

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 284

FINAL READING

Introduced by McCollister, 20.

Read first time January 15, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.13, 77-2701.16, 77-2701.32, 77-2705, and 77-2708, Reissue
3 Revised Statutes of Nebraska; to redefine terms; to change sales and
4 use tax provisions relating to certain out-of-state retailers and
5 multivendor marketplace platforms; to require certain retailers to
6 obtain a sales tax permit and collect sales taxes as prescribed; to
7 relieve certain retailers of their obligation to collect sales taxes
8 as prescribed; to provide an operative date; to provide
9 severability; to repeal the original sections; and to declare an
10 emergency.
11 Be it enacted by the people of the State of Nebraska,

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

3 77-2701.13 (1) Engaged in business in this state means conducting
4 operations in this state that exceed the limitations of the commerce
5 clause and due process clause of the United States Constitution and
6 includes, but is not limited to, any of the following:

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

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

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

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

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

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

1 (g) ~~(7)~~ Maintaining or having a franchisee or licensee operating
2 under the retailer's trade name in this state if the franchisee or
3 licensee is required to collect the tax under the Nebraska Revenue Act of
4 1967.

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

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

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

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

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

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

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

29 77-2701.16 (1) Gross receipts means the total amount of the sale or
30 lease or rental price, as the case may be, of the retail sales of
31 retailers.

1 (2) Gross receipts of every person engaged as a public utility
2 specified in this subsection, as a community antenna television service
3 operator, or as a satellite service operator or any person involved in
4 connecting and installing services defined in subdivision (2)(a), (b), or
5 (d) of this section means:

6 (a)(i) In the furnishing of telephone communication service, other
7 than mobile telecommunications service as described in section
8 77-2703.04, the gross income received from furnishing ancillary services,
9 except for conference bridging services, and intrastate
10 telecommunications services, except for value-added, nonvoice data
11 service.

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

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

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

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

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

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

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

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

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

22 (4) Gross receipts for providing a service means:

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

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

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

28 (d) The gross income received for installing and applying tangible
29 personal property if the sale of the property is subject to tax. If any
30 or all of the charge for installation is free to the customer and is paid
31 by a third-party service provider to the installer, any tax due on that

1 part of the activation commission, finder's fee, installation charge, or
2 similar payment made by the third-party service provider shall be paid
3 and remitted by the third-party service provider;

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

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

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

15 (h) The gross income received for detective services.

16 (5) Gross receipts includes the sale of admissions. When an
17 admission to an activity or a membership constituting an admission is
18 combined with the solicitation of a contribution, the portion or the
19 amount charged representing the fair market price of the admission shall
20 be considered a retail sale subject to the tax imposed by section
21 77-2703. The organization conducting the activity shall determine the
22 amount properly attributable to the purchase of the privilege, benefit,
23 or other consideration in advance, and such amount shall be clearly
24 indicated on any ticket, receipt, or other evidence issued in connection
25 with the payment.

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

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

1 (8) Gross receipts includes the sale of and recharge of prepaid
2 calling service and prepaid wireless calling service.

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

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

16 (11) ~~(10)~~ Gross receipts does not include:

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

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

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

25 77-2701.32 (1) Retailer means any seller.

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

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

31 (b) Any person collecting the proceeds of the auction, other than

1 the owner of the property, together with his or her principal, if any,
2 when the person collecting the proceeds of the auction is not the
3 auctioneer or an agent or employee of the auctioneer. The seller does not
4 include the auctioneer in such case;

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

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

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

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

18 (3) For the proper administration of the Nebraska Revenue Act of
19 1967, the following persons do not have the duties and responsibilities
20 of a seller for purposes of sales and use taxes:

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

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

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

1 thirty days;~~or~~

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

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

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

11 77-2705 (1) Except as provided in subsection (10) of this section,
12 every retailer shall register with the Tax Commissioner and give:

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

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

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

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

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

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

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

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

30 (3)(a) (3) It shall be unlawful for any person to engage in or
31 transact business as a seller within this state after June 1, 1967,

1 unless a permit or permits shall have been issued to him or her as
2 prescribed in this section.

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

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

16 (4) Every application for a permit shall:

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

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

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

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

30 (5) After compliance with subsections (1) through (4) of this
31 section by the applicant, the Tax Commissioner shall grant and issue to

1 each applicant a separate permit for each place of business within the
2 state. A permit shall not be assignable and shall be valid only for the
3 person in whose name it is issued and for the transaction of business at
4 the place designated therein. It shall at all times be conspicuously
5 displayed at the place for which issued and shall be valid and effective
6 until revoked by the Tax Commissioner.

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

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

1 revocation and fifty dollars for renewal after each successive
2 revocation.

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

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

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

21 (9) Any report, name, or information which is supplied to the Tax
22 Commissioner regarding a violation specified in this section, including
23 the identity of the informer, shall be subject to the pertinent
24 provisions regarding wrongful disclosure in section 77-2711.

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

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

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

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

28 The Tax Commissioner may adopt and promulgate rules and regulations
29 to allow annual, semiannual, or quarterly returns for any retailer making
30 monthly remittances or payments of sales and use taxes by electronic
31 funds transfer or for any retailer remitting tax to the state pursuant to

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

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

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

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

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

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

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

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

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

27 (2)(a) If the Tax Commissioner determines that any sales or use tax
28 amount, penalty, or interest has been paid more than once, has been
29 erroneously or illegally collected or computed, or has been paid and the
30 purchaser qualifies for a refund under section 77-2708.01, the Tax
31 Commissioner shall set forth that fact in his or her records and the

1 excess amount collected or paid may be credited on any sales, use, or
2 income tax amounts then due and payable from the person under the
3 Nebraska Revenue Act of 1967. Any balance may be refunded to the person
4 by whom it was paid or his or her successors, administrators, or
5 executors.

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

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

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

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

1 determination.

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

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

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

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

28 (j)(i) Credit shall be allowed to the retailer, contractor, or
29 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue
30 Act of 1967 on any deduction taken that is attributed to bad debts not
31 including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as

1 such section existed on January 1, 2003. However, the amount calculated
2 pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges
3 or interest; sales or use taxes charged on the purchase price;
4 uncollectible amounts on property that remains in the possession of the
5 seller until the full purchase price is paid; and expenses incurred in
6 attempting to collect any debt and repossessed property.

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

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

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

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

30 (vi) For purposes of reporting a payment received on a previously
31 claimed bad debt, any payments made on a debt or account are applied

1 first proportionally to the taxable price of the property or service and
2 the sales tax thereon, and secondly to interest, service charges, and any
3 other charges.

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

8 (3) Beginning July 1, 2020, if a refund claim under this section
9 involves a refund of a tax imposed under the Local Option Revenue Act or
10 section 13-319 or 13-2813 and the amount of such tax to be refunded is at
11 least five thousand dollars, the Tax Commissioner shall notify the
12 affected city, village, county, or municipal county of such claim within
13 twenty days after receiving the claim. If the Tax Commissioner allows the
14 claim and the refund of such tax is at least five thousand dollars, the
15 Tax Commissioner shall notify the affected city, village, county, or
16 municipal county of such refund and shall give the city, village, county,
17 or municipal county the option of having such refund deducted from its
18 tax proceeds in one lump sum or in twelve equal monthly installments. The
19 city, village, county, or municipal county shall make its selection and
20 shall certify the selection to the Tax Commissioner within twenty days
21 after receiving notice of the refund. The Tax Commissioner shall then
22 deduct such refund from the applicable tax proceeds in accordance with
23 the selection when he or she deducts refunds pursuant to section 13-324,
24 13-2814, or 77-27,144, whichever is applicable.

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

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

29 Sec. 8. Original sections 77-2701.13, 77-2701.16, 77-2701.32,
30 77-2705, and 77-2708, Reissue Revised Statutes of Nebraska, are repealed.

31 Sec. 9. Since an emergency exists, this act takes effect when

1 passed and approved according to law.