

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 841**

Introduced by Hadley, 37.

Read first time January 13, 2014

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2701.35, Reissue Revised Statutes of Nebraska, and  
3 sections 37-201, 77-2703, 77-2708, and 77-27,132, Revised  
4 Statutes Cumulative Supplement, 2012; to create a fund;  
5 to change sales and use tax provisions relating to all-  
6 terrain vehicles and utility-type vehicles; to change the  
7 distribution of sales and use tax revenue; to harmonize  
8 provisions; to provide an operative date; and to repeal  
9 the original sections.  
10 Be it enacted by the people of the State of Nebraska,

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

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

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

17           Sec. 3. Section 77-2701.35, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           77-2701.35 (1) Sales price applies to the measure subject  
20 to sales tax and means the total amount of consideration, including  
21 cash, credit, property, and services, for which personal property or  
22 services are sold, leased, or rented, valued in money, whether  
23 received in money or otherwise, without any deduction for the  
24 following:

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

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

4                   (c) Charges by the seller for any services necessary to  
5 complete the sale;

6                   (d) Delivery charges; and

7                   (e) Installation charges.

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

10                   (a) The seller actually receives consideration from a  
11 party other than the purchaser and the consideration is directly  
12 related to a price reduction or discount on the sale;

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

15                   (c) The amount of the consideration attributable to the  
16 sale is fixed and determinable by the seller at the time of the sale  
17 of the item to the purchaser; and

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

19                   (i) The purchaser presents a coupon, certificate, or  
20 other documentation to the seller to claim a price reduction or  
21 discount when the coupon, certificate, or documentation is  
22 authorized, distributed, or granted by a third party with the  
23 understanding that the third party will reimburse any seller to whom  
24 the coupon, certificate, or documentation is presented;

25                   (ii) The purchaser identifies himself or herself to the

1 seller as a member of a group or organization entitled to a price  
2 reduction or discount. A preferred customer card that is available to  
3 any patron does not constitute membership in such a group; or

4 (iii) The price reduction or discount is identified as a  
5 third-party price reduction or discount on the invoice received by  
6 the purchaser or on a coupon, certificate, or other documentation  
7 presented by the purchaser.

8 (3) Sales price does not include:

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

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

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

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

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

23 (ii) The value of a motor vehicle, ~~or motorboat,~~ all-  
24 terrain vehicle, or utility-type vehicle taken by any person in trade  
25 as all or a part of the consideration for a sale of another motor

1 vehicle, ~~or motorboat, all-terrain vehicle, or utility-type vehicle.~~

2           Sec. 4. Section 77-2703, Revised Statutes Cumulative  
3 Supplement, 2012, is amended to read:

4           77-2703 (1) There is hereby imposed a tax at the rate  
5 provided in section 77-2701.02 upon the gross receipts from all sales  
6 of tangible personal property sold at retail in this state; the gross  
7 receipts of every person engaged as a public utility, as a community  
8 antenna television service operator, or as a satellite service  
9 operator, any person involved in the connecting and installing of the  
10 services defined in subdivision (2)(a), (b), (d), or (e) of section  
11 77-2701.16, or every person engaged as a retailer of intellectual or  
12 entertainment properties referred to in subsection (3) of section  
13 77-2701.16; the gross receipts from the sale of admissions in this  
14 state; the gross receipts from the sale of warranties, guarantees,  
15 service agreements, or maintenance agreements when the items covered  
16 are subject to tax under this section; beginning January 1, 2008, the  
17 gross receipts from the sale of bundled transactions when one or more  
18 of the products included in the bundle are taxable; the gross  
19 receipts from the provision of services defined in subsection (4) of  
20 section 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 a  
23 sale, the tax shall be imposed at the rate in effect at the time the  
24 gross receipts are realized under the accounting basis used by the  
25 retailer to maintain his or her books and records.

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

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

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

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

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

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

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

25 (g) In the rental or lease of automobiles, trucks,

1 trailers, semitrailers, and truck-tractors as defined in the Motor  
2 Vehicle Registration Act, the tax shall be collected by the lessor on  
3 the rental or lease price, except as otherwise provided within this  
4 section.

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

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

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

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

1 Commissioner prescribes; and

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

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

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

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

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

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

25 (ii) In the rental or lease of motorboats, the tax shall

1 be collected by the lessor on the rental or lease price.

2 (k)(i) The tax imposed by this section on the sale of an  
3 all-terrain vehicle as defined in section 60-103 or a utility-type  
4 vehicle as defined in section 60-135.01 shall be the liability of the  
5 purchaser. The tax shall be collected by the county treasurer at the  
6 time the purchaser makes application for the titling of the all-  
7 terrain vehicle or utility-type vehicle. At the time of the sale of  
8 an all-terrain vehicle or a utility-type vehicle, the seller shall  
9 (A) state on the sales invoice the dollar amount of the tax imposed  
10 under this section and (B) 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. The  
14 sales tax due shall be computed on the difference between the total  
15 sales price and the allowance for any trade-in as disclosed by such  
16 certified statement. Any seller who willfully understates the amount  
17 upon which the sales tax is due shall be subject to a penalty of one  
18 thousand dollars. A copy of such certified statement shall also be  
19 furnished to the Tax Commissioner. Any seller who fails or refuses to  
20 furnish such certified statement shall be guilty of a misdemeanor and  
21 shall, upon conviction thereof, be punished by a fine of not less  
22 than twenty-five dollars nor more than one hundred dollars. If the  
23 seller fails to state on the sales invoice the dollar amount of the  
24 tax due, the purchaser shall have the right and authority to rescind  
25 any agreement for purchase and to declare the purchase null and void.

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

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

20 ~~(\*)~~(1) The Tax Commissioner shall adopt and promulgate  
21 necessary rules and regulations for determining the amount subject to  
22 the taxes imposed by this section so as to insure that the full  
23 amount of any applicable tax is paid in cases in which a sale is made  
24 of which a part is subject to the taxes imposed by this section and a  
25 part of which is not so subject and a separate accounting is not

1 practical or economical.

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

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

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

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

22           (d) All persons designated to collect the use tax and all  
23 persons required to collect the use tax shall forward the total of  
24 such collections to the Tax Commissioner at such time and in such  
25 manner as the Tax Commissioner may prescribe. For all use taxes

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

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

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

1 directly.

2           Sec. 5. Section 77-2708, Revised Statutes Cumulative  
3 Supplement, 2012, is amended to read:

4           77-2708 (1)(a) The sales and use taxes imposed by the  
5 Nebraska Revenue Act of 1967 shall be due and payable to the Tax  
6 Commissioner monthly on or before the twentieth day of the month next  
7 succeeding each monthly period unless otherwise provided pursuant to  
8 the Nebraska Revenue Act of 1967.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (f) Within thirty days after the mailing of the notice of

1 the Tax Commissioner's action upon a claim filed pursuant to the  
2 Nebraska Revenue Act of 1967, the action of the Tax Commissioner  
3 shall be final unless the taxpayer seeks review of the Tax  
4 Commissioner's determination as provided in section 77-27,127.

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

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

22 (i) The Tax Commissioner may recover any refund or part  
23 thereof which is erroneously made and any credit or part thereof  
24 which is erroneously allowed by issuing a deficiency determination  
25 within one year from the date of refund or credit or within the

1 period otherwise allowed for issuing a deficiency determination,  
2 whichever expires later.

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

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

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

1 period in which the collection is made.

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

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

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

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

22 Sec. 6. Section 77-27,132, Revised Statutes Cumulative  
23 Supplement, 2012, is amended to read:

24 77-27,132 (1) There is hereby created a fund to be  
25 designated the Revenue Distribution Fund which shall be set apart and

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

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

12 (a) Credit to the Game and Parks Commission Capital  
13 Maintenance Fund all of the proceeds of the sales and use taxes  
14 derived from the sale or lease of all-terrain vehicles as defined in  
15 section 60-103 and utility-type vehicles as defined in section  
16 60-135.01;

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

25 ~~(b)~~ (c) For transactions occurring on or after July 1,

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

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

9           Sec. 7. This act becomes operative on October 1, 2014.

10           Sec. 8. Original section 77-2701.35, Reissue Revised  
11 Statutes of Nebraska, and sections 37-201, 77-2703, 77-2708, and  
12 77-27,132, Revised Statutes Cumulative Supplement, 2012, are  
13 repealed.