

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 82

Introduced by Coash, 27.

Read first time January 06, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.10 and 77-2701.16, Reissue Revised Statutes of
3 Nebraska; to redefine contractor or repairperson and
4 gross receipts to exclude sod as prescribed; to provide
5 an operative date; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701.10, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 77-2701.10 Contractor or repairperson means any person
4 who performs any repair services upon property annexed to, or who
5 annexes building materials to, real estate, including leased
6 property, and who, as a necessary and incidental part of performing
7 such services, annexes building materials to the real estate being so
8 repaired or annexed or arranges for such annexation. Contractor or
9 repairperson does not include any person who incorporates live
10 plants, except for sod, into real estate except when such
11 incorporation is incidental to the transfer of an improvement upon
12 real estate or the real estate. The contractor or repairperson not
13 electing to be taxed as a retailer is considered to be the consumer
14 of such building materials furnished by him or her and annexed to the
15 real estate being so repaired or annexed for all the purposes of the
16 Nebraska Revenue Act of 1967. The contractor or repairperson:

17 (1) Shall be permitted to make an election that he or she
18 will be taxed as a retailer in which case he or she shall not be
19 considered the final consumer of building materials annexed to real
20 estate;

21 (2) Shall be permitted to make an election that he or she
22 will be taxed as the consumer of building materials annexed to real
23 estate, will pay the sales tax or remit the use tax at the time of
24 purchase, and will maintain a tax-paid inventory; or

25 (3) Shall be permitted to make an election that he or she

1 will be taxed as the consumer of building materials annexed to real
2 estate and may issue a resale certificate when purchasing building
3 materials that will be annexed to real estate. Such person shall then
4 remit the appropriate use tax on any building materials when
5 withdrawn from inventory for the purpose of being annexed to real
6 estate at the rate in effect at the time and place of the withdrawal
7 from inventory.

8 The provisions of this section shall not excuse any
9 person from the obligation to collect sales tax on retail sales of
10 property not annexed to real estate or from the obligation to pay the
11 sales tax or remit the use tax on tools, services, and other
12 materials consumed that are not annexed to real estate.

13 The Department of Revenue shall not prescribe any
14 requirements of Nebraska sales revenue, percentage or otherwise,
15 restricting any person's election. Any change in an election shall
16 require prior approval by the Tax Commissioner.

17 Any change in the election shall, if filed on or prior to
18 the fifteenth of the month, become effective at the beginning of the
19 following month or, if filed after the fifteenth of the month, become
20 effective on the first day of the next succeeding month. Any person
21 who changes his or her election and becomes a contractor or
22 repairperson shall pay the tax on all building materials in inventory
23 which may be annexed to real estate at the time of making the change
24 in election except when such contractor or repairperson elects to
25 purchase inventory with a resale certificate. Any person who changes

1 his or her election and becomes a retailer shall not be entitled to a
2 refund but shall receive a credit for the tax paid on building
3 materials in inventory at the time the building materials are sold.
4 The credit shall be applied against the tax collected on sales of
5 such building materials.

6 Any contractor or repairperson who has not completed and
7 filed an election as required in this section within three months
8 after beginning to operate as a contractor or repairperson shall be
9 considered a retailer for all periods until an election has been
10 made.

11 Sec. 2. Section 77-2701.16, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-2701.16 (1) Gross receipts means the total amount of
14 the sale or lease or rental price, as the case may be, of the retail
15 sales of retailers.

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

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

1 nonvoice data service; and

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

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

9 (c) In the furnishing of gas, electricity, sewer, and
10 water service, the gross income received from the furnishing of such
11 services upon billings or statements rendered to consumers for such
12 utility services;

13 (d) In the furnishing of community antenna television
14 service or satellite service, the gross income received from the
15 furnishing of such community antenna television service as regulated
16 under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite
17 service; and

18 (e) The gross income received from the provision,
19 installation, construction, servicing, or removal of property used in
20 conjunction with the furnishing, installing, or connecting of any
21 public utility services specified in subdivision (2)(a) or (b) of
22 this section or community antenna television service or satellite
23 service specified in subdivision (2)(d) of this section, except when
24 acting as a subcontractor for a public utility, this subdivision does
25 not apply to the gross income received by a contractor electing to be

1 treated as a consumer of building materials under subdivision (2) or
2 (3) of section 77-2701.10 for any such services performed on the
3 customer's side of the utility demarcation point.

4 (3) Gross receipts of every person engaged in selling,
5 leasing, or otherwise providing intellectual or entertainment
6 property means:

7 (a) In the furnishing of computer software, the gross
8 income received, including the charges for coding, punching, or
9 otherwise producing any computer software and the charges for the
10 tapes, disks, punched cards, or other properties furnished by the
11 seller; and

12 (b) In the furnishing of videotapes, movie film,
13 satellite programming, satellite programming service, and satellite
14 television signal descrambling or decoding devices, the gross income
15 received from the license, franchise, or other method establishing
16 the charge.

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

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

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

22 (c) The gross income received for computer software
23 training;

24 (d) The gross income received for installing and applying
25 tangible personal property if the sale of the property is subject to

1 tax. If any or all of the charge for installation is free to the
2 customer and is paid by a third-party service provider to the
3 installer, any tax due on that part of the activation commission,
4 finder's fee, installation charge, or similar payment made by the
5 third-party service provider shall be paid and remitted by the third-
6 party service provider;

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, (ii) specialty services
16 performed on livestock as defined in section 54-183, and (iii) animal
17 grooming performed by a licensed veterinarian or a licensed
18 veterinary technician in conjunction with medical treatment; and

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

20 (5) Gross receipts includes the sale of admissions which
21 means the right or privilege to have access to or to use a place or
22 location. An admission includes a membership that allows access to or
23 use of a place or location, but which membership does not include the
24 right to hold office, vote, or change the policies of the
25 organization. When an admission to an activity or a membership

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

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

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

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

19 (9) Gross receipts includes the retail sale of digital
20 audio works, digital audiovisual works, digital codes, and digital
21 books delivered electronically if the products are taxable when
22 delivered on tangible storage media. A sale includes the transfer of
23 a permanent right of use, the transfer of a right of use that
24 terminates on some condition, and the transfer of a right of use
25 conditioned upon the receipt of continued payments.

1 (10) Gross receipts does not include:

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

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

9 Sec. 3. This act becomes operative on October 1, 2011.

10 Sec. 4. Original sections 77-2701.10 and 77-2701.16,
11 Reissue Revised Statutes of Nebraska, are repealed.