

REG-1-010, The Sales and Use Tax Return

*** LB 851 (2014) increased the statute of limitations for issuing a deficiency determination to six years if the taxpayer files a false or fraudulent return with the intent to evade the sales or use tax, or omits an amount from the return that is in excess of 25% of the amount of tax. This regulation is currently undergoing review for amendment.**

010.01 A retailer must file a return for each reporting period or portion of a reporting period. The return must be filed for every tax reporting period even if there have been no sales.

010.02 The filing frequency is the reporting period assigned by the Nebraska Department of Revenue (Department). Except as provided below, annual returns are required if the retailer's yearly tax liability is less than \$900, quarterly returns are required if the yearly tax liability is \$900 or more and less than \$3,000, and monthly returns are required if the yearly tax liability is \$3,000 or more.

010.02A Sellers who are Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Streamlined Sales Tax Agreement (SSUTA).

010.02B Sellers who are registered under the SSUTA, but do not have a legal requirement to register in the state, and who are not Model 1, 2, or 3 sellers, may follow the filing frequency guidelines outlined in the SSUTA.

010.02C Retailers who have not obtained a permit or been assigned a filing frequency have a monthly filing frequency.

010.02D The Tax Commissioner has discretion to assign an annual return for seasonal retailers, even if the yearly tax liability exceeds the amounts listed in Reg-1-010.02.

010.03 Retailers must report and account for gross receipts.

010.03A The return includes both a sales tax return and a use tax return. Unless there are amounts, words, statements, numbers, zeros, or figures shown on the appropriate lines of a paper Nebraska and Local Sales and Use Tax Return, Form 10, mailing the form to the Department does not constitute the filing of either or both returns.

010.03A(1) If the retailer files a return, the statute of limitations for issuing a deficiency determination is three years after the last day of the month following the reporting period, or three years after the return was filed, whichever is later. If the retailer fails to file a return, the statute of limitations for issuing a deficiency determination is five years after the last day of the month following the reporting period.

010.03A(2) If the retailer does not enter amounts, words, statements, numbers, zeros, or figures on a paper Nebraska and Local Sales and Use Tax Return, Form 10, the statute of limitations for issuing a deficiency determination for that reporting period is extended beyond three years to five years. This extension of the statute of limitations does not apply to returns that are electronically filed.

010.03A(3) Statements by the retailer that no sales were made or no tax is due, or entries made by the Department to the account of the retailer indicating that no tax is due, do not constitute the filing of either or both returns and does not limit the statute of limitations to three years.

010.03B The return must be filed within 20 days following the end of the reporting period. The retailer is entitled to deduct and withhold a collection fee from the amount of sales tax which otherwise would be due. No fee may be deducted for reporting use tax or tax remitted pursuant to a direct payment permit.

010.03C The Tax Commissioner will accept the format for filing and payment methods allowed pursuant to the SSUTA.

010.03D The Tax Commissioner may require some or all taxpayers to file returns and remit payments electronically.

010.04 Unless otherwise provided in the SSUTA, the Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent.

010.05 Returns that are not filed electronically must be properly signed.

010.06 The return and the remittance are considered timely filed if received, delivered, or mailed, postage prepaid, on or before the 20th day of the month following the close of the reporting period. When the last day falls on a Saturday, Sunday, or an approved holiday, the return is considered timely filed if received, delivered, or mailed, postage prepaid, on the next day which is not a Saturday, Sunday, or an approved holiday.

010.06A A United States Postal Service postmark is conclusive evidence of the date of mailing for the purpose of timely filing a return.

010.06B A private postage meter date or a date stamped by a private delivery service will be considered the date of mailing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

010.06C Failure to file the return or to remit the tax due by the due date will subject the taxpayer to a penalty equal to 10% of the unpaid tax or \$25.00, whichever is greater. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

010.07 Remittance must be in the form of a electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax Commissioner, made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps cannot be sent as payment. Cash may be used when payment is made in person at an office of the Department.

010.08 If any understatement on a return is a result of fraud or an intent to evade the sales or use tax, a penalty of 25% of the amount of the understatement or \$50, whichever is greater, may be assessed.

010.09 Criminal Penalties.

010.09A Any person required to collect, account for, or pay over any sales or use taxes who willfully fails to collect, truthfully account for, or pay over these taxes is guilty of a Class IV felony.

010.09B Any person who willfully attempts in any manner to evade any sales or use taxes is guilty of a Class IV felony.

010.09C Any person who willfully assists in or advises in preparing or filing a false or fraudulent return, is guilty of a Class IV felony, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to file the return.

(Neb. Rev. Stat. §§ 77-1784, 77-2705.01, 77-2708(1), 77-2709, 77-2712.05, 77-2713, and 77-27,125, and McDonald's Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993). July 3, 2013.)