

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 916**

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Preister, 5; Raikes, 25; White, 8.

Read first time January 14, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701.32, 77-2704.26, 77-2704.45, and 77-2705, Reissue  
3 Revised Statutes of Nebraska, section 77-2708, Revised  
4 Statutes Cumulative Supplement, 2006, and sections  
5 77-2701, 77-2701.04, 77-2701.16, 77-2703, 77-2703.01, and  
6 77-2704.09, Revised Statutes Supplement, 2007; to change  
7 provisions relating to sales and use tax exemptions  
8 and refund claims; to provide for sales tax treatment  
9 of digital works; to eliminate obsolete provisions; to  
10 harmonize provisions; to provide an operative date; and  
11 to repeal the original sections.

12 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 sections 5 to 8 of this act shall be known and may be  
5 cited 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  
9 77-2713 and sections 5 to 8 of this act, unless the context  
10 otherwise requires, the definitions found in sections 77-2701.05 to  
11 77-2701.48 and sections 5 to 8 of this act shall be used.

12           Sec. 3. Section 77-2701.16, Revised Statutes Supplement,  
13 2007, is amended to read:

14           77-2701.16 ~~(1)~~ Gross receipts shall mean the total amount  
15 of the sale or lease or rental price, as the case may be, of  
16 the retail sales of retailers valued in money whether received in  
17 money or otherwise, without any deduction on account of any of the  
18 following:

19           ~~(a)~~ The cost of property sold. In accordance with rules  
20 and regulations adopted and promulgated by the Tax Commissioner, a  
21 deduction may be taken if the retailer has purchased property for  
22 some purpose other than resale, has reimbursed his or her vendor  
23 for tax which the vendor is required to pay to the state or has  
24 paid the use tax with respect to the property, and has resold  
25 the property prior to making any use of the property other than

1 ~~retention, demonstration, or display while holding it for sale in~~  
2 ~~the regular course of business. If such a deduction is taken by the~~  
3 ~~retailer, no refund or credit will be allowed to his or her vendor~~  
4 ~~with respect to the sale of the property;~~

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

7 ~~(c) The cost of transportation of the property;~~

8 ~~(d) The amount of any excise or property tax levied~~  
9 ~~against the property except as otherwise provided in the Nebraska~~  
10 ~~Revenue Act of 1967; or~~

11 ~~(e) The amount charged for warranties, guarantees, or~~  
12 ~~maintenance agreements.~~

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

18 ~~(a) In the furnishing of telephone communication service,~~  
19 ~~other than mobile telecommunications service as described in~~  
20 ~~section 77-2706.02, the gross income received from furnishing local~~  
21 ~~exchange telephone service and intrastate message toll telephone~~  
22 ~~service. In the furnishing of mobile telecommunications service~~  
23 ~~as described in section 77-2706.02, the gross income received~~  
24 ~~from furnishing mobile telecommunications service that originates~~  
25 ~~and terminates in the same state to a customer with a place~~

1 of primary use in Nebraska. Gross receipts shall not mean (i)  
2 the gross income, including division of revenue, settlements, or  
3 carrier access charges received on or after January 1, 1984, from  
4 the sale of a telephone communication service to a communication  
5 service provider for purposes of furnishing telephone communication  
6 service or (ii) the gross income attributable to services rendered  
7 using a prepaid telephone calling arrangement. For purposes of  
8 this subdivision, a prepaid telephone calling arrangement shall  
9 mean the right to exclusively purchase telecommunications service  
10 that is paid for in advance that enables the origination of calls  
11 using an access number or authorization code, whether manually or  
12 electronically dialed;

13 (b) In the furnishing of telegraph service, the gross  
14 income received from the furnishing of intrastate telegraph  
15 services;

16 (c) In the furnishing of gas, electricity, sewer, and  
17 water service except water used for irrigation of agricultural  
18 lands and manufacturing purposes, the gross income received from  
19 the furnishing of such services upon billings or statements  
20 rendered to consumers for such utility services; and

21 (d) In the furnishing of community antenna television  
22 service, the gross income received from the furnishing of such  
23 community antenna television service as regulated under sections  
24 18-2201 to 18-2205 or 23-383 to 23-388.

25 Gross receipts shall also mean gross income received from

1 the provision, installation, construction, servicing, or removal of  
2 property used in conjunction with the furnishing, installing, or  
3 connecting of any public utility services specified in subdivision  
4 (2)(a) or (b) of this section or community antenna television  
5 service specified in subdivision (2)(d) of this section. Gross  
6 receipts shall not mean gross income received from telephone  
7 directory advertising.

8 (3) Gross receipts of every person engaged in selling,  
9 leasing, or otherwise providing intellectual or entertainment  
10 property shall mean:

11 (a) In the furnishing of computer software, the gross  
12 income received, including the charges for coding, punching, or  
13 otherwise producing computer software and the charges for the  
14 tapes, disks, punched cards, or other properties furnished by the  
15 seller; and

16 (b) In the furnishing of videotapes, movie film,  
17 satellite programming, satellite programming service, and satellite  
18 television signal descrambling or decoding devices, the gross  
19 income received from the license, franchise, or other method  
20 establishing the charge except the gross income received from  
21 videotape and film rentals, satellite programming, and satellite  
22 programming service when the sales tax or the admission tax is  
23 charged under the Nebraska Revenue Act of 1967 and except as  
24 provided in section 77-2704.39.

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

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

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

5           ~~(c) The gross income received for computer software~~  
6 ~~training;~~

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

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

12           ~~(f) The gross income received for services of~~  
13 ~~recreational vehicle parks;~~

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

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

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

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

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

1           ~~(b) The amount of any rebate granted by a motor vehicle~~  
2 ~~or motorboat manufacturer or dealer at the time of sale of the~~  
3 ~~motor vehicle or motorboat, which rebate functions as a discount~~  
4 ~~from the sales price of the motor vehicle or motorboat;~~

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

8           ~~(d) The amount charged for finance charges, carrying~~  
9 ~~charges, service charges, or interest from credit extended on sales~~  
10 ~~of property or services under contracts providing for deferred~~  
11 ~~payments of the purchase price if such charges are not used as a~~  
12 ~~means of avoiding imposition of the tax upon the actual sales price~~  
13 ~~of the property or services;~~

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

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

20           ~~(g) Receipts from conditional sale contracts, installment~~  
21 ~~sale contracts, rentals, and leases executed in writing prior to~~  
22 ~~June 1, 1967, and with delivery of the property prior to June~~  
23 ~~1, 1967, if such conditional sale contracts, installment sale~~  
24 ~~contracts, rentals, or leases are for a fixed price and are not~~  
25 ~~subject to negotiation or alteration; or~~

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

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

9           ~~(7) (1) Gross receipts means the total amount of the sale~~  
10           ~~or lease or rental price, as the case may be, of the retail sales~~  
11           ~~of retailers.~~

12           ~~(8) (2) Gross receipts of every person engaged as a~~  
13           ~~public utility specified in this subsection or as a community~~  
14           ~~antenna television service operator or any person involved in~~  
15           ~~connecting and installing services defined in subdivision (8)(a),~~  
16           ~~(2)(a), (b), or (d) of this section means:~~

17                   (a)(i) In the furnishing of telephone communication  
18                   service, other than mobile telecommunications service as described  
19                   in section 77-2703.04, the gross income received from furnishing  
20                   local exchange telephone service and intrastate message toll  
21                   telephone service; and

22                   (ii) In the furnishing of mobile telecommunications  
23                   service as described in section 77-2703.04, the gross income  
24                   received from furnishing mobile telecommunications service that  
25                   originates and terminates in the same state to a customer with a



1 place of primary use in Nebraska;

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

5 (c) In the furnishing of gas, electricity, sewer, and  
6 water service, the gross income received from the furnishing of  
7 such services upon billings or statements rendered to consumers for  
8 such utility services;

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

13 (e) The gross income received from the provision,  
14 installation, construction, servicing, or removal of property used  
15 in conjunction with the furnishing, installing, or connecting of  
16 any public utility services specified in subdivision ~~(8)-(a)~~ (2)(a)  
17 or (b) of this section or community antenna television service  
18 specified in subdivision ~~(8)-(d)~~ (2)(d) of this section, except when  
19 acting as a subcontractor for a public utility, this subdivision  
20 does not apply to the gross income received by a contractor  
21 electing to be treated as a consumer of building materials under  
22 subdivision (2) or (3) of section 77-2701.10 for any such services  
23 performed on the customer's side of the utility demarcation point.

24 ~~(9)~~ (3) Gross receipts of every person engaged  
25 in selling, leasing, or otherwise providing intellectual or

1 entertainment property means:

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

7 (b) In the furnishing of videotapes, movie film,  
8 satellite programming, satellite programming service, and satellite  
9 television signal descrambling or decoding devices, the gross  
10 income received from the license, franchise, or other method  
11 establishing the charge; and -

12 (c) The gross income received from the provision,  
13 installation, construction, servicing, or removal of property used  
14 in conjunction with the furnishing, installing, or connecting of  
15 any satellite services specified in subdivision (3)(b) of this  
16 section, except when acting as a subcontractor for a public  
17 utility, this subdivision does not apply to the gross income  
18 received by a contractor electing to be treated as a consumer  
19 of building materials under subdivision (2) or (3) of section  
20 77-2701.10 for any such services performed on the customer's side  
21 of the utility demarcation point.

22 ~~(10)~~ (4) Gross receipts for providing a service means:

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

25 (b) The gross income received for motor vehicle washing,

1 waxing, towing, and painting;

2 (c) The gross income received for computer software  
3 training;

4 (d) The gross income received for installing and applying  
5 tangible personal property if the sale of the property is subject  
6 to tax;

7 (e) The gross income received for services of  
8 recreational vehicle parks;

9 (f) The gross income received for labor for repair or  
10 maintenance services performed with regard to tangible personal  
11 property the sale of which would be subject to sales and use taxes,  
12 excluding motor vehicles, except as otherwise provided in section  
13 77-2704.26 or 77-2704.50;

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

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

18 ~~(11)~~ (5) Gross receipts includes the sale of admissions  
19 which means the right or privilege to have access to or to use a  
20 place or location. An admission includes a membership that allows  
21 access to or use of a place or location, but which membership  
22 does not include the right to hold office, vote, or change the  
23 policies of the organization. When an admission to an activity or  
24 a membership constituting an admission pursuant to this subsection  
25 is combined with the solicitation of a contribution, the portion

1 or the amount charged representing the fair market price of  
2 the admission shall be considered a retail sale subject to the  
3 tax imposed by section 77-2703. The organization conducting the  
4 activity shall determine the amount properly attributable to the  
5 purchase of the privilege, benefit, or other consideration in  
6 advance, and such amount shall be clearly indicated on any ticket,  
7 receipt, or other evidence issued in connection with the payment.

8 ~~(12)~~ (6) Gross receipts includes the sale of live plants  
9 incorporated into real estate except when such incorporation is  
10 incidental to the transfer of an improvement upon real estate or  
11 the real estate.

12 ~~(13)~~ (7) Gross receipts includes the sale of any building  
13 materials annexed to real estate by a person electing to be taxed  
14 as a retailer pursuant to subdivision (1) of section 77-2701.10.

15 ~~(14)~~ (8) Gross receipts includes the sale of prepaid  
16 telephone calling arrangements and the recharge of prepaid  
17 telephone calling arrangements. If the sale or recharge of a  
18 prepaid telephone calling arrangement does not take place at  
19 the vendor's place of business, the sale or recharge shall be  
20 conclusively determined to take place at the customer's shipping  
21 address or, if there is no item shipped, at the customer's  
22 billing address. For purposes of this subsection, a prepaid  
23 telephone calling arrangement means the right to exclusively  
24 purchase telecommunications services that are paid for in advance  
25 that enables the origination of calls using an access number or

1 authorization code, whether manually or electronically dialed.

2 (9) Gross receipts includes the sale of products  
3 delivered electronically if the products are taxable when delivered  
4 on tangible storage media. Products delivered electronically  
5 include, but are not limited to, digital audio works, digital  
6 audiovisual works, and digital books. A sale includes the transfer  
7 of a permanent right of use, the transfer of a right of use that  
8 terminates on some condition, and the transfer of a right of use  
9 conditioned upon the receipt of continued payments.

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

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

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

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

20 ~~(17)~~ The Tax Commissioner shall hold a hearing on rules  
21 and regulations to carry out the changes made to this section by  
22 Laws 2003, LB 759. It is the intent of the Legislature that the Tax  
23 Commissioner adopt and promulgate rules and regulations to carry  
24 out such changes.

25 Sec. 4. Section 77-2701.32, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2701.32 (1) Retailer means any seller.

3 (2) To facilitate the proper administration of the  
4 Nebraska Revenue Act of 1967, the following persons have the  
5 duties and responsibilities of sellers for the purposes of sales  
6 and use taxes:

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

10 (b) Any person collecting the proceeds of the auction,  
11 other than the owner of the property, together with his or her  
12 principal, if any, when the person collecting the proceeds of the  
13 auction is not the auctioneer or an agent or employee of the  
14 auctioneer. The seller does not include the auctioneer in such  
15 case;

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

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

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

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

25 (a) Any person who leases or rents films when an

1 admission tax is charged under the Nebraska Revenue Act of 1967;

2 (b) Any person who leases or rents railroad rolling stock  
3 interchanged pursuant to the provisions of the federal Interstate  
4 Commerce Act;

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

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

16 Sec. 5. Delivered electronically means obtained by the  
17 purchaser by means other than tangible storage media.

18 Sec. 6. Digital audio works means works that result from  
19 the fixation of a series of musical, spoken, or other sounds,  
20 including ringtones.

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

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

1           Sec. 9. Section 77-2703, Revised Statutes Supplement,  
2 2007, is amended to read:

3           77-2703 (1) There is hereby imposed a tax at the rate  
4 provided in section 77-2701.02 upon the gross receipts from all  
5 sales of tangible personal property sold at retail in this state;  
6 the gross receipts of every person engaged as a public utility,  
7 as a community antenna television service operator or any person  
8 involved in the connecting and installing of the services defined  
9 in subdivision ~~(8)(a)~~, (2)(a), (b), (d), or (e) of section  
10 77-2701.16, or as a retailer of intellectual or entertainment  
11 properties referred to in subsection ~~(9)~~ (3) of section 77-2701.16;  
12 the gross receipts from the sale of admissions in this state; the  
13 gross receipts from the sale of warranties, guarantees, service  
14 agreements, or maintenance agreements when the items covered are  
15 subject to tax under this section; beginning January 1, 2008,  
16 the gross receipts from the sale of bundled transactions when  
17 one or more of the products included in the bundle are taxable;  
18 ~~and~~ the gross receipts from the provision of services defined in  
19 subsection ~~(10)~~ (4) of section 77-2701.16; and the gross receipts  
20 from the sale of products delivered electronically as described in  
21 subsection (9) of section 77-2701.16. Except as provided in section  
22 77-2701.03, when there is a sale, the tax shall be imposed at the  
23 rate in effect at the time the gross receipts are realized under  
24 the accounting basis used by the retailer to maintain his or her  
25 books and records.



1           (a) The tax imposed by this section shall be collected  
2 by the retailer from the consumer. It shall constitute a part of  
3 the purchase price and until collected shall be a debt from the  
4 consumer to the retailer and shall be recoverable at law in the  
5 same manner as other debts. The tax required to be collected by the  
6 retailer from the consumer constitutes a debt owed by the retailer  
7 to this state.

8           (b) It is unlawful for any retailer to advertise, hold  
9 out, or state to the public or to any customer, directly or  
10 indirectly, that the tax or part thereof will be assumed or  
11 absorbed by the retailer, that it will not be added to the selling,  
12 renting, or leasing price of the property sold, rented, or leased,  
13 or that, if added, it or any part thereof will be refunded. The  
14 provisions of this subdivision shall not apply to a public utility.

15           (c) The tax required to be collected by the retailer from  
16 the purchaser, unless otherwise provided by statute or by rule and  
17 regulation of the Tax Commissioner, shall be displayed separately  
18 from the list price, the price advertised in the premises, the  
19 marked price, or other price on the sales check or other proof of  
20 sales, rentals, or leases.

21           (d) For the purpose of more efficiently securing the  
22 payment, collection, and accounting for the sales tax and for the  
23 convenience of the retailer in collecting the sales tax, it shall  
24 be the duty of the Tax Commissioner to provide a schedule or  
25 schedules of the amounts to be collected from the consumer or user

1 to effectuate the computation and collection of the tax imposed  
2 by the Nebraska Revenue Act of 1967. Such schedule or schedules  
3 shall provide that the tax shall be collected from the consumer  
4 or user uniformly on sales according to brackets based on sales  
5 prices of the item or items. Retailers may compute the tax due on  
6 any transaction on an item or an invoice basis. The rounding rule  
7 provided in section 77-3,117 applies.

8 (e) The use of tokens or stamps for the purpose of  
9 collecting or enforcing the collection of the taxes imposed in the  
10 Nebraska Revenue Act of 1967 or for any other purpose in connection  
11 with such taxes is prohibited.

12 (f) For the purpose of the proper administration of the  
13 provisions of the Nebraska Revenue Act of 1967 and to prevent  
14 evasion of the retail sales tax, it shall be presumed that all  
15 gross receipts are subject to the tax until the contrary is  
16 established. The burden of proving that a sale of property is not  
17 a sale at retail is upon the person who makes the sale unless he  
18 or she takes from the purchaser (i) a resale certificate to the  
19 effect that the property is purchased for the purpose of reselling,  
20 leasing, or renting it, (ii) an exemption certificate pursuant to  
21 subsection (7) of section 77-2705, or (iii) a direct payment permit  
22 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale  
23 certificate, exemption certificate, or direct payment permit shall  
24 be conclusive proof for the seller that the sale was made for  
25 resale or was exempt or that the tax will be paid directly to the

1 state.

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

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

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

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

23 (iii) When such election is made, it shall apply to all  
24 vehicles of the lessor rented or leased for periods of one year or  
25 more except vehicles to be leased to common or contract carriers

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

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

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

1 to the county treasurer, the designated county official, or the  
2 Department of Motor Vehicles. If the tax is not paid on or  
3 before the thirtieth day after its purchase, the county treasurer,  
4 designated county official, or Department of Motor Vehicles shall  
5 also collect from the purchaser interest from the thirtieth day  
6 through the date of payment and sales tax penalties as provided in  
7 the Nebraska Revenue Act of 1967. The county treasurer, designated  
8 county official, or Department of Motor Vehicles shall report and  
9 remit the tax so collected to the Tax Commissioner by the fifteenth  
10 day of the following month. The county treasurer or designated  
11 county official shall deduct and withhold for the use of the county  
12 general fund, from all amounts required to be collected under  
13 this subsection, the collection fee permitted to be deducted by  
14 any retailer collecting the sales tax. The Department of Motor  
15 Vehicles shall deduct, withhold, and deposit in the Motor Carrier  
16 Division Cash Fund the collection fee permitted to be deducted by  
17 any retailer collecting the sales tax. The collection fee shall  
18 be forfeited if the county treasurer, designated county official,  
19 or Department of Motor Vehicles violates any rule or regulation  
20 pertaining to the collection of the use tax.

21 (j)(i) The tax imposed by this section on the sale of a  
22 motorboat as defined in section 37-1204 shall be the liability of  
23 the purchaser. The tax shall be collected by the county treasurer  
24 or designated county official at the time the purchaser makes  
25 application for the registration of the motorboat. At the time

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

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

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

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

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



1 on or after June 1, 1967, for storage, use, or other consumption  
2 in this state at the rate set as provided in subsection (1) of  
3 this section on the sales price of the property or, in the case of  
4 leases or rentals, of the lease or rental prices.

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

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

1 and form prescribed by the Tax Commissioner.

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

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

1 for the cost of collecting the tax. For use taxes collected on  
2 and after October 1, 2002, such collectors of the use tax shall  
3 deduct and withhold from the amount of taxes collected two and  
4 one-half percent of the first three thousand dollars remitted each  
5 month as reimbursement for the cost of collecting the tax. Any  
6 such deduction shall be forfeited to the State of Nebraska if such  
7 collector violates any rule, regulation, or directive of the Tax  
8 Commissioner.

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

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

23 Sec. 10. Section 77-2703.01, Revised Statutes Supplement,  
24 2007, is amended to read:

25 77-2703.01 (1) The determination of whether a sale or use

1 of property or the provision of services is in this state, in a  
2 municipality that has adopted a tax under the Local Option Revenue  
3 Act, or in a county that has adopted a tax under section 13-319  
4 shall be governed by the sourcing rules in sections 77-2703.01 to  
5 77-2703.04.

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

9 (3) When the property or service is not received by the  
10 purchaser at a business location of the retailer, the sale is  
11 sourced to the location where receipt by the purchaser or the  
12 purchaser's donee, designated as such by the purchaser, occurs,  
13 including the location indicated by instructions for delivery to  
14 the purchaser or donee, known to the retailer.

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

21 (5) When subsection (2), (3), or (4) of this section does  
22 not apply, the sale is sourced to the location indicated by an  
23 address for the purchaser obtained during the consummation of the  
24 sale, including the address of a purchaser's payment instrument, if  
25 no other address is available, when use of this address does not

1 constitute bad faith.

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

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

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

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

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

9           (8) The lease or rental of motor vehicles, trailers,  
10 semitrailers, or aircraft that do not qualify as transportation  
11 equipment under subsection (9) of this section shall be sourced as  
12 follows:

13           (a) For a lease or rental that requires recurring  
14 periodic payments, each periodic payment is sourced to the primary  
15 property location. The primary property location shall be as  
16 indicated by an address for the property provided by the lessee  
17 that is available to the lessor from its records maintained in  
18 the ordinary course of business when use of this address does  
19 not constitute bad faith. This location shall not be altered by  
20 intermittent use at different locations; and

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

25           This subsection does not affect the imposition or

1 computation of sales or use tax on leases or rentals based on a  
2 lump-sum or accelerated basis or on the acquisition of property  
3 for lease.

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

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

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

18 (c) Aircraft operated by air carriers authorized and  
19 certificated by the United States Department of Transportation or  
20 another federal authority or a foreign authority to engage in the  
21 carriage of persons or property in interstate or foreign commerce;  
22 and

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

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

12           (11) The sale, not including lease or rental, of a motor  
13 vehicle, semitrailer, or trailer as defined in the Motor Vehicle  
14 Registration Act shall be sourced to the place of registration of  
15 the motor vehicle, semitrailer, or trailer for operation upon the  
16 highways of this state.

17           (12) The sale or lease for one year or more of motorboats  
18 shall be sourced to the place of registration of the motorboat. The  
19 lease of motorboats for less than one year shall be sourced to the  
20 point of delivery.

21           Sec. 11. Section 77-2704.09, Revised Statutes Supplement,  
22 2007, is amended to read:

23           77-2704.09 (1) Sales and use taxes shall not be imposed  
24 on the gross receipts from the sale, lease, or rental of and  
25 the storage, use, or other consumption in this state of (a)



1 insulin, (b) drugs, not including over-the-counter drugs, when  
2 sold for a patient's use under a prescription, and (c) the  
3 following when sold for a patient's use under a prescription and  
4 which are of the type eligible for coverage under the medical  
5 assistance program established pursuant to the Medical Assistance  
6 Act: ~~Drugs, not including over-the-counter drugs, durable~~ Durable  
7 medical equipment; home medical supplies; prosthetic devices;  
8 oxygen; oxygen equipment; and mobility enhancing equipment.

9 (2) For purposes of this section:

10 (a) Drug means a compound, substance, preparation, and  
11 component of a compound, substance, or preparation, other than food  
12 and food ingredients, dietary supplements, or alcoholic beverages:

13 (i) Recognized in the official United States  
14 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United  
15 States, or official National Formulary, and any supplement to any  
16 of them;

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

19 (iii) Intended to affect the structure or any function of  
20 the body;

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

1 includes repair and replacement parts for such equipment;

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

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

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

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

1 oxygen humidifiers, and oxygen fittings and accessories;

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

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

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

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

1 registered or based in this state and it will not remain in this  
2 state more than ten days after the service is completed.

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

5 77-2704.45 Sales and use taxes shall not be imposed on  
6 the gross receipts from the sale, lease, or rental of and the  
7 storage, use, or other consumption in this state of:

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

11 (2) A service listed in subsection ~~(10)~~ (4) of section  
12 77-2701.16 which will become an ingredient or component part of a  
13 service listed in subsection ~~(10)~~ (4) of section 77-2701.16 for  
14 ultimate sale at retail.

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

17 77-2705 (1) Except as provided in subsection (10) of this  
18 section, every retailer shall register with the Tax Commissioner  
19 and give:

20 (a) The name and address of all agents operating in this  
21 state;

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

24 (c) The name and address of any officer, director,  
25 partner, limited liability company member, or employee, other than

1 an employee whose duties are purely ministerial in nature, or any  
2 person with a substantial interest in the applicant, who is or who  
3 will be responsible for the collection or remittance of the sales  
4 tax;

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

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

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

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

15 (b) Such other information as the Tax Commissioner may  
16 require.

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

- 1                   (4) Every application for a permit shall:
- 2                   (a) Be made upon a form prescribed by the Tax
- 3 Commissioner;
- 4                   (b) Set forth the name under which the applicant
- 5 transacts or intends to transact business and the location of
- 6 his or her place or places of business;
- 7                   (c) Set forth such other information as the Tax
- 8 Commissioner may require; and
- 9                   (d) Be signed by the owner and include his or her social
- 10 security number if he or she is a natural person; in the case
- 11 of an association or partnership, by a member or partner; in the
- 12 case of a limited liability company, by a member or some person
- 13 authorized by the limited liability company to sign such kinds of
- 14 applications; and in the case of a corporation, by an executive
- 15 officer or some person authorized by the corporation to sign such
- 16 kinds of applications.
- 17                   (5) After compliance with subsections (1) through (4) of
- 18 this section by the applicant, the Tax Commissioner shall grant
- 19 and issue to each applicant a separate permit for each place of
- 20 business within the state. A permit shall not be assignable and
- 21 shall be valid only for the person in whose name it is issued and
- 22 for the transaction of business at the place designated therein.
- 23 It shall at all times be conspicuously displayed at the place for
- 24 which issued and shall be valid and effective until revoked by the
- 25 Tax Commissioner.

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

20           (b) The Tax Commissioner shall have the power to restore  
21 permits which have been revoked but shall not issue a new permit  
22 after the revocation of a permit unless he or she is satisfied that  
23 the former holder of the permit will comply with the provisions  
24 of such act relating to the retail sales tax and the regulations  
25 of the Tax Commissioner. A seller whose permit has been previously

1 suspended or revoked under this subsection shall pay the Tax  
2 Commissioner a fee of twenty-five dollars for the renewal or  
3 issuance of a permit in the event of a first revocation and fifty  
4 dollars for renewal after each successive revocation.

5 (c) The action of the Tax Commissioner may be appealed  
6 by the taxpayer in the same manner as a final deficiency  
7 determination.

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

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



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

6           (10) Pursuant to the streamlined sales and use tax  
7 agreement, the state shall participate in an online registration  
8 system that will allow retailers to register in all the member  
9 states. The state hereby agrees to honor and abide by the retailer  
10 registration decisions made by the governing board pursuant to the  
11 agreement.

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

14           77-2708 (1)(a) The sales and use taxes imposed by the  
15 Nebraska Revenue Act of 1967 shall be due and payable to the  
16 Tax Commissioner monthly on or before the twenty-fifth day of the  
17 month next succeeding each monthly period unless otherwise provided  
18 pursuant to the Nebraska Revenue Act of 1967.

19           (b)(i) On or before the twenty-fifth day of the month  
20 following each monthly period or such other period as the Tax  
21 Commissioner may require, a return for such period, along with all  
22 taxes due, shall be filed with the Tax Commissioner in such form  
23 and content as the Tax Commissioner may prescribe and containing  
24 such information as the Tax Commissioner deems necessary for the  
25 proper administration of the Nebraska Revenue Act of 1967. The Tax

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

19           The Tax Commissioner may adopt and promulgate rules  
20 and regulations to allow annual, semiannual, or quarterly returns  
21 for any retailer making monthly remittances or payments of sales  
22 and use taxes by electronic funds transfer or for any retailer  
23 remitting tax to the state pursuant to the streamlined sales and  
24 use tax agreement. Such rules and regulations may establish a  
25 method of determining the amount of the payment that will result in

1 substantially all of the tax liability being paid each quarter. At  
2 least once each year, the difference between the amount paid and  
3 the amount due shall be reconciled. If the difference is more than  
4 ten percent of the amount paid, a penalty of fifty percent of the  
5 unpaid amount shall be imposed.

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

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

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

1 permitted to change from that basis without first having notified  
2 the Tax Commissioner.

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

17 (d) For all sales tax collected prior to October 1, 2002,  
18 the taxpayer shall deduct and withhold, from the taxes otherwise  
19 due from him or her on his or her tax return, two and one-half  
20 percent of the first three thousand dollars remitted each month and  
21 one-half of one percent of all amounts in excess of three thousand  
22 dollars remitted each month to reimburse himself or herself for  
23 the cost of collecting the tax. For all sales tax collected on  
24 and after October 1, 2002, the taxpayer shall deduct and withhold,  
25 from the taxes otherwise due from him or her on his or her

1 tax return, two and one-half percent of the first three thousand  
2 dollars remitted each month to reimburse himself or herself for the  
3 cost of collecting the tax. Taxpayers filing a combined return as  
4 allowed by subdivision (1)(b)(ii) of this subsection shall compute  
5 such collection fees on the basis of the receipts and liability of  
6 each licensed location.

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

17 (b) No refund shall be allowed unless a claim therefor  
18 is filed with the Tax Commissioner by the person who made the  
19 overpayment or his or her attorney, executor, or administrator  
20 within three years from the required filing date following the  
21 close of the period for which the overpayment was made, within six  
22 months after any determination becomes final under section 77-2709,  
23 or within six months from the date of overpayment with respect  
24 to such determinations, whichever of these three periods expires  
25 later, unless the credit relates to a period for which a waiver has

1 been given. Failure to file a claim within the time prescribed in  
2 this subsection shall constitute a waiver of any demand against the  
3 state on account of overpayment.

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

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

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

22 (f) Within thirty days after the mailing of the notice  
23 of the Tax Commissioner's action upon a claim filed pursuant  
24 to the Nebraska Revenue Act of 1967, the action of the Tax  
25 Commissioner shall be final unless the taxpayer seeks review of the

1 Tax Commissioner's determination as provided in section 77-27,127.

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

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

19 (i) The Tax Commissioner may recover any refund or part  
20 thereof which is erroneously made and any credit or part thereof  
21 which is erroneously allowed by issuing a deficiency determination  
22 within one year from the date of refund or credit or within the  
23 period otherwise allowed for issuing a deficiency determination,  
24 whichever expires later.

25 (j)(i) Credit shall be allowed to the retailer,



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

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

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

25 (iv) When the amount of bad debt exceeds the amount

1 of taxable sales for the period during which the bad debt is  
2 written off, a refund claim may be filed within the otherwise  
3 applicable statute of limitations for refund claims. The statute of  
4 limitations shall be measured from the due date of the return on  
5 which the bad debt could first be claimed.

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

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

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

21 Sec. 16. This act becomes operative on October 1, 2008.

22 Sec. 17. Original sections 77-2701.32, 77-2704.26,  
23 77-2704.45, and 77-2705, Reissue Revised Statutes of Nebraska,  
24 section 77-2708, Revised Statutes Cumulative Supplement, 2006, and  
25 sections 77-2701, 77-2701.04, 77-2701.16, 77-2703, 77-2703.01, and

LB 916

LB 916

1 77-2704.09, Revised Statutes Supplement, 2007, are repealed.