

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 457

Introduced by McCollister, 20.

Read first time January 15, 2021

Committee: Revenue

- 1 A BILL FOR AN ACT relating to sales and use taxes; to amend sections
- 2 77-2708 and 77-27,144, Revised Statutes Cumulative Supplement, 2020;
- 3 to change provisions relating to deductions for certain sales and
- 4 use tax refunds; to harmonize provisions; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2708, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 77-2708 (1)(a) The sales and use taxes imposed by the Nebraska
4 Revenue Act of 1967 shall be due and payable to the Tax Commissioner
5 monthly on or before the twentieth day of the month next succeeding each
6 monthly period unless otherwise provided pursuant to the Nebraska Revenue
7 Act of 1967.

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

30 The Tax Commissioner may adopt and promulgate rules and regulations
31 to allow annual, semiannual, or quarterly returns for any retailer making

1 monthly remittances or payments of sales and use taxes by electronic
2 funds transfer or for any retailer remitting tax to the state pursuant to
3 the streamlined sales and use tax agreement. Such rules and regulations
4 may establish a method of determining the amount of the payment that will
5 result in substantially all of the tax liability being paid each quarter.
6 At least once each year, the difference between the amount paid and the
7 amount due shall be reconciled. If the difference is more than ten
8 percent of the amount paid, a penalty of fifty percent of the unpaid
9 amount shall be imposed.

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

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

23 (iv) A taxpayer who keeps his or her regular books and records on a
24 cash basis, an accrual basis, or any generally recognized accounting
25 basis which correctly reflects the operation of the business may file the
26 sales and use tax returns required by the Nebraska Revenue Act of 1967 on
27 the same accounting basis that is used for the regular books and records,
28 except that on credit, conditional, and installment sales, the retailer
29 who keeps his or her books on an accrual basis may report such sales on
30 the cash basis and pay the tax upon the collections made during each
31 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of

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

21 (c) Except as provided in the streamlined sales and use tax
22 agreement, the taxpayer required to file the return shall deliver or mail
23 any required return together with a remittance of the net amount of the
24 tax due to the office of the Tax Commissioner on or before the required
25 filing date. Failure to file the return, filing after the required filing
26 date, failure to remit the net amount of the tax due, or remitting the
27 net amount of the tax due after the required filing date shall be cause
28 for a penalty, in addition to interest, of ten percent of the amount of
29 tax not paid by the required filing date or twenty-five dollars,
30 whichever is greater, unless the penalty is being collected under
31 subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a

1 county treasurer or the Department of Motor Vehicles, in which case the
2 penalty shall be five dollars.

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

10 (e) A retailer that makes sales into Nebraska using a multivendor
11 marketplace platform is relieved of its obligation to collect and remit
12 sales taxes to Nebraska with regard to any sales taxes collected and
13 remitted by the multivendor marketplace platform. Such a retailer must
14 include all sales into Nebraska in its gross receipts in its return, but
15 may claim credit for any sales taxes collected and remitted by the
16 multivendor marketplace platform with respect to such retailer's sales.
17 Such retailer is liable for the sales tax due on sales into Nebraska as
18 provided in section 77-2704.35.

19 (f) A multivendor marketplace platform is relieved of its obligation
20 to collect and remit the correct amount of state and local sales taxes to
21 Nebraska to the extent that the multivendor marketplace platform can
22 establish that the error was due to insufficient or incorrect information
23 given to the multivendor marketplace platform by the seller and relied on
24 by the multivendor marketplace platform. This subdivision shall not apply
25 if the multivendor marketplace platform and the seller are related
26 persons under either section 267(b) or (c) or section 707(b) of the
27 Internal Revenue Code of 1986 or if the seller is also the multivendor
28 marketplace platform operator.

29 (2)(a) If the Tax Commissioner determines that any sales or use tax
30 amount, penalty, or interest has been paid more than once, has been
31 erroneously or illegally collected or computed, or has been paid and the

1 purchaser qualifies for a refund under section 77-2708.01, the Tax
2 Commissioner shall set forth that fact in his or her records and the
3 excess amount collected or paid may be credited on any sales, use, or
4 income tax amounts then due and payable from the person under the
5 Nebraska Revenue Act of 1967. Any balance may be refunded to the person
6 by whom it was paid or his or her successors, administrators, or
7 executors.

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

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

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

31 (e) Within thirty days after disallowing any claim in whole or in

1 part, the Tax Commissioner shall serve notice of his or her action on the
2 claimant in the manner prescribed for service of notice of a deficiency
3 determination.

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

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

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

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

30 (j)(i) Credit shall be allowed to the retailer, contractor, or
31 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue

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

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

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

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

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

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

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

10 (3) Beginning July 1, 2020, if a refund claim under this section
11 involves a refund of a tax imposed under the Local Option Revenue Act or
12 section 13-319, 13-2813, or 77-6403 and the amount of such tax to be
13 refunded is at least five thousand dollars, the Tax Commissioner shall
14 notify the affected city, village, county, or municipal county of such
15 claim within twenty days after receiving the claim. If the Tax
16 Commissioner allows the claim and the refund of such tax is at least five
17 thousand dollars, the Tax Commissioner shall notify the affected city,
18 village, county, or municipal county of such refund and shall give the
19 city, village, county, or municipal county the option of having such
20 refund deducted from its tax proceeds in one lump sum or in twelve equal
21 monthly installments. The city, village, county, or municipal county
22 shall make its selection and shall certify the selection to the Tax
23 Commissioner within twenty days after receiving notice of the refund. The
24 Tax Commissioner shall then deduct such refund from the applicable tax
25 proceeds in accordance with the selection when he or she deducts refunds
26 pursuant to section 13-324, 13-2814, ~~77-27,144,~~ or 77-6403 or subsection
27 (1) of section 77-27,144, whichever is applicable. This subsection shall
28 not apply to any refund that is subject to subsection (2) or (3) of
29 section 77-27,144.

30 Sec. 2. Section 77-27,144, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by
2 any incorporated municipality concurrently with collection of a state tax
3 in the same manner as the state tax is collected. The Tax Commissioner
4 shall remit monthly the proceeds of the tax to the incorporated
5 municipalities levying the tax, after deducting the amount of refunds
6 made and three percent of the remainder to be credited to the Municipal
7 Equalization Fund.

8 (2) Deductions for a refund made pursuant to section 77-4105,
9 77-4106, 77-5725, or 77-5726 shall be delayed as follows:

10 (a) For refunds owed by a city of the first class, city of the
11 second class, or village, such deductions shall be delayed for one year
12 after the refund has been made to the taxpayer. The Department of Revenue
13 shall notify the municipality liable for a refund exceeding one thousand
14 five hundred dollars of the pending refund, the amount of the refund, and
15 the month in which the deduction will be made or begin, except that if
16 the amount of a refund claimed under section 77-4105, 77-4106, 77-5725,
17 or 77-5726 exceeds twenty-five percent of the municipality's total sales
18 and use tax receipts, net of any refunds or sales tax collection fees,
19 for the municipality's prior fiscal year, the department shall deduct the
20 refund over the period of one year in equal monthly amounts beginning
21 after the one-year notification period required by this subdivision; and
22 subsection. This subsection applies to refunds owed by cities of the
23 first class, cities of the second class, and villages. This subsection
24 applies to refunds beginning January 1, 2014.

25 (b) For refunds owed by a city of the metropolitan class or city of
26 the primary class, such deductions shall be delayed as provided in this
27 subdivision after the refund has been made to the taxpayer. The
28 Department of Revenue shall notify each municipality liable for a refund
29 exceeding one thousand five hundred dollars of the pending refund and the
30 amount of the refund claimed under section 77-4105, 77-4106, 77-5725, or
31 77-5726. The notification shall be made by March 1 of each year beginning

1 in 2022 and shall be used to establish the refund amount for the
2 following calendar year. The notification shall include any excess or
3 underpayment from the prior calendar year. The department shall deduct
4 the refund over a period of one year in equal monthly amounts beginning
5 in January following the notification. This subdivision applies to total
6 annual refunds exceeding one million dollars owed by any city of the
7 metropolitan class or city of the primary class.

8 (3) Deductions for a refund made pursuant to the Imagine Nebraska
9 Act shall be delayed as provided in this subsection after the refund has
10 been made to the taxpayer. The Department of Revenue shall notify each
11 municipality liable for a refund exceeding one thousand five hundred
12 dollars of the pending refund and the amount of the refund claimed under
13 the Imagine Nebraska Act. The notification shall be made by March 1 of
14 each year beginning in 2021 and shall be used to establish the refund
15 amount for the following calendar year. The notification shall include
16 any excess or underpayment from the prior calendar year. The department
17 shall deduct the refund over a period of one year in equal monthly
18 amounts beginning in January following the notification. This subsection
19 applies to total annual refunds exceeding one million dollars or twenty-
20 five percent of the municipality's total sales and use tax receipts for
21 the prior fiscal year, whichever is the lesser amount.

22 (4) The Tax Commissioner shall keep full and accurate records of all
23 money received and distributed under the provisions of the Local Option
24 Revenue Act. When proceeds of a tax levy are received but the identity of
25 the incorporated municipality which levied the tax is unknown and is not
26 identified within six months after receipt, the amount shall be credited
27 to the Municipal Equalization Fund. The municipality may request the
28 names and addresses of the retailers which have collected the tax as
29 provided in subsection (13) of section 77-2711 and may certify an
30 individual to request and review confidential sales and use tax returns
31 and sales and use tax return information as provided in subsection (14)

1 of section 77-2711.

2 (5)(a) Every qualifying business that has filed an application to
3 receive tax incentives under the Employment and Investment Growth Act,
4 the Nebraska Advantage Act, or the Imagine Nebraska Act shall, with
5 respect to such acts, provide annually to each municipality, in aggregate
6 data, the maximum amount the qualifying business is eligible to receive
7 in the current year in refunds of local sales and use taxes of the
8 municipality and exemptions for the previous year, and the estimate of
9 annual refunds of local sales and use taxes of the municipality and
10 exemptions such business intends to claim in each future year. Such
11 information shall be kept confidential by the municipality unless
12 publicly disclosed previously by the taxpayer or by the State of
13 Nebraska.

14 (b) For purposes of this subsection, municipality means a
15 municipality that has adopted the local option sales and use tax under
16 the Local Option Revenue Act and to which the qualifying business has
17 paid such sales and use tax.

18 (c) The qualifying business shall provide the information to the
19 municipality on or before June 30 of each year.

20 (d) Any amounts held by a municipality to make sales and use tax
21 refunds under the Employment and Investment Growth Act, the Nebraska
22 Advantage Act, and the Imagine Nebraska Act shall not count toward any
23 budgeted restricted funds limitation as provided in section 13-519 or
24 toward any cash reserve limitation as provided in section 13-504.

25 Sec. 3. Original sections 77-2708 and 77-27,144, Revised Statutes
26 Cumulative Supplement, 2020, are repealed.