

AMENDMENTS TO LB 914

Introduced by Janssen, 15.

1 1. Insert the following new sections:

2 Sec. 7. Section 77-2701.16, Revised Statutes Supplement,
3 2007, is amended to read:

4 77-2701.16 ~~(1)~~ Gross receipts shall mean the total amount
5 of the sale or lease or rental price, as the case may be, of
6 the retail sales of retailers valued in money whether received in
7 money or otherwise, without any deduction on account of any of the
8 following:

9 ~~(a)~~ The cost of property sold. In accordance with rules
10 and regulations adopted and promulgated by the Tax Commissioner, a
11 deduction may be taken if the retailer has purchased property for
12 some purpose other than resale, has reimbursed his or her vendor
13 for tax which the vendor is required to pay to the state or has
14 paid the use tax with respect to the property, and has resold
15 the property prior to making any use of the property other than
16 retention, demonstration, or display while holding it for sale in
17 the regular course of business. If such a deduction is taken by the
18 retailer, no refund or credit will be allowed to his or her vendor
19 with respect to the sale of the property,

20 ~~(b)~~ The cost of the materials used, labor or service
21 costs, interest paid, losses, or any other expense,

22 ~~(c)~~ The cost of transportation of the property,

23 ~~(d)~~ The amount of any excise or property tax levied

1 against the property except as otherwise provided in the Nebraska
2 Revenue Act of 1967; or

3 (e) The amount charged for warranties, guarantees, or
4 maintenance agreements.

5 (2) Gross receipts of every person engaged as a public
6 utility specified in this subsection or as a community antenna
7 television service operator or any person involved in connecting
8 and installing services defined in subdivision (2)(a), (b), or (d)
9 of this section shall mean:

10 (a) In the furnishing of telephone communication service,
11 other than mobile telecommunications service as described in
12 section 77-2706.02, the gross income received from furnishing local
13 exchange telephone service and intrastate message toll telephone
14 service. In the furnishing of mobile telecommunications service
15 as described in section 77-2706.02, the gross income received
16 from furnishing mobile telecommunications service that originates
17 and terminates in the same state to a customer with a place
18 of primary use in Nebraska. Gross receipts shall not mean (i)
19 the gross income, including division of revenue, settlements, or
20 carrier access charges received on or after January 1, 1984, from
21 the sale of a telephone communication service to a communication
22 service provider for purposes of furnishing telephone communication
23 service or (ii) the gross income attributable to services rendered
24 using a prepaid telephone calling arrangement. For purposes of
25 this subdivision, a prepaid telephone calling arrangement shall
26 mean the right to exclusively purchase telecommunications service
27 that is paid for in advance that enables the origination of calls

1 using an access number or authorization code, whether manually or
2 electronically dialed,

3 (b) In the furnishing of telegraph service, the gross
4 income received from the furnishing of intrastate telegraph
5 services,

6 (c) In the furnishing of gas, electricity, sewer, and
7 water service except water used for irrigation of agricultural
8 lands and manufacturing purposes, the gross income received from
9 the furnishing of such services upon billings or statements
10 rendered to consumers for such utility services, and

11 (d) In the furnishing of community antenna television
12 service, the gross income received from the furnishing of such
13 community antenna television service as regulated under sections
14 18-2201 to 18-2205 or 23-383 to 23-388.

15 Gross receipts shall also mean gross income received from
16 the provision, installation, construction, servicing, or removal of
17 property used in conjunction with the furnishing, installing, or
18 connecting of any public utility services specified in subdivision
19 (2)(a) or (b) of this section or community antenna television
20 service specified in subdivision (2)(d) of this section. Gross
21 receipts shall not mean gross income received from telephone
22 directory advertising.

23 (3) Gross receipts of every person engaged in selling,
24 leasing, or otherwise providing intellectual or entertainment
25 property shall mean:

26 (a) In the furnishing of computer software, the gross
27 income received, including the charges for coding, punching, or

1 otherwise producing computer software and the charges for the
2 tapes, disks, punched cards, or other properties furnished by the
3 seller; and

4 (b) In the furnishing of videotapes, movie film,
5 satellite programming, satellite programming service, and satellite
6 television signal descrambling or decoding devices, the gross
7 income received from the license, franchise, or other method
8 establishing the charge except the gross income received from
9 videotape and film rentals, satellite programming, and satellite
10 programming service when the sales tax or the admission tax is
11 charged under the Nebraska Revenue Act of 1967 and except as
12 provided in section 77-2704.39.

13 (4) Gross receipts for providing a service shall mean:

14 (a) The gross income received for building cleaning and
15 maintenance, pest control, and security;

16 (b) The gross income received for motor vehicle washing,
17 waxing, towing, and painting;

18 (c) The gross income received for computer software
19 training;

20 (d) The gross income received for installing and applying
21 tangible personal property if the sale of the property is subject
22 to tax;

23 (e) The gross income received for labor by a contractor
24 except as provided in section 77-2704.55;

25 (f) The gross income received for services of
26 recreational vehicle parks;

27 (g) The gross income received for labor for repair or

1 maintenance services performed with regard to tangible personal
2 property the sale of which would be subject to sales and use
3 taxes, excluding motor vehicles, except as otherwise provided in
4 subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

5 (h) The gross income received for animal specialty
6 services except (i) veterinary services and (ii) specialty services
7 performed on livestock as defined in section 54-183; and

8 (i) The gross income received for detective services.

9 (5) Gross receipts shall not include any of the
10 following:

11 (a) Cash discounts allowed and taken on sales;

12 (b) The amount of any rebate granted by a motor vehicle
13 or motorboat manufacturer or dealer at the time of sale of the
14 motor vehicle or motorboat, which rebate functions as a discount
15 from the sales price of the motor vehicle or motorboat;

16 (c) Sales price of property or services returned or
17 rejected by customers when the full sales price is refunded either
18 in cash or credit;

19 (d) The amount charged for finance charges, carrying
20 charges, service charges, or interest from credit extended on sales
21 of property or services under contracts providing for deferred
22 payments of the purchase price if such charges are not used as a
23 means of avoiding imposition of the tax upon the actual sales price
24 of the property or services;

25 (e) The value of property taken by a seller in trade as
26 all or a part of the consideration for a sale of property of any
27 kind or nature;

1 ~~(f)~~ The value of a motor vehicle or motorboat taken by
2 any person in trade as all or a part of the consideration for a
3 sale of another motor vehicle or motorboat;

4 ~~(g)~~ Receipts from conditional sale contracts, installment
5 sale contracts, rentals, and leases executed in writing prior to
6 June 1, 1967, and with delivery of the property prior to June
7 1, 1967, if such conditional sale contracts, installment sale
8 contracts, rentals, or leases are for a fixed price and are not
9 subject to negotiation or alteration; or

10 ~~(h)~~ Except as provided in subsection ~~(2)~~ of this section,
11 until October 1, 2002, the amount charged for labor or services
12 rendered in installing or applying the property sold if such amount
13 is separately stated and such separate statement is not used as a
14 means of avoiding imposition of the tax upon the actual sales price
15 of the property.

16 ~~(6)~~ Subsections ~~(1)~~ through ~~(6)~~ of this section terminate
17 on January 1, 2004.

18 ~~(7)~~ (1) Gross receipts means the total amount of the sale
19 or lease or rental price, as the case may be, of the retail sales
20 of retailers.

21 ~~(8)~~ (2) Gross receipts of every person engaged as a
22 public utility specified in this subsection or as a community
23 antenna television service operator or any person involved in
24 connecting and installing services defined in subdivision ~~(8)(a)~~,
25 (2)(a), (b), or (d) of this section means:

26 (a)(i) In the furnishing of telephone communication
27 service, other than mobile telecommunications service as described

1 in section 77-2703.04, the gross income received from furnishing
2 local exchange telephone service and intrastate message toll
3 telephone service; and

4 (ii) In the furnishing of mobile telecommunications
5 service as described in section 77-2703.04, the gross income
6 received from furnishing mobile telecommunications service that
7 originates and terminates in the same state to a customer with a
8 place of primary use in Nebraska;

9 (b) In the furnishing of telegraph service, the gross
10 income received from the furnishing of intrastate telegraph
11 services;

12 (c) In the furnishing of gas, electricity, sewer, and
13 water service, the gross income received from the furnishing of
14 such services upon billings or statements rendered to consumers for
15 such utility services;

16 (d) In the furnishing of community antenna television
17 service, the gross income received from the furnishing of such
18 community antenna television service as regulated under sections
19 18-2201 to 18-2205 or 23-383 to 23-388; and

20 (e) The gross income received from the provision,
21 installation, construction, servicing, or removal of property used
22 in conjunction with the furnishing, installing, or connecting of
23 any public utility services specified in subdivision ~~(8)-(a)~~ (2)(a)
24 or (b) of this section or community antenna television service
25 specified in subdivision ~~(8)-(d)~~ (2)(d) of this section, except when
26 acting as a subcontractor for a public utility, this subdivision
27 does not apply to the gross income received by a contractor

1 electing to be treated as a consumer of building materials under
2 subdivision (2) or (3) of section 77-2701.10 for any such services
3 performed on the customer's side of the utility demarcation point.

4 ~~(9)~~ (3) Gross receipts of every person engaged
5 in selling, leasing, or otherwise providing intellectual or
6 entertainment property means:

7 (a) In the furnishing of computer software, the gross
8 income received, including the charges for coding, punching, or
9 otherwise producing any computer software and the charges for the
10 tapes, disks, punched cards, or other properties furnished by the
11 seller; and

12 (b) In the furnishing of videotapes, movie film,
13 satellite programming, satellite programming service, and satellite
14 television signal descrambling or decoding devices, the gross
15 income received from the license, franchise, or other method
16 establishing the charge.

17 ~~(10)~~ (4) Gross receipts for providing a service means:

18 (a) The gross income received for building cleaning and
19 maintenance, pest control, and security;

20 (b) The gross income received for motor vehicle washing,
21 waxing, towing, and painting;

22 (c) The gross income received for computer software
23 training;

24 (d) The gross income received for installing and applying
25 tangible personal property if the sale of the property is subject
26 to tax;

27 (e) The gross income received for services of

1 recreational vehicle parks;

2 (f) The gross income received for labor for repair or
3 maintenance services performed with regard to tangible personal
4 property the sale of which would be subject to sales and use taxes,
5 excluding motor vehicles, except as otherwise provided in section
6 77-2704.26 or 77-2704.50;

7 (g) The gross income received for animal specialty
8 services except (i) veterinary services and (ii) specialty services
9 performed on livestock as defined in section 54-183; and

10 (h) The gross income received for detective services.

11 ~~(11)~~ (5) Gross receipts includes the sale of admissions
12 which means the right or privilege to have access to or to use a
13 place or location. An admission includes a membership that allows
14 access to or use of a place or location, but which membership
15 does not include the right to hold office, vote, or change the
16 policies of the organization. When an admission to an activity or
17 a membership constituting an admission pursuant to this subsection
18 is combined with the solicitation of a contribution, the portion
19 or the amount charged representing the fair market price of
20 the admission shall be considered a retail sale subject to the
21 tax imposed by section 77-2703. The organization conducting the
22 activity shall determine the amount properly attributable to the
23 purchase of the privilege, benefit, or other consideration in
24 advance, and such amount shall be clearly indicated on any ticket,
25 receipt, or other evidence issued in connection with the payment.

26 ~~(12)~~ (6) Gross receipts includes the sale of live plants
27 incorporated into real estate except when such incorporation is

1 incidental to the transfer of an improvement upon real estate or
2 the real estate.

3 ~~(13)~~ (7) Gross receipts includes the sale of any building
4 materials annexed to real estate by a person electing to be taxed
5 as a retailer pursuant to subdivision (1) of section 77-2701.10.

6 ~~(14)~~ (8) Gross receipts includes the sale of prepaid
7 telephone calling arrangements and the recharge of prepaid
8 telephone calling arrangements. If the sale or recharge of a
9 prepaid telephone calling arrangement does not take place at
10 the vendor's place of business, the sale or recharge shall be
11 conclusively determined to take place at the customer's shipping
12 address or, if there is no item shipped, at the customer's
13 billing address. For purposes of this subsection, a prepaid
14 telephone calling arrangement means the right to exclusively
15 purchase telecommunications services that are paid for in advance
16 that enables the origination of calls using an access number or
17 authorization code, whether manually or electronically dialed.

18 ~~(15)~~ (9) Gross receipts does not include:

19 (a) The amount of any rebate granted by a motor vehicle
20 or motorboat manufacturer or dealer at the time of sale of the
21 motor vehicle or motorboat, which rebate functions as a discount
22 from the sales price of the motor vehicle or motorboat; or

23 (b) The price of property or services returned or
24 rejected by customers when the full sales price is refunded
25 either in cash or credit.

26 ~~(16)~~ Subsections ~~(7)~~ through ~~(15)~~ of this section become
27 operative on January 1, 2004.

1 ~~(17) The Tax Commissioner shall hold a hearing on rules~~
2 ~~and regulations to carry out the changes made to this section by~~
3 ~~Laws 2003, LB 759. It is the intent of the Legislature that the Tax~~
4 ~~Commissioner adopt and promulgate rules and regulations to carry~~
5 ~~out such changes.~~

6 Sec. 8. Section 77-2701.32, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-2701.32 (1) Retailer means any seller.

9 (2) To facilitate the proper administration of the
10 Nebraska Revenue Act of 1967, the following persons have the
11 duties and responsibilities of sellers for the purposes of sales
12 and use taxes:

13 (a) Any person in the business of making sales subject
14 to tax under section 77-2703 at auction of property owned by the
15 person or others;

16 (b) Any person collecting the proceeds of the auction,
17 other than the owner of the property, together with his or her
18 principal, if any, when the person collecting the proceeds of the
19 auction is not the auctioneer or an agent or employee of the
20 auctioneer. The seller does not include the auctioneer in such
21 case;

22 (c) Every person who has elected to be considered a
23 retailer pursuant to subdivision (1) of section 77-2701.10;

24 (d) Every person operating, organizing, or promoting a
25 flea market, craft show, fair, or similar event; and

26 (e) Every person engaged in the business of providing any
27 service defined in subsection ~~(10)~~ (4) of section 77-2701.16.

1 (3) For the proper administration of the Nebraska Revenue
2 Act of 1967, the following persons do not have the duties and
3 responsibilities of a seller for purposes of sales and use taxes:

4 (a) Any person who leases or rents films when an
5 admission tax is charged under the Nebraska Revenue Act of 1967;

6 (b) Any person who leases or rents railroad rolling stock
7 interchanged pursuant to the provisions of the federal Interstate
8 Commerce Act;

9 (c) Any person engaged in the business of furnishing
10 rooms in a facility licensed under the Health Care Facility
11 Licensure Act in which rooms, lodgings, or accommodations are
12 regularly furnished for a consideration or a facility operated by
13 an educational institution established under Chapter 79 or Chapter
14 85 in which rooms are regularly used to house students for a
15 consideration for periods in excess of thirty days; or

16 (d) Any person making sales at a flea market, craft show,
17 fair, or similar event when such person does not have a sales tax
18 permit and has arranged to pay sales taxes collected to the person
19 operating, organizing, or promoting such event.

20 Sec. 9. Section 77-2703, Revised Statutes Supplement,
21 2007, is amended to read:

22 77-2703 (1) There is hereby imposed a tax at the rate
23 provided in section 77-2701.02 upon the gross receipts from all
24 sales of tangible personal property sold at retail in this state;
25 the gross receipts of every person engaged as a public utility,
26 as a community antenna television service operator or any person
27 involved in the connecting and installing of the services defined

1 in subdivision ~~(8)(a)~~, (2)(a), (b), (d), or (e) of section
2 77-2701.16, or as a retailer of intellectual or entertainment
3 properties referred to in subsection ~~(9)~~ (3) of section 77-2701.16;
4 the gross receipts from the sale of admissions in this state; the
5 gross receipts from the sale of warranties, guarantees, service
6 agreements, or maintenance agreements when the items covered are
7 subject to tax under this section; beginning January 1, 2008, the
8 gross receipts from the sale of bundled transactions when one or
9 more of the products included in the bundle are taxable; and the
10 gross receipts from the provision of services defined in subsection
11 ~~(10)~~ (4) of section 77-2701.16. Except as provided in section
12 77-2701.03, when there is a sale, the tax shall be imposed at the
13 rate in effect at the time the gross receipts are realized under
14 the accounting basis used by the retailer to maintain his or her
15 books and records.

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

23 (b) It is unlawful for any retailer to advertise, hold
24 out, or state to the public or to any customer, directly or
25 indirectly, that the tax or part thereof will be assumed or
26 absorbed by the retailer, that it will not be added to the selling,
27 renting, or leasing price of the property sold, rented, or leased,

1 or that, if added, it or any part thereof will be refunded. The
2 provisions of this subdivision shall not apply to a public utility.

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

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

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

25 (f) For the purpose of the proper administration of the
26 provisions of the Nebraska Revenue Act of 1967 and to prevent
27 evasion of the retail sales tax, it shall be presumed that all

1 gross receipts are subject to the tax until the contrary is
2 established. The burden of proving that a sale of property is not
3 a sale at retail is upon the person who makes the sale unless he
4 or she takes from the purchaser (i) a resale certificate to the
5 effect that the property is purchased for the purpose of reselling,
6 leasing, or renting it, (ii) an exemption certificate pursuant to
7 subsection (7) of section 77-2705, or (iii) a direct payment permit
8 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
9 certificate, exemption certificate, or direct payment permit shall
10 be conclusive proof for the seller that the sale was made for
11 resale or was exempt or that the tax will be paid directly to the
12 state.

13 (g) In the rental or lease of automobiles, trucks,
14 trailers, semitrailers, and truck-tractors as defined in the Motor
15 Vehicle Registration Act, the tax shall be collected by the lessor
16 on the rental or lease price at the tax rate in effect on the date
17 the automobile, truck, trailer, semitrailer, or truck-tractor is
18 delivered to the lessee, except as otherwise provided within this
19 section.

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

26 (i) Notice of the desire to make such election shall
27 be filed with the Tax Commissioner and shall not become effective

1 until the Tax Commissioner is satisfied that the taxpayer has
2 complied with all conditions of this subsection and all rules and
3 regulations of the Tax Commissioner;

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

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

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

22 (i) The tax imposed by this section on the sales of
23 motor vehicles, semitrailers, and trailers as defined in sections
24 60-339, 60-348, and 60-354 shall be the liability of the purchaser
25 and, with the exception of motor vehicles, semitrailers, and
26 trailers registered pursuant to section 60-3,198, the tax shall
27 be collected by the county treasurer or designated county official

1 as provided in the Motor Vehicle Registration Act at the time
2 the purchaser makes application for the registration of the motor
3 vehicle, semitrailer, or trailer for operation upon the highways
4 of this state. The tax imposed by this section on motor vehicles,
5 semitrailers, and trailers registered pursuant to section 60-3,198
6 shall be collected by the Department of Motor Vehicles at the time
7 the purchaser makes application for the registration of the motor
8 vehicle, semitrailer, or trailer for operation upon the highways
9 of this state. At the time of the sale of any motor vehicle,
10 semitrailer, or trailer, the seller shall (i) state on the sales
11 invoice the dollar amount of the tax imposed under this section
12 and (ii) furnish to the purchaser a certified statement of the
13 transaction, in such form as the Tax Commissioner prescribes,
14 setting forth as a minimum the total sales price, the allowance for
15 any trade-in, and the difference between the two. The sales tax due
16 shall be computed on the difference between the total sales price
17 and the allowance for any trade-in as disclosed by such certified
18 statement. Any seller who willfully understates the amount upon
19 which the sales tax is due shall be subject to a penalty of one
20 thousand dollars. A copy of such certified statement shall also
21 be furnished to the Tax Commissioner. Any seller who fails or
22 refuses to furnish such certified statement shall be guilty of
23 a misdemeanor and shall, upon conviction thereof, be punished by
24 a fine of not less than twenty-five dollars nor more than one
25 hundred dollars. If the seller fails to state on the sales invoice
26 the dollar amount of the tax due, the purchaser shall have the
27 right and authority to rescind any agreement for purchase and

1 to declare the purchase null and void. If the purchaser retains
2 such motor vehicle, semitrailer, or trailer in this state and
3 does not register it for operation on the highways of this state
4 within thirty days of the purchase thereof, the tax imposed by
5 this section shall immediately thereafter be paid by the purchaser
6 to the county treasurer, the designated county official, or the
7 Department of Motor Vehicles. If the tax is not paid on or
8 before the thirtieth day after its purchase, the county treasurer,
9 designated county official, or Department of Motor Vehicles shall
10 also collect from the purchaser interest from the thirtieth day
11 through the date of payment and sales tax penalties as provided in
12 the Nebraska Revenue Act of 1967. The county treasurer, designated
13 county official, or Department of Motor Vehicles shall report and
14 remit the tax so collected to the Tax Commissioner by the fifteenth
15 day of the following month. The county treasurer or designated
16 county official shall deduct and withhold for the use of the county
17 general fund, from all amounts required to be collected under
18 this subsection, the collection fee permitted to be deducted by
19 any retailer collecting the sales tax. The Department of Motor
20 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
21 Division Cash Fund the collection fee permitted to be deducted by
22 any retailer collecting the sales tax. The collection fee shall
23 be forfeited if the county treasurer, designated county official,
24 or Department of Motor Vehicles violates any rule or regulation
25 pertaining to the collection of the use tax.

26 (j) (i) The tax imposed by this section on the sale of a
27 motorboat as defined in section 37-1204 shall be the liability of

1 the purchaser. The tax shall be collected by the county treasurer
2 or designated county official at the time the purchaser makes
3 application for the registration of the motorboat. At the time
4 of the sale of a motorboat, the seller shall (A) state on the
5 sales invoice the dollar amount of the tax imposed under this
6 section and (B) furnish to the purchaser a certified statement of
7 the transaction, in such form as the Tax Commissioner prescribes,
8 setting forth as a minimum the total sales price, the allowance for
9 any trade-in, and the difference between the two. The sales tax due
10 shall be computed on the difference between the total sales price
11 and the allowance for any trade-in as disclosed by such certified
12 statement. Any seller who willfully understates the amount upon
13 which the sales tax is due shall be subject to a penalty of one
14 thousand dollars. A copy of such certified statement shall also
15 be furnished to the Tax Commissioner. Any seller who fails or
16 refuses to furnish such certified statement shall be guilty of a
17 misdemeanor and shall, upon conviction thereof, be punished by a
18 fine of not less than twenty-five dollars nor more than one hundred
19 dollars. If the seller fails to state on the sales invoice the
20 dollar amount of the tax due, the purchaser shall have the right
21 and authority to rescind any agreement for purchase and to declare
22 the purchase null and void. If the purchaser retains such motorboat
23 in this state and does not register it within thirty days of the
24 purchase thereof, the tax imposed by this section shall immediately
25 thereafter be paid by the purchaser to the county treasurer or
26 designated county official. If the tax is not paid on or before
27 the thirtieth day after its purchase, the county treasurer or

1 designated county official shall also collect from the purchaser
2 interest from the thirtieth day through the date of payment and
3 sales tax penalties as provided in the Nebraska Revenue Act of
4 1967. The county treasurer or designated county official shall
5 report and remit the tax so collected to the Tax Commissioner by
6 the fifteenth day of the following month. The county treasurer or
7 designated county official shall deduct and withhold for the use of
8 the county general fund, from all amounts required to be collected
9 under this subsection, the collection fee permitted to be deducted
10 by any retailer collecting the sales tax. The collection fee shall
11 be forfeited if the county treasurer or designated county official
12 violates any rule or regulation pertaining to the collection of the
13 use tax.

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

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

23 (2) A use tax is hereby imposed on the storage, use, or
24 other consumption in this state of property purchased, leased, or
25 rented from any retailer and on any transaction the gross receipts
26 of which are subject to tax under subsection (1) of this section
27 on or after June 1, 1967, for storage, use, or other consumption

1 in this state at the rate set as provided in subsection (1) of
2 this section on the sales price of the property or, in the case of
3 leases or rentals, of the lease or rental prices.

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

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

26 (c) The Tax Commissioner, in order to facilitate the
27 proper administration of the use tax, may designate such person or

1 persons as he or she may deem necessary to be use tax collectors
2 and delegate to such persons such authority as is necessary to
3 collect any use tax which is due and payable to the State of
4 Nebraska. The Tax Commissioner may require of all persons so
5 designated a surety bond in favor of the State of Nebraska to
6 insure against any misappropriation of state funds so collected.
7 The Tax Commissioner may require any tax official, city, county, or
8 state, to collect the use tax on behalf of the state. All persons
9 designated to or required to collect the use tax shall account for
10 such collections in the manner prescribed by the Tax Commissioner.
11 Nothing in this subdivision shall be so construed as to prevent the
12 Tax Commissioner or his or her employees from collecting any use
13 taxes due and payable to the State of Nebraska.

14 (d) All persons designated to collect the use tax and all
15 persons required to collect the use tax shall forward the total of
16 such collections to the Tax Commissioner at such time and in such
17 manner as the Tax Commissioner may prescribe. For all use taxes
18 collected prior to October 1, 2002, such collectors of the use tax
19 shall deduct and withhold from the amount of taxes collected two
20 and one-half percent of the first three thousand dollars remitted
21 each month and one-half of one percent of all amounts in excess
22 of three thousand dollars remitted each month as reimbursement
23 for the cost of collecting the tax. For use taxes collected on
24 and after October 1, 2002, such collectors of the use tax shall
25 deduct and withhold from the amount of taxes collected two and
26 one-half percent of the first three thousand dollars remitted each
27 month as reimbursement for the cost of collecting the tax. Any

1 such deduction shall be forfeited to the State of Nebraska if such
2 collector violates any rule, regulation, or directive of the Tax
3 Commissioner.

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

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

18 Sec. 10. Section 77-2703.01, Revised Statutes Supplement,
19 2007, is amended to read:

20 77-2703.01 (1) The determination of whether a sale or use
21 of property or the provision of services is in this state, in a
22 municipality that has adopted a tax under the Local Option Revenue
23 Act, or in a county that has adopted a tax under section 13-319
24 shall be governed by the sourcing rules in sections 77-2703.01 to
25 77-2703.04.

26 (2) When the property or service is received by the
27 purchaser at a business location of the retailer, the sale is

1 sourced to that business location.

2 (3) When the property or service is not received by the
3 purchaser at a business location of the retailer, the sale is
4 sourced to the location where receipt by the purchaser or the
5 purchaser's donee, designated as such by the purchaser, occurs,
6 including the location indicated by instructions for delivery to
7 the purchaser or donee, known to the retailer.

8 (4) When subsection (2) or (3) of this section does not
9 apply, the sale is sourced to the location indicated by an address
10 or other information for the purchaser that is available from
11 the business records of the retailer that are maintained in the
12 ordinary course of the retailer's business when use of this address
13 does not constitute bad faith.

14 (5) When subsection (2), (3), or (4) of this section does
15 not apply, the sale is sourced to the location indicated by an
16 address for the purchaser obtained during the consummation of the
17 sale, including the address of a purchaser's payment instrument, if
18 no other address is available, when use of this address does not
19 constitute bad faith.

20 (6) When subsection (2), (3), (4), or (5) of this section
21 does not apply, including the circumstance in which the retailer
22 is without sufficient information to apply the rules in any such
23 subsection, then the location will be determined by the address
24 from which property was shipped, from which the digital good was
25 first available for transmission by the retailer, or from which the
26 service was provided disregarding for these purposes any location
27 that merely provided the digital transfer of the product sold.

1 (7) The lease or rental of tangible personal property,
2 other than property identified in subsection (8) or (9) of this
3 section, shall be sourced as follows:

4 (a) For a lease or rental that requires recurring
5 periodic payments, the first periodic payment is sourced the same
6 as a retail sale in accordance with the provisions of subsections
7 (2) through (6) of this section. Periodic payments made subsequent
8 to the first payment are sourced to the primary property location
9 for each period covered by the payment. The primary property
10 location shall be as indicated by an address for the property
11 provided by the lessee that is available to the lessor from its
12 records maintained in the ordinary course of business when use of
13 this address does not constitute bad faith. The property location
14 shall not be altered by intermittent use at different locations,
15 such as use of business property that accompanies employees on
16 business trips and service calls; and

17 (b) For a lease or rental that does not require recurring
18 periodic payments, the payment is sourced the same as a retail sale
19 in accordance with the provisions of subsections (2) through (6) of
20 this section.

21 This subsection does not affect the imposition or
22 computation of sales or use tax on leases or rentals based on a
23 lump-sum or accelerated basis or on the acquisition of property
24 for lease.

25 (8) The lease or rental of motor vehicles, trailers,
26 semitrailers, or aircraft that do not qualify as transportation
27 equipment under subsection (9) of this section shall be sourced as

1 follows:

2 (a) For a lease or rental that requires recurring
3 periodic payments, each periodic payment is sourced to the primary
4 property location. The primary property location shall be as
5 indicated by an address for the property provided by the lessee
6 that is available to the lessor from its records maintained in
7 the ordinary course of business when use of this address does
8 not constitute bad faith. This location shall not be altered by
9 intermittent use at different locations; and

10 (b) For a lease or rental that does not require recurring
11 periodic payments, the payment is sourced the same as a retail sale
12 in accordance with the provisions of subsections (2) through (6) of
13 this section.

14 This subsection does not affect the imposition or
15 computation of sales or use tax on leases or rentals based on a
16 lump-sum or accelerated basis or on the acquisition of property
17 for lease.

18 (9) The retail sale, including lease or rental, of
19 transportation equipment shall be sourced the same as a retail sale
20 in accordance with subsections (2) through (6) of this section.

21 Transportation equipment means any of the following:

22 (a) Locomotives and railcars that are utilized for the
23 carriage of persons or property in interstate commerce;

24 (b) Trucks and truck-tractors with a gross vehicle
25 weight rating of ten thousand one pounds or greater, trailers,
26 semitrailers, or passenger buses that are (i) registered through
27 the International Registration Plan and (ii) operated under

1 authority of a carrier authorized and certificated by the United
2 States Department of Transportation or another federal authority
3 to engage in the carriage of persons or property in interstate
4 commerce;

5 (c) Aircraft operated by air carriers authorized and
6 certificated by the United States Department of Transportation or
7 another federal authority or a foreign authority to engage in the
8 carriage of persons or property in interstate or foreign commerce;
9 and

10 (d) Containers designed for use on and component parts
11 attached or secured on the items set forth in subdivisions (9) (a)
12 through (c) of this section.

13 (10) For purposes of this section, receive and receipt
14 mean taking possession of tangible personal property, making first
15 use of services, or taking possession or making first use of
16 digital goods, whichever comes first. The terms receive and receipt
17 do not include possession by a shipping company on behalf of the
18 purchaser. For purposes of sourcing detective services subject to
19 tax under subdivision ~~(10)(h)~~ (4)(h) of section 77-2701.16, making
20 first use of a service shall be deemed to be at the individual's
21 residence, in the case of a customer who is an individual, or
22 at the principal place of business, in the case of a business
23 customer.

24 (11) The sale, not including lease or rental, of a motor
25 vehicle, semitrailer, or trailer as defined in the Motor Vehicle
26 Registration Act shall be sourced to the place of registration of
27 the motor vehicle, semitrailer, or trailer for operation upon the

1 highways of this state.

2 (12) The sale or lease for one year or more of motorboats
3 shall be sourced to the place of registration of the motorboat. The
4 lease of motorboats for less than one year shall be sourced to the
5 point of delivery.

6 Sec. 11. Section 77-2704.09, Revised Statutes Supplement,
7 2007, is amended to read:

8 77-2704.09 (1) Sales and use taxes shall not be imposed
9 on the gross receipts from the sale, lease, or rental of and
10 the storage, use, or other consumption in this state of (a)
11 insulin, (b) drugs, not including over-the-counter drugs, when
12 sold for a patient's use under a prescription, and (c) the
13 following when sold for a patient's use under a prescription and
14 which are of the type eligible for coverage under the medical
15 assistance program established pursuant to the Medical Assistance
16 Act: ~~Drugs, not including over-the-counter drugs; durable~~ Durable
17 medical equipment; home medical supplies; prosthetic devices;
18 oxygen; oxygen equipment; and mobility enhancing equipment.

19 (2) For purposes of this section:

20 (a) Drug means a compound, substance, preparation, and
21 component of a compound, substance, or preparation, other than food
22 and food ingredients, dietary supplements, or alcoholic beverages:

23 (i) Recognized in the official United States
24 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
25 States, or official National Formulary, and any supplement to any
26 of them;

27 (ii) Intended for use in the diagnosis, cure, mitigation,

1 treatment, or prevention of disease; or

2 (iii) Intended to affect the structure or any function of
3 the body;

4 (b) Durable medical equipment means equipment which can
5 withstand repeated use, is primarily and customarily used to serve
6 a medical purpose, generally is not useful to a person in the
7 absence of illness or injury, is appropriate for use in the home,
8 and is not worn in or on the body. Durable medical equipment
9 includes repair and replacement parts for such equipment;

10 (c) Home medical supplies means supplies primarily and
11 customarily used to serve a medical purpose which are appropriate
12 for use in the home and are generally not useful to a person in the
13 absence of illness or injury;

14 (d) Mobility enhancing equipment means equipment which
15 is primarily and customarily used to provide or increase the
16 ability to move from one place to another, which is not generally
17 used by persons with normal mobility, and which is appropriate
18 for use either in a home or a motor vehicle. Mobility enhancing
19 equipment includes repair and replacement parts for such equipment.
20 Mobility enhancing equipment does not include any motor vehicle or
21 equipment on a motor vehicle normally provided by a motor vehicle
22 manufacturer;

23 (e) Over-the-counter drug means a drug that contains a
24 label that identifies the product as a drug as required by 21
25 C.F.R. 201.66, as such regulation existed on January 1, 2003.
26 The over-the-counter drug label includes a drug facts panel or
27 a statement of the active ingredients with a list of those

1 ingredients contained in the compound, substance, or preparation;

2 (f) Oxygen equipment means oxygen cylinders, cylinder
3 transport devices including sheaths and carts, cylinder studs and
4 support devices, regulators, flowmeters, tank wrenches, oxygen
5 concentrators, liquid oxygen base dispensers, liquid oxygen
6 portable dispensers, oxygen tubing, nasal cannulas, face masks,
7 oxygen humidifiers, and oxygen fittings and accessories;

8 (g) Prescription means an order, formula, or recipe
9 issued in any form of oral, written, electronic, or other means of
10 transmission by a duly licensed practitioner authorized under the
11 Uniform Credentialing Act; and

12 (h) Prosthetic devices means a replacement, corrective,
13 or supportive device worn on or in the body to artificially
14 replace a missing portion of the body, prevent or correct physical
15 deformity or malfunction, or support a weak or deformed portion
16 of the body, and includes any supplies used with such device and
17 repair and replacement parts.

18 Sec. 12. Section 77-2704.26, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2704.26 Sales and use taxes shall not be imposed on
21 the gross receipts from the sale, lease, or rental of and the
22 storage, use, or other consumption in this state of an aircraft
23 delivered in this state to an individual who is a resident of
24 another state or any other person who has a business location in
25 another state when the aircraft is not to be registered or based in
26 this state and it will not remain in this state more than ten days.
27 Sales and use taxes shall not be imposed on the gross receipts from

1 a service listed in subsection ~~(10)~~ (4) of section 77-2701.16 that
2 is rendered to an aircraft brought into this state by an individual
3 who is a resident of another state or any other person who has a
4 business location in another state when the aircraft is not to be
5 registered or based in this state and it will not remain in this
6 state more than ten days after the service is completed.

7 Sec. 13. Section 77-2704.45, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-2704.45 Sales and use taxes shall not be imposed on
10 the gross receipts from the sale, lease, or rental of and the
11 storage, use, or other consumption in this state of:

12 (1) Property which will enter into and become an
13 ingredient or component part of property manufactured, processed,
14 or fabricated for ultimate sale at retail; or

15 (2) A service listed in subsection ~~(10)~~ (4) of section
16 77-2701.16 which will become an ingredient or component part of a
17 service listed in subsection ~~(10)~~ (4) of section 77-2701.16 for
18 ultimate sale at retail.

19 Sec. 14. Section 77-2705, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-2705 (1) Except as provided in subsection (10) of this
22 section, every retailer shall register with the Tax Commissioner
23 and give:

24 (a) The name and address of all agents operating in this
25 state;

26 (b) The location of all distribution or sales houses or
27 offices or other places of business in this state;

1 (c) The name and address of any officer, director,
2 partner, limited liability company member, or employee, other than
3 an employee whose duties are purely ministerial in nature, or any
4 person with a substantial interest in the applicant, who is or who
5 will be responsible for the collection or remittance of the sales
6 tax;

7 ~~(e)~~ (d) Such other information as the Tax Commissioner
8 may require; and

9 ~~(d)~~ (e) If the retailer is an individual, his or her
10 social security number.

11 (2) Every person furnishing public utility service as
12 defined in subsection ~~(8)~~ (2) of section 77-2701.16 shall register
13 with the Tax Commissioner and give:

14 (a) The address of each office open to the public in
15 which such public utility service business is transacted with
16 consumers; and

17 (b) Such other information as the Tax Commissioner may
18 require.

19 (3) It shall be unlawful for any person to engage in or
20 transact business as a seller within this state after June 1, 1967,
21 unless a permit or permits shall have been issued to him or her
22 as prescribed in this section. Every person desiring to engage in
23 or to conduct business as a seller within this state shall file
24 with the Tax Commissioner an application for a permit for each
25 place of business. There shall be no charge to the retailer for
26 the application for or issuance of a permit except as otherwise
27 provided in this section.

1 (4) Every application for a permit shall:

2 (a) Be made upon a form prescribed by the Tax
3 Commissioner;

4 (b) Set forth the name under which the applicant
5 transacts or intends to transact business and the location of
6 his or her place or places of business;

7 (c) Set forth such other information as the Tax
8 Commissioner may require; and

9 (d) Be signed by the owner and include his or her social
10 security number if he or she is a natural person; in the case
11 of an association or partnership, by a member or partner; in the
12 case of a limited liability company, by a member or some person
13 authorized by the limited liability company to sign such kinds of
14 applications; and in the case of a corporation, by an executive
15 officer or some person authorized by the corporation to sign such
16 kinds of applications.

17 (5) After compliance with subsections (1) through (4) of
18 this section by the applicant, the Tax Commissioner shall grant
19 and issue to each applicant a separate permit for each place of
20 business within the state. A permit shall not be assignable and
21 shall be valid only for the person in whose name it is issued and
22 for the transaction of business at the place designated therein.
23 It shall at all times be conspicuously displayed at the place for
24 which issued and shall be valid and effective until revoked by the
25 Tax Commissioner.

26 (6) (a) Whenever the holder of a permit issued under
27 subsection (5) of this section or any person required to be

1 identified in subdivision (1)(c) of this section (i) fails to
2 comply with any provision of the Nebraska Revenue Act of 1967
3 relating to the retail sales tax or with any rule or regulation of
4 the Tax Commissioner relating to such tax prescribed and adopted
5 under such act, (ii) fails to provide for inspection or audit
6 any book, record, document, or item required by law, rule, or
7 regulation, or (iii) makes a misrepresentation of or fails to
8 disclose a material fact to the Department of Revenue, the Tax
9 Commissioner upon hearing, after giving the person twenty days'
10 notice in writing specifying the time and place of hearing and
11 requiring him or her to show cause why his or her permit or permits
12 should not be revoked, may revoke or suspend any one or more of
13 the permits held by the person. The Tax Commissioner shall give to
14 the person written notice of the suspension or revocation of any
15 of his or her permits. The notices may be served personally or by
16 mail in the manner prescribed for service of notice of a deficiency
17 determination.

18 (b) The Tax Commissioner shall have the power to restore
19 permits which have been revoked but shall not issue a new permit
20 after the revocation of a permit unless he or she is satisfied that
21 the former holder of the permit will comply with the provisions
22 of such act relating to the retail sales tax and the regulations
23 of the Tax Commissioner. A seller whose permit has been previously
24 suspended or revoked under this subsection shall pay the Tax
25 Commissioner a fee of twenty-five dollars for the renewal or
26 issuance of a permit in the event of a first revocation and fifty
27 dollars for renewal after each successive revocation.

1 (c) The action of the Tax Commissioner may be appealed
2 by the taxpayer in the same manner as a final deficiency
3 determination.

4 (7) For the purpose of more efficiently securing the
5 payment, collection, and accounting for the sales and use taxes
6 and for the convenience of the retailer in collecting the sales
7 tax, it shall be the duty of the Tax Commissioner to formulate
8 and promulgate appropriate rules and regulations providing a form
9 and method for the registration of exempt purchases and the
10 documentation of exempt sales.

11 (8) If any person, firm, corporation, association, or
12 agent thereof presents an exempt sale certificate to the seller
13 for property which is purchased by a taxpayer or for a use other
14 than those enumerated in the Nebraska Revenue Act of 1967 as
15 exempted from the computation of sales and use taxes, the Tax
16 Commissioner may, in addition to other penalties provided by law,
17 impose, assess, and collect from the purchaser or the agent thereof
18 a penalty of one hundred dollars or ten times the tax, whichever
19 amount is larger, for each instance of such presentation and misuse
20 of an exempt sale certificate. Such amount shall be in addition to
21 any tax, interest, or penalty otherwise imposed.

22 (9) Any report, name, or information which is supplied
23 to the Tax Commissioner regarding a violation specified in this
24 section, including the identity of the informer, shall be subject
25 to the pertinent provisions regarding wrongful disclosure in
26 section 77-2711.

27 (10) Pursuant to the streamlined sales and use tax

1 agreement, the state shall participate in an online registration
2 system that will allow retailers to register in all the member
3 states. The state hereby agrees to honor and abide by the retailer
4 registration decisions made by the governing board pursuant to the
5 agreement.

6 Sec. 15. Section 77-2708, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-2708 (1)(a) The sales and use taxes imposed by the
9 Nebraska Revenue Act of 1967 shall be due and payable to the
10 Tax Commissioner monthly on or before the twenty-fifth day of the
11 month next succeeding each monthly period unless otherwise provided
12 pursuant to the Nebraska Revenue Act of 1967.

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

1 the streamlined sales and use tax agreement, annual returns shall
2 be required if such sellers', retailers', or purchasers' yearly
3 tax liability is less than nine hundred dollars, quarterly returns
4 shall be required if their yearly tax liability is nine hundred
5 dollars or more and less than three thousand dollars, and monthly
6 returns shall be required if their yearly tax liability is three
7 thousand dollars or more. The Tax Commissioner shall have the
8 discretion to allow an annual return for seasonal retailers, even
9 when their yearly tax liability exceeds the amounts listed in this
10 subdivision.

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

23 (ii) For purposes of the sales tax, a return shall be
24 filed by every retailer liable for collection from a purchaser and
25 payment to the state of the tax, except that a combined sales tax
26 return may be filed for all licensed locations which are subject
27 to common ownership. For purposes of this subdivision, common

1 ownership means the same person or persons own eighty percent or
2 more of each licensed location. For purposes of the use tax, a
3 return shall be filed by every retailer engaged in business in this
4 state and by every person who has purchased property, the storage,
5 use, or other consumption of which is subject to the use tax, but
6 who has not paid the use tax due to a retailer required to collect
7 the tax.

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

11 (iv) A taxpayer who keeps his or her regular books
12 and records on a cash basis, an accrual basis, or any generally
13 recognized accounting basis which correctly reflects the operation
14 of the business may file the sales and use tax returns required
15 by the Nebraska Revenue Act of 1967 on the same accounting basis
16 that is used for the regular books and records, except that on
17 credit, conditional, and installment sales, the retailer who keeps
18 his or her books on an accrual basis may report such sales on
19 the cash basis and pay the tax upon the collections made during
20 each month. If a taxpayer transfers, sells, assigns, or otherwise
21 disposes of an account receivable, he or she shall be deemed
22 to have received the full balance of the consideration for the
23 original sale and shall be liable for the remittance of the sales
24 tax on the balance of the total sale price not previously reported,
25 except that such transfer, sale, assignment, or other disposition
26 of an account receivable by a retailer to a subsidiary shall not be
27 deemed to require the retailer to pay the sales tax on the credit

1 sale represented by the account transferred prior to the time the
2 customer makes payment on such account. If the subsidiary does not
3 obtain a Nebraska sales tax permit, the taxpayer shall obtain a
4 surety bond in favor of the State of Nebraska to insure payment
5 of the tax and any interest and penalty imposed thereon under this
6 section in an amount not less than two times the amount of tax
7 payable on outstanding accounts receivable held by the subsidiary
8 as of the end of the prior calendar year. Failure to obtain either
9 a sales tax permit or a surety bond in accordance with this section
10 shall result in the payment on the next required filing date of
11 all sales taxes not previously remitted. When the retailer has
12 adopted one basis or the other of reporting credit, conditional, or
13 installment sales and paying the tax thereon, he or she will not be
14 permitted to change from that basis without first having notified
15 the Tax Commissioner.

16 (c) Except as provided in the streamlined sales and use
17 tax agreement, the taxpayer required to file the return shall
18 deliver or mail any required return together with a remittance of
19 the net amount of the tax due to the office of the Tax Commissioner
20 on or before the required filing date. Failure to file the return,
21 filing after the required filing date, failure to remit the net
22 amount of the tax due, or remitting the net amount of the tax due
23 after the required filing date shall be cause for a penalty, in
24 addition to interest, of ten percent of the amount of tax not paid
25 by the required filing date or twenty-five dollars, whichever is
26 greater, unless the penalty is being collected under subdivision
27 (1) (i) or (1) (j) (i) of section 77-2703 by a county treasurer, a

1 designated county official, or the Department of Motor Vehicles, in
2 which case the penalty shall be five dollars.

3 (d) For all sales tax collected prior to October 1, 2002,
4 the taxpayer shall deduct and withhold, from the taxes otherwise
5 due from him or her on his or her tax return, two and one-half
6 percent of the first three thousand dollars remitted each month and
7 one-half of one percent of all amounts in excess of three thousand
8 dollars remitted each month to reimburse himself or herself for
9 the cost of collecting the tax. For all sales tax collected on
10 and after October 1, 2002, the taxpayer shall deduct and withhold,
11 from the taxes otherwise due from him or her on his or her
12 tax return, two and one-half percent of the first three thousand
13 dollars remitted each month to reimburse himself or herself for the
14 cost of collecting the tax. Taxpayers filing a combined return as
15 allowed by subdivision (1)(b)(ii) of this subsection shall compute
16 such collection fees on the basis of the receipts and liability of
17 each licensed location.

18 (2)(a) If the Tax Commissioner determines that any sales
19 or use tax amount, penalty, or interest has been paid more than
20 once, has been erroneously or illegally collected or computed,
21 or has been paid and the purchaser qualifies for a refund under
22 section 77-2708.01, the Tax Commissioner shall set forth that fact
23 in his or her records and the excess amount collected or paid may
24 be credited on any sales, use, or income tax amounts then due and
25 payable from the person under the Nebraska Revenue Act of 1967. Any
26 balance may be refunded to the person by whom it was paid or his or
27 her successors, administrators, or executors.

1 (b) No refund shall be allowed unless a claim therefor
2 is filed with the Tax Commissioner by the person who made the
3 overpayment or his or her attorney, executor, or administrator
4 within three years from the required filing date following the
5 close of the period for which the overpayment was made, within six
6 months after any determination becomes final under section 77-2709,
7 or within six months from the date of overpayment with respect
8 to such determinations, whichever of these three periods expires
9 later, unless the credit relates to a period for which a waiver has
10 been given. Failure to file a claim within the time prescribed in
11 this subsection shall constitute a waiver of any demand against the
12 state on account of overpayment.

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

17 (d) The Tax Commissioner shall allow or disallow
18 a claim within one hundred eighty days after it has been
19 filed. If A request for a hearing shall constitute a waiver
20 of the one-hundred-eighty-day period. The claimant and the Tax
21 Commissioner may also agree to extend the one-hundred-eighty-day
22 period. If a hearing has not been requested and the Tax
23 Commissioner has neither allowed nor disallowed a claim within ~~such~~
24 either the one hundred eighty days or the period agreed to by the
25 claimant and the Tax Commissioner, the claim shall be deemed to
26 have been allowed.

27 (e) Within thirty days after disallowing any claim in

1 whole or in part, the Tax Commissioner shall serve notice of his or
2 her action on the claimant in the manner prescribed for service of
3 notice of a deficiency determination.

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

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

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

26 (i) The Tax Commissioner may recover any refund or part
27 thereof which is erroneously made and any credit or part thereof

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

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

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

26 (iii) If a deduction is taken for a bad debt and the
27 debt is subsequently collected in whole or in part, the tax on the

1 amount so collected must be paid and reported on the return filed
2 for the period in which the collection is made.

3 (iv) When the amount of bad debt exceeds the amount
4 of taxable sales for the period during which the bad debt is
5 written off, a refund claim may be filed within the otherwise
6 applicable statute of limitations for refund claims. The statute of
7 limitations shall be measured from the due date of the return on
8 which the bad debt could first be claimed.

9 (v) If filing responsibilities have been assumed by a
10 certified service provider, the service provider may claim, on
11 behalf of the retailer, any bad debt allowance provided by this
12 section. The certified service provider shall credit or refund the
13 full amount of any bad debt allowance or refund received to the
14 retailer.

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

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

24 2. Renumber the remaining sections and correct internal
25 references and the operative date section and repealer so that
26 the sections added by this amendment become operative on their
27 effective date.