

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 237

Introduced by Crawford, 45; Blood, 3.

Read first time January 14, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2703, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to sales and use tax collection fees; to provide an
- 4 operative date; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-2703 (1) There is hereby imposed a tax at the rate provided in
4 section 77-2701.02 upon the gross receipts from all sales of tangible
5 personal property sold at retail in this state; the gross receipts of
6 every person engaged as a public utility, as a community antenna
7 television service operator, or as a satellite service operator, any
8 person involved in the connecting and installing of the services defined
9 in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every
10 person engaged as a retailer of intellectual or entertainment properties
11 referred to in subsection (3) of section 77-2701.16; the gross receipts
12 from the sale of admissions in this state; the gross receipts from the
13 sale of warranties, guarantees, service agreements, or maintenance
14 agreements when the items covered are subject to tax under this section;
15 beginning January 1, 2008, the gross receipts from the sale of bundled
16 transactions when one or more of the products included in the bundle are
17 taxable; the gross receipts from the provision of services defined in
18 subsection (4) of section 77-2701.16; and the gross receipts from the
19 sale of products delivered electronically as described in subsection (9)
20 of section 77-2701.16. Except as provided in section 77-2701.03, when
21 there is a sale, the tax shall be imposed at the rate in effect at the
22 time the gross receipts are realized under the accounting basis used by
23 the retailer to maintain his or her books and records.

24 (a) The tax imposed by this section shall be collected by the
25 retailer from the consumer. It shall constitute a part of the purchase
26 price and until collected shall be a debt from the consumer to the
27 retailer and shall be recoverable at law in the same manner as other
28 debts. The tax required to be collected by the retailer from the consumer
29 constitutes a debt owed by the retailer to this state.

30 (b) It is unlawful for any retailer to advertise, hold out, or state
31 to the public or to any customer, directly or indirectly, that the tax or

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

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

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

26 (f) For the purpose of the proper administration of the provisions
27 of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail
28 sales tax, it shall be presumed that all gross receipts are subject to
29 the tax until the contrary is established. The burden of proving that a
30 sale of property is not a sale at retail is upon the person who makes the
31 sale unless he or she takes from the purchaser (i) a resale certificate

1 to the effect that the property is purchased for the purpose of
2 reselling, leasing, or renting it, (ii) an exemption certificate pursuant
3 to subsection (7) of section 77-2705, or (iii) a direct payment permit
4 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
5 certificate, exemption certificate, or direct payment permit shall be
6 conclusive proof for the seller that the sale was made for resale or was
7 exempt or that the tax will be paid directly to the state.

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

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

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

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

26 (iii) When such election is made, it shall apply to all vehicles of
27 the lessor rented or leased for periods of one year or more except
28 vehicles to be leased to common or contract carriers who provide to the
29 lessor a valid common or contract carrier exemption certificate. If the
30 lessor rents or leases other vehicles for periods of less than one year,
31 such lessor shall maintain his or her books and records and his or her

1 accounting procedure as the Tax Commissioner prescribes; and

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

8 (i) The tax imposed by this section on the sales of motor vehicles,
9 semitrailers, and trailers as defined in sections 60-339, 60-348, and
10 60-354 shall be the liability of the purchaser and, with the exception of
11 motor vehicles, semitrailers, and trailers registered pursuant to section
12 60-3,198, the tax shall be collected by the county treasurer as provided
13 in the Motor Vehicle Registration Act or by an approved licensed dealer
14 participating in the electronic dealer services system pursuant to
15 section 60-1507 at the time the purchaser makes application for the
16 registration of the motor vehicle, semitrailer, or trailer for operation
17 upon the 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 the
20 time the purchaser makes application for the registration of the motor
21 vehicle, semitrailer, or trailer for operation upon the highways of this
22 state. At the time of the sale of any motor vehicle, semitrailer, or
23 trailer, the seller shall (i) state on the sales invoice the dollar
24 amount of the tax imposed under this section and (ii) furnish to the
25 purchaser a certified statement of the transaction, in such form as the
26 Tax Commissioner prescribes, setting forth as a minimum the total sales
27 price, the allowance for any trade-in, and the difference between the
28 two. The sales tax due shall be computed on the difference between the
29 total sales price and the allowance for any trade-in as disclosed by such
30 certified statement. Any seller who willfully understates the amount upon
31 which the sales tax is due shall be subject to a penalty of one thousand

1 dollars. A copy of such certified statement shall also be furnished to
2 the Tax Commissioner. Any seller who fails or refuses to furnish such
3 certified statement shall be guilty of a misdemeanor and shall, upon
4 conviction thereof, be punished by a fine of not less than twenty-five
5 dollars nor more than one hundred dollars. If the purchaser does not
6 register such motor vehicle, semitrailer, or trailer for operation on the
7 highways of this state within thirty days of the purchase thereof, the
8 tax imposed by this section shall immediately thereafter be paid by the
9 purchaser to the county treasurer or the Department of Motor Vehicles. If
10 the tax is not paid on or before the thirtieth day after its purchase,
11 the county treasurer or Department of Motor Vehicles shall also collect
12 from the purchaser interest from the thirtieth day through the date of
13 payment and sales tax penalties as provided in the Nebraska Revenue Act
14 of 1967. The county treasurer or Department of Motor Vehicles shall
15 report and remit the tax so collected to the Tax Commissioner by the
16 fifteenth day of the following month. The county treasurer, for his or
17 her collection fee, shall deduct and withhold ~~for the use of the county~~
18 ~~general fund,~~ from all amounts required to be collected under this
19 subsection, the collection fee permitted to be deducted by any retailer
20 collecting the sales tax, all of which shall be deposited in the county
21 general fund, plus one-half of one percent of all amounts in excess of
22 three thousand dollars remitted each month, seventy-five percent of which
23 shall be deposited in the county general fund and twenty-five percent of
24 which shall be deposited in the county road fund. The Department of Motor
25 Vehicles, for its collection fee, shall deduct, withhold, and deposit in
26 the Motor Carrier Division Cash Fund the collection fee permitted to be
27 deducted by any retailer collecting the sales tax. The collection fee for
28 the county treasurer or the Department of Motor Vehicles shall be
29 forfeited if the county treasurer or department ~~Department of Motor~~
30 ~~Vehicles~~ violates any rule or regulation pertaining to the collection of
31 the use tax.

1 (j)(i) The tax imposed by this section on the sale of a motorboat as
2 defined in section 37-1204 shall be the liability of the purchaser. The
3 tax shall be collected by the county treasurer at the time the purchaser
4 makes application for the registration of the motorboat. At the time of
5 the sale of a motorboat, the seller shall (A) state on the sales invoice
6 the dollar amount of the tax imposed under this section and (B) furnish
7 to the purchaser a certified statement of the transaction, in such form
8 as the Tax Commissioner prescribes, setting forth as a minimum the total
9 sales price, the allowance for any trade-in, and the difference between
10 the two. The sales tax due shall be computed on the difference between
11 the total sales price and the allowance for any trade-in as disclosed by
12 such certified statement. Any seller who willfully understates the amount
13 upon which the sales tax is due shall be subject to a penalty of one
14 thousand dollars. A copy of such certified statement shall also be
15 furnished to the Tax Commissioner. Any seller who fails or refuses to
16 furnish such certified statement shall be guilty of a misdemeanor and
17 shall, upon conviction thereof, be punished by a fine of not less than
18 twenty-five dollars nor more than one hundred dollars. If the purchaser
19 does not register such motorboat within thirty days of the purchase
20 thereof, the tax imposed by this section shall immediately thereafter be
21 paid by the purchaser to the county treasurer. If the tax is not paid on
22 or before the thirtieth day after its purchase, the county treasurer
23 shall also collect from the purchaser interest from the thirtieth day
24 through the date of payment and sales tax penalties as provided in the
25 Nebraska Revenue Act of 1967. The county treasurer shall report and remit
26 the tax so collected to the Tax Commissioner by the fifteenth day of the
27 following month. The county treasurer, for his or her collection fee,
28 shall deduct and withhold for the use of the county general fund, from
29 all amounts required to be collected under this subsection, the
30 collection fee permitted to be deducted by any retailer collecting the
31 sales tax. The collection fee shall be forfeited if the county treasurer

1 violates any rule or regulation pertaining to the collection of the use
2 tax.

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

5 (k)(i) The tax imposed by this section on the sale of an all-terrain
6 vehicle as defined in section 60-103 or a utility-type vehicle as defined
7 in section 60-135.01 shall be the liability of the purchaser. The tax
8 shall be collected by the county treasurer or by an approved licensed
9 dealer participating in the electronic dealer services system pursuant to
10 section 60-1507 at the time the purchaser makes application for the
11 certificate of title for the all-terrain vehicle or utility-type vehicle.
12 At the time of the sale of an all-terrain vehicle or a utility-type
13 vehicle, the seller shall (A) state on the sales invoice the dollar
14 amount of the tax imposed under this section and (B) furnish to the
15 purchaser a certified statement of the transaction, in such form as the
16 Tax Commissioner prescribes, setting forth as a minimum the total sales
17 price, the allowance for any trade-in, and the difference between the
18 two. The sales tax due shall be computed on the difference between the
19 total sales price and the allowance for any trade-in as disclosed by such
20 certified statement. Any seller who willfully understates the amount upon
21 which the sales tax is due shall be subject to a penalty of one thousand
22 dollars. A copy of such certified statement shall also be furnished to
23 the Tax Commissioner. Any seller who fails or refuses to furnish such
24 certified statement shall be guilty of a misdemeanor and shall, upon
25 conviction thereof, be punished by a fine of not less than twenty-five
26 dollars nor more than one hundred dollars. If the purchaser does not
27 obtain a certificate of title for such all-terrain vehicle or utility-
28 type vehicle within thirty days of the purchase thereof, the tax imposed
29 by this section shall immediately thereafter be paid by the purchaser to
30 the county treasurer. If the tax is not paid on or before the thirtieth
31 day after its purchase, the county treasurer shall also collect from the

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

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

14 (iii) County treasurers are appointed as sales and use tax
15 collectors for all sales of all-terrain vehicles or utility-type vehicles
16 made outside of this state to purchasers or users of all-terrain vehicles
17 or utility-type vehicles which are required to have a certificate of
18 title in this state. The county treasurer shall collect the applicable
19 use tax from the purchaser of an all-terrain vehicle or a utility-type
20 vehicle purchased outside of this state at the time application for a
21 certificate of title is made. The full use tax on the purchase price
22 shall be collected by the county treasurer if a sales or occupation tax
23 was not paid by the purchaser in the state of purchase. If a sales or
24 occupation tax was lawfully paid in the state of purchase at a rate less
25 than the tax imposed in this state, use tax must be collected on the
26 difference as a condition for obtaining a certificate of title in this
27 state.

28 (1) The Tax Commissioner shall adopt and promulgate necessary rules
29 and regulations for determining the amount subject to the taxes imposed
30 by this section so as to insure that the full amount of any applicable
31 tax is paid in cases in which a sale is made of which a part is subject

1 to the taxes imposed by this section and a part of which is not so
2 subject and a separate accounting is not practical or economical.

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

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

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

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

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

30 (e) For the purpose of the proper administration of the Nebraska
31 Revenue Act of 1967 and to prevent evasion of the use tax, it shall be

1 presumed that property sold, leased, or rented by any person for delivery
2 in this state is sold, leased, or rented for storage, use, or other
3 consumption in this state until the contrary is established. The burden
4 of proving the contrary is upon the person who purchases, leases, or
5 rents the property.

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

12 Sec. 2. This act becomes operative on January 1, 2020.

13 Sec. 3. Original section 77-2703, Reissue Revised Statutes of
14 Nebraska, is repealed.