

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 762

Introduced by Avery, 28.

Read first time January 09, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701 and 77-2701.04, Revised Statutes Supplement,
3 2007; to exempt sales of clothing, school supplies,
4 and computers from sales and use tax as prescribed;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement,
2 2007, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to
4 77-27,236 and section 3 of this act shall be known and may be cited
5 as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Supplement,
7 2007, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713
9 and section 3 of this act, unless the context otherwise requires,
10 the definitions found in sections 77-2701.05 to 77-2701.48 shall be
11 used.

12 Sec. 3. (1) Sales and use tax shall not be imposed on
13 the gross receipts from the sale, use, or other consumption in this
14 state of the following items of tangible personal property, if sold
15 between 12:01 a.m. on the first Friday of August and 11:59 p.m. the
16 following Sunday:

17 (a) Clothing with a sales price of one hundred dollars or
18 less per item;

19 (b) School supplies with a sales price of one hundred
20 dollars or less per item; and

21 (c) Computers with a sales price of one thousand five
22 hundred dollars or less per item.

23 (2) The exemption provided by this section does not apply
24 to the following:

25 (a) Computer software;

1 (b) Clothing accessories or equipment;

2 (c) Protective equipment;

3 (d) Sport or recreational equipment;

4 (e) School art supplies;

5 (f) School instructional material;

6 (g) School computer supplies;

7 (h) Any item for use in a trade or business; or

8 (i) The lease or rental of any item.

9 (3) Each retailer making exempt sales under this section
10 shall report the amount of such sales to the Tax Commissioner on
11 the retailer's sales and use tax returns.

12 (4) The exemption provided in this section shall be
13 subject to the following provisions:

14 (a) A sale of eligible property under a layaway sale
15 qualifies for exemption if:

16 (i) Final payment on a layaway order is made by, and the
17 property is given to, the purchaser during the exemption period; or

18 (ii) The purchaser selects the property and the retailer
19 accepts the order for the item during the exemption period, for
20 immediate delivery upon full payment, even if delivery is made
21 after the exemption period;

22 (b) A discount by the seller reduces the sales price of
23 the eligible property and the discounted sales price determines
24 whether the sales price is within the price threshold. A coupon
25 that reduces the sales price is treated as a discount if the seller

1 is not reimbursed for the coupon amount by a third party. If a
2 discount applies to the total amount paid by a purchaser, rather
3 than to the sales price of a particular item, and the purchaser has
4 purchased both eligible property and taxable property, the seller
5 shall allocate the discount based on the total sales price of the
6 taxable property compared to the total sales price of all property
7 sold in that same transaction;

8 (c) Articles that are normally sold as a single unit
9 shall continue to be sold in that manner. Such articles cannot be
10 priced separately and sold as individual items in order to obtain
11 the exemption. For example, each shoe of a pair of shoes cannot be
12 sold separately so that the sales price of each shoe is within a
13 sales tax holiday price threshold;

14 (d) Eligible property that customers purchase during the
15 exemption period with use of a rain check shall qualify for the
16 exemption, regardless of when the rain check was issued. Issuance
17 of a rain check during the exemption period shall not qualify
18 eligible property for the exemption, if the property is purchased
19 after the exemption period;

20 (e) The procedure for an exchange regarding a sales tax
21 holiday is as follows:

22 (i) If a customer purchases an item of eligible property
23 during the exemption period, but later exchanges the item for a
24 similar eligible item, even if a different size, different color,
25 or other feature, no additional tax is due, even if the exchange is

1 made after the exemption period;

2 (ii) If a customer purchases an item of eligible property
3 during the exemption period but, after the exemption period has
4 ended, the customer returns the item and receives credit on the
5 purchase of a different item, the appropriate sales tax is due on
6 the sale of the newly purchased item; and

7 (iii) If a customer purchases an item of eligible
8 property before the exemption period, but during the exemption
9 period the customer returns the item and receives credit on the
10 purchase of a different item of eligible property, no sales tax is
11 due on the sale of the new item if the new item is purchased during
12 the exemption period;

13 (f) Delivery charges, including shipping, handling, and
14 service charges, are part of the sales price of eligible property.
15 For the purpose of determining the price threshold, if all the
16 property in a shipment qualifies as eligible property and the sales
17 price for each item in the shipment is within the price threshold,
18 then the seller does not have to allocate the delivery, handling,
19 or service charge to determine if the price threshold is exceeded.
20 The shipment shall be considered a sale of eligible products.
21 If the shipment includes eligible property and taxable property,
22 including an eligible item with a sales price in excess of the
23 price threshold, the seller shall allocate the delivery charge by
24 using:

25 (i) A percentage based on the total sales prices of the

1 taxable property compared to the total sales prices of all property
2 in the shipment; or

3 (ii) A percentage based on the total weight of the
4 taxable property compared to the total weight of all property in
5 the shipment. The seller shall tax the percentage of the delivery
6 charge allocated to the taxable property, but shall not tax the
7 percentage allocated to the eligible property;

8 (g) For purposes of this section, eligible property
9 qualifies for exemption if:

10 (i) The item is both delivered to and paid for by the
11 customer during the exemption period; or

12 (ii) The customer orders and pays for the item and the
13 seller accepts the order during the exemption period for immediate
14 shipment, even if delivery is made after the exemption period. The
15 seller accepts an order when the seller has taken action to fill
16 the order for immediate shipment. Actions to fill an order include
17 placement of an "in date" stamp on a mail order or assignment of
18 an "order number" to a telephone order. An order is for immediate
19 shipment when the customer does not request delayed shipment. An
20 order is for immediate shipment, notwithstanding that the shipment
21 may be delayed because of a backlog of orders or because stock is
22 currently unavailable to or on back order by the seller;

23 (h) For the sixty-day period immediately after the
24 exemption period, when a customer returns an item that would
25 qualify for the exemption, no credit for or refund of sales tax

1 shall be given unless the customer provides a receipt or invoice
2 that shows tax was paid or the seller has sufficient documentation
3 to show that tax was paid on the specific item. The sixty-day
4 period is set solely for the purpose of designating a time period
5 during which the customer shall provide documentation that shows
6 that sales tax was paid on returned merchandise. The sixty-day
7 period is not intended to change a seller's policy on the time
8 period during which the seller will accept returns; and

9 (i) The time zone of the seller's location determines the
10 time of the exemption period when the purchaser is located in one
11 time zone and the seller is located in another.

12 Sec. 4. Original sections 77-2701 and 77-2701.04, Revised
13 Statutes Supplement, 2007, are repealed.