

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 952

Introduced by White, 8; Ashford, 20; Cook, 13; Cornett, 45;
Council, 11; Gay, 14; Howard, 9; Lathrop, 12;
Lautenbaugh, 18; McGill, 26; Mello, 5; Nelson, 6;
Nordquist, 7; Price, 3; Rogert, 16.

Read first time January 14, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701, 77-2701.04, and 77-2701.16, Reissue Revised
3 Statutes of Nebraska; to exempt certain public utility
4 income for infrastructure replacement and sewer programs
5 from sales tax as prescribed; to define a term; to
6 harmonize provisions; to provide an operative date; and
7 to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Reissue Revised Statutes of
2 Nebraska, is amended to read:

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

6 Sec. 2. Section 77-2701.04, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713
9 and section 4 of this act, unless the context otherwise requires,
10 the definitions found in sections 77-2701.05 to 77-2701.53 and
11 section 4 of this act shall be used.

12 Sec. 3. Section 77-2701.16, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2701.16 (1) Gross receipts means the total amount of
15 the sale or lease or rental price, as the case may be, of the
16 retail sales of retailers.

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

22 (a)(i) In the furnishing of telephone communication
23 service, other than mobile telecommunications service as described
24 in section 77-2703.04, the gross income received from furnishing
25 ancillary services, except for conference bridging services, and

1 intrastate telecommunications services, except for value-added,
2 nonvoice data service; and

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

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

11 (c) In the furnishing of gas, electricity, sewer, and
12 water service, the gross income received from the furnishing of
13 such services upon billings or statements rendered to consumers
14 for such utility services, except that gross receipts shall not
15 include:

16 (i) The gross income received by a public utility for
17 the dedicated purpose of water or natural gas infrastructure
18 replacement. The charges for such infrastructure replacement shall
19 be stated separately on the billings or statements rendered to
20 consumers; or

21 (ii) The gross income received by a city or public
22 sewer utility for the dedicated purpose of sewer programs designed
23 to remedy combined sewer overflow, as such term is used by the
24 federal Environmental Protection Agency. The charges for such sewer
25 programs shall be stated separately on the billings or statements

1 rendered to consumers.

2 (d) In the furnishing of community antenna television
3 service or satellite service, the gross income received from
4 the furnishing of such community antenna television service as
5 regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or
6 satellite service; and

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

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

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

1 seller; and

2 (b) In the furnishing of videotapes, movie film,
3 satellite programming, satellite programming service, and satellite
4 television signal descrambling or decoding devices, the gross
5 income received from the license, franchise, or other method
6 establishing the charge.

7 (4) Gross receipts for providing a service means:

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

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

12 (c) The gross income received for computer software
13 training;

14 (d) The gross income received for installing and applying
15 tangible personal property if the sale of the property is subject
16 to tax. If any or all of the charge for installation is free to
17 the customer and is paid by a third-party service provider to the
18 installer, any tax due on that part of the activation commission,
19 finder's fee, installation charge, or similar payment made by the
20 third-party service provider shall be paid and remitted by the
21 third-party service provider;

22 (e) The gross income received for services of
23 recreational vehicle parks;

24 (f) The gross income received for labor for repair or
25 maintenance services performed with regard to tangible personal

1 property the sale of which would be subject to sales and use taxes,
2 excluding motor vehicles, except as otherwise provided in section
3 77-2704.26 or 77-2704.50;

4 (g) The gross income received for animal specialty
5 services except (i) veterinary services, (ii) specialty services
6 performed on livestock as defined in section 54-183, and (iii)
7 animal grooming performed by a licensed veterinarian or a licensed
8 veterinary technician in conjunction with medical treatment; and

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

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

25 (6) Gross receipts includes the sale of live plants

1 incorporated into real estate except when such incorporation is
2 incidental to the transfer of an improvement upon real estate or
3 the real estate.

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

7 (8) Gross receipts includes the sale of and recharge of
8 prepaid calling service and prepaid wireless calling service.

9 (9) Gross receipts includes the retail sale of digital
10 audio works, digital audiovisual works, digital codes, and digital
11 books delivered electronically if the products are taxable when
12 delivered on tangible storage media. A sale includes the transfer
13 of a permanent right of use, the transfer of a right of use that
14 terminates on some condition, and the transfer of a right of use
15 conditioned upon the receipt of continued payments.

16 (10) Gross receipts does not include:

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

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

24 Sec. 4. Infrastructure replacement means the replacement
25 of obsolete or deteriorated piping by new piping pursuant to a

1 planned program of pipe replacement and not for the sole purpose of
2 pipng repair.

3 Sec. 5. This act becomes operative on October 1, 2010.

4 Sec. 6. Original sections 77-2701, 77-2701.04, and
5 77-2701.16, Reissue Revised Statutes of Nebraska, are repealed.