

AMENDMENTS TO LB1057

Introduced by Revenue

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. If the federal government passes a law that  
4 expands the state's authority to require out-of-state retailers  
5 to collect and remit the tax imposed under section 77-2703 on  
6 purchases by Nebraska residents and the state collects additional  
7 revenue under section 77-2703 as a result of such federal law,  
8 then the Department of Revenue shall determine the amount of  
9 such additional revenue collected during the first twelve months  
10 following the date on which the state begins collecting such  
11 additional revenue. The department shall certify such amount to  
12 the Governor, the Legislature, and the State Treasurer, and the  
13 certified amount shall be used for purposes of subdivision (2)(c)  
14 of section 77-27,132.

15           Sec. 2. Section 77-2703, Revised Statutes Cumulative  
16 Supplement, 2012, is amended to read:

17           77-2703 (1) There is hereby imposed a tax at the rate  
18 provided in section 77-2701.02 upon the gross receipts from all  
19 sales of tangible personal property sold at retail in this state;  
20 the gross receipts of every person engaged as a public utility,  
21 as a community antenna television service operator, or as a  
22 satellite service operator, any person involved in the connecting  
23 and installing of the services defined in subdivision (2)(a), (b),

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

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

24 (b) It is unlawful for any retailer to advertise, hold  
25 out, or state to the public or to any customer, directly or  
26 indirectly, that the tax or part thereof will be assumed or  
27 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.

26 (f) For the purpose of the proper administration of the  
27 provisions of the Nebraska Revenue Act of 1967 and to prevent

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

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

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

25 (i) Notice of the desire to make such election shall  
26 be filed with the Tax Commissioner and shall not become effective  
27 until the Tax Commissioner is satisfied that the taxpayer has

1 complied with all conditions of this subsection and all rules and  
2 regulations of the Tax Commissioner;

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

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

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

21 (i) The tax imposed by this section on the sales of  
22 motor vehicles, semitrailers, and trailers as defined in sections  
23 60-339, 60-348, and 60-354 shall be the liability of the purchaser  
24 and, with the exception of motor vehicles, semitrailers, and  
25 trailers registered pursuant to section 60-3,198, the tax shall be  
26 collected by the county treasurer as provided in the Motor Vehicle  
27 Registration Act at the time the purchaser makes application for

1 the registration of the motor vehicle, semitrailer, or trailer for  
2 operation upon the highways of this state. The tax imposed by this  
3 section on motor vehicles, semitrailers, and trailers registered  
4 pursuant to section 60-3,198 shall be collected by the Department  
5 of Motor Vehicles at the time the purchaser makes application for  
6 the registration of the motor vehicle, semitrailer, or trailer for  
7 operation upon the highways of this state. At the time of the sale  
8 of any motor vehicle, semitrailer, or trailer, the seller shall (i)  
9 state on the sales invoice the dollar amount of the tax imposed  
10 under this section and (ii) furnish to the purchaser a certified  
11 statement of the transaction, in such form as the Tax Commissioner  
12 prescribes, setting forth as a minimum the total sales price, the  
13 allowance for any trade-in, and the difference between the two.  
14 The sales tax due shall be computed on the difference between the  
15 total sales price and the allowance for any trade-in as disclosed  
16 by such certified statement. Any seller who willfully understates  
17 the amount upon which the sales tax is due shall be subject to a  
18 penalty of one thousand dollars. A copy of such certified statement  
19 shall also be furnished to the Tax Commissioner. Any seller who  
20 fails or refuses to furnish such certified statement shall be  
21 guilty of a misdemeanor and shall, upon conviction thereof, be  
22 punished by a fine of not less than twenty-five dollars nor more  
23 than one hundred dollars. If the seller fails to state on the sales  
24 invoice the dollar amount of the tax due, the purchaser shall have  
25 the right and authority to rescind any agreement for purchase and  
26 to declare the purchase null and void. If the purchaser retains  
27 such motor vehicle, semitrailer, or trailer in this state and

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

22 (j) (i) The tax imposed by this section on the sale of a  
23 motorboat as defined in section 37-1204 shall be the liability of  
24 the purchaser. The tax shall be collected by the county treasurer  
25 at the time the purchaser makes application for the registration  
26 of the motorboat. At the time of the sale of a motorboat, the  
27 seller shall (A) state on the sales invoice the dollar amount

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

1 The county treasurer shall deduct and withhold for the use of the  
2 county general fund, from all amounts required to be collected  
3 under this subsection, the collection fee permitted to be deducted  
4 by any retailer collecting the sales tax. The collection fee  
5 shall be forfeited if the county treasurer violates any rule or  
6 regulation pertaining to the collection of the use tax.

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

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

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

24 (a) Every person storing, using, or otherwise consuming  
25 in this state property purchased from a retailer or leased or  
26 rented from another person for such purpose shall be liable for the  
27 use tax at the rate in effect when his or her liability for the

1 use tax becomes certain under the accounting basis used to maintain  
2 his or her books and records. His or her liability shall not be  
3 extinguished until the use tax has been paid to this state, except  
4 that a receipt from a retailer engaged in business in this state  
5 or from a retailer who is authorized by the Tax Commissioner, under  
6 such rules and regulations as he or she may prescribe, to collect  
7 the sales tax and who is, for the purposes of the Nebraska Revenue  
8 Act of 1967 relating to the sales tax, regarded as a retailer  
9 engaged in business in this state, which receipt is given to the  
10 purchaser pursuant to subdivision (b) of this subsection, shall be  
11 sufficient to relieve the purchaser from further liability for the  
12 tax to which the receipt refers.

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

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

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

7 (d) All persons designated to collect the use tax and all  
8 persons required to collect the use tax shall forward the total of  
9 such collections to the Tax Commissioner at such time and in such  
10 manner as the Tax Commissioner may prescribe. For all use taxes  
11 collected ~~prior to October 1, 2002,~~ on and after January 1, 2015,  
12 such collectors of the use tax shall deduct and withhold from the  
13 amount of taxes collected two and one-half percent of the first  
14 three thousand dollars remitted each month and one-half of one  
15 percent of all amounts in excess of three thousand dollars remitted  
16 each month as reimbursement for the cost of collecting the tax. For  
17 use taxes collected ~~on and after October 1, 2002,~~ before January  
18 1, 2015, such collectors of the use tax shall deduct and withhold  
19 from the amount of taxes collected two and one-half percent of the  
20 first three thousand dollars remitted each month as reimbursement  
21 for the cost of collecting the tax. Any such deduction shall be  
22 forfeited to the State of Nebraska if such collector violates any  
23 rule, regulation, or directive of the Tax Commissioner.

24 (e) For the purpose of the proper administration of the  
25 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
26 it shall be presumed that property sold, leased, or rented by any  
27 person for delivery in this state is sold, leased, or rented for

1 storage, use, or other consumption in this state until the contrary  
2 is established. The burden of proving the contrary is upon the  
3 person who purchases, leases, or rents the property.

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

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

13 77-2708 (1)(a) The sales and use taxes imposed by the  
14 Nebraska Revenue Act of 1967 shall be due and payable to the  
15 Tax Commissioner monthly on or before the twentieth day of the  
16 month next succeeding each monthly period unless otherwise provided  
17 pursuant to the Nebraska Revenue Act of 1967.

18 (b)(i) On or before the twentieth day of the month  
19 following each monthly period or such other period as the Tax  
20 Commissioner may require, a return for such period, along with all  
21 taxes due, shall be filed with the Tax Commissioner in such form  
22 and content as the Tax Commissioner may prescribe and containing  
23 such information as the Tax Commissioner deems necessary for the  
24 proper administration of the Nebraska Revenue Act of 1967. The Tax  
25 Commissioner, if he or she deems it necessary in order to insure  
26 payment to or facilitate the collection by the state of the amount  
27 of sales or use taxes due, may require returns and payment of the

1 amount of such taxes for periods other than monthly periods in the  
2 case of a particular seller, retailer, or purchaser, as the case  
3 may be. The Tax Commissioner shall by rule and regulation require  
4 reports and tax payments from sellers, retailers, or purchasers  
5 depending on their yearly tax liability. Except as required by  
6 the streamlined sales and use tax agreement, annual returns shall  
7 be required if such sellers', retailers', or purchasers' yearly  
8 tax liability is less than nine hundred dollars, quarterly returns  
9 shall be required if their yearly tax liability is nine hundred  
10 dollars or more and less than three thousand dollars, and monthly  
11 returns shall be required if their yearly tax liability is three  
12 thousand dollars or more. The Tax Commissioner shall have the  
13 discretion to allow an annual return for seasonal retailers, even  
14 when their yearly tax liability exceeds the amounts listed in this  
15 subdivision.

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

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

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

16           (iv) A taxpayer who keeps his or her regular books  
17 and records on a cash basis, an accrual basis, or any generally  
18 recognized accounting basis which correctly reflects the operation  
19 of the business may file the sales and use tax returns required  
20 by the Nebraska Revenue Act of 1967 on the same accounting basis  
21 that is used for the regular books and records, except that on  
22 credit, conditional, and installment sales, the retailer who keeps  
23 his or her books on an accrual basis may report such sales on  
24 the cash basis and pay the tax upon the collections made during  
25 each month. If a taxpayer transfers, sells, assigns, or otherwise  
26 disposes of an account receivable, he or she shall be deemed  
27 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,  
26 filing after the required filing date, failure to remit the net  
27 amount of the tax due, or remitting the net amount of the tax due

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

8 (d) ~~The~~ For all sales tax collected on and after January  
9 1, 2015, the taxpayer shall deduct and withhold, from the taxes  
10 otherwise due from him or her on his or her tax return, two and  
11 one-half percent of the first three thousand dollars remitted each  
12 month and one-half of one percent of all amounts in excess of  
13 three thousand dollars remitted each month to reimburse himself  
14 or herself for the cost of collecting the tax. For all sales  
15 tax collected before January 1, 2015, the taxpayer shall deduct  
16 and withhold, from the taxes otherwise due from him or her on  
17 his or her tax return, two and one-half percent of the first  
18 three thousand dollars remitted each month to reimburse himself  
19 or herself for the cost of collecting the tax. Taxpayers filing  
20 a combined return as allowed by subdivision (1)(b)(ii) of this  
21 subsection shall compute such collection fees on the basis of the  
22 receipts and liability of each licensed location.

23 (2)(a) If the Tax Commissioner determines that any sales  
24 or use tax amount, penalty, or interest has been paid more than  
25 once, has been erroneously or illegally collected or computed,  
26 or has been paid and the purchaser qualifies for a refund under  
27 section 77-2708.01, the Tax Commissioner shall set forth that fact

1 in his or her records and the excess amount collected or paid may  
2 be credited on any sales, use, or income tax amounts then due and  
3 payable from the person under the Nebraska Revenue Act of 1967. Any  
4 balance may be refunded to the person by whom it was paid or his or  
5 her successors, administrators, or executors.

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

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

22 (d) The Tax Commissioner shall allow or disallow  
23 a claim within one hundred eighty days after it has been  
24 filed. A request for a hearing shall constitute a waiver of  
25 the one-hundred-eighty-day period. The claimant and the Tax  
26 Commissioner may also agree to extend the one-hundred-eighty-day  
27 period. If a hearing has not been requested and the Tax

1 Commissioner has neither allowed nor disallowed a claim within  
2 either the one hundred eighty days or the period agreed to by the  
3 claimant and the Tax Commissioner, the claim shall be deemed to  
4 have been allowed.

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

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

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

27 (h) No suit or proceeding shall be maintained in any

1 court for the recovery of any amount alleged to have been  
2 erroneously or illegally determined or collected unless a claim  
3 for refund or credit has been duly filed.

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

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

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

1 as uncollectible in the claimant's books and records and would be  
2 eligible for a bad debt deduction for federal income tax purposes  
3 if the claimant was required to file a federal income tax return.

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

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

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

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

25 (vii) In situations in which the books and records of the  
26 party claiming the bad debt allowance support an allocation of the  
27 bad debts among the member states in the streamlined sales and use

1 tax agreement, the state shall permit the allocation.

2           Sec. 4. Section 77-27,132, Revised Statutes Cumulative  
3 Supplement, 2012, is amended to read:

4           77-27,132 (1) There is hereby created a fund to be  
5 designated the Revenue Distribution Fund which shall be set apart  
6 and maintained by the Tax Commissioner. Revenue not required to be  
7 credited to the General Fund or any other specified fund may be  
8 credited to the Revenue Distribution Fund. Credits and refunds of  
9 such revenue shall be paid from the Revenue Distribution Fund. The  
10 balance of the amount credited, after credits and refunds, shall be  
11 allocated as provided by the statutes creating such revenue.

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

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

26           (b) For transactions occurring on or after July 1, 2013,  
27 and before July 1, 2033, of the proceeds of the sales and use taxes

1 derived from transactions other than those listed in subdivision  
2 (2) (a) of this section from a sales tax rate of one-quarter  
3 of one percent, credit monthly eighty-five percent to the State  
4 Highway Capital Improvement Fund and fifteen percent to the Highway  
5 Allocation Fund; and-

6 (c) Of the proceeds of the sales and use taxes derived  
7 from transactions other than those listed in subdivisions (2) (a)  
8 and (b) of this section, credit to the Property Tax Credit Cash  
9 Fund the amount determined under section 1 of this act, if any such  
10 determination is made.

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

13 Sec. 5. Original sections 77-2703, 77-2708, and  
14 77-27,132, Revised Statutes Cumulative Supplement, 2012, are  
15 repealed.