

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 291**

Introduced by Linehan, 39.

Read first time January 15, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2701.13, 77-2701.16, 77-2701.32, 77-2705, and 77-2708, Reissue
- 3 Revised Statutes of Nebraska; to redefine terms relating to sales
- 4 and use taxes; to change provisions relating to sales and use tax
- 5 permits and collection; to provide an operative date; to repeal the
- 6 original sections; and to declare an emergency.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701.13, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 77-2701.13 (1) Engaged in business in this state means conducting  
4 operations in this state that exceed the limitations of the commerce  
5 clause and due process clause of the United States Constitution and  
6 includes, but is not limited to, any of the following:

7 (a) ~~(1)~~ Maintaining, occupying, or using, permanently or  
8 temporarily, directly or indirectly, or through a subsidiary or agent, by  
9 whatever name called, an office, place of distribution, sales or sample  
10 room or place, warehouse, storage place, or other place of business in  
11 this state;

12 (b) ~~(2)~~ Having any representative, agent, salesperson, canvasser,  
13 facilitator, or solicitor operating in this state under the authority of  
14 the retailer or its subsidiary for the purpose of selling, delivering, or  
15 taking orders for any property;

16 (c) ~~(3)~~ Deriving rentals from a lease of property in this state by  
17 any retailer;

18 (d) ~~(4)~~ Soliciting retail sales of property from residents of this  
19 state on a continuous, regular, or systematic basis by means of  
20 advertising which is broadcast into ~~from or relayed from a transmitter~~  
21 ~~within this state or distributed from a location within this state or~~  
22 installed onto an electronic device located in this state;

23 (e) ~~(5)~~ Soliciting or facilitating orders from or sales to residents  
24 of this state for property by mail, if the activities solicitations are  
25 continuous, regular, seasonal, or systematic or ~~and~~ if the retailer  
26 benefits from any ~~banking, financing, debt collection, or marketing~~  
27 activities occurring in this state or benefits from the location in this  
28 state of authorized installation, servicing, or repair facilities;

29 (f) ~~(6)~~ Being owned or controlled by the same interests which own or  
30 control any retailer engaged in business ~~in the same or similar line of~~  
31 ~~business~~ in this state; or

1           (g) ~~(7)~~ Maintaining or having a franchisee or licensee operating  
2 under the retailer's trade name in this state if the franchisee or  
3 licensee is required to collect the tax under the Nebraska Revenue Act of  
4 1967.

5           (2) A retailer who lacks a physical presence in this state, and who  
6 operates a web site or other digital medium or media to execute sales to  
7 purchasers of property subject to sales and use taxes in this state, or  
8 who operates or uses a multivendor marketplace platform that acts as an  
9 intermediary by facilitating sales between a seller and the purchaser of  
10 property subject to sales or use taxes in this state, shall be deemed to  
11 be engaged in business in this state if:

12           (a) Such retailer made or facilitated total retail sales of property  
13 in this state that exceeded one hundred thousand dollars in the previous  
14 or current calendar year; or

15           (b) Such retailer made or facilitated retail sales in this state in  
16 two hundred or more separate transactions in the previous or current  
17 calendar year.

18           Sec. 2. Section 77-2701.16, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20           77-2701.16 (1) Gross receipts means the total amount of the sale or  
21 lease or rental price, as the case may be, of the retail sales of  
22 retailers.

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

28           (a)(i) In the furnishing of telephone communication service, other  
29 than mobile telecommunications service as described in section  
30 77-2703.04, the gross income received from furnishing ancillary services,  
31 except for conference bridging services, and intrastate

1 telecommunications services, except for value-added, nonvoice data  
2 service.

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

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

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

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

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

23 (e) The gross income received from the provision, installation,  
24 construction, servicing, or removal of property used in conjunction with  
25 the furnishing, installing, or connecting of any public utility services  
26 specified in subdivision (2)(a) or (b) of this section or community  
27 antenna television service or satellite service specified in subdivision  
28 (2)(d) of this section, except when acting as a subcontractor for a  
29 public utility, this subdivision does not apply to the gross income  
30 received by a contractor electing to be treated as a consumer of building  
31 materials under subdivision (2) or (3) of section 77-2701.10 for any such

1 services performed on the customer's side of the utility demarcation  
2 point.

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

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

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

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

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

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

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

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

26 (e) The gross income received for services of recreational vehicle  
27 parks;

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

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

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

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

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

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

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

25 (9) Gross receipts includes the retail sale of digital audio works,  
26 digital audiovisual works, digital codes, and digital books delivered  
27 electronically if the products are taxable when delivered on tangible  
28 storage media. A sale includes the transfer of a permanent right of use,  
29 the transfer of a right of use that terminates on some condition, and the  
30 transfer of a right of use conditioned upon the receipt of continued  
31 payments.

1        (10) Gross receipts includes any receipts from sales of tangible  
2 personal property made over a multivendor marketplace platform that acts  
3 as the intermediary by facilitating sales between a seller and the  
4 purchaser, typically by processing the transaction.

5        (11) ~~(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. 3. Section 77-2701.32, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14       77-2701.32 (1) Retailer means any seller.

15       (2) To facilitate the proper administration of the Nebraska Revenue  
16 Act of 1967, the following persons have the duties and responsibilities  
17 of sellers for the purposes of sales and use taxes:

18       (a) Any person in the business of making sales subject to tax under  
19 section 77-2703 at auction of property owned by the person or others;

20       (b) Any person collecting the proceeds of the auction, other than  
21 the owner of the property, together with his or her principal, if any,  
22 when the person collecting the proceeds of the auction is not the  
23 auctioneer or an agent or employee of the auctioneer. The seller does not  
24 include the auctioneer in such case;

25       (c) Every person who has elected to be considered a retailer  
26 pursuant to subdivision (1) of section 77-2701.10;

27       (d) Every person operating, organizing, or promoting a flea market,  
28 craft show, fair, or similar event; ~~and~~

29       (e) Every person engaged in the business of providing any service  
30 defined in subsection (4) of section 77-2701.16; and ~~-~~

31       (f) Every person operating a multivendor marketplace platform that

1 acts as the intermediary by facilitating sales between a seller and the  
2 purchaser, typically by processing the transaction.

3 (3) For the proper administration of the Nebraska Revenue Act of  
4 1967, the following persons do not have the duties and responsibilities  
5 of a seller for purposes of sales and use taxes:

6 (a) Any person who leases or rents films when an admission tax is  
7 charged under the Nebraska Revenue Act of 1967;

8 (b) Any person who leases or rents railroad rolling stock  
9 interchanged pursuant to the provisions of the federal Interstate  
10 Commerce Act;

11 (c) Any person engaged in the business of furnishing rooms in a  
12 facility licensed under the Health Care Facility Licensure Act in which  
13 rooms, lodgings, or accommodations are regularly furnished for a  
14 consideration or a facility operated by an educational institution  
15 established under Chapter 79 or Chapter 85 in which rooms are regularly  
16 used to house students for a consideration for periods in excess of  
17 thirty days; or

18 (d) Any person making sales at a flea market, craft show, fair, or  
19 similar event when such person does not have a sales tax permit and has  
20 arranged to pay sales taxes collected to the person operating,  
21 organizing, or promoting such event.

22 Sec. 4. Section 77-2705, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 77-2705 (1) Except as provided in subsection (10) of this section,  
25 every retailer shall register with the Tax Commissioner and give:

26 (a) The name and address of all agents operating in this state;

27 (b) The location of all distribution or sales houses or offices or  
28 other places of business in this state;

29 (c) The name and address of any officer, director, partner, limited  
30 liability company member, or employee, other than an employee whose  
31 duties are purely ministerial in nature, or any person with a substantial



1 interest in the applicant, who is or who will be responsible for the  
2 collection or remittance of the sales tax;

3 (d) Such other information as the Tax Commissioner may require; and

4 (e) If the retailer is an individual, his or her social security  
5 number.

6 (2) Every person furnishing public utility service as defined in  
7 subsection (2) of section 77-2701.16 shall register with the Tax  
8 Commissioner and give:

9 (a) The address of each office open to the public in which such  
10 public utility service business is transacted with consumers; and

11 (b) Such other information as the Tax Commissioner may require.

12 (3)(a) (3) It shall be unlawful for any person to engage in or  
13 transact business as a seller within this state after June 1, 1967,  
14 unless a permit or permits shall have been issued to him or her as  
15 prescribed in this section.

16 (b) Every person desiring to engage in or to conduct business as a  
17 seller within this state shall file with the Tax Commissioner an  
18 application for a permit for each place of business. There shall be no  
19 charge to the retailer for the application for or issuance of a permit  
20 except as otherwise provided in this section.

21 (c) If a retailer becomes engaged in business in this state during a  
22 calendar year by exceeding one of the thresholds in subsection (2) of  
23 section 77-2701.13 for the first time, the retailer must obtain a permit  
24 and begin collecting the sales tax on or before the first day of the  
25 second calendar month after the threshold was exceeded.

26 (4) Every application for a permit shall:

27 (a) Be made upon a form prescribed by the Tax Commissioner;

28 (b) Set forth the name under which the applicant transacts or  
29 intends to transact business and the location of his or her place or  
30 places of business;

31 (c) Set forth such other information as the Tax Commissioner may

1 require; and

2 (d) Be signed by the owner and include his or her social security  
3 number if he or she is a natural person; in the case of an association or  
4 partnership, by a member or partner; in the case of a limited liability  
5 company, by a member or some person authorized by the limited liability  
6 company to sign such kinds of applications; and in the case of a  
7 corporation, by an executive officer or some person authorized by the  
8 corporation to sign such kinds of applications.

9 (5) After compliance with subsections (1) through (4) of this  
10 section by the applicant, the Tax Commissioner shall grant and issue to  
11 each applicant a separate permit for each place of business within the  
12 state. A permit shall not be assignable and shall be valid only for the  
13 person in whose name it is issued and for the transaction of business at  
14 the place designated therein. It shall at all times be conspicuously  
15 displayed at the place for which issued and shall be valid and effective  
16 until revoked by the Tax Commissioner.

17 (6)(a) Whenever the holder of a permit issued under subsection (5)  
18 of this section or any person required to be identified in subdivision  
19 (1)(c) of this section (i) fails to comply with any provision of the  
20 Nebraska Revenue Act of 1967 relating to the retail sales tax or with any  
21 rule or regulation of the Tax Commissioner relating to such tax  
22 prescribed and adopted under such act, (ii) fails to provide for  
23 inspection or audit any book, record, document, or item required by law,  
24 rule, or regulation, or (iii) makes a misrepresentation of or fails to  
25 disclose a material fact to the Department of Revenue, the Tax  
26 Commissioner upon hearing, after giving the person twenty days' notice in  
27 writing specifying the time and place of hearing and requiring him or her  
28 to show cause why his or her permit or permits should not be revoked, may  
29 revoke or suspend any one or more of the permits held by the person. The  
30 Tax Commissioner shall give to the person written notice of the  
31 suspension or revocation of any of his or her permits. The notices may be

1 served personally or by mail in the manner prescribed for service of  
2 notice of a deficiency determination.

3 (b) The Tax Commissioner shall have the power to restore permits  
4 which have been revoked but shall not issue a new permit after the  
5 revocation of a permit unless he or she is satisfied that the former  
6 holder of the permit will comply with the provisions of such act relating  
7 to the retail sales tax and the regulations of the Tax Commissioner. A  
8 seller whose permit has been previously suspended or revoked under this  
9 subsection shall pay the Tax Commissioner a fee of twenty-five dollars  
10 for the renewal or issuance of a permit in the event of a first  
11 revocation and fifty dollars for renewal after each successive  
12 revocation.

13 (c) The action of the Tax Commissioner may be appealed by the  
14 taxpayer in the same manner as a final deficiency determination.

15 (7) For the purpose of more efficiently securing the payment,  
16 collection, and accounting for the sales and use taxes and for the  
17 convenience of the retailer in collecting the sales tax, it shall be the  
18 duty of the Tax Commissioner to formulate and promulgate appropriate  
19 rules and regulations providing a form and method for the registration of  
20 exempt purchases and the documentation of exempt sales.

21 (8) If any person, firm, corporation, association, or agent thereof  
22 presents an exempt sale certificate to the seller for property which is  
23 purchased by a taxpayer or for a use other than those enumerated in the  
24 Nebraska Revenue Act of 1967 as exempted from the computation of sales  
25 and use taxes, the Tax Commissioner may, in addition to other penalties  
26 provided by law, impose, assess, and collect from the purchaser or the  
27 agent thereof a penalty of one hundred dollars or ten times the tax,  
28 whichever amount is larger, for each instance of such presentation and  
29 misuse of an exempt sale certificate. Such amount shall be in addition to  
30 any tax, interest, or penalty otherwise imposed.

31 (9) Any report, name, or information which is supplied to the Tax

1 Commissioner regarding a violation specified in this section, including  
2 the identity of the informer, shall be subject to the pertinent  
3 provisions regarding wrongful disclosure in section 77-2711.

4 (10) Pursuant to the streamlined sales and use tax agreement, the  
5 state shall participate in an online registration system that will allow  
6 retailers to register in all the member states. The state hereby agrees  
7 to honor and abide by the retailer registration decisions made by the  
8 governing board pursuant to the agreement.

9 Sec. 5. Section 77-2708, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

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

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

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

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

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

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

31 (iv) A taxpayer who keeps his or her regular books and records on a

1 cash basis, an accrual basis, or any generally recognized accounting  
2 basis which correctly reflects the operation of the business may file the  
3 sales and use tax returns required by the Nebraska Revenue Act of 1967 on  
4 the same accounting basis that is used for the regular books and records,  
5 except that on credit, conditional, and installment sales, the retailer  
6 who keeps his or her books on an accrual basis may report such sales on  
7 the cash basis and pay the tax upon the collections made during each  
8 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of  
9 an account receivable, he or she shall be deemed to have received the  
10 full balance of the consideration for the original sale and shall be  
11 liable for the remittance of the sales tax on the balance of the total  
12 sale price not previously reported, except that such transfer, sale,  
13 assignment, or other disposition of an account receivable by a retailer  
14 to a subsidiary shall not be deemed to require the retailer to pay the  
15 sales tax on the credit sale represented by the account transferred prior  
16 to the time the customer makes payment on such account. If the subsidiary  
17 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a  
18 surety bond in favor of the State of Nebraska to insure payment of the  
19 tax and any interest and penalty imposed thereon under this section in an  
20 amount not less than two times the amount of tax payable on outstanding  
21 accounts receivable held by the subsidiary as of the end of the prior  
22 calendar year. Failure to obtain either a sales tax permit or a surety  
23 bond in accordance with this section shall result in the payment on the  
24 next required filing date of all sales taxes not previously remitted.  
25 When the retailer has adopted one basis or the other of reporting credit,  
26 conditional, or installment sales and paying the tax thereon, he or she  
27 will not be permitted to change from that basis without first having  
28 notified the Tax Commissioner.

29 (c) Except as provided in the streamlined sales and use tax  
30 agreement, the taxpayer required to file the return shall deliver or mail  
31 any required return together with a remittance of the net amount of the

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

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

18 (e) A retailer that makes sales into Nebraska using a multivendor  
19 marketplace platform is relieved of its obligation to collect and remit  
20 sales taxes to Nebraska with regard to any sales taxes collected and  
21 remitted by the multivendor marketplace platform. Such a retailer must  
22 include all sales into Nebraska in its gross receipts in its return, but  
23 may claim credit for any sales taxes collected and remitted by the  
24 multivendor marketplace platform with respect to such retailer's sales.  
25 Such retailer is jointly liable for the sales tax due on sales into  
26 Nebraska as provided in section 77-2704.35.

27 (2)(a) If the Tax Commissioner determines that any sales or use tax  
28 amount, penalty, or interest has been paid more than once, has been  
29 erroneously or illegally collected or computed, or has been paid and the  
30 purchaser qualifies for a refund under section 77-2708.01, the Tax  
31 Commissioner shall set forth that fact in his or her records and the

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

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

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

21 (d) The Tax Commissioner shall allow or disallow a claim within one  
22 hundred eighty days after it has been filed. A request for a hearing  
23 shall constitute a waiver of the one-hundred-eighty-day period. The  
24 claimant and the Tax Commissioner may also agree to extend the one-  
25 hundred-eighty-day period. If a hearing has not been requested and the  
26 Tax Commissioner has neither allowed nor disallowed a claim within either  
27 the one hundred eighty days or the period agreed to by the claimant and  
28 the Tax Commissioner, the claim shall be deemed to have been allowed.

29 (e) Within thirty days after disallowing any claim in whole or in  
30 part, the Tax Commissioner shall serve notice of his or her action on the  
31 claimant in the manner prescribed for service of notice of a deficiency



1 determination.

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

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

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

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

28 (j)(i) Credit shall be allowed to the retailer, contractor, or  
29 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue  
30 Act of 1967 on any deduction taken that is attributed to bad debts not  
31 including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as

1 such section existed on January 1, 2003. However, the amount calculated  
2 pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges  
3 or interest; sales or use taxes charged on the purchase price;  
4 uncollectible amounts on property that remains in the possession of the  
5 seller until the full purchase price is paid; and expenses incurred in  
6 attempting to collect any debt and repossessed property.

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

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

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

25 (v) If filing responsibilities have been assumed by a certified  
26 service provider, the service provider may claim, on behalf of the  
27 retailer, any bad debt allowance provided by this section. The certified  
28 service provider shall credit or refund the full amount of any bad debt  
29 allowance or refund received to the retailer.

30 (vi) For purposes of reporting a payment received on a previously  
31 claimed bad debt, any payments made on a debt or account are applied

1 first proportionally to the taxable price of the property or service and  
2 the sales tax thereon, and secondly to interest, service charges, and any  
3 other charges.

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

8 (3) Beginning July 1, 2020, if a refund claim under this section  
9 involves a refund of a tax imposed under the Local Option Revenue Act or  
10 section 13-319 or 13-2813 and the amount of such tax to be refunded is at  
11 least five thousand dollars, the Tax Commissioner shall notify the  
12 affected city, village, county, or municipal county of such claim within  
13 twenty days after receiving the claim. If the Tax Commissioner allows the  
14 claim and the refund of such tax is at least five thousand dollars, the  
15 Tax Commissioner shall notify the affected city, village, county, or  
16 municipal county of such refund and shall give the city, village, county,  
17 or municipal county the option of having such refund deducted from its  
18 tax proceeds in one lump sum or in twelve equal monthly installments. The  
19 city, village, county, or municipal county shall make its selection and  
20 shall certify the selection to the Tax Commissioner within twenty days  
21 after receiving notice of the refund. The Tax Commissioner shall then  
22 deduct such refund from the applicable tax proceeds in accordance with  
23 the selection when he or she deducts refunds pursuant to section 13-324,  
24 13-2814, or 77-27,144, whichever is applicable.

25 Sec. 6. This act becomes operative on April 1, 2019.

26 Sec. 7. Original sections 77-2701.13, 77-2701.16, 77-2701.32,  
27 77-2705, and 77-2708, Reissue Revised Statutes of Nebraska, are repealed.

28 Sec. 8. Since an emergency exists, this act takes effect when  
29 passed and approved according to law.