

Statutory Responsibilities For Collecting, Reporting, and Remitting Sales Taxes and Income Tax Withholding

Overview

Retailers are required to collect, report, and remit Nebraska and local sales tax.

Employers are required to withhold, report, and remit Nebraska income tax for their employees.

Sales tax and income tax withholding are “trust fund” taxes that are held by retailers, employers, contractors, and payors as agents for Nebraska. Retailers, employers, and others collecting sales tax and income tax withholding should maintain a separate bank account to hold these taxes.

Retailers and employers must also file returns that accurately report Nebraska taxes collected and withheld.

This guide is an informational overview and does not replace the Administrative Procedures Act, Nebraska Revenue Act, or any applicable regulations.

This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (DOR) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the DOR and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.



This guidance document may change with updated information or added examples. The Department recommends you do not print this document. Instead, sign up for the [subscription service](https://revenue.nebraska.gov) at revenue.nebraska.gov to get updates on your topics of interest.

Trust Fund Taxes

Trust fund taxes are taxes owned by Nebraska and held “in trust” because they are generally collected from the customer, withheld from an employee’s wages, or deducted from a payment requiring withholding. Trust fund taxes should be maintained in a bank account separate from funds owned by the business. When a separate bank account is maintained, the account should be titled: “ABC Company, Nebraska Tax Trust Account.” Retailers and employers may also owe use tax, individual income tax, and business income tax liabilities which are not trust fund taxes.

Collection of Taxes

Nebraska and Local Sales Taxes

Sales tax required to be collected from your customers is a debt that you, as a retailer, owe to Nebraska. The sales tax is held in trust by you pending payment to the DOR. You **cannot** legally use these trust funds for any other purposes. Sales taxes should be separated from other business receipts.

Income Tax Withholding

Income tax withholding is required to be deducted from your employees' paychecks. The withholding is held in trust pending payment to the DOR. You **cannot** legally use these funds for any other purposes. You should separate the withholding from other business receipts. If you pay a nonresident who is not your employee for personal services performed in Nebraska you may be required to withhold Nebraska income tax. For more information, see *Income Tax Withholding for Nonresident Individuals Performing Personal Services in Nebraska Information Guide*. Please review the information guide to determine if income tax withholding is required. All contractors making payments to another construction contractor (subcontractor) who is **not** listed on the Contractor Database maintained by the Nebraska Department of Labor on its website at dol.nebraska.gov are required to withhold and remit 5% of all payments made to the nonregistered construction subcontractor. See the additional information on the DOR's website, *Important Information for Contractors Performing Construction Services in Nebraska Effective January 1, 2010*.

Recordkeeping Requirements

Nebraska and Local Sales Taxes

You must keep records, including receipts, invoices, cash register tapes, resale or exempt sale certificates, ledgers, spreadsheets, and workpapers used in preparing tax returns. These records may be examined by the DOR to verify the amounts required to be remitted to Nebraska.

Income Tax Withholding

You must keep records, including payroll journals, Forms W-4, time records, and spreadsheets to establish the correct amount of income tax withholding due to Nebraska. These records may be examined by the DOR to determine or verify the amounts required to be remitted to Nebraska.

Reporting and Payment of Taxes

Nebraska and Local Sales Taxes

Retailers must report and remit Nebraska and all local sales taxes collected from customers using Form 10. Retailers must file a Form 10 monthly, quarterly, or annually based on their annual sales tax liability. You may be required to electronically file and pay Nebraska and local sales and use taxes. Please refer to the DOR's website for more information on Electronic Payments and E-File Mandates.

Annual Sales Tax Liability	Filing Frequency	Due Date
\$3,000 or more	Monthly	20th day of the following month
Between \$900 and \$2,999	Quarterly	20th day of the month following the end of the quarter
Less than \$900	Annually	January 20th of the following year

You must continue to file returns based on the frequency established by the DOR until you or the DOR change that frequency. Tax returns must be filed even if no tax is due.

Note. Any change in filing frequency must be first approved by the DOR. Please refer to [Form 22](#) Nebraska Change Request.

Income Tax Withholding

The Nebraska Income Tax Withholding Return, Form 941N, is filed on a quarterly or annual basis. Some employers are required to also make monthly deposits. You may be required to electronically file and remit Nebraska income tax withholding. Please refer to the DOR's website for more information on Electronic Payment and E-File Mandates.

- ❖ **Monthly deposits.** When the amount of income tax withholding for the first or second month of a quarter exceeds \$500, you must file a Nebraska Monthly Income Tax Withholding Deposit, Form 501N and remit the withholding by the 15th day of the following month. If paying electronically, do not file Form 501N.

- ❖ **Quarterly filers.** You must file the return and remit the income tax withholding on or before the last day of the month following the end of the quarter.
- ❖ **Annual filers.** You must file the return and remit the income tax withholding on or before the last day of the month following the end of the tax year.

You must continue to file returns based on the frequency established by the DOR until you or the DOR change that frequency.

Note. Any change in filing frequency must be approved by the DOR first. Please refer to [Form 22](#) Nebraska Change Request.

Deficiency Determinations

If you fail to file a return, the DOR will determine the amount due from any available records and issue a Notice of Deficiency Determination (Notice) for that amount. If you do not protest the Notice **within 60 days after receiving the Notice, the DOR will begin collections based on the Notice issued.** If the taxpayer files a return within 60 days from the postmark date of the Notice, the DOR may examine the returns and other documents and may change or withdraw the Notice. Filing a return is not a protest.

Successor Liability

If you purchase an existing business, or the assets of an existing business, you may be held liable for unpaid taxes owed by the business to the DOR.

Even if the purchase contract includes a statement that the seller's business is free and clear of all encumbrances, such a statement does not relieve the buyer from any obligations to withhold and pay over any taxes owed to the DOR and the buyer must verify that there is no tax due with the DOR. A certificate of clearance can be obtained by filing a [Tax Clearance Application, Form 36](#), with the Department.

Click [here](#) to file a Form 36; or send Form 36 to:

State of Nebraska
Department of Revenue
Compliance Division
PO Box 94609
Lincoln NE 68509-4609

A purchaser must withhold an amount from the purchase price sufficient to cover any sales and use taxes or obtain the certificate of clearance from the DOR. If the purchaser fails to obtain a tax clearance letter, he or she is liable for the sales and use taxes due, to the extent of the purchase price, valued in money. A purchaser is also liable under transferee liability for withholding and delinquent income taxes, generally up to the value of the assets received from the transferor. A tax clearance letter cannot waive income tax transferee liability in any circumstance. See Neb. Rev. Stat. §§ 77-2707 and 77-27,110.

Personal Liability

A person who willfully fails to pay taxes can be held personally liable for any unpaid taxes, penalties, and interest. Willfully fails to pay means that the person knows or has reason to know of the liability and does not cause payment to be made, regardless of the reason. Financial difficulties and choosing to pay other creditors do not excuse the willful failure to pay taxes. Those who may be held personally liable for unpaid taxes are:

- ❖ Any corporate officer or employee with the duty to pay the taxes imposed on a corporation; or
- ❖ Any partner, member, manager, or employee with the duty to pay the taxes imposed on a partnership or limited liability company (LLC).

Collection of Delinquent Taxes

Anyone who fails to report and pay any taxes due to Nebraska is subject to penalty and interest in addition to the tax. Under Nebraska law, the State automatically holds a lien on all property of the taxpayer for any

outstanding balance. This is called a statutory lien. The DOR may also record a tax lien with the Secretary of State and the county. All liens may be enforced by:

1. Garnishing wages or salaries;
2. Levying accounts receivable or bank accounts; or
3. Seizing and selling real, personal, or intangible property.

The DOR is required to publish a list of delinquent taxpayers who owe taxes in excess of \$20,000.

Revocation of a Sales Tax Permit

Your sales tax permit may be revoked if you:

- ❖ Fail to comply with any provision of the Nebraska Revenue Act, or with any rule or regulation relating to sales tax;
- ❖ Fail to provide any books, records, documents, or items required by law, rule, or regulation for inspection or audit; or
- ❖ Misrepresent, or fail to disclose, a material fact to the DOR.

The DOR will give you a minimum of 20 days' notice in writing before a revocation hearing. If you have multiple licenses or permits, there will be a hearing for each delinquent account, unless you request to combine hearings. The notice will specify the time and place of hearing and require you to prove why your sales tax permit should not be revoked. You will receive written notice from the DOR of the suspension or revocation of any of your sales tax permits. If your permit is revoked or suspended, your business must close and remain closed.

If your permits have been revoked or suspended, they may be reinstated if the DOR is satisfied that you will comply with the provisions of the Revenue Act and regulations relating to sales tax. A permit reinstatement fee of \$25 must be paid to the DOR after the first revocation. A reinstatement fee of \$50 must be paid after any later revocations. The DOR may also require a security deposit to ensure future compliance. For additional information please see the DOR's Information Guide on What to Expect During a Sales Tax Permit Suspension or Revocation Hearing.

Security Deposits

Upon reinstatement of your permit, you may be required to post a security deposit of up to three times your average liability in a reporting period to ensure your continued compliance.

If you are habitually delinquent in filing or remitting Nebraska taxes, a security deposit of up to five times the average liability in a reporting period may be required.

Criminal Penalties

Nebraska and Local Sales Taxes

Any person who engages in business as a retailer without the proper Nebraska sales tax permit (or following the revocation or suspension of a permit) may be found guilty of a Class IV misdemeanor. Each day of operation without a permit represents a separate offense and subjects the retailer to a fine of up to \$500 per day.

Any person who willfully fails to collect, report, or remit sales tax, or who in any manner evades taxes imposed under Nebraska's sales tax laws, may be found guilty of a Class IV felony. This person may receive a maximum imprisonment of up to five years, a fine of up to \$10,000, or both.

Income Tax Withholding

Any person who willfully fails to collect, report, or pay income tax withholding, or who in any manner evades taxes imposed under Nebraska's income tax withholding laws, may be found guilty of a Class IV felony. This person may receive a maximum imprisonment of up to five years, a fine of up to \$10,000, or both.

Resource List

Visit revenue.nebraska.gov for related statutes and regulations.

Regulations

- ❖ Reg-1-004 Permits
- ❖ Reg-1-004ermits

Statutes

Applicable to all Tax Programs

- ❖ Neb. Rev. Stat. § 21-129. Liability of members and managers.
- ❖ Neb. Rev. Stat. § 77-1783.01. Corporate officer or employee liability.
- ❖ Neb. Rev. Stat. § 77-27,131. Tax Commissioner; security required; when; sale of security; notice.
- ❖ Neb. Rev. Stat. § 77-3904. Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.
- ❖ Neb. Rev. Stat. § 77-3905. Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.
- ❖ Neb. Rev. Stat. § 77-3906. Distraint and sale of taxpayer's property; procedures; conditions; powers and duties; tax agreement; confidentiality rights.

Income Tax

- ❖ Neb. Rev. Stat. § 77-2772. Income tax; Tax Commissioner; records, form of returns.
- ❖ Neb. Rev. Stat. § 77-2776. Income tax; Tax Commissioner; return; examination; failure to file; notice; deficiency; notice.
- ❖ Neb. Rev. Stat. § 77-27,110. Income tax; liability of transferee.
- ❖ Neb. Rev. Stat. § 77-27,114. Income tax; failure to collect, withhold, deduct, account for, or pay; penalty.
- ❖ Neb. Rev. Stat. § 77-2753. Income tax; withholding from wages and other payments.
- ❖ Neb. Rev. Stat. § 77-2756. Income tax; employer or payor; withholding for tax.

Sales Tax

- ❖ Neb. Rev. Stat. § 77-2703. Sales and use tax; rate; collection; understatement; violation; penalty; interest.
- ❖ Neb. Rev. Stat. § 77-2705. Sales and use tax; retailer; registration; permit; form; revocation; restoration; appeal; exempt sale certificate; violations; penalty; wrongful disclosure; online registration system.
- ❖ Neb. Rev. Stat. § 77-2707. Sales and use tax; sale of business; liability for tax.
- ❖ Neb. Rev. Stat. § 77-2708. Sales and use tax; returns; date due; failure to file; penalty; deduction; amount; claim for refund; allowance; disallowance; proceedings.
- ❖ Neb. Rev. Stat. § 77-2709. Sales and use tax; return; Tax Commissioner; deficiency determination; penalty; deficiency; notice; hearing; order.
- ❖ Neb. Rev. Stat. § 77-2711. Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.
- ❖ Neb. Rev. Stat. § 77-2713. Sales and use tax; failure to collect; false return; violations; penalty; statute of limitations.