

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 855

Introduced by Fulton, 29.

Read first time January 06, 2012

Committee:

A BILL

- 1 FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2703 and 77-2708, Revised Statutes Supplement, 2011;
- 3 to change the sales and use tax collection fees; and to
- 4 repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Revised Statutes Supplement,
2 2011, is amended to read:

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

25 (a) The tax imposed by this section shall be collected by

1 the retailer from the consumer. It shall constitute a part of the
2 purchase price and until collected shall be a debt from the consumer
3 to the retailer and shall be recoverable at law in the same manner as
4 other debts. The tax required to be collected by the retailer from
5 the consumer constitutes a debt owed by the retailer to this state.

6 (b) It is unlawful for any retailer to advertise, hold
7 out, or state to the public or to any customer, directly or
8 indirectly, that the tax or part thereof will be assumed or absorbed
9 by the retailer, that it will not be added to the selling, renting,
10 or leasing price of the property sold, rented, or leased, or that, if
11 added, it or any part thereof will be refunded. The provisions of
12 this subdivision shall not apply to a public utility.

13 (c) The tax required to be collected by the retailer from
14 the purchaser, unless otherwise provided by statute or by rule and
15 regulation of the Tax Commissioner, shall be displayed separately
16 from the list price, the price advertised in the premises, the marked
17 price, or other price on the sales check or other proof of sales,
18 rentals, or leases.

19 (d) For the purpose of more efficiently securing the
20 payment, collection, and accounting for the sales tax and for the
21 convenience of the retailer in collecting the sales tax, it shall be
22 the duty of the Tax Commissioner to provide a schedule or schedules
23 of the amounts to be collected from the consumer or user to
24 effectuate the computation and collection of the tax imposed by the
25 Nebraska Revenue Act of 1967. Such schedule or schedules shall

1 provide that the tax shall be collected from the consumer or user
2 uniformly on sales according to brackets based on sales prices of the
3 item or items. Retailers may compute the tax due on any transaction
4 on an item or an invoice basis. The rounding rule provided in section
5 77-3,117 applies.

6 (e) The use of tokens or stamps for the purpose of
7 collecting or enforcing the collection of the taxes imposed in the
8 Nebraska Revenue Act of 1967 or for any other purpose in connection
9 with such taxes is prohibited.

10 (f) For the purpose of the proper administration of the
11 provisions of the Nebraska Revenue Act of 1967 and to prevent evasion
12 of the retail sales tax, it shall be presumed that all gross receipts
13 are subject to the tax until the contrary is established. The burden
14 of proving that a sale of property is not a sale at retail is upon
15 the person who makes the sale unless he or she takes from the
16 purchaser (i) a resale certificate to the effect that the property is
17 purchased for the purpose of reselling, leasing, or renting it, (ii)
18 an exemption certificate pursuant to subsection (7) of section
19 77-2705, or (iii) a direct payment permit pursuant to sections
20 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption
21 certificate, or direct payment permit shall be conclusive proof for
22 the seller that the sale was made for resale or was exempt or that
23 the tax will be paid directly to the state.

24 (g) In the rental or lease of automobiles, trucks,
25 trailers, semitrailers, and truck-tractors as defined in the Motor

1 Vehicle Registration Act, the tax shall be collected by the lessor on
2 the rental or lease price, except as otherwise provided within this
3 section.

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

10 (i) Notice of the desire to make such election shall be
11 filed with the Tax Commissioner and shall not become effective until
12 the Tax Commissioner is satisfied that the taxpayer has complied with
13 all conditions of this subsection and all rules and regulations of
14 the Tax Commissioner;

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

18 (iii) When such election is made, it shall apply to all
19 vehicles of the lessor rented or leased for periods of one year or
20 more except vehicles to be leased to common or contract carriers who
21 provide to the lessor a valid common or contract carrier exemption
22 certificate. If the lessor rents or leases other vehicles for periods
23 of less than one year, such lessor shall maintain his or her books
24 and records and his or her accounting procedure as the Tax
25 Commissioner prescribes; and

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

8 (i) The tax imposed by this section on the sales of motor
9 vehicles, semitrailers, and trailers as defined in sections 60-339,
10 60-348, and 60-354 shall be the liability of the purchaser and, with
11 the exception of motor vehicles, semitrailers, and trailers
12 registered pursuant to section 60-3,198, the tax shall be collected
13 by the county treasurer or designated county official as provided in
14 the Motor Vehicle Registration Act at the time the purchaser makes
15 application for the registration of the motor vehicle, semitrailer,
16 or trailer for operation upon the highways of this state. The tax
17 imposed by this section on motor vehicles, semitrailers, and trailers
18 registered pursuant to section 60-3,198 shall be collected by the
19 Department of Motor Vehicles at the time the purchaser makes
20 application for the registration of the motor vehicle, semitrailer,
21 or trailer for operation upon the highways of this state. At the time
22 of the sale of any motor vehicle, semitrailer, or trailer, the seller
23 shall (i) state on the sales invoice the dollar amount of the tax
24 imposed under this section and (ii) furnish to the purchaser a
25 certified statement of the transaction, in such form as the Tax

1 Commissioner prescribes, setting forth as a minimum the total sales
2 price, the allowance for any trade-in, and the difference between the
3 two. The sales tax due shall be computed on the difference between
4 the total sales price and the allowance for any trade-in as disclosed
5 by such certified statement. Any seller who willfully understates the
6 amount upon which the sales tax is due shall be subject to a penalty
7 of one thousand dollars. A copy of such certified statement shall
8 also be furnished to the Tax Commissioner. Any seller who fails or
9 refuses to furnish such certified statement shall be guilty of a
10 misdemeanor and shall, upon conviction thereof, be punished by a fine
11 of not less than twenty-five dollars nor more than one hundred
12 dollars. If the seller fails to state on the sales invoice the dollar
13 amount of the tax due, the purchaser shall have the right and
14 authority to rescind any agreement for purchase and to declare the
15 purchase null and void. If the purchaser retains such motor vehicle,
16 semitrailer, or trailer in this state and does not register it for
17 operation on the highways of this state within thirty days of the
18 purchase thereof, the tax imposed by this section shall immediately
19 thereafter be paid by the purchaser to the county treasurer, the
20 designated county official, or the Department of Motor Vehicles. If
21 the tax is not paid on or before the thirtieth day after its
22 purchase, the county treasurer, designated county official, or
23 Department of Motor Vehicles shall also collect from the purchaser
24 interest from the thirtieth day through the date of payment and sales
25 tax penalties as provided in the Nebraska Revenue Act of 1967. The

1 county treasurer, designated county official, or Department of Motor
2 Vehicles shall report and remit the tax so collected to the Tax
3 Commissioner by the fifteenth day of the following month. The county
4 treasurer or designated county official shall deduct and withhold for
5 the use of the county general fund, from all amounts required to be
6 collected under this subsection, the collection fee permitted to be
7 deducted by any retailer collecting the sales tax. The Department of
8 Motor Vehicles shall deduct, withhold, and deposit in the Motor
9 Carrier Division Cash Fund the collection fee permitted to be
10 deducted by any retailer collecting the sales tax. The collection fee
11 shall be forfeited if the county treasurer, designated county
12 official, or Department of Motor Vehicles violates any rule or
13 regulation pertaining to the collection of the use tax.

14 (j)(i) The tax imposed by this section on the sale of a
15 motorboat as defined in section 37-1204 shall be the liability of the
16 purchaser. The tax shall be collected by the county treasurer or
17 designated county official at the time the purchaser makes
18 application for the registration of the motorboat. At the time of the
19 sale of a motorboat, the seller shall (A) state on the sales invoice
20 the dollar amount of the tax imposed under this section and (B)
21 furnish to the purchaser a certified statement of the transaction, in
22 such form as the Tax Commissioner prescribes, setting forth as a
23 minimum the total sales price, the allowance for any trade-in, and
24 the difference between the two. The sales tax due shall be computed
25 on the difference between the total sales price and the allowance for

1 any trade-in as disclosed by such certified statement. Any seller who
2 willfully understates the amount upon which the sales tax is due
3 shall be subject to a penalty of one thousand dollars. A copy of such
4 certified statement shall also be furnished to the Tax Commissioner.
5 Any seller who fails or refuses to furnish such certified statement
6 shall be guilty of a misdemeanor and shall, upon conviction thereof,
7 be punished by a fine of not less than twenty-five dollars nor more
8 than one hundred dollars. If the seller fails to state on the sales
9 invoice the dollar amount of the tax due, the purchaser shall have
10 the right and authority to rescind any agreement for purchase and to
11 declare the purchase null and void. If the purchaser retains such
12 motorboat in this state and does not register it within thirty days
13 of the purchase thereof, the tax imposed by this section shall
14 immediately thereafter be paid by the purchaser to the county
15 treasurer or designated county official. If the tax is not paid on or
16 before the thirtieth day after its purchase, the county treasurer or
17 designated county official shall also collect from the purchaser
18 interest from the thirtieth day through the date of payment and sales
19 tax penalties as provided in the Nebraska Revenue Act of 1967. The
20 county treasurer or designated county official shall report and remit
21 the tax so collected to the Tax Commissioner by the fifteenth day of
22 the following month. The county treasurer or designated county
23 official shall deduct and withhold for the use of the county general
24 fund, from all amounts required to be collected under this
25 subsection, the collection fee permitted to be deducted by any

1 retailer collecting the sales tax. The collection fee shall be
2 forfeited if the county treasurer or designated county official
3 violates any rule or regulation pertaining to the collection of the
4 use tax.

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

7 (k) The Tax Commissioner shall adopt and promulgate
8 necessary rules and regulations for determining the amount subject to
9 the taxes imposed by this section so as to insure that the full
10 amount of any applicable tax is paid in cases in which a sale is made
11 of which a part is subject to the taxes imposed by this section and a
12 part of which is not so subject and a separate accounting is not
13 practical or economical.

14 (2) A use tax is hereby imposed on the storage, use, or
15 other consumption in this state of property purchased, leased, or
16 rented from any retailer and on any transaction the gross receipts of
17 which are subject to tax under subsection (1) of this section on or
18 after June 1, 1967, for storage, use, or other consumption in this
19 state at the rate set as provided in subsection (1) of this section
20 on the sales price of the property or, in the case of leases or
21 rentals, of the lease or rental prices.

22 (a) Every person storing, using, or otherwise consuming
23 in this state property purchased from a retailer or leased or rented
24 from another person for such purpose shall be liable for the use tax
25 at the rate in effect when his or her liability for the use tax

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

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

19 (c) The Tax Commissioner, in order to facilitate the
20 proper administration of the use tax, may designate such person or
21 persons as he or she may deem necessary to be use tax collectors and
22 delegate to such persons such authority as is necessary to collect
23 any use tax which is due and payable to the State of Nebraska. The
24 Tax Commissioner may require of all persons so designated a surety
25 bond in favor of the State of Nebraska to insure against any

1 misappropriation of state funds so collected. The Tax Commissioner
2 may require any tax official, city, county, or state, to collect the
3 use tax on behalf of the state. All persons designated to or required
4 to collect the use tax shall account for such collections in the
5 manner prescribed by the Tax Commissioner. Nothing in this
6 subdivision shall be so construed as to prevent the Tax Commissioner
7 or his or her employees from collecting any use taxes due and payable
8 to the State of Nebraska.

9 (d) All persons designated to collect the use tax and all
10 persons required to collect the use tax shall forward the total of
11 such collections to the Tax Commissioner at such time and in such
12 manner as the Tax Commissioner may prescribe. For all use taxes
13 collected ~~prior to October 1, 2002, on and after July 1, 2013,~~ such
14 collectors of the use tax shall deduct and withhold from the amount
15 of taxes collected two and one-half percent of the first three
16 thousand dollars remitted each month and one-half of one percent of
17 all amounts in excess of three thousand dollars remitted each month
18 as reimbursement for the cost of collecting the tax. For use taxes
19 collected ~~on and after October 1, 2002, before July 1, 2013,~~ such
20 collectors of the use tax shall deduct and withhold from the amount
21 of taxes collected two and one-half percent of the first three
22 thousand dollars remitted each month as reimbursement for the cost of
23 collecting the tax. Any such deduction shall be forfeited to the
24 State of Nebraska if such collector violates any rule, regulation, or
25 directive of the Tax Commissioner.

1 (e) For the purpose of the proper administration of the
2 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
3 it shall be presumed that property sold, leased, or rented by any
4 person for delivery in this state is sold, leased, or rented for
5 storage, use, or other consumption in this state until the contrary
6 is established. The burden of proving the contrary is upon the person
7 who purchases, leases, or rents the property.

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

15 Sec. 2. Section 77-2708, Revised Statutes Supplement,
16 2011, is amended to read:

17 77-2708 (1)(a) The sales and use taxes imposed by the
18 Nebraska Revenue Act of 1967 shall be due and payable to the Tax
19 Commissioner monthly on or before the twentieth day of the month next
20 succeeding each monthly period unless otherwise provided pursuant to
21 the Nebraska Revenue Act of 1967.

22 (b)(i) On or before the twentieth day of the month
23 following each monthly period or such other period as the Tax
24 Commissioner may require, a return for such period, along with all
25 taxes due, shall be filed with the Tax Commissioner in such form and

1 content as the Tax Commissioner may prescribe and containing such
2 information as the Tax Commissioner deems necessary for the proper
3 administration of the Nebraska Revenue Act of 1967. The Tax
4 Commissioner, if he or she deems it necessary in order to insure
5 payment to or facilitate the collection by the state of the amount of
6 sales or use taxes due, may require returns and payment of the amount
7 of such taxes for periods other than monthly periods in the case of a
8 particular seller, retailer, or purchaser, as the case may be. The
9 Tax Commissioner shall by rule and regulation require reports and tax
10 payments from sellers, retailers, or purchasers depending on their
11 yearly tax liability. Except as required by the streamlined sales and
12 use tax agreement, annual returns shall be required if such sellers',
13 retailers', or purchasers' yearly tax liability is less than nine
14 hundred dollars, quarterly returns shall be required if their yearly
15 tax liability is nine hundred dollars or more and less than three
16 thousand dollars, and monthly returns shall be required if their
17 yearly tax liability is three thousand dollars or more. The Tax
18 Commissioner shall have the discretion to allow an annual return for
19 seasonal retailers, even when their yearly tax liability exceeds the
20 amounts listed in this subdivision.

21 The Tax Commissioner may adopt and promulgate rules and
22 regulations to allow annual, semiannual, or quarterly returns for any
23 retailer making monthly remittances or payments of sales and use
24 taxes by electronic funds transfer or for any retailer remitting tax
25 to the state pursuant to the streamlined sales and use tax agreement.

1 Such rules and regulations may establish a method of determining the
2 amount of the payment that will result in substantially all of the
3 tax liability being paid each quarter. At least once each year, the
4 difference between the amount paid and the amount due shall be
5 reconciled. If the difference is more than ten percent of the amount
6 paid, a penalty of fifty percent of the unpaid amount shall be
7 imposed.

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

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

22 (iv) A taxpayer who keeps his or her regular books and
23 records on a cash basis, an accrual basis, or any generally
24 recognized accounting basis which correctly reflects the operation of
25 the business may file the sales and use tax returns required by the

1 Nebraska Revenue Act of 1967 on the same accounting basis that is
2 used for the regular books and records, except that on credit,
3 conditional, and installment sales, the retailer who keeps his or her
4 books on an accrual basis may report such sales on the cash basis and
5 pay the tax upon the collections made during each month. If a
6 taxpayer transfers, sells, assigns, or otherwise disposes of an
7 account receivable, he or she shall be deemed to have received the
8 full balance of the consideration for the original sale and shall be
9 liable for the remittance of the sales tax on the balance of the
10 total sale price not previously reported, except that such transfer,
11 sale, assignment, or other disposition of an account receivable by a
12 retailer to a subsidiary shall not be deemed to require the retailer
13 to pay the sales tax on the credit sale represented by the account
14 transferred prior to the time the customer makes payment on such
15 account. If the subsidiary does not obtain a Nebraska sales tax
16 permit, the taxpayer shall obtain a surety bond in favor of the State
17 of Nebraska to insure payment of the tax and any interest and penalty
18 imposed thereon under this section in an amount not less than two
19 times the amount of tax payable on outstanding accounts receivable
20 held by the subsidiary as of the end of the prior calendar year.
21 Failure to obtain either a sales tax permit or a surety bond in
22 accordance with this section shall result in the payment on the next
23 required filing date of all sales taxes not previously remitted. When
24 the retailer has adopted one basis or the other of reporting credit,
25 conditional, or installment sales and paying the tax thereon, he or

1 she will not be permitted to change from that basis without first
2 having notified the Tax Commissioner.

3 (c) Except as provided in the streamlined sales and use
4 tax agreement, the taxpayer required to file the return shall deliver
5 or mail any required return together with a remittance of the net
6 amount of the tax due to the office of the Tax Commissioner on or
7 before the required filing date. Failure to file the return, filing
8 after the required filing date, failure to remit the net amount of
9 the tax due, or remitting the net amount of the tax due after the
10 required filing date shall be cause for a penalty, in addition to
11 interest, of ten percent of the amount of tax not paid by the
12 required filing date or twenty-five dollars, whichever is greater,
13 unless the penalty is being collected under subdivision (1)(i) or (1)
14 (j)(i) of section 77-2703 by a county treasurer, a designated county
15 official, or the Department of Motor Vehicles, in which case the
16 penalty shall be five dollars.

17 (d) ~~The~~ For all sales tax collected on and after July 1,
18 2013, the taxpayer shall deduct and withhold, from the taxes
19 otherwise due from him or her on his or her tax return, two and one-
20 half percent of the first three thousand dollars remitted each month
21 and one-half of one percent of all amounts in excess of three
22 thousand dollars remitted each month to reimburse himself or herself
23 for the cost of collecting the tax. For all sales tax collected
24 before July 1, 2013, the taxpayer shall deduct and withhold, from the
25 taxes otherwise due from him or her on his or her tax return, two and

1 one-half percent of the first three thousand dollars remitted each
2 month to reimburse himself or herself for the cost of collecting the
3 tax. Taxpayers filing a combined return as allowed by subdivision (1)
4 (b)(ii) of this subsection shall compute such collection fees on the
5 basis of the receipts and liability of each licensed location.

6 (2)(a) If the Tax Commissioner determines that any sales
7 or use tax amount, penalty, or interest has been paid more than once,
8 has been erroneously or illegally collected or computed, or has been
9 paid and the purchaser qualifies for a refund under section
10 77-2708.01, the Tax Commissioner shall set forth that fact in his or
11 her records and the excess amount collected or paid may be credited
12 on any sales, use, or income tax amounts then due and payable from
13 the person under the Nebraska Revenue Act of 1967. Any balance may be
14 refunded to the person by whom it was paid or his or her successors,
15 administrators, or executors.

16 (b) No refund shall be allowed unless a claim therefor is
17 filed with the Tax Commissioner by the person who made the
18 overpayment or his or her attorney, executor, or administrator within
19 three years from the required filing date following the close of the
20 period for which the overpayment was made, within six months after
21 any determination becomes final under section 77-2709, or within six
22 months from the date of overpayment with respect to such
23 determinations, whichever of these three periods expires later,
24 unless the credit relates to a period for which a waiver has been
25 given. Failure to file a claim within the time prescribed in this

1 subsection shall constitute a waiver of any demand against the state
2 on account of overpayment.

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

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

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

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

25 (g) Upon the allowance of a credit or refund of any sum

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

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

17 (i) The Tax Commissioner may recover any refund or part
18 thereof which is erroneously made and any credit or part thereof
19 which is erroneously allowed by issuing a deficiency determination
20 within one year from the date of refund or credit or within the
21 period otherwise allowed for issuing a deficiency determination,
22 whichever expires later.

23 (j)(i) Credit shall be allowed to the retailer,
24 contractor, or repairperson for sales or use taxes paid pursuant to
25 the Nebraska Revenue Act of 1967 on any deduction taken that is

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

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

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

22 (iv) When the amount of bad debt exceeds the amount of
23 taxable sales for the period during which the bad debt is written
24 off, a refund claim may be filed within the otherwise applicable
25 statute of limitations for refund claims. The statute of limitations

1 shall be measured from the due date of the return on which the bad
2 debt could first be claimed.

3 (v) If filing responsibilities have been assumed by a
4 certified service provider, the service provider may claim, on behalf
5 of the retailer, any bad debt allowance provided by this section. The
6 certified service provider shall credit or refund the full amount of
7 any bad debt allowance or refund received to the retailer.

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

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

17 Sec. 3. Original sections 77-2703 and 77-2708, Revised
18 Statutes Supplement, 2011, are repealed.