designated county official, or the Department of Motor Vehicles, in  
9 which case the penalty shall be five dollars.

10 (d) ~~For all sales tax collected prior to October 1, 2002,~~  
11 ~~the taxpayer shall deduct and withhold, from the taxes otherwise~~  
12 ~~due from him or her on his or her tax return, two and one-half~~  
13 ~~percent of the first three thousand dollars remitted each month and~~  
14 ~~one-half of one percent of all amounts in excess of three thousand~~  
15 ~~dollars remitted each month to reimburse himself or herself for~~  
16 ~~the cost of collecting the tax. For all sales tax collected on and~~  
17 ~~after October 1, 2002, the The taxpayer shall deduct and withhold,~~  
18 ~~from the taxes otherwise due from him or her on his or her~~  
19 ~~tax return, two and one-half percent of the first three thousand~~  
20 ~~dollars remitted each month to reimburse himself or herself for~~  
21 ~~the cost of collecting the tax. The taxpayer shall also deduct and~~  
22 ~~withhold, from the taxes otherwise due from him or her on his or~~  
23 ~~her tax return, an amount equal to any fees charged or deducted~~  
24 ~~on the tax collected from payment card sales by the issuers of~~  
25 ~~the payment cards for processing the payment card transactions.~~

1 The payment card transaction fee deduction shall be calculated by  
2 multiplying the percentage of the payment card fee by the amount of  
3 tax on each payment card transaction. Taxpayers filing a combined  
4 return as allowed by subdivision (1)(b)(ii) of this subsection  
5 shall compute such ~~collection fees~~ deductions on the basis of the  
6 receipts and liability of each licensed location.

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

17 (b) No refund shall be allowed unless a claim therefor  
18 is filed with the Tax Commissioner by the person who made the  
19 overpayment or his or her attorney, executor, or administrator  
20 within three years from the required filing date following the  
21 close of the period for which the overpayment was made, within six  
22 months after any determination becomes final under section 77-2709,  
23 or within six months from the date of overpayment with respect  
24 to such determinations, whichever of these three periods expires  
25 later, unless the credit relates to a period for which a waiver has

1 been given. Failure to file a claim within the time prescribed in  
2 this subsection shall constitute a waiver of any demand against the  
3 state on account of overpayment.

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

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

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

22 (f) Within thirty days after the mailing of the notice  
23 of the Tax Commissioner's action upon a claim filed pursuant  
24 to the Nebraska Revenue Act of 1967, the action of the Tax  
25 Commissioner shall be final unless the taxpayer seeks review of the

1 Tax Commissioner's determination as provided in section 77-27,127.

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

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

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

25 (j)(i) Credit shall be allowed to the retailer,

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

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

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

25 (iv) When the amount of bad debt exceeds the amount

1 of taxable sales for the period during which the bad debt is  
2 written off, a refund claim may be filed within the otherwise  
3 applicable statute of limitations for refund claims. The statute of  
4 limitations shall be measured from the due date of the return on  
5 which the bad debt could first be claimed.

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

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

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

21 Sec. 3. This act becomes operative on January 1, 2010.

22 Sec. 4. Original sections 77-2703 and 77-2708, Revised  
23 Statutes Cumulative Supplement, 2008, are repealed.