

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1021

Introduced by Schumacher, 22.

Read first time January 16, 2018

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 2-2701, Reissue Revised Statutes of Nebraska, and sections 77-382,
3 77-385, 77-2701.16, 77-2704.13, and 77-2708, Revised Statutes
4 Cumulative Supplement, 2016; to eliminate certain sales and use tax
5 exemptions; to harmonize provisions; to provide an operative date;
6 to repeal the original sections; and to outright repeal sections
7 77-2704.23, 77-2704.41, 77-2704.46, and 77-2704.60, Reissue Revised
8 Statutes of Nebraska, and sections 77-2704.36, 77-2704.64, and
9 77-2708.01, Revised Statutes Cumulative Supplement, 2016.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-2701, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 2-2701 (1) No person shall be permitted to sell or dispose of any
4 current tractor model of one hundred or more horsepower in the State of
5 Nebraska without first having (a) made application for a permit and
6 obtained a permit to sell the tractor model, (b) the model tested by the
7 University of Nebraska onsite or offsite or by any Organization for
8 Economic Cooperation and Development test station, and (c) the model
9 passed upon by the board.

10 (2) A person may obtain a permit to sell or dispose of a current
11 tractor model of less than one hundred horsepower by meeting the permit
12 requirements of sections 2-2701 to 2-2711. ~~A purchaser of a current~~
13 ~~tractor model is not eligible to claim the exemption from sales and use~~
14 ~~tax for agricultural machinery and equipment under section 77-2704.36~~
15 ~~unless the current tractor model has been permitted for sale pursuant to~~
16 ~~sections 2-2701 to 2-2711.~~

17 (3) Each and every tractor model presented for testing shall be a
18 stock model and shall not be equipped with any special accessory unless
19 regularly supplied to the trade. Any tractor model not complying with
20 this section shall not be tested under sections 2-2701 to 2-2711.
21 Applications shall be made to the board and shall be accompanied by
22 specifications of the tractor model required by the board and by the
23 applicable fees specified in sections 2-2705 and 2-2705.01.

24 (4) If an official test application, with the required
25 specifications and fees, is submitted to any Organization for Economic
26 Cooperation and Development test station or to the University of Nebraska
27 and an application for a temporary permit and the fee prescribed in
28 section 2-2705.01 are submitted, the department, with the approval of the
29 board, may issue a temporary permit for the sale of the tractor model
30 specified in the official test application. The date on which the
31 temporary permit terminates shall be fixed by the board. All temporary

1 permits shall be conditioned upon such tractor model being tested at a
2 mutually agreed-upon date, and the person to whom a temporary permit has
3 been issued shall submit a tractor model for testing which conforms to
4 the specifications filed with the official test application. Such tractor
5 model shall be delivered for testing at the mutually agreed-upon date.
6 Upon failure so to do, all such fees deposited by such person shall be
7 forfeited to the University of Nebraska Tractor Test Cash Fund, except
8 that the fee imposed in section 2-2705.01 shall be deposited in and
9 forfeited to the Tractor Permit Cash Fund, and in addition such person
10 shall not be issued any temporary permit for a period of five years from
11 the date such tractor was to be delivered for testing and until such
12 person meets the obligations required under subsection (5) of this
13 section to the department's satisfaction.

14 (5) All sales of tractors upon which a temporary permit has been
15 issued shall be made subject to the final official test and approval of
16 the tractor model as follows:

17 (a) If a tractor model upon which a temporary permit has been issued
18 was not submitted for the official test and approval on the mutually
19 agreed-upon date, the person to whom the temporary permit was issued
20 shall repurchase any such tractor sold in Nebraska under the temporary
21 permit. A claim by a purchaser under this subdivision shall be brought
22 within two years after the date of the expiration of the temporary
23 permit; and

24 (b) If a tractor model upon which a temporary permit has been issued
25 fails in the official test to meet the specifications of the tractor
26 model which were filed with the application and fees, the person to whom
27 the temporary permit was issued shall send a notice, as approved by the
28 department, to any person in Nebraska who has purchased a tractor sold
29 under the temporary permit. The person to whom the temporary permit was
30 issued shall either modify the tractor to meet the specifications filed
31 with the board or remedy to the satisfaction of the purchaser any injury

1 incurred by the purchaser which was caused by the failure of the tractor
2 to meet the specifications claimed. Such person shall be prohibited from
3 modifying sales literature, advertisement claims, or specifications of
4 the tractor to avoid such notice.

5 Sec. 2. Section 77-382, Revised Statutes Cumulative Supplement,
6 2016, is amended to read:

7 77-382 (1) The department shall prepare a tax expenditure report
8 describing (a) the basic provisions of the Nebraska tax laws, (b) the
9 actual or estimated revenue loss caused by the exemptions, deductions,
10 exclusions, deferrals, credits, and preferential rates in effect on July
11 1 of each year and allowed under Nebraska's tax structure and in the
12 property tax, (c) the actual or estimated revenue loss caused by failure
13 to impose sales and use tax on services purchased for nonbusiness use,
14 and (d) the elements which make up the tax base for state and local
15 income, including income, sales and use, property, and miscellaneous
16 taxes.

17 (2) The department shall review the major tax exemptions for which
18 state general funds are used to reduce the impact of revenue lost due to
19 a tax expenditure. The report shall indicate an estimate of the amount of
20 the reduction in revenue resulting from the operation of all tax
21 expenditures. The report shall list each tax expenditure relating to
22 sales and use tax under the following categories:

23 ~~(a) Agriculture, which shall include a separate listing for the~~
24 ~~following items: Agricultural machinery; agricultural chemicals; seeds~~
25 ~~sold to commercial producers; water for irrigation and manufacturing;~~
26 ~~commercial artificial insemination; mineral oil as dust suppressant;~~
27 ~~animal grooming; oxygen for use in aquaculture; animal life whose~~
28 ~~products constitute food for human consumption; and grains;~~

29 (a) ~~(b)~~ Business across state lines, which shall include a separate
30 listing for the following items: Property shipped out-of-state;
31 fabrication labor for items to be shipped out-of-state; property to be

1 transported out-of-state; property purchased in other states to be used
2 in Nebraska; aircraft delivery to an out-of-state resident or business;
3 state reciprocal agreements for industrial machinery; and property taxed
4 in another state;

5 (b) ~~(e)~~ Common carrier and logistics, which shall include a separate
6 listing for the following items: Railroad rolling stock and repair parts
7 and services; common or contract carriers and repair parts and services;
8 common or contract carrier accessories; and common or contract carrier
9 safety equipment;

10 (c) ~~(d)~~ Consumer goods, which shall include a separate listing for
11 the following items: Motor vehicles and motorboat trade-ins; merchandise
12 trade-ins; certain medical equipment and medicine; newspapers;
13 laundromats; telefloral deliveries; motor vehicle discounts for the
14 disabled; and political campaign fundraisers;

15 (d) ~~(e)~~ Energy, which shall include a separate listing for the
16 following items: Motor fuels; energy used in industry; ~~energy used in~~
17 ~~agriculture~~; aviation fuel; and minerals, oil, and gas severed from real
18 property;

19 (e) ~~(f)~~ Food, which shall include a separate listing for the
20 following items: Food for home consumption; Supplemental Nutrition
21 Assistance Program; school lunches; meals sold by hospitals; meals sold
22 by institutions at a flat rate; food for the elderly, handicapped, and
23 Supplemental Security Income recipients; and meals sold by churches;

24 (f) ~~(g)~~ General business, which shall include a separate listing for
25 the following items: Component and ingredient parts; manufacturing
26 machinery; containers; film rentals; molds and dies; syndicated
27 programming; intercompany sales; intercompany leases; sale of a business
28 or farm machinery; and transfer of property in a change of business
29 ownership;

30 (g) ~~(h)~~ Lodging and shelter, which shall include a separate listing
31 for the following item: Room rentals by certain institutions;

1 (h) ~~(i)~~ Miscellaneous, which shall include a separate listing for
2 the following items: Cash discounts and coupons; separately stated
3 finance charges; casual sales; lease-to-purchase agreements; and
4 separately stated taxes;

5 (i) ~~(j)~~ Nonprofits, governments, and exempt entities, which shall
6 include a separate listing for the following items: Purchases by
7 political subdivisions of the state; purchases by churches and nonprofit
8 colleges and medical facilities; purchasing agents for public real estate
9 construction improvements; contractor as purchasing agent for public
10 agencies; Nebraska lottery; admissions to school events; sales on Native
11 American Indian reservations; school-supporting fundraisers; fine art
12 purchases by a museum; purchases by the Nebraska State Fair Board;
13 purchases by the Nebraska Investment Finance Authority and licensees of
14 the State Racing Commission; purchases by the United States Government;
15 public records; and sales by religious organizations;

16 (j) ~~(k)~~ Recent sales tax expenditures, which shall include a
17 separate listing for each sales tax expenditure created by statute or
18 rule and regulation after July 19, 2012;

19 (k) ~~(l)~~ Services purchased for nonbusiness use, which shall include
20 a separate listing for each such service, including, but not limited to,
21 the following items: Motor vehicle cleaning, maintenance, and repair
22 services; cleaning and repair of clothing; cleaning, maintenance, and
23 repair of other tangible personal property; maintenance, painting, and
24 repair of real property; entertainment admissions; personal care
25 services; lawn care, gardening, and landscaping services; pet-related
26 services; storage and moving services; household utilities; other
27 personal services; taxi, limousine, and other transportation services;
28 legal services; accounting services; other professional services; and
29 other real estate services; and

30 (l) ~~(m)~~ Telecommunications, which shall include a separate listing
31 for the following items: Telecommunications access charges; prepaid

1 calling arrangements; conference bridging services; and nonvoice data
2 services.

3 (3) It is the intent of the Legislature that nothing in the Tax
4 Expenditure Reporting Act shall cause the valuation or assessment of any
5 property exempt from taxation on the basis of its use exclusively for
6 religious, educational, or charitable purposes.

7 Sec. 3. Section 77-385, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 77-385 (1) The report required under section 77-382 and a summary of
10 the report shall be submitted to the Governor, the Executive Board of the
11 Legislative Council, and the chairpersons of the Legislature's Revenue
12 and Appropriations Committees on or before October 15, 1991, and October
13 15 of every even-numbered year thereafter. The report submitted to the
14 executive board and the committees shall be submitted electronically. The
15 department shall, on or before December 1 of each even-numbered year,
16 appear at a joint hearing of the Appropriations Committee of the
17 Legislature and the Revenue Committee of the Legislature and present the
18 report. Any supplemental information requested by three or more committee
19 members shall be presented within thirty days after the request. The
20 summary shall be included with or appended to the Governor's budget
21 presented to the Legislature in odd-numbered years.

22 (2)(a) In addition to the tax expenditure report required under
23 section 77-382, the department shall prepare an annual report that
24 focuses specifically on the tax expenditures relating to sales and use
25 tax as follows:

26 (i) For 2014 and every fourth year thereafter, the report shall
27 analyze the actual or estimated revenue loss caused by the tax
28 expenditures described in subdivisions (2)(a) through (c) of section
29 77-382;

30 (ii) For 2015 and every fourth year thereafter, the report shall
31 analyze the actual or estimated revenue loss caused by the tax

1 expenditures described in subdivisions (2)(d) through (f) of section
2 77-382;

3 (iii) For 2016 and every fourth year thereafter, the report shall
4 analyze the actual or estimated revenue loss caused by the tax
5 expenditures described in subdivisions (2)(g) through (j) of section
6 77-382; and

7 (iv) For 2017 and every fourth year thereafter, the report shall
8 analyze the actual or estimated revenue loss caused by the tax
9 expenditures described in subdivisions (2)(k) and (l) ~~through (m)~~ of
10 section 77-382.

11 (b) The report required under this subsection shall be submitted to
12 the Governor, the Executive Board of the Legislative Council, and the
13 chairpersons of the Revenue Committee of the Legislature and the
14 Appropriations Committee of the Legislature on or before October 15 of
15 each year. The report submitted to the executive board and the committees
16 shall be submitted electronically. The department shall, on or before
17 December 1 of each year, appear at a joint hearing of the Appropriations
18 Committee of the Legislature and the Revenue Committee of the Legislature
19 and present the report. Any supplemental information requested by three
20 or more committee members shall be presented within thirty days after the
21 request.

22 Sec. 4. Section 77-2701.16, Revised Statutes Cumulative Supplement,
23 2016, is amended to read:

24 77-2701.16 (1) Gross receipts means the total amount of the sale or
25 lease or rental price, as the case may be, of the retail sales of
26 retailers.

27 (2) Gross receipts of every person engaged as a public utility
28 specified in this subsection, as a community antenna television service
29 operator, or as a satellite service operator or any person involved in
30 connecting and installing services defined in subdivision (2)(a), (b), or
31 (d) of this section means:

1 (a)(i) In the furnishing of telephone communication service, other
2 than mobile telecommunications service as described in section
3 77-2703.04, the gross income received from furnishing ancillary services,
4 except for conference bridging services, and intrastate
5 telecommunications services, except for value-added, nonvoice data
6 service.

7 (ii) In the furnishing of mobile telecommunications service as
8 described in section 77-2703.04, the gross income received from
9 furnishing mobile telecommunications service that originates and
10 terminates in the same state to a customer with a place of primary use in
11 Nebraska;

12 (b) In the furnishing of telegraph service, the gross income
13 received from the furnishing of intrastate telegraph services;

14 (c)(i) In the furnishing of gas, sewer, water, and electricity
15 service, other than electricity service to a customer-generator as
16 defined in section 70-2002, the gross income received from the furnishing
17 of such services upon billings or statements rendered to consumers for
18 such utility services.

19 (ii) In the furnishing of electricity service to a customer-
20 generator as defined in section 70-2002, the net energy use upon billings
21 or statements rendered to customer-generators for such electricity
22 service;

23 (d) In the furnishing of community antenna television service or
24 satellite service, the gross income received from the furnishing of such
25 community antenna television service as regulated under sections 18-2201
26 to 18-2205 or 23-383 to 23-388 or satellite service; and

27 (e) The gross income received from the provision, installation,
28 construction, servicing, or removal of property used in conjunction with
29 the furnishing, installing, or connecting of any public utility services
30 specified in subdivision (2)(a) or (b) of this section or community
31 antenna television service or satellite service specified in subdivision

1 (2)(d) of this section, except when acting as a subcontractor for a
2 public utility, this subdivision does not apply to the gross income
3 received by a contractor electing to be treated as a consumer of building
4 materials under subdivision (2) or (3) of section 77-2701.10 for any such
5 services performed on the customer's side of the utility demarcation
6 point.

7 (3) Gross receipts of every person engaged in selling, leasing, or
8 otherwise providing intellectual or entertainment property means:

9 (a) In the furnishing of computer software, the gross income
10 received, including the charges for coding, punching, or otherwise
11 producing any computer software and the charges for the tapes, disks,
12 punched cards, or other properties furnished by the seller; and

13 (b) In the furnishing of videotapes, movie film, satellite
14 programming, satellite programming service, and satellite television
15 signal descrambling or decoding devices, the gross income received from
16 the license, franchise, or other method establishing the charge.

17 (4) Gross receipts for providing a service means:

18 (a) The gross income received for building cleaning and maintenance,
19 pest control, and security;

20 (b) The gross income received for motor vehicle washing, waxing,
21 towing, and painting;

22 (c) The gross income received for computer software training;

23 (d) The gross income received for installing and applying tangible
24 personal property if the sale of the property is subject to tax. If any
25 or all of the charge for installation is free to the customer and is paid
26 by a third-party service provider to the installer, any tax due on that
27 part of the activation commission, finder's fee, installation charge, or
28 similar payment made by the third-party service provider shall be paid
29 and remitted by the third-party service provider;

30 (e) The gross income received for services of recreational vehicle
31 parks;

1 (f) The gross income received for labor for repair or maintenance
2 services performed with regard to tangible personal property the sale of
3 which would be subject to sales and use taxes, excluding motor vehicles,
4 except as otherwise provided in section 77-2704.26 or 77-2704.50;

5 (g) The gross income received for animal specialty services except
6 (i) veterinary services and ~~7~~ (ii) specialty services performed on
7 livestock as defined in section 54-183, ~~and (iii) animal grooming~~
8 ~~performed by a licensed veterinarian or a licensed veterinary technician~~
9 ~~in conjunction with medical treatment; and~~

10 (h) The gross income received for detective services.

11 (5) Gross receipts includes the sale of admissions. When an
12 admission to an activity or a membership constituting an admission is
13 combined with the solicitation of a contribution, the portion or the
14 amount charged representing the fair market price of the admission shall
15 be considered a retail sale subject to the tax imposed by section
16 77-2703. The organization conducting the activity shall determine the
17 amount properly attributable to the purchase of the privilege, benefit,
18 or other consideration in advance, and such amount shall be clearly
19 indicated on any ticket, receipt, or other evidence issued in connection
20 with the payment.

21 (6) Gross receipts includes the sale of live plants incorporated
22 into real estate except when such incorporation is incidental to the
23 transfer of an improvement upon real estate or the real estate.

24 (7) Gross receipts includes the sale of any building materials
25 annexed to real estate by a person electing to be taxed as a retailer
26 pursuant to subdivision (1) of section 77-2701.10.

27 (8) Gross receipts includes the sale of and recharge of prepaid
28 calling service and prepaid wireless calling service.

29 (9) Gross receipts includes the retail sale of digital audio works,
30 digital audiovisual works, digital codes, and digital books delivered
31 electronically if the products are taxable when delivered on tangible

1 storage media. A sale includes the transfer of a permanent right of use,
2 the transfer of a right of use that terminates on some condition, and the
3 transfer of a right of use conditioned upon the receipt of continued
4 payments.

5 (10) Gross receipts does not include:

6 (a) The amount of any rebate granted by a motor vehicle or motorboat
7 manufacturer or dealer at the time of sale of the motor vehicle or
8 motorboat, which rebate functions as a discount from the sales price of
9 the motor vehicle or motorboat; or

10 (b) The price of property or services returned or rejected by
11 customers when the full sales price is refunded either in cash or credit.

12 Sec. 5. Section 77-2704.13, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 77-2704.13 Sales and use taxes shall not be imposed on the gross
15 receipts from the sale, lease, or rental of and the storage, use, or
16 other consumption in this state of sales and purchases of electricity,
17 coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke,
18 nuclear fuel, butane, wood as fuel, and corn as fuel when more than fifty
19 percent of the amount purchased is for use directly in processing,
20 manufacturing, or refining, in the generation of electricity, in the
21 compression of natural gas for retail sale as a vehicle fuel, or by any
22 hospital. For purposes of this section, processing includes the drying
23 and aerating of grain in commercial agricultural facilities. ÷

24 ~~(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel~~
25 ~~fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, butane, wood~~
26 ~~as fuel, and corn as fuel when more than fifty percent of the amount~~
27 ~~purchased is for use directly in irrigation or farming;~~

28 ~~(2) Sales and purchases of such energy sources or fuels when more~~
29 ~~than fifty percent of the amount purchased is for use directly in~~
30 ~~processing, manufacturing, or refining, in the generation of electricity,~~
31 ~~in the compression of natural gas for retail sale as a vehicle fuel, or~~

1 ~~by any hospital. For purposes of this subdivision, processing includes~~
2 ~~the drying and aerating of grain in commercial agricultural facilities;~~
3 ~~and~~

4 ~~(3) Sales and purchases of water used for irrigation of agricultural~~
5 ~~lands and manufacturing purposes.~~

6 Sec. 6. Section 77-2708, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

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

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

1 dollars or more. The Tax Commissioner shall have the discretion to allow
2 an annual return for seasonal retailers, even when their yearly tax
3 liability exceeds the amounts listed in this subdivision.

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

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

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

28 (iv) A taxpayer who keeps his or her regular books and records on a
29 cash basis, an accrual basis, or any generally recognized accounting
30 basis which correctly reflects the operation of the business may file the
31 sales and use tax returns required by the Nebraska Revenue Act of 1967 on

1 the same accounting basis that is used for the regular books and records,
2 except that on credit, conditional, and installment sales, the retailer
3 who keeps his or her books on an accrual basis may report such sales on
4 the cash basis and pay the tax upon the collections made during each
5 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of
6 an account receivable, he or she shall be deemed to have received the
7 full balance of the consideration for the original sale and shall be
8 liable for the remittance of the sales tax on the balance of the total
9 sale price not previously reported, except that such transfer, sale,
10 assignment, or other disposition of an account receivable by a retailer
11 to a subsidiary shall not be deemed to require the retailer to pay the
12 sales tax on the credit sale represented by the account transferred prior
13 to the time the customer makes payment on such account. If the subsidiary
14 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a
15 surety bond in favor of the State of Nebraska to insure payment of the
16 tax and any interest and penalty imposed thereon under this section in an
17 amount not less than two times the amount of tax payable on outstanding
18 accounts receivable held by the subsidiary as of the end of the prior
19 calendar year. Failure to obtain either a sales tax permit or a surety
20 bond in accordance with this section shall result in the payment on the
21 next required filing date of all sales taxes not previously remitted.
22 When the retailer has adopted one basis or the other of reporting credit,
23 conditional, or installment sales and paying the tax thereon, he or she
24 will not be permitted to change from that basis without first having
25 notified the Tax Commissioner.

26 (c) Except as provided in the streamlined sales and use tax
27 agreement, the taxpayer required to file the return shall deliver or mail
28 any required return together with a remittance of the net amount of the
29 tax due to the office of the Tax Commissioner on or before the required
30 filing date. Failure to file the return, filing after the required filing
31 date, failure to remit the net amount of the tax due, or remitting the

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

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

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

25 (b) No refund shall be allowed unless a claim therefor is filed with
26 the Tax Commissioner by the person who made the overpayment or his or her
27 attorney, executor, or administrator within three years from the required
28 filing date following the close of the period for which the overpayment
29 was made, within six months after any determination becomes final under
30 section 77-2709, or within six months from the date of overpayment with
31 respect to such determinations, whichever of these three periods expires

1 later, unless the credit relates to a period for which a waiver has been
2 given. Failure to file a claim within the time prescribed in this
3 subsection shall constitute a waiver of any demand against the state on
4 account of overpayment.

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

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

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

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

26 (g) Upon the allowance of a credit or refund of any sum erroneously
27 or illegally assessed or collected, of any penalty collected without
28 authority, or of any sum which was excessive or in any manner wrongfully
29 collected, interest shall be allowed and paid on the amount of such
30 credit or refund at the rate specified in section 45-104.02, as such rate
31 may from time to time be adjusted, from the date such sum was paid or

1 from the date the return was required to be filed, whichever date is
2 later, to the date of the allowance of the refund or, in the case of a
3 credit, to the due date of the amount against which the credit is
4 allowed, but in the case of a voluntary and unrequested payment in excess
5 of actual tax liability ~~or a refund under section 77-2708.01~~, no interest
6 shall be allowed when such excess is refunded or credited.

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

11 (i) The Tax Commissioner may recover any refund or part thereof
12 which is erroneously made and any credit or part thereof which is
13 erroneously allowed by issuing a deficiency determination within one year
14 from the date of refund or credit or within the period otherwise allowed
15 for issuing a deficiency determination, whichever expires later.

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

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

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

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

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

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

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

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

27 Sec. 7. This act becomes operative on April 1, 2019.

28 Sec. 8. Original section 2-2701, Reissue Revised Statutes of
29 Nebraska, and sections 77-382, 77-385, 77-2701.16, 77-2704.13, and
30 77-2708, Revised Statutes Cumulative Supplement, 2016, are repealed.

31 Sec. 9. The following sections are outright repealed: Sections

1 77-2704.23, 77-2704.41, 77-2704.46, and 77-2704.60, Reissue Revised
2 Statutes of Nebraska, and sections 77-2704.36, 77-2704.64, and
3 77-2708.01, Revised Statutes Cumulative Supplement, 2016.