

AMENDMENTS TO LB 916

Introduced by Revenue.

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 70-1903, Revised Statutes Supplement,  
4 2007, is amended to read:

5           70-1903 For purposes of the Rural Community-Based Energy  
6 Development Act:

7           (1) C-BED project or community-based energy development  
8 project means a new wind energy project that:

9           (a) Has an ownership structure as follows:

10           (i) For a C-BED project that consists of more than two  
11 turbines, ~~is owned by~~ has one or more qualified owners with no  
12 single individual qualified owner owning directly or indirectly  
13 more than fifteen percent of the project and with at least  
14 thirty-three percent of the gross power purchase agreement payments  
15 flowing to the qualified owner or owners or local community; or

16           (ii) For a C-BED project that consists of one or two  
17 turbines, ~~is owned by~~ has one or more qualified owners with at  
18 least thirty-three percent of the gross power purchase agreement  
19 payments flowing to a qualified owner or owners or local community;  
20 and

21           (b) Has a resolution of support adopted:

22           (i) By the county board of each county in which the C-BED  
23 project is to be located; or

1 (ii) By the tribal council for a C-BED project located  
2 within the boundaries of an Indian reservation;

3 (2) Electric utility means an electric supplier that:

4 (a) Owns more than one hundred miles of  
5 one-hundred-fifteen-kilovolt or larger transmission lines in the  
6 State of Nebraska;

7 (b) Owns more than two hundred megawatts of electric  
8 generating facilities; and

9 (c) Has the obligation to directly serve more than two  
10 hundred megawatts of wholesale or retail electric load in the State  
11 of Nebraska; and

12 (3) Qualified owner means:

13 (a) A Nebraska resident;

14 (b) A limited liability company that is organized under  
15 the Limited Liability Company Act and that is made up of members  
16 who are Nebraska residents;

17 (c) A Nebraska nonprofit corporation organized under the  
18 Nebraska Nonprofit Corporation Act;

19 (d) An electric supplier as defined in section  
20 70-1001.01, except that ownership in a single C-BED project is  
21 limited to no more than:

22 (i) Fifteen percent either directly or indirectly by a  
23 single electric supplier; and

24 (ii) A combined total of twenty-five percent ownership  
25 either directly or indirectly by multiple electric suppliers; or

26 (e) A tribal council.

27 Sec. 2. Section 70-1904, Revised Statutes Supplement,

1 2007, is amended to read:

2           70-1904 (1) A C-BED project developer and an electric  
3 utility are authorized to negotiate in good faith mutually  
4 agreeable power purchase agreement terms.

5           (2) A qualified owner or any combination of qualified  
6 owners may develop a C-BED project with an equity partner that is  
7 not a qualified owner, if not more than sixty-seven percent of the  
8 power purchase agreement payments flow to the nonqualified owners.

9           (3) Except for an inherited interest, the transfer of  
10 a C-BED project to any person other than a qualified owner is  
11 prohibited during the initial ten years of the power purchase  
12 agreement.

13           (4) A C-BED project that is operating under a power  
14 purchase agreement is not eligible for any applicable net energy  
15 billing.

16           (5) A C-BED project shall be subject to approval by the  
17 Nebraska Power Review Board in accordance with Chapter 70, article  
18 10, or shall receive certification as a qualifying facility in  
19 accordance with the federal Public Utility Regulatory Policies Act  
20 of 1978, 16 U.S.C. 2601 et seq., with written notice of such  
21 certification provided to the Nebraska Power Review Board.

22           (6) A C-BED project developer shall notify the electric  
23 utility that has a power purchase agreement with a C-BED project if  
24 there is a change in project ownership which makes the project no  
25 longer eligible as a C-BED project.

26           Sec. 3. Section 70-1905, Revised Statutes Supplement,  
27 2007, is amended to read:

1                   70-1905 An electric utility shall:

2                   (1) Consider mechanisms to encourage the aggregation of  
3 C-BED projects located in the same general geographical area;

4                   (2) Require any qualified owner to provide sufficient  
5 security to assure performance under the power purchase agreement;  
6 and

7                   (3) Annually prepare a statement by March 1 summarizing  
8 its efforts to purchase energy from C-BED projects, including a  
9 list of the C-BED projects under a power purchase agreement and the  
10 amount of C-BED project energy purchased. The statement shall be  
11 posted on the electric utility's web site.

12                   Sec. 4. Section 70-1907, Revised Statutes Supplement,  
13 2007, is amended to read:

14                   70-1907 To the extent feasible, a C-BED project developer  
15 shall provide, in writing, an opportunity to ~~invest~~ become a  
16 qualified owner in the C-BED project to each property owner on  
17 whose property a turbine ~~is~~ will be located.

18                   Sec. 5. Section 77-2701, Revised Statutes Supplement,  
19 2007, is amended to read:

20                   77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to  
21 77-27,236 and sections 9 to 13, 22, and 23 of this act shall be  
22 known and may be cited as the Nebraska Revenue Act of 1967.

23                   Sec. 6. Section 77-2701.04, Revised Statutes Supplement,  
24 2007, is amended to read:

25                   77-2701.04 For purposes of sections 77-2701.04 to 77-2713  
26 and sections 9 to 13, 22, and 23 of this act, unless the context  
27 otherwise requires, the definitions found in sections 77-2701.05 to

1 77-2701.48 and sections 9 to 13 of this act shall be used.

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~~  
24 ~~against the property except as otherwise provided in the Nebraska~~  
25 ~~Revenue Act of 1967; or~~

26 ~~(e) The amount charged for warranties, guarantees, or~~  
27 ~~maintenance agreements.~~

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

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

26           ~~(b) In the furnishing of telegraph service, the gross~~  
27 ~~income received from the furnishing of intrastate telegraph~~

1 ~~services;~~

2           ~~(c) In the furnishing of gas, electricity, sewer, and~~  
3 ~~water service except water used for irrigation of agricultural~~  
4 ~~lands and manufacturing purposes, the gross income received from~~  
5 ~~the furnishing of such services upon billings or statements~~  
6 ~~rendered to consumers for such utility services; and~~

7           ~~(d) In the furnishing of community antenna television~~  
8 ~~service, the gross income received from the furnishing of such~~  
9 ~~community antenna television service as regulated under sections~~  
10 ~~18-2201 to 18-2205 or 23-383 to 23-388.~~

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

19           ~~(3) Gross receipts of every person engaged in selling,~~  
20 ~~leasing, or otherwise providing intellectual or entertainment~~  
21 ~~property shall mean:~~

22           ~~(a) In the furnishing of computer software, the gross~~  
23 ~~income received, including the charges for coding, punching, or~~  
24 ~~otherwise producing computer software and the charges for the~~  
25 ~~tapes, disks, punched cards, or other properties furnished by the~~  
26 ~~seller; and~~

27           ~~(b) In the furnishing of videotapes, movie film,~~

1 ~~satellite programming, satellite programming service, and satellite~~  
2 ~~television signal descrambling or decoding devices, the gross~~  
3 ~~income received from the license, franchise, or other method~~  
4 ~~establishing the charge except the gross income received from~~  
5 ~~videotape and film rentals, satellite programming, and satellite~~  
6 ~~programming service when the sales tax or the admission tax is~~  
7 ~~charged under the Nebraska Revenue Act of 1967 and except as~~  
8 ~~provided in section 77-2704.39.~~

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

10 ~~(a) The gross income received for building cleaning and~~  
11 ~~maintenance, pest control, and security;~~

12 ~~(b) The gross income received for motor vehicle washing,~~  
13 ~~waxing, towing, and painting;~~

14 ~~(c) The gross income received for computer software~~  
15 ~~training;~~

16 ~~(d) The gross income received for installing and applying~~  
17 ~~tangible personal property if the sale of the property is subject~~  
18 ~~to tax;~~

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

21 ~~(f) The gross income received for services of~~  
22 ~~recreational vehicle parks;~~

23 ~~(g) The gross income received for labor for repair or~~  
24 ~~maintenance services performed with regard to tangible personal~~  
25 ~~property the sale of which would be subject to sales and use~~  
26 ~~taxes, excluding motor vehicles, except as otherwise provided in~~  
27 ~~subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;~~



1           ~~(h) The gross income received for animal specialty~~  
2 ~~services except (i) veterinary services and (ii) specialty services~~  
3 ~~performed on livestock as defined in section 54-183; and~~

4           ~~(i) The gross income received for detective services.~~

5           ~~(5) Gross receipts shall not include any of the~~  
6 ~~following:~~

7           ~~(a) Cash discounts allowed and taken on sales;~~

8           ~~(b) The amount of any rebate granted by a motor vehicle~~  
9 ~~or motorboat manufacturer or dealer at the time of sale of the~~  
10 ~~motor vehicle or motorboat, which rebate functions as a discount~~  
11 ~~from the sales price of the motor vehicle or motorboat;~~

12           ~~(c) Sales price of property or services returned or~~  
13 ~~rejected by customers when the full sales price is refunded either~~  
14 ~~in cash or credit;~~

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

21           ~~(e) The value of property taken by a seller in trade as~~  
22 ~~all or a part of the consideration for a sale of property of any~~  
23 ~~kind or nature;~~

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

27           ~~(g) Receipts from conditional sale contracts, installment~~

1 sale contracts, rentals, and leases executed in writing prior to  
2 June 1, 1967, and with delivery of the property prior to June  
3 1, 1967, if such conditional sale contracts, installment sale  
4 contracts, rentals, or leases are for a fixed price and are not  
5 subject to negotiation or alteration, or

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

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

14 ~~(7)~~ (1) Gross receipts means the total amount of the sale  
15 or lease or rental price, as the case may be, of the retail sales  
16 of retailers.

17 ~~(8)~~ (2) Gross receipts of every person engaged as a  
18 public utility specified in this subsection, ~~or~~ as a community  
19 antenna television service operator, or as a satellite service  
20 operator or any person involved in connecting and installing  
21 services defined in subdivision ~~(8)(a)~~, (2)(a), (b), or (d) of this  
22 section means:

23 (a)(i) In the furnishing of telephone communication  
24 service, other than mobile telecommunications service as described  
25 in section 77-2703.04, the gross income received from furnishing  
26 local exchange telephone service and intrastate message toll  
27 telephone service; and

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

6           (b) In the furnishing of telegraph service, the gross  
7 income received from the furnishing of intrastate telegraph  
8 services;

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

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

18           (e) The gross income received from the provision,  
19 installation, construction, servicing, or removal of property used  
20 in conjunction with the furnishing, installing, or connecting of  
21 any public utility services specified in subdivision ~~(8)-(a)~~ (2)(a)  
22 or (b) of this section or community antenna television service  
23 or satellite service specified in subdivision ~~(8)-(d)~~ (2)(d) of  
24 this section, except when acting as a subcontractor for a public  
25 utility, this subdivision does not apply to the gross income  
26 received by a contractor electing to be treated as a consumer  
27 of building materials under subdivision (2) or (3) of section

1 77-2701.10 for any such services performed on the customer's side  
2 of the utility demarcation point.

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

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

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

16 ~~(10)~~ (4) Gross receipts for providing a service means:

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

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

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

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

26 (e) The gross income received for services of  
27 recreational vehicle parks;

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

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

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

10           ~~(11)~~ (5) Gross receipts includes the sale of admissions  
11 which means the right or privilege to have access to or to use a  
12 place or location. An admission includes a membership that allows  
13 access to or use of a place or location, but which membership  
14 does not include the right to hold office, vote, or change the  
15 policies of the organization. When an admission to an activity or  
16 a membership constituting an admission pursuant to this subsection  
17 is combined with the solicitation of a contribution, the portion  
18 or the amount charged representing the fair market price of  
19 the admission shall be considered a retail sale subject to the  
20 tax imposed by section 77-2703. The organization conducting the  
21 activity shall determine the amount properly attributable to the  
22 purchase of the privilege, benefit, or other consideration in  
23 advance, and such amount shall be clearly indicated on any ticket,  
24 receipt, or other evidence issued in connection with the payment.

25           ~~(12)~~ (6) Gross receipts includes the sale of live plants  
26 incorporated into real estate except when such incorporation is  
27 incidental to the transfer of an improvement upon real estate or

1 the real estate.

2 ~~(13)~~ (7) Gross receipts includes the sale of any building  
3 materials annexed to real estate by a person electing to be taxed  
4 as a retailer pursuant to subdivision (1) of section 77-2701.10.

5 ~~(14)~~ (8) Gross receipts includes the sale of prepaid  
6 telephone calling arrangements and the recharge of prepaid  
7 telephone calling arrangements. If the sale or recharge of a  
8 prepaid telephone calling arrangement does not take place at  
9 the vendor's place of business, the sale or recharge shall be  
10 conclusively determined to take place at the customer's shipping  
11 address or, if there is no item shipped, at the customer's  
12 billing address. For purposes of this subsection, a prepaid  
13 telephone calling arrangement means the right to exclusively  
14 purchase telecommunications services that are paid for in advance  
15 that enables the origination of calls using an access number or  
16 authorization code, whether manually or electronically dialed.

17 (9) Gross receipts includes the retail sale of products  
18 delivered electronically if the products are taxable when delivered  
19 on tangible storage media. Products delivered electronically  
20 include digital audio works, digital audiovisual works, digital  
21 codes, and digital books. A sale includes the transfer of a  
22 permanent right of use, the transfer of a right of use that  
23 terminates on some condition, and the transfer of a right of use  
24 conditioned upon the receipt of continued payments.

25 ~~(15)~~ (10) Gross receipts does not include:

26 (a) The amount of any rebate granted by a motor vehicle  
27 or motorboat manufacturer or dealer at the time of sale of the

1 motor vehicle or motorboat, which rebate functions as a discount  
2 from the sales price of the motor vehicle or motorboat; or

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

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

8 ~~(17) The Tax Commissioner shall hold a hearing on rules~~  
9 ~~and regulations to carry out the changes made to this section by~~  
10 ~~Laws 2003, LB 759. It is the intent of the Legislature that the Tax~~  
11 ~~Commissioner adopt and promulgate rules and regulations to carry~~  
12 ~~out such changes.~~

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

15 77-2701.32 (1) Retailer means any seller.

16 (2) To facilitate the proper administration of the  
17 Nebraska Revenue Act of 1967, the following persons have the  
18 duties and responsibilities of sellers for the purposes of sales  
19 and use taxes:

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

23 (b) Any person collecting the proceeds of the auction,  
24 other than the owner of the property, together with his or her  
25 principal, if any, when the person collecting the proceeds of the  
26 auction is not the auctioneer or an agent or employee of the  
27 auctioneer. The seller does not include the auctioneer in such

1 case;

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

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

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

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

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

13 (b) Any person who leases or rents railroad rolling stock  
14 interchanged pursuant to the provisions of the federal Interstate  
15 Commerce Act;

16 (c) Any person engaged in the business of furnishing  
17 rooms in a facility licensed under the Health Care Facility  
18 Licensure Act in which rooms, lodgings, or accommodations are  
19 regularly furnished for a consideration or a facility operated by  
20 an educational institution established under Chapter 79 or Chapter  
21 85 in which rooms are regularly used to house students for a  
22 consideration for periods in excess of thirty days; or

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

27 Sec. 9. Delivered electronically means obtained by the



1 purchaser by means other than tangible storage media.

2           Sec. 10. Digital audio works means works that result from  
3 the fixation of a series of musical, spoken, or other sounds,  
4 including ringtones.

5           Sec. 11. Digital audiovisual works means a series  
6 of related images which, when shown in succession, impart an  
7 impression of motion, together with accompanying sounds, if any.

8           Sec. 12. Digital books means works that are generally  
9 recognized in the ordinary and usual sense as books.

10           Sec. 13. Digital code means a code which provides a  
11 purchaser with a right to obtain one or more products delivered  
12 electronically. A digital code may be obtained by any means,  
13 including email or tangible means.

14           Sec. 14. Section 77-2701.34, Revised Statutes Supplement,  
15 2007, is amended to read:

16           77-2701.34 Sale for resale means a sale of property or  
17 provision of a service to any purchaser who is purchasing such  
18 property or service for the purpose of reselling it in the normal  
19 course of his or her business, either in the form or condition in  
20 which it is purchased or as an attachment to or integral part of  
21 other property or service. A sale for resale includes (1) a sale  
22 of building materials to a contractor or repairperson electing to  
23 be taxed as a retailer under subdivision (1) of section 77-2701.10,  
24 a sale of building materials to a contractor or repairperson  
25 being taxed as the consumer of building materials and electing  
26 a tax-free inventory under subdivision (3) of section 77-2701.10,  
27 ~~or~~ (2) a sale of property to a purchaser for the sole purpose

1 of that purchaser renting or leasing such property to another  
2 person, with rent or lease payments set at a fair market value,  
3 ~~or (3)~~ film rentals for use in a place where an admission is  
4 charged that is subject to tax under the Nebraska Revenue Act  
5 of 1967 but not if incidental to the renting or leasing of real  
6 estate, or (4) sale of digital products to a person who receives  
7 by contract the product transferred electronically for further  
8 broadcast, transmission, retransmission, licensing, relicensing,  
9 distribution, redistribution, or exhibition of the product to  
10 another person or persons.

11           Sec. 15. Section 77-2703, Revised Statutes Supplement,  
12 2007, is amended to read:

13           77-2703 (1) There is hereby imposed a tax at the rate  
14 provided in section 77-2701.02 upon the gross receipts from all  
15 sales of tangible personal property sold at retail in this state;  
16 the gross receipts of every person engaged as a public utility, as  
17 a community antenna television service operator, or as a satellite  
18 service operator, ~~or~~ any person involved in the connecting and  
19 installing of the services defined in subdivision ~~(8)(a)~~, (2)(a),  
20 (b), (d), or (e) of section 77-2701.16, or every person engaged  
21 as a retailer of intellectual or entertainment properties referred  
22 to in subsection ~~(9)~~ (3) of section 77-2701.16; the gross receipts  
23 from the sale of admissions in this state; the gross receipts  
24 from the sale of warranties, guarantees, service agreements, or  
25 maintenance agreements when the items covered are subject to tax  
26 under this section; beginning January 1, 2008, the gross receipts  
27 from the sale of bundled transactions when one or more of the

1 products included in the bundle are taxable; ~~and~~ the gross receipts  
2 from the provision of services defined in subsection ~~(10)~~ (4)  
3 of section 77-2701.16; and the gross receipts from the sale of  
4 products delivered electronically as described in subsection (9) of  
5 section 77-2701.16. Except as provided in section 77-2701.03, when  
6 there is a sale, the tax shall be imposed at the rate in effect at  
7 the time the gross receipts are realized under the accounting basis  
8 used by the retailer to maintain his or her books and records.

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

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

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

1 sales, rentals, or leases.

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

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

18 (f) For the purpose of the proper administration of the  
19 provisions of the Nebraska Revenue Act of 1967 and to prevent  
20 evasion of the retail sales tax, it shall be presumed that all  
21 gross receipts are subject to the tax until the contrary is  
22 established. The burden of proving that a sale of property is not  
23 a sale at retail is upon the person who makes the sale unless he  
24 or she takes from the purchaser (i) a resale certificate to the  
25 effect that the property is purchased for the purpose of reselling,  
26 leasing, or renting it, (ii) an exemption certificate pursuant to  
27 subsection (7) of section 77-2705, or (iii) a direct payment permit

1 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale  
2 certificate, exemption certificate, or direct payment permit shall  
3 be conclusive proof for the seller that the sale was made for  
4 resale or was exempt or that the tax will be paid directly to the  
5 state.

6 (g) In the rental or lease of automobiles, trucks,  
7 trailers, semitrailers, and truck-tractors as defined in the Motor  
8 Vehicle Registration Act, the tax shall be collected by the lessor  
9 on the rental or lease price at the tax rate in effect on the date  
10 the automobile, truck, trailer, semitrailer, or truck-tractor is  
11 delivered to the lessee, except as otherwise provided within this  
12 section.

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

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

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

27 (iii) When such election is made, it shall apply to all

1 vehicles of the lessor rented or leased for periods of one year or  
2 more except vehicles to be leased to common or contract carriers  
3 who provide to the lessor a valid common or contract carrier  
4 exemption certificate. If the lessor rents or leases other vehicles  
5 for periods of less than one year, such lessor shall maintain his  
6 or her books and records and his or her accounting procedure as the  
7 Tax Commissioner prescribes; and

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

15 (i) The tax imposed by this section on the sales of  
16 motor vehicles, semitrailers, and trailers as defined in sections  
17 60-339, 60-348, and 60-354 shall be the liability of the purchaser  
18 and, with the exception of motor vehicles, semitrailers, and  
19 trailers registered pursuant to section 60-3,198, the tax shall  
20 be collected by the county treasurer or designated county official  
21 as provided in the Motor Vehicle Registration Act at the time  
22 the purchaser makes application for the registration of the motor  
23 vehicle, semitrailer, or trailer for operation upon the highways  
24 of this state. The tax imposed by this section on motor vehicles,  
25 semitrailers, and trailers registered pursuant to section 60-3,198  
26 shall be collected by the Department of Motor Vehicles at the time  
27 the purchaser makes application for the registration of the motor

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

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

19 (j)(i) The tax imposed by this section on the sale of a  
20 motorboat as defined in section 37-1204 shall be the liability of  
21 the purchaser. The tax shall be collected by the county treasurer  
22 or designated county official at the time the purchaser makes  
23 application for the registration of the motorboat. At the time  
24 of the sale of a motorboat, the seller shall (A) state on the  
25 sales invoice the dollar amount of the tax imposed under this  
26 section and (B) furnish to the purchaser a certified statement of  
27 the transaction, in such form as the Tax Commissioner prescribes,



1 setting forth as a minimum the total sales price, the allowance for  
2 any trade-in, and the difference between the two. The sales tax due  
3 shall be computed on the difference between the total sales price  
4 and the allowance for any trade-in as disclosed by such certified  
5 statement. Any seller who willfully understates the amount upon  
6 which the sales tax is due shall be subject to a penalty of one  
7 thousand dollars. A copy of such certified statement shall also  
8 be furnished to the Tax Commissioner. Any seller who fails or  
9 refuses to furnish such certified statement shall be guilty of a  
10 misdemeanor and shall, upon conviction thereof, be punished by a  
11 fine of not less than twenty-five dollars nor more than one hundred  
12 dollars. If the seller fails to state on the sales invoice the  
13 dollar amount of the tax due, the purchaser shall have the right  
14 and authority to rescind any agreement for purchase and to declare  
15 the purchase null and void. If the purchaser retains such motorboat  
16 in this state and does not register it within thirty days of the  
17 purchase thereof, the tax imposed by this section shall immediately  
18 thereafter be paid by the purchaser to the county treasurer or  
19 designated county official. If the tax is not paid on or before  
20 the thirtieth day after its purchase, the county treasurer or  
21 designated county official shall also collect from the purchaser  
22 interest from the thirtieth day through the date of payment and  
23 sales tax penalties as provided in the Nebraska Revenue Act of  
24 1967. The county treasurer or designated county official shall  
25 report and remit the tax so collected to the Tax Commissioner by  
26 the fifteenth day of the following month. The county treasurer or  
27 designated county official shall deduct and withhold for the use of

1 the county general fund, from all amounts required to be collected  
2 under this subsection, the collection fee permitted to be deducted  
3 by any retailer collecting the sales tax. The collection fee shall  
4 be forfeited if the county treasurer or designated county official  
5 violates any rule or regulation pertaining to the collection of the  
6 use tax.

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

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

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

24 (a) Every person storing, using, or otherwise consuming  
25 in this state property purchased from a retailer or leased or  
26 rented from another person for such purpose shall be liable for the  
27 use tax at the rate in effect when his or her liability for the

1 use tax becomes certain under the accounting basis used to maintain  
2 his or her books and records. His or her liability shall not be  
3 extinguished until the use tax has been paid to this state, except  
4 that a receipt from a retailer engaged in business in this state  
5 or from a retailer who is authorized by the Tax Commissioner, under  
6 such rules and regulations as he or she may prescribe, to collect  
7 the sales tax and who is, for the purposes of the Nebraska Revenue  
8 Act of 1967 relating to the sales tax, regarded as a retailer  
9 engaged in business in this state, which receipt is given to the  
10 purchaser pursuant to subdivision (b) of this subsection, shall be  
11 sufficient to relieve the purchaser from further liability for the  
12 tax to which the receipt refers.

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

19 (c) The Tax Commissioner, in order to facilitate the  
20 proper administration of the use tax, may designate such person or  
21 persons as he or she may deem necessary to be use tax collectors  
22 and delegate to such persons such authority as is necessary to  
23 collect any use tax which is due and payable to the State of  
24 Nebraska. The Tax Commissioner may require of all persons so  
25 designated a surety bond in favor of the State of Nebraska to  
26 insure against any misappropriation of state funds so collected.  
27 The Tax Commissioner may require any tax official, city, county, or

1 state, to collect the use tax on behalf of the state. All persons  
2 designated to or required to collect the use tax shall account for  
3 such collections in the manner prescribed by the Tax Commissioner.  
4 Nothing in this subdivision shall be so construed as to prevent the  
5 Tax Commissioner or his or her employees from collecting any use  
6 taxes due and payable to the State of Nebraska.

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

24 (e) For the purpose of the proper administration of the  
25 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
26 it shall be presumed that property sold, leased, or rented by any  
27 person for delivery in this state is sold, leased, or rented for

1 storage, use, or other consumption in this state until the contrary  
2 is established. The burden of proving the contrary is upon the  
3 person who purchases, leases, or rents the property.

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

11 Sec. 16. Section 77-2703.01, Revised Statutes Supplement,  
12 2007, is amended to read:

13 77-2703.01 (1) The determination of whether a sale or use  
14 of property or the provision of services is in this state, in a  
15 municipality that has adopted a tax under the Local Option Revenue  
16 Act, or in a county that has adopted a tax under section 13-319  
17 shall be governed by the sourcing rules in sections 77-2703.01 to  
18 77-2703.04.

19 (2) When the property or service is received by the  
20 purchaser at a business location of the retailer, the sale is  
21 sourced to that business location.

22 (3) When the property or service is not received by the  
23 purchaser at a business location of the retailer, the sale is  
24 sourced to the location where receipt by the purchaser or the  
25 purchaser's donee, designated as such by the purchaser, occurs,  
26 including the location indicated by instructions for delivery to  
27 the purchaser or donee, known to the retailer.

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

7           (5) When subsection (2), (3), or (4) of this section does  
8 not apply, the sale is sourced to the location indicated by an  
9 address for the purchaser obtained during the consummation of the  
10 sale, including the address of a purchaser's payment instrument, if  
11 no other address is available, when use of this address does not  
12 constitute bad faith.

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

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

24           (a) For a lease or rental that requires recurring  
25 periodic payments, the first periodic payment is sourced the same  
26 as a retail sale in accordance with the provisions of subsections  
27 (2) through (6) of this section. Periodic payments made subsequent

1 to the first payment are sourced to the primary property location  
2 for each period covered by the payment. The primary property  
3 location shall be as indicated by an address for the property  
4 provided by the lessee that is available to the lessor from its  
5 records maintained in the ordinary course of business when use of  
6 this address does not constitute bad faith. The property location  
7 shall not be altered by intermittent use at different locations,  
8 such as use of business property that accompanies employees on  
9 business trips and service calls; 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 (8) The lease or rental of motor vehicles, trailers,  
19 semitrailers, or aircraft that do not qualify as transportation  
20 equipment under subsection (9) of this section shall be sourced as  
21 follows:

22 (a) For a lease or rental that requires recurring  
23 periodic payments, each periodic payment is sourced to the primary  
24 property location. The primary property location shall be as  
25 indicated by an address for the property provided by the lessee  
26 that is available to the lessor from its records maintained in  
27 the ordinary course of business when use of this address does

1 not constitute bad faith. This location shall not be altered by  
2 intermittent use at different locations; and

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

7 This subsection does not affect the imposition or  
8 computation of sales or use tax on leases or rentals based on a  
9 lump-sum or accelerated basis or on the acquisition of property  
10 for lease.

11 (9) The retail sale, including lease or rental, of  
12 transportation equipment shall be sourced the same as a retail sale  
13 in accordance with subsections (2) through (6) of this section.  
14 Transportation equipment means any of the following:

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

17 (b) Trucks and truck-tractors with a gross vehicle  
18 weight rating of ten thousand one pounds or greater, trailers,  
19 semitrailers, or passenger buses that are (i) registered through  
20 the International Registration Plan and (ii) operated under  
21 authority of a carrier authorized and certificated by the United  
22 States Department of Transportation or another federal authority  
23 to engage in the carriage of persons or property in interstate  
24 commerce;

25 (c) Aircraft operated by air carriers authorized and  
26 certificated by the United States Department of Transportation or  
27 another federal authority or a foreign authority to engage in the



1 carriage of persons or property in interstate or foreign commerce;  
2 and

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

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

17 (11) The sale, not including lease or rental, of a motor  
18 vehicle, semitrailer, or trailer as defined in the Motor Vehicle  
19 Registration Act shall be sourced to the place of registration of  
20 the motor vehicle, semitrailer, or trailer for operation upon the  
21 highways of this state.

22 (12) The sale or lease for one year or more of motorboats  
23 shall be sourced to the place of registration of the motorboat. The  
24 lease of motorboats for less than one year shall be sourced to the  
25 point of delivery.

26 Sec. 17. Section 77-2704.09, Revised Statutes Supplement,  
27 2007, is amended to read:

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

12                   (2) For purposes of this section:

13                   (a) Drug means a compound, substance, preparation, and  
14 component of a compound, substance, or preparation, other than food  
15 and food ingredients, dietary supplements, or alcoholic beverages:

16                   (i) Recognized in the official United States  
17 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United  
18 States, or official National Formulary, and any supplement to any  
19 of them;

20                   (ii) Intended for use in the diagnosis, cure, mitigation,  
21 treatment, or prevention of disease; or

22                   (iii) Intended to affect the structure or any function of  
23 the body;

24                   (b) Durable medical equipment means equipment which can  
25 withstand repeated use, is primarily and customarily used to serve  
26 a medical purpose, generally is not useful to a person in the  
27 absence of illness or injury, is appropriate for use in the home,

1 and is not worn in or on the body. Durable medical equipment  
2 includes repair and replacement parts for such equipment;

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

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

16 (e) Over-the-counter drug means a drug that contains a  
17 label that identifies the product as a drug as required by 21  
18 C.F.R. 201.66, as such regulation existed on January 1, 2003.  
19 The over-the-counter drug label includes a drug facts panel or  
20 a statement of the active ingredients with a list of those  
21 ingredients contained in the compound, substance, or preparation;

22 (f) Oxygen equipment means oxygen cylinders, cylinder  
23 transport devices including sheaths and carts, cylinder studs and  
24 support devices, regulators, flowmeters, tank wrenches, oxygen  
25 concentrators, liquid oxygen base dispensers, liquid oxygen  
26 portable dispensers, oxygen tubing, nasal cannulas, face masks,  
27 oxygen humidifiers, and oxygen fittings and accessories;

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

5           (h) Prosthetic devices means a replacement, corrective,  
6 or supportive device worn on or in the body to artificially  
7 replace a missing portion of the body, prevent or correct physical  
8 deformity or malfunction, or support a weak or deformed portion  
9 of the body, and includes any supplies used with such device and  
10 repair and replacement parts.

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

13           77-2704.26 Sales and use taxes shall not be imposed on  
14 the gross receipts from the sale, lease, or rental of and the  
15 storage, use, or other consumption in this state of an aircraft  
16 delivered in this state to an individual who is a resident of  
17 another state or any other person who has a business location in  
18 another state when the aircraft is not to be registered or based in  
19 this state and it will not remain in this state more than ten days.  
20 Sales and use taxes shall not be imposed on the gross receipts from  
21 a service listed in subsection ~~(10)~~ (4) of section 77-2701.16 that  
22 is rendered to an aircraft brought into this state by an individual  
23 who is a resident of another state or any other person who has a  
24 business location in another state when the aircraft is not to be  
25 registered or based in this state and it will not remain in this  
26 state more than ten days after the service is completed.

27           Sec. 19. Section 77-2704.45, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           77-2704.45 Sales and use taxes shall not be imposed on  
3 the gross receipts from the sale, lease, or rental of and the  
4 storage, use, or other consumption in this state of:

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

8           (2) A service listed in subsection ~~(10)~~ (4) of section  
9 77-2701.16 which will become an ingredient or component part of a  
10 service listed in subsection ~~(10)~~ (4) of section 77-2701.16 for  
11 ultimate sale at retail.

12           Sec. 20. Section 77-2704.46, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           77-2704.46 Sales and use taxes shall not be imposed on  
15 the gross receipts from the sale, lease, or rental of and the  
16 storage, use, or other consumption in this state of:

17           (1) Any form of animal life of a kind the products of  
18 which ordinarily constitute food for human consumption. Animal life  
19 includes live poultry, other species of game birds subject to  
20 permit and regulation by the Game and Parks Commission, and ~~or~~  
21 livestock on the hoof when sales are made by the grower, producer,  
22 feeder, or any person engaged in the business of bartering, buying,  
23 or selling live poultry, other species of game birds subject  
24 to permit and regulation by the Game and Parks Commission, or  
25 livestock on the hoof;

26           (2) Seeds and annual plants, the products of which  
27 ordinarily constitute food for human consumption and which seeds

1 and annual plants are sold to commercial producers of such  
2 products, and seed legumes, seed grasses, and seed grains when  
3 sold to be used exclusively for agricultural purposes;

4 (3) Agricultural chemicals, adjuvants, surfactants,  
5 bonding agents, clays, oils, and any other additives or  
6 compatibility agents for use in commercial agriculture and applied  
7 to land or crops and sold in any tax period that has not been  
8 closed by the applicable statute of limitations. Agricultural  
9 chemicals does not mean chemicals, adjuvants, surfactants, bonding  
10 agents, clays, oils, and any other additives or compatibility  
11 agents applied to harvested grains stored in commercial elevators;  
12 or

13 (4) Oxygen for use in aquaculture as defined in section  
14 2-3804.01.

15 Sec. 21. Section 77-2704.57, Revised Statutes Supplement,  
16 2007, is amended to read:

17 77-2704.57 (1) Sales and use tax shall not be imposed  
18 on the gross receipts from the sale, lease, or rental of personal  
19 property for use in a C-BED project or community-based energy  
20 development project. This exemption shall be conditioned upon  
21 filing requirements for the exemption as imposed by the Tax  
22 Commissioner. The requirements imposed by the Tax Commissioner  
23 shall be related to ensuring that the property purchased qualifies  
24 for the exemption. The Tax Commissioner may require the filing  
25 of the documents showing compliance with section 70-1907, the  
26 organization of the project, the distribution of the payments,  
27 the power purchase agreements, the project pro forma, articles of

1 incorporation, operating agreements, and any amendments or changes  
2 to these documents during the life of the power purchase agreement.

3 (2) The Tax Commissioner shall notify an electric utility  
4 that has a power purchase agreement with a C-BED project if  
5 there is a change in project ownership which makes the project no  
6 longer eligible as a C-BED project. Purchase of a C-BED project  
7 by an electric utility prior to the end of the power purchase  
8 agreement disqualifies the C-BED project for the exemption, but the  
9 Department of Revenue may not recover the amount of the sales and  
10 use tax that was not paid by the project prior to the purchase.

11 (3) For purposes of this section:

12 (1) (a) C-BED project or community-based energy  
13 development project means a new wind energy project that:

14 (a) (i) Has an ownership structure as follows:

15 (i) (A) For a C-BED project that consists of more than  
16 two turbines, is owned by has one or more qualified owners with  
17 no single individual qualified owner owning directly or indirectly  
18 more than fifteen percent of the project and with at least  
19 thirty-three percent of the gross power purchase agreement payments  
20 flowing to the qualified owner or owners or local community; or

21 (ii) (B) For a C-BED project that consists of one or two  
22 turbines, is owned by has one or more qualified owners with at  
23 least thirty-three percent of the gross power purchase agreement  
24 payments flowing to a qualified owner or owners or local community;  
25 and

26 (b) (ii) Has a resolution of support adopted:

27 (i) (A) By the county board of each county in which the

1 C-BED project is to be located; or

2 ~~(ii)~~ (B) By the tribal council for a C-BED project  
3 located within the boundaries of an Indian reservation;

4 ~~(2)~~ (b) New wind energy project ~~includes any materials~~  
5 means any tangible personal property used to manufacture, install,  
6 construct, repair, or replace a device, such as a wind charger,  
7 windmill, or wind turbine, ~~that converts~~ which is used to convert  
8 wind energy to a ~~form of usable~~ electrical energy; and

9 ~~(3)~~ (c) Qualified owner means:

10 ~~(a)~~ (i) A Nebraska resident;

11 ~~(b)~~ (ii) A limited liability company that is organized  
12 under the Limited Liability Company Act and that is entirely made  
13 up of members who are Nebraska residents;

14 ~~(c)~~ (iii) A Nebraska nonprofit corporation organized  
15 under the Nebraska Nonprofit Corporation Act;

16 ~~(d)~~ (iv) An electric supplier as defined in section  
17 70-1001.01, except that ownership in a single C-BED project is  
18 limited to no more than:

19 ~~(i)~~ (A) Fifteen percent either directly or indirectly by  
20 a single electric supplier; and

21 ~~(ii)~~ (B) A combined total of twenty-five percent  
22 ownership either directly or indirectly by multiple electric  
23 suppliers; or

24 ~~(e)~~ (v) A tribal council.

25 (4) Power purchase agreements payments are the total  
26 amount of payments during the life of the agreement. For the  
27 purposes of determining eligibility of the project, an estimate of



1 the payments and their recipients shall be used.

2 (5) Payments to the local community include, but are not  
3 limited to, lease payments to property owners on whose property a  
4 turbine is located, wind energy easement payments, and real and  
5 personal property tax receipts from the C-BED project.

6 (6) The Department of Revenue may examine the actual  
7 payments and the distribution of the payments to determine if the  
8 projected distributions were met. If the payment distributions to  
9 qualified owners do not meet the requirements of this section, the  
10 department may recover the amount of the sales or use tax that was  
11 not paid by the project at any time up until the end of three years  
12 after the end of the purchase power agreement.

13 (7) At any time prior to the end of the power purchase  
14 agreements, the project may voluntarily surrender the exemption  
15 granted by the Tax Commissioner and pay the amount of sales and use  
16 tax that would have otherwise have been due.

17 (8) The amount of the tax due under either subsection  
18 (6) or (7) of this section shall be increased by interest at the  
19 rate specified in section 45-104.02, as such rate may from time to  
20 time be adjusted, from the date the tax would have been due if no  
21 exemption was granted until the date paid.

22 Sec. 22. Sales and use taxes shall not be imposed on  
23 the gross receipts from the sale, use, or other consumption in  
24 this state of depositions, bills of exceptions, and transcripts  
25 prepared by a court reporter or copies of such depositions, bills  
26 of exceptions, and transcripts.

27 Sec. 23. Sales and use taxes shall not be imposed on the

1 gross receipts from the sale, use, or other consumption in this  
2 state of copies of medical records provided to the patient or a  
3 person holding such patient's power of attorney for health care.

4 Sec. 24. Section 77-2705, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 77-2705 (1) Except as provided in subsection (10) of this  
7 section, every retailer shall register with the Tax Commissioner  
8 and give:

9 (a) The name and address of all agents operating in this  
10 state;

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

13 (c) The name and address of any officer, director,  
14 partner, limited liability company member, or employee, other than  
15 an employee whose duties are purely ministerial in nature, or any  
16 person with a substantial interest in the applicant, who is or who  
17 will be responsible for the collection or remittance of the sales  
18 tax;

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

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

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

26 (a) The address of each office open to the public in  
27 which such public utility service business is transacted with

1 consumers; and

2 (b) Such other information as the Tax Commissioner may  
3 require.

4 (3) It shall be unlawful for any person to engage in or  
5 transact business as a seller within this state after June 1, 1967,  
6 unless a permit or permits shall have been issued to him or her  
7 as prescribed in this section. Every person desiring to engage in  
8 or to conduct business as a seller within this state shall file  
9 with the Tax Commissioner an application for a permit for each  
10 place of business. There shall be no charge to the retailer for  
11 the application for or issuance of a permit except as otherwise  
12 provided in this section.

13 (4) Every application for a permit shall:

14 (a) Be made upon a form prescribed by the Tax  
15 Commissioner;

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

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

21 (d) Be signed by the owner and include his or her social  
22 security number if he or she is a natural person; in the case  
23 of an association or partnership, by a member or partner; in the  
24 case of a limited liability company, by a member or some person  
25 authorized by the limited liability company to sign such kinds of  
26 applications; and in the case of a corporation, by an executive  
27 officer or some person authorized by the corporation to sign such

1 kinds of applications.

2 (5) After compliance with subsections (1) through (4) of  
3 this section by the applicant, the Tax Commissioner shall grant  
4 and issue to each applicant a separate permit for each place of  
5 business within the state. A permit shall not be assignable and  
6 shall be valid only for the person in whose name it is issued and  
7 for the transaction of business at the place designated therein.  
8 It shall at all times be conspicuously displayed at the place for  
9 which issued and shall be valid and effective until revoked by the  
10 Tax Commissioner.

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

1 mail in the manner prescribed for service of notice of a deficiency  
2 determination.

3 (b) The Tax Commissioner shall have the power to restore  
4 permits which have been revoked but shall not issue a new permit  
5 after the revocation of a permit unless he or she is satisfied that  
6 the former holder of the permit will comply with the provisions  
7 of such act relating to the retail sales tax and the regulations  
8 of the Tax Commissioner. A seller whose permit has been previously  
9 suspended or revoked under this subsection shall pay the Tax  
10 Commissioner a fee of twenty-five dollars for the renewal or  
11 issuance of a permit in the event of a first revocation and fifty  
12 dollars for renewal after each successive revocation.

13 (c) The action of the Tax Commissioner may be appealed  
14 by the taxpayer in the same manner as a final deficiency  
15 determination.

16 (7) For the purpose of more efficiently securing the  
17 payment, collection, and accounting for the sales and use taxes  
18 and for the convenience of the retailer in collecting the sales  
19 tax, it shall be the duty of the Tax Commissioner to formulate  
20 and promulgate appropriate rules and regulations providing a form  
21 and method for the registration of exempt purchases and the  
22 documentation of exempt sales.

23 (8) If any person, firm, corporation, association, or  
24 agent thereof presents an exempt sale certificate to the seller  
25 for property which is purchased by a taxpayer or for a use other  
26 than those enumerated in the Nebraska Revenue Act of 1967 as  
27 exempted from the computation of sales and use taxes, the Tax

1 Commissioner may, in addition to other penalties provided by law,  
2 impose, assess, and collect from the purchaser or the agent thereof  
3 a penalty of one hundred dollars or ten times the tax, whichever  
4 amount is larger, for each instance of such presentation and misuse  
5 of an exempt sale certificate. Such amount shall be in addition to  
6 any tax, interest, or penalty otherwise imposed.

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

12 (10) Pursuant to the streamlined sales and use tax  
13 agreement, the state shall participate in an online registration  
14 system that will allow retailers to register in all the member  
15 states. The state hereby agrees to honor and abide by the retailer  
16 registration decisions made by the governing board pursuant to the  
17 agreement.

18 Sec. 25. Section 77-2708, Revised Statutes Cumulative  
19 Supplement, 2006, is amended to read:

20 77-2708 (1)(a) The sales and use taxes imposed by the  
21 Nebraska Revenue Act of 1967 shall be due and payable to the  
22 Tax Commissioner monthly on or before the twenty-fifth day of the  
23 month next succeeding each monthly period unless otherwise provided  
24 pursuant to the Nebraska Revenue Act of 1967.

25 (b)(i) On or before the twenty-fifth day of the month  
26 following each monthly period or such other period as the Tax  
27 Commissioner may require, a return for such period, along with all

1 taxes due, shall be filed with the Tax Commissioner in such form  
2 and content as the Tax Commissioner may prescribe and containing  
3 such information as the Tax Commissioner deems necessary for the  
4 proper administration of the Nebraska Revenue Act of 1967. The Tax  
5 Commissioner, if he or she deems it necessary in order to insure  
6 payment to or facilitate the collection by the state of the amount  
7 of sales or use taxes due, may require returns and payment of the  
8 amount of such taxes for periods other than monthly periods in the  
9 case of a particular seller, retailer, or purchaser, as the case  
10 may be. The Tax Commissioner shall by rule and regulation require  
11 reports and tax payments from sellers, retailers, or purchasers  
12 depending on their yearly tax liability. Except as required by  
13 the streamlined sales and use tax agreement, annual returns shall  
14 be required if such sellers', retailers', or purchasers' yearly  
15 tax liability is less than nine hundred dollars, quarterly returns  
16 shall be required if their yearly tax liability is nine hundred  
17 dollars or more and less than three thousand dollars, and monthly  
18 returns shall be required if their yearly tax liability is three  
19 thousand dollars or more. The Tax Commissioner shall have the  
20 discretion to allow an annual return for seasonal retailers, even  
21 when their yearly tax liability exceeds the amounts listed in this  
22 subdivision.

23           The Tax Commissioner may adopt and promulgate rules  
24 and regulations to allow annual, semiannual, or quarterly returns  
25 for any retailer making monthly remittances or payments of sales  
26 and use taxes by electronic funds transfer or for any retailer  
27 remitting tax to the state pursuant to the streamlined sales and

1 use tax agreement. Such rules and regulations may establish a  
2 method of determining the amount of the payment that will result in  
3 substantially all of the tax liability being paid each quarter. At  
4 least once each year, the difference between the amount paid and  
5 the amount due shall be reconciled. If the difference is more than  
6 ten percent of the amount paid, a penalty of fifty percent of the  
7 unpaid amount shall be imposed.

8 (ii) For purposes of the sales tax, a return shall be  
9 filed by every retailer liable for collection from a purchaser and  
10 payment to the state of the tax, except that a combined sales tax  
11 return may be filed for all licensed locations which are subject  
12 to common ownership. For purposes of this subdivision, common  
13 ownership means the same person or persons own eighty percent or  
14 more of each licensed location. For purposes of the use tax, a  
15 return shall be filed by every retailer engaged in business in this  
16 state and by every person who has purchased property, the storage,  
17 use, or other consumption of which is subject to the use tax, but  
18 who has not paid the use tax due to a retailer required to collect  
19 the tax.

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

23 (iv) A taxpayer who keeps his or her regular books  
24 and records on a cash basis, an accrual basis, or any generally  
25 recognized accounting basis which correctly reflects the operation  
26 of the business may file the sales and use tax returns required  
27 by the Nebraska Revenue Act of 1967 on the same accounting basis



1 that is used for the regular books and records, except that on  
2 credit, conditional, and installment sales, the retailer who keeps  
3 his or her books on an accrual basis may report such sales on  
4 the cash basis and pay the tax upon the collections made during  
5 each month. If a taxpayer transfers, sells, assigns, or otherwise  
6 disposes of an account receivable, he or she shall be deemed  
7 to have received the full balance of the consideration for the  
8 original sale and shall be liable for the remittance of the sales  
9 tax on the balance of the total sale price not previously reported,  
10 except that such transfer, sale, assignment, or other disposition  
11 of an account receivable by a retailer to a subsidiary shall not be  
12 deemed to require the retailer to pay the sales tax on the credit  
13 sale represented by the account transferred prior to the time the  
14 customer makes payment on such account. If the subsidiary does not  
15 obtain a Nebraska sales tax permit, the taxpayer shall obtain a  
16 surety bond in favor of the State of Nebraska to insure payment  
17 of the tax and any interest and penalty imposed thereon under this  
18 section in an amount not less than two times the amount of tax  
19 payable on outstanding accounts receivable held by the subsidiary  
20 as of the end of the prior calendar year. Failure to obtain either  
21 a sales tax permit or a surety bond in accordance with this section  
22 shall result in the payment on the next required filing date of  
23 all sales taxes not previously remitted. When the retailer has  
24 adopted one basis or the other of reporting credit, conditional, or  
25 installment sales and paying the tax thereon, he or she will not be  
26 permitted to change from that basis without first having notified  
27 the Tax Commissioner.

1           (c) Except as provided in the streamlined sales and use  
2 tax agreement, the taxpayer required to file the return shall  
3 deliver or mail any required return together with a remittance of  
4 the net amount of the tax due to the office of the Tax Commissioner  
5 on or before the required filing date. Failure to file the return,  
6 filing after the required filing date, failure to remit the net  
7 amount of the tax due, or remitting the net amount of the tax due  
8 after the required filing date shall be cause for a penalty, in  
9 addition to interest, of ten percent of the amount of tax not paid  
10 by the required filing date or twenty-five dollars, whichever is  
11 greater, unless the penalty is being collected under subdivision  
12 (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a  
13 designated county official, or the Department of Motor Vehicles, in  
14 which case the penalty shall be five dollars.

15           (d) For all sales tax collected prior to October 1, 2002,  
16 the taxpayer shall deduct and withhold, from the taxes otherwise  
17 due from him or her on his or her tax return, two and one-half  
18 percent of the first three thousand dollars remitted each month and  
19 one-half of one percent of all amounts in excess of three thousand  
20 dollars remitted each month to reimburse himself or herself for  
21 the cost of collecting the tax. For all sales tax collected on  
22 and after October 1, 2002, the taxpayer shall deduct and withhold,  
23 from the taxes otherwise due from him or her on his or her  
24 tax return, two and one-half percent of the first three thousand  
25 dollars remitted each month to reimburse himself or herself for the  
26 cost of collecting the tax. Taxpayers filing a combined return as  
27 allowed by subdivision (1)(b)(ii) of this subsection shall compute

1 such collection fees on the basis of the receipts and liability of  
2 each licensed location.

3 (2) (a) If the Tax Commissioner determines that any sales  
4 or use tax amount, penalty, or interest has been paid more than  
5 once, has been erroneously or illegally collected or computed,  
6 or has been paid and the purchaser qualifies for a refund under  
7 section 77-2708.01, the Tax Commissioner shall set forth that fact  
8 in his or her records and the excess amount collected or paid may  
9 be credited on any sales, use, or income tax amounts then due and  
10 payable from the person under the Nebraska Revenue Act of 1967. Any  
11 balance may be refunded to the person by whom it was paid or his or  
12 her successors, administrators, or executors.

13 (b) No refund shall be allowed unless a claim therefor  
14 is filed with the Tax Commissioner by the person who made the  
15 overpayment or his or her attorney, executor, or administrator  
16 within three years from the required filing date following the  
17 close of the period for which the overpayment was made, within six  
18 months after any determination becomes final under section 77-2709,  
19 or within six months from the date of overpayment with respect  
20 to such determinations, whichever of these three periods expires  
21 later, unless the credit relates to a period for which a waiver has  
22 been given. Failure to file a claim within the time prescribed in  
23 this subsection shall constitute a waiver of any demand against the  
24 state on account of overpayment.

25 (c) Every claim shall be in writing on forms prescribed  
26 by the Tax Commissioner and shall state the specific amount and  
27 grounds upon which the claim is founded. No refund shall be made in

1 any amount less than two dollars.

2 (d) The Tax Commissioner shall allow or disallow  
3 a claim within one hundred eighty days after it has been  
4 filed. If A request for a hearing shall constitute a waiver  
5 of the one-hundred-eighty-day period. The claimant and the Tax  
6 Commissioner may also agree to extend the one-hundred-eighty-day  
7 period. If a hearing has not been requested and the Tax  
8 Commissioner has neither allowed nor disallowed a claim within ~~such~~  
9 either the one hundred eighty days or the period agreed to by the  
10 claimant and the Tax Commissioner, the claim shall be deemed to  
11 have been allowed.

12 (e) Within thirty days after disallowing any claim in  
13 whole or in part, the Tax Commissioner shall serve notice of his or  
14 her action on the claimant in the manner prescribed for service of  
15 notice of a deficiency determination.

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

21 (g) Upon the allowance of a credit or refund of any  
22 sum erroneously or illegally assessed or collected, of any penalty  
23 collected without authority, or of any sum which was excessive  
24 or in any manner wrongfully collected, interest shall be allowed  
25 and paid on the amount of such credit or refund at the rate  
26 specified in section 45-104.02, as such rate may from time to time  
27 be adjusted, from the date such sum was paid or from the date the

1 return was required to be filed, whichever date is later, to the  
2 date of the allowance of the refund or, in the case of a credit,  
3 to the due date of the amount against which the credit is allowed,  
4 but in the case of a voluntary and unrequested payment in excess  
5 of actual tax liability or a refund under section 77-2708.01, no  
6 interest shall be allowed when such excess is refunded or credited.

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

11 (i) The Tax Commissioner may recover any refund or part  
12 thereof which is erroneously made and any credit or part thereof  
13 which is erroneously allowed by issuing a deficiency determination  
14 within one year from the date of refund or credit or within the  
15 period otherwise allowed for issuing a deficiency determination,  
16 whichever expires later.

17 (j)(i) Credit shall be allowed to the retailer,  
18 contractor, or repairperson for sales or use taxes paid pursuant  
19 to the Nebraska Revenue Act of 1967 on any deduction taken that  
20 is attributed to bad debts not including interest. Bad debt has  
21 the same meaning as in 26 U.S.C. 166, as such section existed  
22 on January 1, 2003. However, the amount calculated pursuant to  
23 26 U.S.C. 166 shall be adjusted to exclude: Financing charges  
24 or interest; sales or use taxes charged on the purchase price;  
25 uncollectible amounts on property that remains in the possession  
26 of the seller until the full purchase price is paid; and expenses  
27 incurred in attempting to collect any debt and repossessed

1 property.

2 (ii) Bad debts may be deducted on the return for the  
3 period during which the bad debt is written off as uncollectible  
4 in the claimant's books and records and is eligible to be deducted  
5 for federal income tax purposes. A claimant who is not required  
6 to file federal income tax returns may deduct a bad debt on a  
7 return filed for the period in which the bad debt is written off  
8 as uncollectible in the claimant's books and records and would be  
9 eligible for a bad debt deduction for federal income tax purposes  
10 if the claimant was required to file a federal income tax return.

11 (iii) If a deduction is taken for a bad debt and the  
12 debt is subsequently collected in whole or in part, the tax on the  
13 amount so collected must be paid and reported on the return filed  
14 for the period in which the collection is made.

15 (iv) When the amount of bad debt exceeds the amount  
16 of taxable sales for the period during which the bad debt is  
17 written off, a refund claim may be filed within the otherwise  
18 applicable statute of limitations for refund claims. The statute of  
19 limitations shall be measured from the due date of the return on  
20 which the bad debt could first be claimed.

21 (v) If filing responsibilities have been assumed by a  
22 certified service provider, the service provider may claim, on  
23 behalf of the retailer, any bad debt allowance provided by this  
24 section. The certified service provider shall credit or refund the  
25 full amount of any bad debt allowance or refund received to the  
26 retailer.

27 (vi) For purposes of reporting a payment received on

1 a previously claimed bad debt, any payments made on a debt or  
2 account are applied first proportionally to the taxable price of  
3 the property or service and the sales tax thereon, and secondly to  
4 interest, service charges, and any other charges.

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

9 Sec. 26. This act becomes operative on October 1, 2008.

10 Sec. 27. Original sections 77-2701.32, 77-2704.26,  
11 77-2704.45, 77-2704.46, and 77-2705, Reissue Revised Statutes  
12 of Nebraska, section 77-2708, Revised Statutes Cumulative  
13 Supplement, 2006, and sections 70-1903, 70-1904, 70-1905, 70-1907,  
14 77-2701, 77-2701.04, 77-2701.16, 77-2701.34, 77-2703, 77-2703.01,  
15 77-2704.09, and 77-2704.57, Revised Statutes Supplement, 2007, are  
16 repealed.