

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1030

Introduced by Friesen, 34.

Read first time January 16, 2018

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 13-2816, Reissue Revised Statutes of Nebraska, and section
3 77-2703.01, Revised Statutes Cumulative Supplement, 2016; to change
4 the sales tax sourcing rules for motor vehicles and trailers
5 operated by public power districts; to provide an operative date;
6 and to repeal the original sections.

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

1 Section 1. Section 13-2816, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-2816 (1) All relevant provisions of the Nebraska Revenue Act of
4 1967, as amended, not inconsistent with sections 13-2813 to 13-2815,
5 shall govern transactions, proceedings, and activities pursuant to any
6 sales and use tax imposed by a municipal county.

7 (2) For purposes of the sales and use tax imposed by a municipal
8 county, all retail sales, rentals, and leases, as defined and described
9 in the Nebraska Revenue Act of 1967, are consummated:

10 (a) At the place where title, possession, or segregation takes
11 place, with the exception of sales or leases or rentals for more than one
12 year of motor vehicles, trailers, semitrailers, and motorboats, if a
13 purchaser takes possession of tangible personal property within a
14 municipal county, which has enacted a tax under section 13-2813,
15 regardless of the business location of the Nebraska retailer;

16 (b) At the point of delivery of utility services and community
17 antenna television services or where such services are provided, with the
18 exception that Nebraska intrastate message toll telephone and telegraph
19 services which are consummated in the county where the customer is
20 normally billed for such services;

21 (c) At the physical location of individual vending machines; and

22 (d) At the place designated on the application for registration for
23 motor vehicles, trailers, semitrailers, and motorboats sold or leased or
24 rented for more than one year, except that the sale of any motor vehicle
25 or trailer operated by a public power district and registered under
26 section 60-3,228 is consummated at the place where the motor vehicle or
27 trailer has situs as defined in section 60-349.

28 Sec. 2. Section 77-2703.01, Revised Statutes Cumulative Supplement,
29 2016, is amended to read:

30 77-2703.01 (1) The determination of whether a sale or use of
31 property or the provision of services is in this state, in a municipality

1 that has adopted a tax under the Local Option Revenue Act, or in a county
2 that has adopted a tax under section 13-319 shall be governed by the
3 sourcing rules in sections 77-2703.01 to 77-2703.04.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (10) For purposes of this section, receive and receipt mean taking
28 possession of tangible personal property, making first use of services,
29 or taking possession or making first use of digital goods, whichever
30 comes first. The terms receive and receipt do not include possession by a
31 shipping company on behalf of the purchaser. For purposes of sourcing

1 detective services subject to tax under subdivision (4)(h) of section
2 77-2701.16, making first use of a service shall be deemed to be at the
3 individual's residence, in the case of a customer who is an individual,
4 or at the principal place of business, in the case of a business
5 customer.

6 (11) The sale, not including lease or rental, of a motor vehicle,
7 semitrailer, or trailer as defined in the Motor Vehicle Registration Act
8 shall be sourced to the place of registration of the motor vehicle,
9 semitrailer, or trailer for operation upon the highways of this state or,
10 if no such registration has occurred, the place where such motor vehicle,
11 semitrailer, or trailer is required to be registered, except that the
12 sale of any motor vehicle or trailer operated by a public power district
13 and registered under section 60-3,228 shall be sourced to the place where
14 the motor vehicle or trailer has situs as defined in section 60-349.

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

19 Sec. 3. This act becomes operative on January 1, 2021.

20 Sec. 4. Original section 13-2816, Reissue Revised Statutes of
21 Nebraska, and section 77-2703.01, Revised Statutes Cumulative Supplement,
22 2016, are repealed.