

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 161**

Introduced by Pahls, 31.

Read first time January 12, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2703, Revised Statutes Cumulative Supplement, 2008; to  
3 adopt the Business Provided Sales Tax Holiday Act; to  
4 harmonize provisions; to provide an operative date; to  
5 repeal the original section; and to declare an emergency.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 4 of this act shall be known and  
2 may be cited as the Business Provided Sales Tax Holiday Act.

3           Sec. 2. For purposes of the Business Provided Sales  
4 Tax Holiday Act, the definitions found in sections 77-2701.05 to  
5 77-2701.53 shall be used and sales tax means the taxes imposed by  
6 sections 13-319 and 77-2703 and the Local Option Revenue Act.

7           Sec. 3. (1) Beginning at 12:01 a.m. on the first Friday  
8 in August and ending at midnight on the Sunday following, a  
9 retailer may elect to:

10           (a) Not collect the sales tax from the consumer as  
11 required in subdivision (1)(a) of section 77-2703 on any tangible  
12 personal property sold at retail in this state. For such sales,  
13 the sales tax shall constitute a part of the sales price and shall  
14 not be considered a debt from the consumer to the retailer or be  
15 recoverable by law in the same manner as other debts;

16           (b) Advertise, hold out, or state to the public or to  
17 any customer, directly or indirectly, that the sales tax or part  
18 thereof will be assumed or absorbed by the retailer, that it will  
19 be added to the sales price of any item listed under subsection (2)  
20 of this section sold, or that, if added, it or any part thereof  
21 will be refunded; or

22           (c) Combine the list price, the price advertised in the  
23 premises, the marked price, or other price on the sales check or  
24 other proof of sales of any tangible personal property sold at  
25 retail in this state with the sales tax returned under section

1 77-2708 for any such item.

2 (2) Any retailer who makes an election pursuant to this  
3 section shall clearly designate, describe, declare, state, or  
4 advertise prior to any sale to any consumer which items of tangible  
5 personal property for sale at retail qualify for the election.

6 (3) Any retailer who makes an election under this section  
7 may advertise, state, declare, or hold out that such sales are  
8 tax-free sales.

9 Sec. 4. The Business Provided Sales Tax Holiday Act  
10 terminates on December 31, 2010.

11 Sec. 5. Section 77-2703, Revised Statutes Cumulative  
12 Supplement, 2008, 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,  
17 as a community antenna television service operator, or as a  
18 satellite service operator, any person involved in the connecting  
19 and installing of the services defined in subdivision (2)(a), (b),  
20 (d), or (e) of section 77-2701.16, or every person engaged as  
21 a retailer of intellectual or entertainment properties referred  
22 to in subsection (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

1 under this section; beginning January 1, 2008, the gross receipts  
2 from the sale of bundled transactions when one or more of the  
3 products included in the bundle are taxable; the gross receipts  
4 from the provision of services defined in subsection (4) of section  
5 77-2701.16; and the gross receipts from the sale of products  
6 delivered electronically as described in subsection (9) of section  
7 77-2701.16. Except as provided in section 77-2701.03, when there is  
8 a sale, the tax shall be imposed at the rate in effect at the time  
9 the gross receipts are realized under the accounting basis used by  
10 the retailer to maintain his or her books and records.

11 (a) ~~The~~ Except as provided in the Business Provided Sales  
12 Tax Holiday Act, the tax imposed by this section shall be collected  
13 by the retailer from the consumer. It shall constitute a part of  
14 the purchase price and until collected shall be a debt from the  
15 consumer to the retailer and shall be recoverable at law in the  
16 same manner as other debts. The tax required to be collected by the  
17 retailer from the consumer constitutes a debt owed by the retailer  
18 to this state.

19 (b) ~~It~~ Except as provided in the Business Provided Sales  
20 Tax Holiday Act, it is unlawful for any retailer to advertise,  
21 hold out, or state to the public or to any customer, directly  
22 or indirectly, that the tax or part thereof will be assumed or  
23 absorbed by the retailer, that it will not be added to the selling,  
24 renting, or leasing price of the property sold, rented, or leased,  
25 or that, if added, it or any part thereof will be refunded. The

1 provisions of this subdivision shall not apply to a public utility.

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

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

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

25 (f) For the purpose of the proper administration of the

1 provisions of the Nebraska Revenue Act of 1967 and to prevent  
2 evasion of the retail sales tax, it shall be presumed that all  
3 gross receipts are subject to the tax until the contrary is  
4 established. The burden of proving that a sale of property is not  
5 a sale at retail is upon the person who makes the sale unless he  
6 or she takes from the purchaser (i) a resale certificate to the  
7 effect that the property is purchased for the purpose of reselling,  
8 leasing, or renting it, (ii) an exemption certificate pursuant to  
9 subsection (7) of section 77-2705, or (iii) a direct payment permit  
10 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale  
11 certificate, exemption certificate, or direct payment permit shall  
12 be conclusive proof for the seller that the sale was made for  
13 resale or was exempt or that the tax will be paid directly to the  
14 state.

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

22 (h) In the rental or lease of automobiles, trucks,  
23 trailers, semitrailers, and truck-tractors as defined in the act,  
24 for periods of one year or more, the lessor may elect not to  
25 collect and remit the sales tax on the gross receipts and instead

1 pay a sales tax on the cost of such vehicle. If such election is  
2 made, it shall be made pursuant to the following conditions:

3 (i) Notice of the desire to make such election shall  
4 be filed with the Tax Commissioner and shall not become effective  
5 until the Tax Commissioner is satisfied that the taxpayer has  
6 complied with all conditions of this subsection and all rules and  
7 regulations of the Tax Commissioner;

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

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

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

1           (i) The tax imposed by this section on the sales of  
2 motor vehicles, semitrailers, and trailers as defined in sections  
3 60-339, 60-348, and 60-354 shall be the liability of the purchaser  
4 and, with the exception of motor vehicles, semitrailers, and  
5 trailers registered pursuant to section 60-3,198, the tax shall  
6 be collected by the county treasurer or designated county official  
7 as provided in the Motor Vehicle Registration Act at the time  
8 the purchaser makes application for the registration of the motor  
9 vehicle, semitrailer, or trailer for operation upon the highways  
10 of this state. The tax imposed by this section on motor vehicles,  
11 semitrailers, and trailers registered pursuant to section 60-3,198  
12 shall be collected by the Department of Motor Vehicles at the time  
13 the purchaser makes application for the registration of the motor  
14 vehicle, semitrailer, or trailer for operation upon the highways  
15 of this state. At the time of the sale of any motor vehicle,  
16 semitrailer, or trailer, the seller shall (i) state on the sales  
17 invoice the dollar amount of the tax imposed under this section  
18 and (ii) furnish to the purchaser a certified statement of the  
19 transaction, in such form as the Tax Commissioner prescribes,  
20 setting forth as a minimum the total sales price, the allowance for  
21 any trade-in, and the difference between the two. The sales tax due  
22 shall be computed on the difference between the total sales price  
23 and the allowance for any trade-in as disclosed by such certified  
24 statement. Any seller who willfully understates the amount upon  
25 which the sales tax is due shall be subject to a penalty of one



1 thousand dollars. A copy of such certified statement shall also  
2 be furnished to the Tax Commissioner. Any seller who fails or  
3 refuses to furnish such certified statement shall be guilty of  
4 a misdemeanor and shall, upon conviction thereof, be punished by  
5 a fine of not less than twenty-five dollars nor more than one  
6 hundred dollars. If the seller fails to state on the sales invoice  
7 the dollar amount of the tax due, the purchaser shall have the  
8 right and authority to rescind any agreement for purchase and  
9 to declare the purchase null and void. If the purchaser retains  
10 such motor vehicle, semitrailer, or trailer in this state and  
11 does not register it for operation on the highways of this state  
12 within thirty days of the purchase thereof, the tax imposed by  
13 this section shall immediately thereafter be paid by the purchaser  
14 to the county treasurer, the designated county official, or the  
15 Department of Motor Vehicles. If the tax is not paid on or  
16 before the thirtieth day after its purchase, the county treasurer,  
17 designated county official, or Department of Motor Vehicles shall  
18 also collect from the purchaser interest from the thirtieth day  
19 through the date of payment and sales tax penalties as provided in  
20 the Nebraska Revenue Act of 1967. The county treasurer, designated  
21 county official, or Department of Motor Vehicles shall report and  
22 remit the tax so collected to the Tax Commissioner by the fifteenth  
23 day of the following month. The county treasurer or designated  
24 county official shall deduct and withhold for the use of the county  
25 general fund, from all amounts required to be collected under

1 this subsection, the collection fee permitted to be deducted by  
2 any retailer collecting the sales tax. The Department of Motor  
3 Vehicles shall deduct, withhold, and deposit in the Motor Carrier  
4 Division Cash Fund the collection fee permitted to be deducted by  
5 any retailer collecting the sales tax. The collection fee shall  
6 be forfeited if the county treasurer, designated county official,  
7 or Department of Motor Vehicles violates any rule or regulation  
8 pertaining to the collection of the use tax.

9 (j)(i) The tax imposed by this section on the sale of a  
10 motorboat as defined in section 37-1204 shall be the liability of  
11 the purchaser. The tax shall be collected by the county treasurer  
12 or designated county official at the time the purchaser makes  
13 application for the registration of the motorboat. At the time  
14 of the sale of a motorboat, the seller shall (A) state on the  
15 sales invoice the dollar amount of the tax imposed under this  
16 section and (B) furnish to the purchaser a certified statement of  
17 the transaction, in such form as the Tax Commissioner prescribes,  
18 setting forth as a minimum the total sales price, the allowance for  
19 any trade-in, and the difference between the two. The sales tax due  
20 shall be computed on the difference between the total sales price  
21 and the allowance for any trade-in as disclosed by such certified  
22 statement. Any seller who willfully understates the amount upon  
23 which the sales tax is due shall be subject to a penalty of one  
24 thousand dollars. A copy of such certified statement shall also  
25 be furnished to the Tax Commissioner. Any seller who fails or

1 refuses to furnish such certified statement shall be guilty of a  
2 misdemeanor and shall, upon conviction thereof, be punished by a  
3 fine of not less than twenty-five dollars nor more than one hundred  
4 dollars. If the seller fails to state on the sales invoice the  
5 dollar amount of the tax due, the purchaser shall have the right  
6 and authority to rescind any agreement for purchase and to declare  
7 the purchase null and void. If the purchaser retains such motorboat  
8 in this state and does not register it within thirty days of the  
9 purchase thereof, the tax imposed by this section shall immediately  
10 thereafter be paid by the purchaser to the county treasurer or  
11 designated county official. If the tax is not paid on or before  
12 the thirtieth day after its purchase, the county treasurer or  
13 designated county official shall also collect from the purchaser  
14 interest from the thirtieth day through the date of payment and  
15 sales tax penalties as provided in the Nebraska Revenue Act of  
16 1967. The county treasurer or designated county official shall  
17 report and remit the tax so collected to the Tax Commissioner by  
18 the fifteenth day of the following month. The county treasurer or  
19 designated county official shall deduct and withhold for the use of  
20 the county general fund, from all amounts required to be collected  
21 under this subsection, the collection fee permitted to be deducted  
22 by any retailer collecting the sales tax. The collection fee shall  
23 be forfeited if the county treasurer or designated county official  
24 violates any rule or regulation pertaining to the collection of the  
25 use tax.

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

3           (k) The Tax Commissioner shall adopt and promulgate  
4 necessary rules and regulations for determining the amount subject  
5 to the taxes imposed by this section so as to insure that the  
6 full amount of any applicable taxes paid in cases in which a sale  
7 is made of which a part is subject to the taxes imposed by this  
8 section and a part of which is not so subject and a separate  
9 accounting is not practical or economical.

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

18           (a) Every person storing, using, or otherwise consuming  
19 in this state property purchased from a retailer or leased or  
20 rented from another person for such purpose shall be liable for the  
21 use tax at the rate in effect when his or her liability for the  
22 use tax becomes certain under the accounting basis used to maintain  
23 his or her books and records. His or her liability shall not be  
24 extinguished until the use tax has been paid to this state, except  
25 that a receipt from a retailer engaged in business in this state

1 or from a retailer who is authorized by the Tax Commissioner, under  
2 such rules and regulations as he or she may prescribe, to collect  
3 the sales tax and who is, for the purposes of the Nebraska Revenue  
4 Act of 1967 relating to the sales tax, regarded as a retailer  
5 engaged in business in this state, which receipt is given to the  
6 purchaser pursuant to subdivision (b) of this subsection, shall be  
7 sufficient to relieve the purchaser from further liability for the  
8 tax to which the receipt refers.

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

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

1 such collections in the manner prescribed by the Tax Commissioner.  
2 Nothing in this subdivision shall be so construed as to prevent the  
3 Tax Commissioner or his or her employees from collecting any use  
4 taxes due and payable to the State of Nebraska.

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

22 (e) For the purpose of the proper administration of the  
23 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
24 it shall be presumed that property sold, leased, or rented by any  
25 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. 6. This act becomes operative on August 1, 2009.

12 Sec. 7. Original section 77-2703, Revised Statutes  
13 Cumulative Supplement, 2008, is repealed.

14 Sec. 8. Since an emergency exists, this act takes effect  
15 when passed and approved according to law.