

LEGISLATIVE BILL 284

Approved by the Governor March 21, 2019

Introduced by McCollister, 20.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2701.13, 77-2701.16, 77-2701.32, 77-2705, and 77-2708, Reissue Revised Statutes of Nebraska; to redefine terms; to change sales and use tax provisions relating to certain out-of-state retailers and multivendor marketplace platforms; to require certain retailers to obtain a sales tax permit and collect sales taxes as prescribed; to relieve certain retailers of their obligation to collect sales taxes as prescribed; to provide an operative date; to provide severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

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

(3) A multivendor marketplace platform that acts as an intermediary by facilitating sales between a seller and the purchaser of property subject to sales or use taxes in this state shall be deemed to be engaged in business in this state if:

(a) The multivendor marketplace platform made or facilitated total retail sales of property in this state that exceeded one hundred thousand dollars in the previous or current calendar year; or

(b) The multivendor marketplace platform made or facilitated retail sales in this state in two hundred or more separate transactions in the previous or current calendar year.

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

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

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing

services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service.

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

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

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

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

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

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

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

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

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

(4) Gross receipts for providing a service means:

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

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

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

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

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

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

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

(h) The gross income received for detective services.

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

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

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

(8) Gross receipts includes the sale of and recharge of prepaid calling

service and prepaid wireless calling service.

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

(10) Gross receipts includes any receipts from sales of tangible personal property made over a multivendor marketplace platform that acts as the intermediary by facilitating sales between a seller and the purchaser and that, either directly or indirectly through agreements or arrangements with third parties, collects payment from the purchaser and transmits payment to the seller.

(11) ~~(10)~~ Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

Sec. 3. Section 77-2701.32, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.32 (1) Retailer means any seller.

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

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

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

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

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

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

(f) Every person operating a multivendor marketplace platform that (i) acts as the intermediary by facilitating sales between a seller and the purchaser or that engages directly or indirectly through one or more affiliated persons in transmitting or otherwise communicating the offer or acceptance between the seller and purchaser and (ii) either directly or indirectly through agreements or arrangements with third parties, collects payment from the purchaser and transmits payment to the seller.

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

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

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

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

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

(e) Any payment processor appointed by a retailer whose sole activity with regard to a sale or lease transaction is to process the payment made from the customer to the retailer.

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

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

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

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

(c) The name and address of any officer, director, partner, limited liability company member, or employee, other than an employee whose duties are purely ministerial in nature, or any person with a substantial interest in the applicant, who is or who will be responsible for the collection or remittance of the sales tax;

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

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

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

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

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

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

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

(c) If a retailer becomes engaged in business in this state during a calendar year by exceeding one of the thresholds in subsection (2) or (3) of section 77-2701.13 for the first time, the retailer must obtain a permit and begin collecting the sales tax on or before the first day of the second calendar month after the threshold was exceeded. Such retailer shall also be subject to the Local Option Revenue Act and sections 13-319 and 13-2813 and shall collect and remit the sales tax due under such act and sections.

(4) Every application for a permit shall:

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

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

(c) Set forth such other information as the Tax Commissioner may require; and

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

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

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

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

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

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

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

(9) Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions

regarding wrongful disclosure in section 77-2711.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

allowed when such excess is refunded or credited.

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

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

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

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

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

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

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

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

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

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

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

Sec. 7. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 8. Original sections 77-2701.13, 77-2701.16, 77-2701.32, 77-2705, and 77-2708, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.