

AMENDMENTS TO LB 135

Introduced by Langemeier

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

3 Section 1. Section 77-2703, Reissue Revised Statutes of
4 Nebraska, is amended to read:

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

1 77-2701.16. Except as provided in section 77-2701.03, when there is
2 a sale, the tax shall be imposed at the rate in effect at the time
3 the gross receipts are realized under the accounting basis used by
4 the retailer to maintain his or her books and records.

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

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

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

25 (d) For the purpose of more efficiently securing the
26 payment, collection, and accounting for the sales tax and for the
27 convenience of the retailer in collecting the sales tax, it shall

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

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

14 (f) For the purpose of the proper administration of the
15 provisions of the Nebraska Revenue Act of 1967 and to prevent
16 evasion of the retail sales tax, it shall be presumed that all
17 gross receipts are subject to the tax until the contrary is
18 established. The burden of proving that a sale of property is not
19 a sale at retail is upon the person who makes the sale unless he
20 or she takes from the purchaser (i) a resale certificate to the
21 effect that the property is purchased for the purpose of reselling,
22 leasing, or renting it, (ii) an exemption certificate pursuant to
23 subsection (7) of section 77-2705, or (iii) a direct payment permit
24 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
25 certificate, exemption certificate, or direct payment permit shall
26 be conclusive proof for the seller that the sale was made for
27 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
26 who provide to the lessor a valid common or contract carrier
27 exemption certificate. If the lessor rents or leases other vehicles

1 for periods of less than one year, such lessor shall maintain his
2 or her books and records and his or her accounting procedure as the
3 Tax Commissioner prescribes; and

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

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

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

1 the Nebraska Revenue Act of 1967. The county treasurer, designated
2 county official, or Department of Motor Vehicles shall report
3 and remit the tax so collected to the Tax Commissioner by the
4 ~~fifteenth~~ fifth day of the following month. The county treasurer or
5 designated county official shall deduct and withhold for the use of
6 the county general fund, from all amounts required to be collected
7 under this subsection, the collection fee permitted to be deducted
8 by any retailer collecting the sales tax. The Department of Motor
9 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
10 Division Cash Fund the collection fee permitted to be deducted by
11 any retailer collecting the sales tax. The collection fee shall
12 be forfeited if the county treasurer, designated county official,
13 or Department of Motor Vehicles violates any rule or regulation
14 pertaining to the collection of the use tax.

15 (j) (i) The tax imposed by this section on the sale of a
16 motorboat as defined in section 37-1204 shall be the liability of
17 the purchaser. The tax shall be collected by the county treasurer
18 or designated county official at the time the purchaser makes
19 application for the registration of the motorboat. At the time
20 of the sale of a motorboat, the seller shall (A) state on the
21 sales invoice the dollar amount of the tax imposed under this
22 section and (B) furnish to the purchaser a certified statement of
23 the transaction, in such form as the Tax Commissioner prescribes,
24 setting forth as a minimum the total sales price, the allowance for
25 any trade-in, and the difference between the two. The sales tax due
26 shall be computed on the difference between the total sales price
27 and the allowance for any trade-in as disclosed by such certified

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

1 or designated county official violates any rule or regulation
2 pertaining to the collection of the use tax.

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

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

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

20 (a) Every person storing, using, or otherwise consuming
21 in this state property purchased from a retailer or leased or
22 rented from another person for such purpose shall be liable for the
23 use tax at the rate in effect when his or her liability for the
24 use tax becomes certain under the accounting basis used to maintain
25 his or her books and records. His or her liability shall not be
26 extinguished until the use tax has been paid to this state, except
27 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
26 such collections in the manner prescribed by the Tax Commissioner.
27 Nothing in this subdivision shall be so construed as to prevent the

1 Tax Commissioner or his or her employees from collecting any use
2 taxes due and payable to the State of Nebraska.

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

20 (e) For the purpose of the proper administration of the
21 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
22 it shall be presumed that property sold, leased, or rented by any
23 person for delivery in this state is sold, leased, or rented for
24 storage, use, or other consumption in this state until the contrary
25 is established. The burden of proving the contrary is upon the
26 person who purchases, leases, or rents the property.

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

1 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
2 for the sale of property to an advertising agency which purchases
3 the property as an agent for a disclosed or undisclosed principal,
4 the advertising agency is and remains liable for the sales and
5 use tax on the purchase the same as if the principal had made the
6 purchase directly.

7 Sec. 2. This act becomes operative on October 1, 2011.

8 Sec. 3. Original section 77-2703, Reissue Revised
9 Statutes of Nebraska, is repealed.