

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 531

Introduced by Harr, 8.

Read first time January 18, 2017

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2703, Revised Statutes Cumulative Supplement, 2016; to change
- 3 sales tax collection fees for motor vehicles as prescribed; and to
- 4 repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Revised Statutes Cumulative Supplement,
2 2016, is 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 at the time the purchaser makes
14 application for the registration of the motor vehicle, semitrailer, or
15 trailer for operation upon the highways of this state. The tax imposed by
16 this section on motor vehicles, semitrailers, and trailers registered
17 pursuant to section 60-3,198 shall be collected by the Department of
18 Motor Vehicles at the time the purchaser makes application for the
19 registration of the motor vehicle, semitrailer, or trailer for operation
20 upon the highways of this state. At the time of the sale of any motor
21 vehicle, semitrailer, or trailer, the seller shall (i) state on the sales
22 invoice the dollar amount of the tax imposed under this section and (ii)
23 furnish to the purchaser a certified statement of the transaction, in
24 such form as the Tax Commissioner prescribes, setting forth as a minimum
25 the total sales price, the allowance for any trade-in, and the difference
26 between the two. The sales tax due shall be computed on the difference
27 between the total sales price and the allowance for any trade-in as
28 disclosed by such certified statement. Any seller who willfully
29 understates the amount upon which the sales tax is due shall be subject
30 to a penalty of one thousand dollars. A copy of such certified statement
31 shall also be furnished to the Tax Commissioner. Any seller who fails or

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

26 (j)(i) The tax imposed by this section on the sale of a motorboat as
27 defined in section 37-1204 shall be the liability of the purchaser. The
28 tax shall be collected by the county treasurer at the time the purchaser
29 makes application for the registration of the motorboat. At the time of
30 the sale of a motorboat, the seller shall (A) state on the sales invoice
31 the dollar amount of the tax imposed under this section and (B) furnish

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

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

29 (k)(i) The tax imposed by this section on the sale of an all-terrain
30 vehicle as defined in section 60-103 or a utility-type vehicle as defined
31 in section 60-135.01 shall be the liability of the purchaser. The tax

1 shall be collected by the county treasurer at the time the purchaser
2 makes application for the certificate of title for the all-terrain
3 vehicle or utility-type vehicle. At the time of the sale of an all-
4 terrain vehicle or a utility-type vehicle, the seller shall (A) state on
5 the sales invoice the dollar amount of the tax imposed under this section
6 and (B) furnish to the purchaser a certified statement of the
7 transaction, in such form as the Tax Commissioner prescribes, setting
8 forth as a minimum the total sales price, the allowance for any trade-in,
9 and the difference between the two. The sales tax due shall be computed
10 on the difference between the total sales price and the allowance for any
11 trade-in as disclosed by such certified statement. Any seller who
12 willfully understates the amount upon which the sales tax is due shall be
13 subject to a penalty of one thousand dollars. A copy of such certified
14 statement shall also be furnished to the Tax Commissioner. Any seller who
15 fails or refuses to furnish such certified statement shall be guilty of a
16 misdemeanor and shall, upon conviction thereof, be punished by a fine of
17 not less than twenty-five dollars nor more than one hundred dollars. If
18 the purchaser does not obtain a certificate of title for such all-terrain
19 vehicle or utility-type vehicle 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 shall deduct and withhold for the
28 use of the county general fund, from all amounts required to be collected
29 under this subsection, the collection fee permitted to be deducted by any
30 retailer collecting the sales tax. The collection fee shall be forfeited
31 if the county treasurer violates any rule or regulation pertaining to the

1 collection of the use tax.

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

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

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

25 (2) A use tax is hereby imposed on the storage, use, or other
26 consumption in this state of property purchased, leased, or rented from
27 any retailer and on any transaction the gross receipts of which are
28 subject to tax under subsection (1) of this section on or after June 1,
29 1967, for storage, use, or other consumption in this state at the rate
30 set as provided in subsection (1) of this section on the sales price of
31 the property or, in the case of leases or rentals, of the lease or rental

1 prices.

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

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

23 (c) The Tax Commissioner, in order to facilitate the proper
24 administration of the use tax, may designate such person or persons as he
25 or she may deem necessary to be use tax collectors and delegate to such
26 persons such authority as is necessary to collect any use tax which is
27 due and payable to the State of Nebraska. The Tax Commissioner may
28 require of all persons so designated a surety bond in favor of the State
29 of Nebraska to insure against any misappropriation of state funds so
30 collected. The Tax Commissioner may require any tax official, city,
31 county, or state, to collect the use tax on behalf of the state. All

1 persons designated to or required to collect the use tax shall account
2 for such collections in the manner prescribed by the Tax Commissioner.
3 Nothing in this subdivision shall be so construed as to prevent the Tax
4 Commissioner or his or her employees from collecting any use taxes due
5 and payable to the State of Nebraska.

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

21 (e) For the purpose of the proper administration of the Nebraska
22 Revenue Act of 1967 and to prevent evasion of the use tax, it shall be
23 presumed that property sold, leased, or rented by any person for delivery
24 in this state is sold, leased, or rented for storage, use, or other
25 consumption in this state until the contrary is established. The burden
26 of proving the contrary is upon the person who purchases, leases, or
27 rents the property.

28 (f) For the purpose of the proper administration of the Nebraska
29 Revenue Act of 1967 and to prevent evasion of the use tax, for the sale
30 of property to an advertising agency which purchases the property as an
31 agent for a disclosed or undisclosed principal, the advertising agency is

1 and remains liable for the sales and use tax on the purchase the same as
2 if the principal had made the purchase directly.

3 Sec. 2. Original section 77-2703, Revised Statutes Cumulative
4 Supplement, 2016, is repealed.