I. INTRODUCTION

The general purpose of the Nebraska sales and use tax is to impose a uniform tax on every sale entered into by a Nebraska resident, whether it takes place within or outside the state. To achieve this goal, the statute utilizes three distinct types of taxes: the retail sales tax, the retail use tax, and the consumer use tax. These taxes are distinguished primarily by procedure and are designed in such manner that there is an imposition of a single tax on each sale. It is the purpose of this article to outline for the reader the procedural aspects of each tax.¹

II. RETAIL SALES TAX

The procedure to be followed by the resident retailer² in the collection of the retail sales tax, can be briefly summarized: the retailer must obtain a license;³ he must maintain certain records;⁴ he must meet certain accounting standards;⁵ and he must collect the tax and periodically report and remit collections to the tax commissioner.⁶

A. LICENSING

Every resident retailer engaged in business in Nebraska must apply for a sales tax permit.⁷ A separate permit must be secured

⁵ See generally Neb. Rev. Stat. § 77-2705(3) (Supp. 1967): "It shall be unlawful
for each place of business owned by an individual retailer. To obtain a permit, a retailer must send an application directly to the tax commissioner, including with it the statutory fee of one dollar. In most instances the permit is granted without delay, where there has been a proper application. If a sales tax permit has previously been suspended or revoked, however, the application fee is increased to $25, with a $50 fee where there has been a second or subsequent suspension or revocation.

The tax commissioner has discretionary power as to the granting of permits, where there has been a prior suspension or revocation of a permit. Moreover, the tax commissioner has the authority to require any applicant to post security for the license, if he believes it necessary to assure compliance with the sales tax.

B. RECORDS AND ACCOUNTING

All records, receipts, and other pertinent papers must be retained by the resident retailer, in the form designated by the tax commissioner. Under the present Regulations, this requires the use of the normal books of account ordinarily maintained by the average prudent businessman engaged in a similar activity, together with all documents supporting entries in the books of account. Schedules or working papers used in preparation of the tax returns and all resale certificates and exemption certificates shall be retained.

A retailer may adopt any recognized method of accounting for any person to engage in or transact business as a seller within this state . . . unless a permit or permits shall have been issued to him . . . .”

See also Neb. Sales & Use Tax Reg. TC 1-4 (1968).
10. For the requirements necessary to apply properly for a sales tax permit, see Neb. Rev. Stat. § 77-2705(4) (Supp. 1967). It should also be noted that all applications must be made on forms supplied by the tax commissioner.
12. Neb. Rev. Stat. § 77-2705(6)(b) (Supp. 1967). See Neb. Sales & Use Tax Reg. TC 1-4 (1968). “A new permit will not be issued to the same person [who has had his permit suspended or revoked] until the Tax Commissioner is satisfied that such person will comply with the sales tax statutes, and the rules and regulations issued thereunder.”
that correctly reflects the operation of his business;\textsuperscript{16} however, once a method has been adopted, the retailer may not change the method without the permission of the tax commissioner.\textsuperscript{17}

To ease the burden on the retailer in the collection of the sales tax, the Regulations allow regular receipts to be commingled with the collected sales tax. The sales tax is then separated from the receipts by means of the following formula:\textsuperscript{18}

Define:
\begin{align*}
TR & = \text{total receipts} \\
RE & = \text{receipts exempt} \\
RT & = \text{receipts from sales of taxable personal property plus sales tax collected} \\
r & = \text{rate of sales tax} \\
TG & = \text{taxable gross receipts} \\
TL & = \text{tax liability}
\end{align*}

Write:
\begin{align*}
(1) \quad TR - RE & = RT \\
(2) \quad RT + (1 + r) & = TG \\
(3) \quad TG \times r & = TL
\end{align*}

If the transaction consists of sales subject to the sales tax and sales not subject to the tax, and it is neither practical nor convenient to have a separate accounting, the Act authorizes the tax commissioner to adopt necessary rules and regulations for determining the amount of the sales subject to the sales tax.\textsuperscript{19}

C. Reporting

The sales tax must be reported each month to the tax commissioner. The statute specifically requires that the tax return

\textsuperscript{16} The statute states:
A taxpayer who keeps his regular books and records on a cash basis or on an accrual basis or on any generally recognized accounting basis which correctly reflects the operation of the business, \textit{may} file the sales and use tax returns . . . on the same accounting basis that is used for the regular books and records; \textit{Provided}, that on credit, conditional and installment sales the retailer may elect to pay the tax upon the collections made during each month if this accounting method correctly reflects the operation of the business and is the same accounting method used for the regular books and records.

\textsuperscript{17} \textsc{Neb. Rev. Stat.} \S 77-2708(1) (b) (iv) (Supp. 1967) (emphasis added). \textsc{Cf. Neb. Sales \& Use Tax Reg. TC 1-9 (1968}. The Regulation has left the proviso meaningless, in that the limitations of the proviso are applied to the statute. Thus, all retailers must use the accounting method used for their regular books.

\textsuperscript{18} \textsc{Neb. Rev. Stat.} \S 77-2708(1) (b) (iv) (Supp. 1967); \textsc{Neb. Sales \& Use Tax Reg. TC 1-9 (1968)}. \textit{See note 16 supra.}

\textsuperscript{19} \textsc{Neb. Rev. Stat.} \S 77-2703(1) (k) (Supp. 1967). \textit{For an instance where the tax commissioner has exercised this discretion, see \textsc{Neb. Sales \& Use Tax Reg. TC 1-53 (funeral directors) (1968)}.}
and the remittance either be delivered to the commissioner's office, or be postmarked, on or before the last day of the month next succeeding the month in which the liability arose.\(^{20}\) If the retailer files the report and remits the tax on or before the deadline, he is allowed as a collection fee three per cent of the tax due;\(^{21}\) however, if he fails to file and remit by the due date, he forfeits either the collection fee or $25, whichever is greater.\(^{22}\)

An exception to the monthly reporting may be required by the tax commissioner, if he deems it necessary to assure payment or to facilitate the collection of the tax.\(^{23}\) Presumably, this allows the commissioner to both shorten and extend the monthly period. Another exception can be made by the tax commissioner where there is a small tax liability involved. In such a case, the commissioner may extend the period to quarterly or semiannual periods.\(^{24}\)

A retailer must file a return for each place of business, unless prior permission has been obtained from the tax commissioner to combine returns.\(^{25}\)

D. Exemptions

While the Act specifically exempts some sales from the sales tax,\(^{26}\) there is a statutory presumption that all sales are taxable.\(^{27}\) A retailer would be well-advised, therefore, to be able to sub-

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\(^{20}\) Neb. Rev. Stat. § 77-2708(1)(a) (Supp. 1967); Neb. Sales & Use Tax Reg. TC 1-10 (1968). Every retailer must file a return form, even though he has not made any taxable sales during the year.


\(^{24}\) Id. It appears that a quarterly reporting is being permitted for those retailers with less than a $15 average monthly liability. There also appear to be other administrative criteria regarding an individual retailer's reporting; however, such rules and regulations have apparently been adopted without publication.

\(^{25}\) Neb. Sales & Use Tax Reg. TC 1-77 (1968). It should be noted that a combined form does not mean a consolidated form. Thus, a retailer having several business locations must still keep the sales of each location separate, since the Regulation merely allows them to be placed under one cover sheet. See also Neb. Sales & Use Tax Reg. TC 1-32 (1968), which allows a lessee or lessor to collect and remit the sales tax.


stantiate the portion of his sales that are claimed to be exempt.\textsuperscript{28} The most effective method of substantiating exempt sales is to take an exemption certificate at the time of sale.\textsuperscript{29} The Act and Regulations provide for several different types of exemption certificates.

1. \textit{Exempt Sale Certificate}

An exempt sale certificate, if taken in good faith by the retailer, raises a statutory presumption that a sale is exempt from taxation.\textsuperscript{30} This type of certificate can be taken whenever a sale is exempt under the exemptions section of the Act. After the certificate is taken by the retailer, it must be kept in the same manner as records of taxable sales and cross-referenced to the retailer's business files.\textsuperscript{31} Failure to cross-reference such certificates, because of the resulting difficulty in substantiating that the sales were exempt, may destroy the presumption of nontaxability, unless the retailer is subsequently able to substantiate such exempt status.\textsuperscript{32}

2. \textit{Resale Certificate}

Under the Act a sale for resale is specifically exempt from the sales tax.\textsuperscript{33} However, an exempt sale certificate cannot be used to substantiate the exempt status of a sale for resale. The tax commissioner has promulgated the resale certificate, which has the same effect as the exempt sale certificate.\textsuperscript{34} A sample form is specifically set out in the Regulations.

\textsuperscript{28} \textit{Neb. Rev. Stat.} § 77-2703(1)(f) (Supp. 1967): “The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale . . . .”
\textsuperscript{31} \textit{Neb. Sales & Use Tax Reg. TC 1-14} (1968).
\textsuperscript{32} \textit{Id.}:

If in any case, a certificate, or satisfactory evidence, cannot be produced on demand of the Tax Commissioner or any of his authorized agents in support of a claim that a sale is exempt, the tax shall be payable by the retailer (seller) making the sale.
\textsuperscript{33} See \textit{Neb. Rev. Stat.} §§ 77-2702(10)(a), -2703(1) (Supp. 1967); \textit{Neb. Sales & Use Tax Reg. TC 1-6} (1968). Section 2703 imposes a tax on all sales of tangible personal property at retail. By definition a sale for resale is not a sale at retail and thus is not subject to a sales tax.
3. Exempt Organization Certificate

The Act provides that certain organizations are exempt from paying a sales tax. If the sale to the exempt organization is less than $100, the retailer must collect and remit a sales tax. The exempt organization must then file a refund claim, whereupon the amount collected and remitted by the retailer will be refunded to the exempt organization. However, for exempt sales in excess of $100, the procedure to be followed is entirely different. An exempt organization must initially register as exempt and receive an assigned exemption number. The Regulations provide that the retailer take an exempt sale certificate at the time of sale and include on it the organization's exemption number. In all other respects, the procedure is identical to that for the exempt sale certificate.

4. Common Carrier Exemption Certificate

Sales of tangible personal property to multistate common carriers are exempt from the sales tax, whether the purchase is made within or outside the state, so long as the property is used or stored for use in interstate commerce. However, if any of the exempt property is subsequently used in the state, a use tax is then imposed on the property.

To effectively substantiate an exempt sale of tangible personal property to a multistate common carrier, there is provided the common carrier's exemption certificate. To obtain such a certificate, a common carrier must make application to the tax commissioner's office, so that the commissioner can ascertain whether or not the common carrier maintains satisfactory records to show where purchased tangible personal property is being used. If the application is viewed favorably, the certificate is issued to the common carrier. The procedure to be used by the retailer in connection with the certificate is similar to that for the exempt sale certificate, when used with a statutory exemption.

35. NEB. REV. STAT. § 77-2704(1) (i) (Supp. 1967).
36. Some exempt organizations are exempt even for purchases of less than $100. See NEB. SALES & USE TAX REG. TC 1-72 (1968). But cf. NEB. REV. STAT. § 77-2704(1) (m) (Supp. 1967).
37. NEB. SALES & USE TAX REG. TC 1-14 (1968).
38. NEB. REV. STAT. § 77-2706(7) (a) (Supp. 1967).
Because of the apparent problem in defining a multistate common carrier, an additional procedure has been adopted in this area by way of an administrative directive. Under this procedure a common carrier must apply for exempt status and receive a numbered "Nebraska Common Carrier's Exemption Certificate." At the time of sale, the retailer can substantiate the exempt sale by taking an exempt sale certificate and including thereon the "Nebraska Common Carrier's Exemption Certificate" number.

5. **Blanket Certificate**

If a retailer repeatedly makes the same type of exempt sale to the same buyer, the Regulations provide that, instead of taking a separate exempt sale certificate for each sale, one "blanket certificate" may be taken to cover all future sales. However, in taking the certificate, the retailer acts at his own risk, since the protection afforded by the conclusive presumption of the exempt sales certificate is lost, and the possibility is left open that the tax commissioner may at a later date determine such sales to be not exempt.

E. **Miscellaneous**

It should be noted in passing that the retail sales tax procedures relating to motor vehicles, contractors, and repairmen differ to some extent from the procedure outlined above.

The taxing procedure for motor vehicles represents a significant departure from the general concept of the sales tax. The retailer does not collect a sales tax, but rather the purchaser pays the sales tax to the county treasurer at the time of registration. Though technically called a sales tax, it more closely resembles a use tax, whereby the county treasurer, who is designated as the use tax collector on behalf of the tax commissioner, collects from the consumer.

The procedures applicable to contractors and repairmen appear
to be somewhat unique under Nebraska law. Under the Act and Regulations, contractors and repairmen may be either consumers or retailers, their status being determined by the contractual relationship of each job. Thus, a contractor or repairman is able to determine by contract whether or not his purchases are subject to the sales tax. The practical effect is that suppliers seldom know whether their contractor-customer is a retailer or a consumer; the contractor is presented with accounting difficulties, and these are compounded if he purchases in bulk for more than one job. Moreover, exempt organizations, in particular certain branches of the federal government, are able to transfer their exempt status to the contractor to extend the effect of the sales tax exemption.

If a retailer purchases the entire business of another retailer, he becomes liable for the amount of the sales tax due from such other retailer. However, the Act does provide a statutory means for avoiding such liability.

III. RETAIL USE TAX

The sales tax Regulations provide a method whereby a non-resident retailer must collect a "retail use tax" at the time of sale. The procedures under the Regulations for collection and remittance of the tax are basically the same as those pertaining to resident retailers, except that there are some variations with respect to licensing and reporting.

A. LICENSING

The licensing requirement for a nonresident retailer may be mandatory or permissive, depending upon the sufficiency of contacts such retailer has with Nebraska. In the case of a non-resident retailer, no application fee is required and only one permit.

49. The only other state believed to have similar provisions is Texas. See Tex. Tax-Gen. art. 20.01(T) (Supp. 1968).
51. For a guideline to the procedures to be followed by contractors or repairmen in obtaining a refund of sales tax paid for material of an exempt organization, see Neb. Rev. Stat. § 77-2704(1) (i) (Supp. 1967).
53. Neb. Sales & Use Tax Reg. TC 1-3 (1968): [A]ny retailer maintaining an office or place of business in the State of Nebraska, or making sales through agents or salesmen in this state of property subject to the use tax, must collect and remit the use tax on such sales in like manner as Nebraska retailers collect and remit the sales tax. See also Neb. Sales & Use Tax Reg. TC 1-64 (1968).
is required, even though he conducts business in several locations.\textsuperscript{54}

B. Reporting

In reporting the use tax to the tax commissioner, the nonresident retailer need only list his sales to Nebraska customers on the return form, and not his entire sales during the reporting period.\textsuperscript{55}

C. Reciprocal Agreements

Mention should also be made of the existence of reciprocal use tax collection agreements,\textsuperscript{56} which provide that all retailers located within a certain proximity to state borders are automatically licensed with the neighboring state, if their business is such that sales are made in the neighboring state. The retailer is required to file use tax returns in the foreign state and sales tax returns in his own state. Because the retailer is subjected to a single audit, audits by foreign states, which at times in the past were arbitrary and irregular, are for the most part eliminated. Moreover, competitive disadvantages for retailers who make good faith attempts to comply with state laws are also eliminated, thereby precluding any possible burdens on interstate commerce. Such agreements allow a better utilization of audit ability and more efficient collection of the use tax.\textsuperscript{57}

IV. THE CONSUMER USE TAX

The Nebraska Act imposes a tax on property purchased in another state and subsequently brought into Nebraska for use. Thus, the tax is imposed where, for some reason other than an exemption, neither the resident nor nonresident retail sales tax has been imposed.\textsuperscript{58} The consumer use tax, therefore, is complementary to the retail sales and retail use tax.

The procedure to be followed under the use tax is relatively simple. Each consumer is responsible for reporting and remitting the tax to the tax commissioner.\textsuperscript{59} Upon acquiring previously un-

\textsuperscript{54} Nebr. Sales & Use Tax Reg. TC 1-4 (1968).
\textsuperscript{55} Nebr. Sales & Use Tax Reg. TC 1-3 (1968).
\textsuperscript{56} A list of states with which Nebraska has entered into agreements, while not published, can be found in the tax commissioner's office.
\textsuperscript{57} This type of agreement should not be confused with the allowance of a tax credit on foreign sales tax paid. See Nebr. Sales & Use Tax Reg. TC 1-71 (1968).
\textsuperscript{59} Nebr. Rev. Stat. § 77-2703(2) (a) (Supp. 1967); Nebr. Sales & Use
taxed personal property, a consumer must obtain a use tax return from the commissioner's office and designate thereon the item to which the tax relates, the date of purchase, and the required tax.

V. CREDITS, REFUNDS, DEFICIENCIES, APPEALS AND RELATED MATTERS

Where there has been an overpayment or a deficiency, the Act and Regulations set out clear procedures to be followed.

A. REFUNDS AND CREDITS

The Act provides that if the tax commissioner determines that a payment for the sales or use tax, or penalties or interest arising thereunder, has been erroneously or illegally computed or collected, he must set forth such facts in his records. After such a determination, the Act requires that any excess first be applied to any sales, use, or income taxes currently due and payable. If there still remains an excess, the tax commissioner as a general rule will notify the taxpayer; however, the Act does not require such notification. If the taxpayer wishes to get a refund of the excess, he must file a written refund claim with the tax commissioner within three years from the last day of the month following the close of the period for which the overpayment was made, or within six months after any determination becomes final under the provisions of section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later. The statute requires the tax commissioner to act upon the claim within 90 days, or the claim is deemed to have been allowed. After a determination has been made, the commissioner has 30 days to notify the taxpayer of his decision. Thus, within a maximum of 120 days any refund controversy must reach a final administrative determination. The taxpayer then has 90 days to appeal this determination, after which it becomes final.

TAX REG. TC 1-3 (1968). As with the sales tax, there is a statutory presumption that the property is taxable when brought in and used in Nebraska. See NEB. REV. STAT. § 77-2703 (2) (f) (Supp. 1967).
60. NEB. REV. STAT. § 77-2708 (2) (a) (Supp. 1967).
61. Id.
62. NEB. REV. STAT. § 77-2708 (2) (b) (Supp. 1967).
63. NEB. REV. STAT. § 77-2708 (2) (d) (Supp. 1967).
64. NEB. REV. STAT. § 77-2708 (2) (e) (Supp. 1967).
65. NEB. REV. STAT. § 77-2708 (2) (f) (Supp. 1967).
there has been an erroneous refund, the tax commissioner must file suit within one year of the date of refund, or the claim is deemed to have been waived.\textsuperscript{66} This action must be instituted in a court of the county of which the taxpayer is a resident.\textsuperscript{67}

\textbf{B. DEFICIENCY DETERMINATIONS}

A deficiency determination may be made by the tax commissioner, based upon either a failure to file a return or upon a review of a filed return. Any information which the commissioner has or which may come into his possession may be used by him in making the determination.\textsuperscript{68}

Notice of a deficiency determination must be personally served or served by registered or certified mail within three years after the last day of the calendar month following the period covered by the deficiency, or within three years after the return is filed, whichever period expires later.\textsuperscript{69} If a business is discontinued within that time, a deficiency determination may be filed at any time, regardless of whether the tax is due and payable.\textsuperscript{70}

Deficiency determinations become final within 30 days from service on the taxpayer, unless a petition for redetermination is filed within the 30-day period.\textsuperscript{71} Upon the filing of a redetermination petition, the tax commissioner need allow a hearing only if a request therefor is made in the petition; if a hearing is so requested, a 10-day notice of the time and place of hearing must be given.\textsuperscript{72}

It should be noted, however, that a redetermination petition is a double-edged sword, for the tax commissioner is not bound by his original deficiency determination and may increase the amount

\textsuperscript{66} NEB. REV. STAT. § 77-2708(2) (i) (Supp. 1967).
\textsuperscript{67} Id.
\textsuperscript{68} NEB. REV. STAT. § 77-2709(2) (Supp. 1967).
\textsuperscript{69} NEB. REV. STAT. § 77-2709(5) (c) (Supp. 1967). See also NEB. REV. STAT. § 77-27,135 (Supp. 1967) which requires that: “Whenever any notice required to be given by the Tax Commissioner under provisions of sections 77-2701 to 77-27,135 may be given by mail, it shall be given by either registered or certified mail, return receipt requested, and not otherwise.” If there has been a failure to file a return, the three years for notification is extended to five years. NEB. REV. STAT. § 77-2709(5) (c) (Supp. 1967). For a definitive study in this area, see Veach, \textit{Nebraska Income Tax: Auditing, Assessment and Appellate Procedure}, 2 CREIGHTON L. REV. 97, 99 (1968).
\textsuperscript{70} NEB. REV. STAT. § 77-2709(6) (Supp. 1967). It is also possible to utilize a jeopardy determination in this situation. See text at notes 80-84 infra.
\textsuperscript{71} NEB. REV. STAT. § 77-2709(7) (Supp. 1967).
\textsuperscript{72} NEB. REV. STAT. § 77-2709(8) (Supp. 1967).
of the deficiency. A 30-day continuance must be allowed for the taxpayer to gather information in order to refute such an increase.\textsuperscript{73} The order of the tax commissioner upon a petition for redetermination becomes final 30 days after service upon the petitioner.\textsuperscript{74} The tax then becomes due and payable, apparently within 20 days after an order becomes final, and if not paid within the 20 days, a 10 per cent penalty attaches to the principal.\textsuperscript{75}

The statute is not entirely clear as to whether an appeal to the district court or the State Board of Equalization and Assessment is allowed from an original deficiency determination.\textsuperscript{76} In all likelihood, however, such an appeal is not possible, because all administrative remedies at the level of the tax commissioner would not have been exhausted.\textsuperscript{77} Thus, a petition for redetermination would appear to be necessary to preserve the right of the taxpayer to appeal to either the board of equalization or to the district court.

All deficiencies bear interest at the rate of one-half of one per cent per month from the last day of the month following the period for which the amount should have been returned.\textsuperscript{78} If the deficiency is based on the failure to file a return, there is a penalty of 10 per cent of the amount due or $25, whichever is greater.\textsuperscript{79}

C. JEOPARDY DETERMINATIONS

If the tax commissioner finds or concludes that a taxpayer is about to avoid paying the prescribed tax for one of the reasons specifically set out in the Act, the tax commissioner may make a jeopardy determination.\textsuperscript{80} In such a determination, the tax com-

\textsuperscript{73} Neb. Rev. Stat. § 77-2709(9) (Supp. 1967).
\textsuperscript{74} Neb. Rev. Stat. § 77-2709(10) (Supp. 1967).
\textsuperscript{75} Neb. Rev. Stat. § 77-2709(11) (Supp. 1967). There is apparently a reference error in this statute. As cited, this statute only applied to jeopardy determinations, however, the practitioner can be assured that this reference will be either construed or changed to apply to deficiency determinations.
\textsuperscript{78} Neb. Rev. Stat. § 77-2709(3) (Supp. 1967).
\textsuperscript{80} Neb. Rev. Stat. § 77-2710 (Supp. 1967); Neb. SALES & USE TAX REG. TC 1-76 (1968). The criteria or conditions are any one of the following: (1) Where the taxpayer is about to depart from the state; (2) where the taxpayer is about to remove his property from the state; (3) where the taxpayer is about to conceal himself or his property within the state; (4) where the taxpayer is about to do any other act tending to delay, prejudice, or render wholly or partially ineffectual any proceedings to
missioner immediately terminates the tax period and declares the tax to be due and payable.\textsuperscript{81} After a jeopardy determination has been made, the taxpayer may file a petition for a redetermination similar to that filed after a deficiency determination, except that 10 days is allowed for the filing rather than 30.\textsuperscript{82} Another variation from the deficiency procedure is that the tax commissioner can require the taxpayer to deposit security along with his redetermination petition.\textsuperscript{83} In all other respects, the procedure for filing a petition for redetermination following a jeopardy determination is the same as the procedure for the petition filed after a deficiency determination.

The Act also provides for a penalty to be assessed when the taxpayer has violated the jeopardy determination. The amount of the penalty is either 25 per cent of the amount due or $50, whichever is greater.\textsuperscript{84}

D. Revocation and Suspension

Licensed retailers, under the sales tax, in addition to being subject to deficiency and jeopardy determinations, can have their permits revoked or suspended.\textsuperscript{85} However, the tax commissioner must give a 20-day written notice setting forth a time and place for a hearing, at which the permit holder may be required to show cause why his permit should not be revoked or suspended.\textsuperscript{86} The revocation or suspension order of the tax commissioner is appealable in the same manner as a final deficiency determination.\textsuperscript{87}

A revocation or suspension of a permit is somewhat serious for a retailer who desires to continue in business, for it is unlawful to engage in or transact business as a seller within the State of Ne-
braska without a sales tax permit.\textsuperscript{88} Violation subjects the retailer to a misdemeanor charge with a maximum fine of $500 for each violation, and each day of operation without a sales tax permit is considered a separate offense.\textsuperscript{89}

## E. Penalties

The tax commissioner, in his discretion, may waive any penalty assessed; however, he may not waive minimum interest on the tax, which at present is one-half of one per cent per month.\textsuperscript{90}

## F. Appeals

Appeal from a final determination of the tax commissioner may be taken either directly to the district court or to the State Board of Equalization and Assessment and then to the district court.\textsuperscript{91} In either event, the notice of appeal must be filed within 30 days after the date of mailing of the tax commissioner's final determination.\textsuperscript{92}

## G. Collections

When the appellate procedures have been exhausted and collection is imminent, it is safe to conclude that the tax commissioner has adequate collection authority. The tax commissioner has the following arsenal: (1) garnishment;\textsuperscript{93} (2) real property liens;\textsuperscript{94} (3) direct court action to collect;\textsuperscript{95} (4) distraint and sale of personal property;\textsuperscript{96} and (5) for taxpayers no longer in the state but subject to a jeopardy determination, the tax commissioner may employ collection agencies or attorneys to attempt collection.\textsuperscript{97}

## VI. Conclusion

In conclusion, it might be noted that the basic procedural aspects of the sales and use tax are sound. Minor statutory changes

\textsuperscript{88} See note 7 supra.
\textsuperscript{89} Neb. Rev. Stat. § 77-2713(3) (Supp. 1967).
\textsuperscript{90} Neb. Rev. Stat. § 77-2711(8) (Supp. 1967). It should be noted that this statute applies to income taxes as well as sales and use taxes.
\textsuperscript{94} Neb. Rev. Stat. § 77-2712(2) (Supp. 1967).
\textsuperscript{95} Neb. Rev. Stat. § 77-2712(3) (Supp. 1967). This includes not only action in Nebraska courts, but action in courts of any state granting reciprocity or comity. See Neb. Rev. Stat. § 77-1774 (Supp. 1967).
are perhaps necessary to clarify inconsistencies, and the procedure could possibly be simplified in certain areas. Administratively, the procedure can and probably will be simplified for the tax practitioner by the adoption of rules and regulations and the adoption of a formal procedure for distribution of administrative decisions.