

AMENDMENTS TO LB1150

(Amendments to Standing Committee amendments, AM2009)

Introduced by McCollister, 20.

1 1. Insert the following new sections:

2 Sec. 2. Section 77-2708, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

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

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

1 returns shall be required if their yearly tax liability is three thousand
2 dollars or more. The Tax Commissioner shall have the discretion to allow
3 an annual return for seasonal retailers, even when their yearly tax
4 liability exceeds the amounts listed in this subdivision.

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

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

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

29 (iv) A taxpayer who keeps his or her regular books and records on a
30 cash basis, an accrual basis, or any generally recognized accounting
31 basis which correctly reflects the operation of the business may file the

1 sales and use tax returns required by the Nebraska Revenue Act of 1967 on
2 the same accounting basis that is used for the regular books and records,
3 except that on credit, conditional, and installment sales, the retailer
4 who keeps his or her books on an accrual basis may report such sales on
5 the cash basis and pay the tax upon the collections made during each
6 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of
7 an account receivable, he or she shall be deemed to have received the
8 full balance of the consideration for the original sale and shall be
9 liable for the remittance of the sales tax on the balance of the total
10 sale price not previously reported, except that such transfer, sale,
11 assignment, or other disposition of an account receivable by a retailer
12 to a subsidiary shall not be deemed to require the retailer to pay the
13 sales tax on the credit sale represented by the account transferred prior
14 to the time the customer makes payment on such account. If the subsidiary
15 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a
16 surety bond in favor of the State of Nebraska to insure payment of the
17 tax and any interest and penalty imposed thereon under this section in an
18 amount not less than two times the amount of tax payable on outstanding
19 accounts receivable held by the subsidiary as of the end of the prior
20 calendar year. Failure to obtain either a sales tax permit or a surety
21 bond in accordance with this section shall result in the payment on the
22 next required filing date of all sales taxes not previously remitted.
23 When the retailer has adopted one basis or the other of reporting credit,
24 conditional, or installment sales and paying the tax thereon, he or she
25 will not be permitted to change from that basis without first having
26 notified the Tax Commissioner.

27 (c) Except as provided in the streamlined sales and use tax
28 agreement, the taxpayer required to file the return shall deliver or mail
29 any required return together with a remittance of the net amount of the
30 tax due to the office of the Tax Commissioner on or before the required
31 filing date. Failure to file the return, filing after the required filing

1 date, failure to remit the net amount of the tax due, or remitting the
2 net amount of the tax due after the required filing date shall be cause
3 for a penalty, in addition to interest, of ten percent of the amount of
4 tax not paid by the required filing date or twenty-five dollars,
5 whichever is greater, unless the penalty is being collected under
6 subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a
7 county treasurer or the Department of Motor Vehicles, in which case the
8 penalty shall be five dollars.

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

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

25 (f) A multivendor marketplace platform is relieved of its obligation
26 to collect and remit the correct amount of state and local sales taxes to
27 Nebraska to the extent that the multivendor marketplace platform can
28 establish that the error was due to insufficient or incorrect information
29 given to the multivendor marketplace platform by the seller and relied on
30 by the multivendor marketplace platform. This subdivision shall not apply
31 if the multivendor marketplace platform and the seller are related

1 persons under either section 267(b) or (c) or section 707(b) of the
2 Internal Revenue Code of 1986 or if the seller is also the multivendor
3 marketplace platform operator.

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

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

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

29 (d) The Tax Commissioner shall allow or disallow a claim within one
30 hundred eighty days after it has been filed. A request for a hearing
31 shall constitute a waiver of the one-hundred-eighty-day period. The

1 claimant and the Tax Commissioner may also agree to extend the one-
2 hundred-eighty-day period. If a hearing has not been requested and the
3 Tax Commissioner has neither allowed nor disallowed a claim within either
4 the one hundred eighty days or the period agreed to by the claimant and
5 the Tax Commissioner, the claim shall be deemed to have been allowed.

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

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

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

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

31 (i) The Tax Commissioner may recover any refund or part thereof

1 which is erroneously made and any credit or part thereof which is
2 erroneously allowed by issuing a deficiency determination within one year
3 from the date of refund or credit or within the period otherwise allowed
4 for issuing a deficiency determination, whichever expires later.

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

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

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

28 (iv) When the amount of bad debt exceeds the amount of taxable sales
29 for the period during which the bad debt is written off, a refund claim
30 may be filed within the otherwise applicable statute of limitations for
31 refund claims. The statute of limitations shall be measured from the due

1 date of the return on which the bad debt could first be claimed.

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

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

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

16 (3) Beginning July 1, 2020, if a refund claim under this section
17 involves a refund of a tax imposed under the Local Option Revenue Act or
18 section 13-319, 13-2813, or 77-6403 and the amount of such tax to be
19 refunded is at least five thousand dollars, the Tax Commissioner shall
20 notify the affected city, village, county, or municipal county of such
21 claim within twenty days after receiving the claim. If the Tax
22 Commissioner allows the claim and the refund of such tax is at least five
23 thousand dollars, the Tax Commissioner shall notify the affected city,
24 village, county, or municipal county of such refund and shall give the
25 city, village, county, or municipal county the option of having such
26 refund deducted from its tax proceeds in one lump sum or in twelve equal
27 monthly installments. The city, village, county, or municipal county
28 shall make its selection and shall certify the selection to the Tax
29 Commissioner within twenty days after receiving notice of the refund. The
30 Tax Commissioner shall then deduct such refund from the applicable tax
31 proceeds in accordance with the selection when he or she deducts refunds

1 pursuant to section 13-324, 13-2814, ~~77-27,144,~~ or 77-6403 or subsection
2 (1) of section 77-27,144, whichever is applicable. This subsection shall
3 not apply to any refund that is subject to subdivision (2)(a) or (2)(b)
4 (ii) or subsection (3) or (4) of section 77-27,144.

5 Sec. 3. Section 77-27,144, Revised Statutes Supplement, 2021, is
6 amended to read:

7 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by
8 any incorporated municipality concurrently with collection of a state tax
9 in the same manner as the state tax is collected. The Tax Commissioner
10 shall remit monthly the proceeds of the tax to the incorporated
11 municipalities levying the tax, after deducting the amount of refunds
12 made and three percent of the remainder to be credited to the Municipal
13 Equalization Fund.

14 (2)(a) {2} Deductions for a refund made pursuant to section 77-4105,
15 77-4106, 77-5725, or 77-5726 and owed by a city of the first class, city
16 of the second class, or village shall be delayed for one year after the
17 refund has been made to the taxpayer. The Department of Revenue shall
18 notify the municipality liable for a refund exceeding one thousand five
19 hundred dollars of the pending refund, the amount of the refund, and the
20 month in which the deduction will be made or begin, except that if the
21 amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or
22 77-5726 exceeds twenty-five percent of the municipality's total sales and
23 use tax receipts, net of any refunds or sales tax collection fees, for
24 the municipality's prior fiscal year, the department shall deduct the
25 refund over the period of one year in equal monthly amounts beginning
26 after the one-year notification period required by this subdivision
27 subsection. ~~This subsection applies to refunds owed by cities of the~~
28 ~~first class, cities of the second class, and villages. This subsection~~
29 ~~applies to refunds beginning January 1, 2014.~~

30 (b) Deductions for a refund made pursuant to section 77-4105,
31 77-4106, 77-5725, or 77-5726 and owed by a city of the metropolitan class

1 or city of the primary class shall be made as follows:

2 (i) During calendar year 2023, such deductions shall be made in
3 accordance with subsection (1) of this section; and

4 (ii) During calendar year 2024 and each calendar year thereafter,
5 such deductions shall be made based on estimated amounts as described in
6 this subdivision. On or before March 1, 2023, and on or before March 1 of
7 each year thereafter, the Department of Revenue shall notify each city of
8 the metropolitan class and city of the primary class of the total amount
9 of such refunds that are estimated to be paid during the following
10 calendar year. Such estimated amount shall be used to establish the total
11 amount to be deducted in the following calendar year. The department
12 shall deduct such amount over the following calendar year in twelve equal
13 monthly amounts. Beginning with the notification sent in calendar year
14 2025, the notification shall include any adjustment needed for the prior
15 calendar year to account for any difference between the estimated amount
16 deducted in such prior calendar year and the actual amount of refunds
17 paid in such year.

18 (3) Deductions for a refund made pursuant to the Imagine Nebraska
19 Act shall be delayed as provided in this subsection after the refund has
20 been made to the taxpayer. The Department of Revenue shall notify each
21 municipality liable for a refund exceeding one thousand five hundred
22 dollars of the pending refund and the amount of the refund claimed under
23 the Imagine Nebraska Act. The notification shall be made by March 1 of
24 each year beginning in 2021 and shall be used to establish the refund
25 amount for the following calendar year. The notification shall include
26 any excess or underpayment from the prior calendar year. The department
27 shall deduct the refund over a period of one year in equal monthly
28 amounts beginning in January following the notification. This subsection
29 applies to total annual refunds exceeding one million dollars or twenty-
30 five percent of the municipality's total sales and use tax receipts for
31 the prior fiscal year, whichever is the lesser amount.

1 (4) Deductions for a refund made pursuant to the Urban Redevelopment
2 Act shall be delayed as provided in this subsection after the refund has
3 been made to the taxpayer. The Department of Revenue shall notify each
4 municipality liable for a refund exceeding one thousand five hundred
5 dollars of the pending refund and the amount of the refund claimed under
6 the Urban Redevelopment Act. The notification shall be made by March 1 of
7 each year beginning in 2022 and shall be used to establish the refund
8 amount for the following calendar year. The notification shall include
9 any excess or underpayment from the prior calendar year. The department
10 shall deduct the refund over a period of one year in equal monthly
11 amounts beginning in January following the notification. This subsection
12 applies to total annual refunds exceeding one million dollars or twenty-
13 five percent of the municipality's total sales and use tax receipts for
14 the prior fiscal year, whichever is the lesser amount.

15 (5) The Tax Commissioner shall keep full and accurate records of all
16 money received and distributed under the provisions of the Local Option
17 Revenue Act. When proceeds of a tax levy are received but the identity of
18 the incorporated municipality which levied the tax is unknown and is not
19 identified within six months after receipt, the amount shall be credited
20 to the Municipal Equalization Fund. The municipality may request the
21 names and addresses of the retailers which have collected the tax as
22 provided in subsection (13) of section 77-2711 and may certify an
23 individual to request and review confidential sales and use tax returns
24 and sales and use tax return information as provided in subsection (14)
25 of section 77-2711.

26 (6)(a) Every qualifying business that has filed an application to
27 receive tax incentives under the Employment and Investment Growth Act,
28 the Nebraska Advantage Act, the Imagine Nebraska Act, or the Urban
29 Redevelopment Act shall, with respect to such acts, provide annually to
30 each municipality, in aggregate data, the maximum amount the qualifying
31 business is eligible to receive in the current year in refunds of local

1 sales and use taxes of the municipality and exemptions for the previous
2 year, and the estimate of annual refunds of local sales and use taxes of
3 the municipality and exemptions such business intends to claim in each
4 future year. Such information shall be kept confidential by the
5 municipality unless publicly disclosed previously by the taxpayer or by
6 the State of Nebraska.

7 (b) For purposes of this subsection, municipality means a
8 municipality that has adopted the local option sales and use tax under
9 the Local Option Revenue Act and to which the qualifying business has
10 paid such sales and use tax.

11 (c) The qualifying business shall provide the information to the
12 municipality on or before June 30 of each year.

13 (d) Any amounts held by a municipality to make sales and use tax
14 refunds under the Employment and Investment Growth Act, the Nebraska
15 Advantage Act, the Imagine Nebraska Act, and the Urban Redevelopment Act
16 shall not count toward any budgeted restricted funds limitation as
17 provided in section 13-519 or toward any cash reserve limitation as
18 provided in section 13-504.

19 2. Renumber the remaining sections and correct internal references
20 accordingly.

21 3. Correct the operative date and repealer sections so that the
22 sections added by this amendment become operative on January 1, 2023.