Introduced by Wayne, 13.

Read first time January 14, 2020

Committee:

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2701.16 and 77-2703, Revised Statutes Supplement, 2019; to impose sales and use taxes on digital advertisements as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-2701.16, Revised Statutes Supplement, 2019, 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
(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. This subdivision also does not apply to the gross income received by a political subdivision of the state for the lease or use of electric generation, transmission, distribution, or street lighting structures or facilities owned by a political subdivision of the state.

(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) Gross receipts includes the retail sale of digital advertisements. For purposes of this subsection, digital advertisement means an advertising message delivered over the Internet that markets or promotes a particular good, service, or political candidate or message.

(12) 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. 2. Section 77-2703, Revised Statutes Supplement, 2019, is amended to read:

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

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the
retailer and shall be recoverable at law in the same manner as other
debs. The tax required to be collected by the retailer from the consumer
constitutes a debt owed by the retailer to this state.

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

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

(d) For the purpose of more efficiently securing the payment,
collection, and accounting for the sales tax and for the convenience of
the retailer in collecting the sales tax, it shall be the duty of the Tax
Commissioner to provide a schedule or schedules of the amounts to be
collected from the consumer or user to effectuate the computation and
collection of the tax imposed by the Nebraska Revenue Act of 1967. Such
schedule or schedules shall provide that the tax shall be collected from
the consumer or user uniformly on sales according to brackets based on
sales prices of the item or items. Retailers may compute the tax due on
any transaction on an item or an invoice basis. The rounding rule
provided in section 77-3,117 applies.

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

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

(g) In the rental or lease of automobiles, trucks, trailers,
semitrailers, and truck-tractors as defined in the Motor Vehicle
Registration Act, the tax shall be collected by the lessor on the rental
or lease price, except as otherwise provided within this section.

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

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

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

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

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

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer as provided in the Motor Vehicle Registration Act or by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales
price, the allowance for any trade-in, and the difference between the
two. The sales tax due shall be computed on the difference between the
total sales price and the allowance for any trade-in as disclosed by such
certified statement. Any seller who willfully understates the amount upon
which the sales tax is due shall be subject to a penalty of one thousand
dollars. A copy of such certified statement shall also be furnished to
the Tax Commissioner. Any seller who fails or refuses to furnish such
certified statement shall be guilty of a misdemeanor and shall, upon
conviction thereof, be punished by a fine of not less than twenty-five
dollars nor more than one hundred dollars. If the purchaser does not
register such motor vehicle, semitrailer, or trailer for operation on the
highways of this state within thirty days of the purchase thereof, the
tax imposed by this section shall immediately thereafter be paid by the
purchaser to the county treasurer or the Department of Motor Vehicles. If
the tax is not paid on or before the thirtieth day after its purchase,
the county treasurer or Department of Motor Vehicles shall also collect
from the purchaser interest from the thirtieth day through the date of
payment and sales tax penalties as provided in the Nebraska Revenue Act
of 1967. The county treasurer or Department of Motor Vehicles shall
report and remit the tax so collected to the Tax Commissioner by the
fifteenth day of the following month. The county treasurer, for his or
her collection fee, shall deduct and withhold, from all amounts required
to be collected under this subsection, the collection fee permitted to be
deducted by any retailer collecting the sales tax, all of which shall be
deposited in the county general fund, plus an additional amount equal to
one-half of one percent of all amounts in excess of six thousand dollars
remitted each month. Prior to January 1, 2023, fifty percent of such
additional amount shall be deposited in the county general fund and fifty
percent of such additional amount shall be deposited in the county road
fund. On and after January 1, 2023, seventy-five percent of such
additional amount shall be deposited in the county general fund and
twenty-five percent of such additional amount shall be deposited in the county road fund. In any county with a population of one hundred fifty thousand inhabitants or more, the county treasurer shall remit one dollar of his or her collection fee for each of the first five thousand motor vehicles, semitrailers, or trailers registered with such county treasurer on or after January 1, 2020, to the State Treasurer for credit to the Department of Revenue Enforcement Fund. The Department of Motor Vehicles, for its collection fee, shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee for the county treasurer or the Department of Motor Vehicles shall be forfeited if the county treasurer or department violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser
does not register such motorboat within thirty days of the purchase
thereof, the tax imposed by this section shall immediately thereafter be
paid by the purchaser to the county treasurer. If the tax is not paid on
or before the thirtieth day after its purchase, the county treasurer
shall also collect from the purchaser interest from the thirtieth day
through the date of payment and sales tax penalties as provided in the
Nebraska Revenue Act of 1967. The county treasurer shall report and remit
the tax so collected to the Tax Commissioner by the fifteenth day of the
following month. The county treasurer, for his or her collection fee,
shall deduct and withhold for the use of the county general fund, from
all amounts required to be collected under this subsection, the
collection fee permitted to be deducted by any retailer collecting the
sales tax. The collection fee shall be forfeited if the county treasurer
violates any rule or regulation pertaining to the collection of the use
tax.

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

(k)(i) The tax imposed by this section on the sale of an all-terrain
vehicle as defined in section 60-103 or a utility-type vehicle as defined
in section 60-135.01 shall be the liability of the purchaser. The tax
shall be collected by the county treasurer or by an approved licensed
dealer participating in the electronic dealer services system pursuant to
section 60-1507 at the time the purchaser makes application for the
certificate of title for the all-terrain vehicle or utility-type vehicle.
At the time of the sale of an all-terrain vehicle or a utility-type
vehicle, the seller shall (A) state on the sales invoice the dollar
amount of the tax imposed under this section and (B) furnish to the
purchaser a certified statement of the transaction, in such form as the
Tax Commissioner prescribes, setting forth as a minimum the total sales
price, the allowance for any trade-in, and the difference between the
two. The sales tax due shall be computed on the difference between the
total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not obtain a certificate of title for such all-terrain vehicle or utility-type vehicle within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of an all-terrain vehicle or a utility-type vehicle, the tax shall be collected by the lessor on the rental or lease price.

(iii) County treasurers are appointed as sales and use tax collectors for all sales of all-terrain vehicles or utility-type vehicles made outside of this state to purchasers or users of all-terrain vehicles or utility-type vehicles which are required to have a certificate of title in this state. The county treasurer shall collect the applicable
use tax from the purchaser of an all-terrain vehicle or a utility-type vehicle purchased outside of this state at the time application for a certificate of title is made. The full use tax on the purchase price shall be collected by the county treasurer if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for obtaining a certificate of title in this state.

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

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

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax
Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

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

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to
October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

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

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

Sec. 3. This act becomes operative on October 1, 2020.
Sec. 4. Original sections 77-2701.16 and 77-2703, Revised Statutes Supplement, 2019, are repealed.