

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 745**

Introduced by Watermeier, 1.

Read first time January 03, 2018

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2708, Revised Statutes Cumulative Supplement, 2016; to require
- 3 certain notice relating to refunds of local sales and use taxes; to
- 4 allow such refunds to be deducted in installments as prescribed; and
- 5 to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2708, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) Every claim shall be in writing on forms prescribed by the Tax

1 Commissioner and shall state the specific amount and grounds upon which  
2 the claim is founded. No refund shall be made in any amount less than two  
3 dollars.

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

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

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

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

1 shall be allowed when such excess is refunded or credited.

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

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

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

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

30 (iii) If a deduction is taken for a bad debt and the debt is  
31 subsequently collected in whole or in part, the tax on the amount so

1 collected must be paid and reported on the return filed for the period in  
2 which the collection is made.

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

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

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

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

22 (3) If a refund claim under this section involves a refund of a tax  
23 imposed under the Local Option Revenue Act or section 13-319 or 13-2813  
24 and the amount of such tax to be refunded is at least five thousand  
25 dollars, the Tax Commissioner shall notify the affected city, village,  
26 county, or municipal county of such claim within twenty days after  
27 receiving the claim. If the Tax Commissioner allows the claim and the  
28 refund of such tax is at least five thousand dollars, the Tax  
29 Commissioner shall notify the affected city, village, county, or  
30 municipal county of such refund and shall give the city, village, county,  
31 or municipal county the option of having such refund deducted from its

1 tax proceeds in one lump sum or in twelve equal monthly installments. The  
2 city, village, county, or municipal county shall make its selection and  
3 shall certify the selection to the Tax Commissioner within twenty days  
4 after receiving notice of the refund. The Tax Commissioner shall then  
5 deduct such refund from the applicable tax proceeds in accordance with  
6 the selection when he or she deducts refunds pursuant to section 13-324,  
7 13-2814, or 77-27,144, whichever is applicable.

8       Sec. 2.   Original section 77-2708, Revised Statutes Cumulative  
9 Supplement, 2016, is repealed.