

LEGISLATIVE BILL 179

Approved by the Governor May 22, 1981

Introduced by Revenue Committee, Carsten, 2, Chpn.; V. Johnson, 8; Newell, 13; Kahle, 37; Burrows, 30; Wagner, 41; Hefner, 19; H. Peterson, 35

AN ACT relating to taxation; to amend sections 76-214, 77-652, 77-801, 77-1242.01, 77-1320.04, 77-2703, 77-2708, 77-2712, and 77-2762, Reissue Revised Statutes of Nebraska, 1943, sections 77-202.03, 77-603, 77-624, 77-625, 77-1303, 77-1701, 77-2702, 77-3505, and 77-3507, Revised Statutes Supplement, 1980, and sections 3 and 9, Legislative Bill 284, Eighty-seventh Legislature, First Session, 1981; to change certain dates; to change filing procedures; to provide for payment of certain judgments; to authorize a refund; to change certain exemptions; to change record-keeping procedures; to authorize the waiver of a penalty; to clarify certain language; to change provisions relating to certain joint returns; to define and redefine terms; to authorize the county treasurer to retain certain funds as prescribed; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 76-214, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-214. All deeds, mortgages, and conveyances of real estate in this state shall truly and correctly state in the body of such instrument the actual consideration paid for such transfer; Provided, that where the actual consideration does not exceed one hundred dollars, said sum or any less sum may be stated as the consideration in such instrument.

Every grantee who has a deed to real estate recorded, which deed was executed after July 21, 1965, shall at the time such deed is presented for recording file with the register of deeds a completed statement as prescribed by the Tax Commissioner. This statement may require the recitation of any information contained in the deed, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors

which may influence the transaction. This statement shall be signed and filed by the grantee or his or her authorized agent. If the grantee fails to furnish such statement the register of deeds shall not record the deed, ~~but shall notify the Tax Commissioner of the failure to file the statement.~~ The register of deeds shall indicate on the statement the book and page on which the deed is recorded, and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Tax Commissioner, and shall, when directed, forward the statement to the Tax Commissioner. This statement and the information contained therein shall be confidential and available to tax officials only.

Sec. 2. Any person paying the documentary stamp tax imposed by section 76-901 may claim a refund if the payment of such tax was (1) the result of a misunderstanding or honest mistake of the taxpayer, (2) the result of a clerical error on the part of the register of deeds or the taxpayer, or (3) invalid for any reason. Within two years after payment of such tax, the taxpayer shall file in the office of the register of deeds of the county in which the tax was paid a written claim on a form prescribed by the Tax Commissioner and evidence in support thereof, stating the reason for the claim. The register of deeds shall, within thirty days after such filing, make a recommendation of approval or denial and forward the recommendation together with a copy of the claim and evidence filed to the Tax Commissioner. Within thirty days after the forwarding of such recommendation the Tax Commissioner shall, upon consideration of the recommendation of the register of deeds and the claim and evidence filed by the taxpayer, render his or her decision approving or rejecting the claim for a refund in whole or in part. A copy of the decision of the Tax Commissioner shall be forwarded to the register of deeds and to the last-known address of the taxpayer by certified mail within ten days after the decision is rendered. Upon approval by the Tax Commissioner of a refund for all or a portion of the documentary stamp tax paid, the register of deeds is authorized to make such refund from the currently collected documentary stamp tax funds presently in the office of the register of deeds. A taxpayer denied a refund under this section, in whole or in part, may appeal the decision of the Tax Commissioner in the manner and within the time provided by sections 84-917 to 84-919.

Sec. 3. That section 77-202.03, Revised Statutes Supplement, 1980, be amended to read as follows:

77-202.03. (1) When real or tangible personal property except motor vehicles has been exempted from taxation as provided by sections 77-202.01 to 77-202.07, it shall continue to be exempt for a period of four years from January 1 of the year following adoption of sections 77-202.01 to 77-202.07; Provided, that each owner of real or tangible personal property except motor vehicles so exempt shall file an affidavit with the county assessor by January 1 of each intervening year certifying that the use of each exempted real or tangible personal property except motor vehicles has not changed during the year. On or before the expiration of such exemption, a new application shall be filed on which the procedure shall be the same as provided for other applications under the provisions of sections 77-202.01 to 77-202.07, except that in the year 1976 such new application shall be filed on or before April 1, and the county assessor's recommendation to the county board of equalization shall be made on or before April 15. If any person, corporation, or organization shall seek tax exemption for any real or tangible personal property except motor vehicles in any intervening year, he, she, or it shall apply on or before September 4 15 of any such intervening year as provided in section 77-202.01 and procedure thereon shall be the same as provided for other applications under the provisions of sections 77-202.01 to 77-202.07, except that for the intervening year the exempt use shall be determined as of the date of levy, and the exemption shall continue for the same period and under the same conditions as if it had been granted on an application which had been filed before January 1, 1964, if such application is filed before January 1, 1968, or as if it had been granted on an application which had been filed in accordance with the second sentence of this section, on or before the expiration of an exemption previously granted, if such application is filed on or after January 1, 1968; Provided, that the county assessor and the county board may cause such exemption to be reviewed in any year to determine whether the exemption should be continued and may do so even if the use of the property has not changed from when a previous exemption may have been granted, which review shall proceed as on an application under section 77-202.02.

(2) During the month of September of each year, the county board shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation in that year pursuant to sections 77-202 to 77-202.07, except real estate owned by the state or its governmental subdivisions. Such list shall be grouped into categories as provided by the Tax Commissioner, which categories shall identify the type of ownership and such list shall

identify the organization, the municipality, if any, in which the property is located, and the number of parcels of real estate exempted. A copy of the list shall be forwarded to the Department of Revenue.

Sec. 4. That section 77-603, Revised Statutes Supplement, 1980, be amended to read as follows:

77-603. On or before ~~April~~ March 1 each year, the person, company, or corporation owning, operating, or controlling any railroad or railroad service in this state, shall, by its president, secretary, principal accounting officer, or duly authorized corporate representative or official, return to the State Board of Equalization and Assessment a sworn statement or schedule of the property of such company on January 1 preceding. 7-as-foiIows For good cause shown, the Tax Commissioner may allow an extension of time in which to file such statement. Such statement shall include:

(1) A list of the right-of-way, track, and roadbed, giving the entire length of the main track and side track in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) A complete list giving size, location as to governmental subdivision, material, and value of all depots, station houses, machine shops, stockyards, scales, or other buildings situated wholly or in part on the right-of-way, together with all platforms, fuel and water stations, and the machinery and tanks connected therewith;

(3) A list showing the number of ties in track per mile, and weight of iron or steel rails per yard, used in the main or side track, what joints or chairs are used in track, kind of ballasting, length of time iron or steel has been used, and what length of time the road has been built;

(4) A full list of the rolling stock belonging to or operated by such road, which shall distinctly set forth the number, class, and value of all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, horse cars, cattle cars, coal cars, flat cars, wrecking cars, pay cars, and all other kinds of cars owned or used by such company, whether within or without the State of Nebraska, together with a statement of the number of miles traveled by each of the classes of cars over the line of such company within the State of Nebraska and without the State of Nebraska, separately during the preceding year ending December 31;

(5) A statement of schedule showing: (a) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (b) the amount of capital stock paid up; (c) the market value of the stock, or, if of no market value, then the true value of the shares of stock; (d) the total amount of all secured and unsecured indebtedness, except for current expenses of operating the road; and (e) the location and actual valuation of all its real estate and personal property in this state that is locally assessed. Such schedule shall be made in conformity with such instructions and forms as may be prescribed by the State Board of Equalization and Assessment, which values shall be taken into account and be considered in arriving at the true value of such railroad property and its franchises;

(6) A correct return of the value of all tools and materials used for repairs and of all other personal property in the State of Nebraska, together with such other information as the State Board of Equalization and Assessment may require;

(7) A true statement of all bridges, showing where located as to governmental subdivisions, the true value thereof, kind and material, the length, width, and height of such structure; and

(8) The total gross earnings and net earnings of such corporation during the year for which the statement is made, and the total amount expended in the operation and maintenance of the property and the improvements to such property, distinguishing that expended in improvement or betterment from that expended in maintenance and operation; also the dividend last declared upon its shares and the amount thereof, and the date, number, and amount of all dividends declared upon its stock during the year preceding the date of such report, and such other information as the state board may in writing require, all of which shall be taken into consideration in ascertaining and fixing the value of such road and the franchise thereof.

Sec. 5. That section 77-624, Revised Statutes Supplement, 1980, be amended to read as follows:

77-624. The president or other chief officer of every car company, mercantile or other company, or corporation, other than a railroad company operating a line of railroad, and every firm, corporation, or individual owning or operating any railroad cars, except sleeping cars, through, in, or into the State of Nebraska shall, on or before ~~June 4~~ April 15 of each year, make to

the State Board of Equalization and Assessment a true, full, and accurate statement, verified by the affidavit of the officer or person making it, showing (1) the aggregate number of miles made by their cars on the several lines of railroad in this state during the preceding year ending December 31, (2) the average number of miles traveled per day by the cars of a particular class covered by the statement in the ordinary course of business during the year, and (3) the total number of cars owned by the company, individual, or firm. For good cause shown, the Tax Commissioner may allow an extension of time in which to file such statement.

Sec. 6. That section 77-625, Revised Statutes Supplement, 1980, be amended to read as follows:

77-625. The president or other chief officer of every railroad company whose lines run through or into this state shall, on or before ~~June 4~~ April 15 of each year, furnish to the State Board of Equalization and Assessment a statement, verified by the affidavit of the officer or person making the statement, showing the total number of miles traveled by the cars of every such car company, mercantile or other company, firm, or individual on their lines, branches, sidings, spurs, and warehouse tracks in this state during the preceding year ending December 31. For good cause shown, the Tax Commissioner may allow an extension of time in which to file such statement.

Sec. 7. That section 77-652, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-652. Every car and freight line company shall submit reports for the State Board of Equalization and Assessment as follows:

- (1) The corporate name of the company;
- (2) The nature of the business of the company, and under the laws of what state or country organized;
- (3) The location of its principal office;
- (4) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager;
- (5) The location of its principal office in the State of Nebraska, together with the name and address of the chief officer or managing agent of the company in Nebraska;

(6) The total number of cars operated by the company;

(7) The total number of cars and rolling stock of any such company run over or operated upon each line of railroad within this state each day during the entire year preceding the date of making and filing such report;

(8) The cost of construction of each of the cars;

(9) The length of time same has been in service;

(10) The cash value of each of the cars so operated and run in this state, at the time of making and filing such report;

(11) The number of shares of capital stock;

(12) The par value and market value, or if there be no market value, the actual value of the shares of stock on ~~March~~ January 1 of the year in which the report is made;

(13) Gross income from the entire business of the company;

(14) Net income from the entire business of the company; and

(15) In addition, all other information and facts relating to such company required by sections 77-624, 77-625, and 77-634, and such other and additional information as may be required by the board, in the form of the return prescribed by it.

Sec. 8. That section 77-801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-801. Each and every person, association, copartnership, joint stock company, or corporation, organized under the laws of this state or any other state or government, engaged in street railways, water works, electric lights, gas works, natural gas, mining, express, telegraph, or telephone business in the State of Nebraska, and all other like companies and like associations, or owning or operating a ~~pipe-line~~ pipeline in the State of Nebraska, whether such line is used for the transmission of oil, heat, steam, or any substance to be used for lighting, heating, power, or other purpose, or for the transmission of articles by pneumatic or other power, shall, in addition to listing the tangible property owned in each governmental subdivision by such

person, association, copartnership, joint stock company, or corporation, and being taxed thereon in like manner as other tangible property is taxed in the governmental subdivision, furnish to the local assessor and to the Tax Commissioner on or before April 30 of each year a sworn statement of the amount of the capital stock, setting forth particularly:

- (1) The name and location of the company;
- (2) The amount of capital stock authorized, and the number of shares into which capital stock is divided;
- (3) The amount of capital stock paid up;
- (4) The market value, or, if of no market value, then the actual value of the shares of stock;
- (5) The true value of its franchise, if any, granted under and by virtue of any law of this state or ordinance of any city or village;
- (6) The length of time such franchise was granted, together with the date of same;
- (7) The total amount of indebtedness, except the indebtedness for current expenses, excluding from expenses the amount paid for the purchase or improvement of property;
- (8) The amount of capital on which a dividend was declared during the last preceding year;
- (9) The date of each dividend declared during said year, ending with the last day of the last preceding December;
- (10) The rate per cent of each dividend declared;
- (11) The total amount of each dividend declared during the year ending with the last day of the last preceding December;
- (12) Gross earnings during said year;
- (13) Net earnings during such year;
- (14) Amount of surplus;
- (15) Amount of profit added to sinking fund during said year;

(16) Maximum price at which shares of stock sold during said year;

(17) Minimum price at which shares of stock sold during said year; and

(18) Average price at which shares of stock sold during said year.

Sec. 9. That section 77-1242.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1242.01. Members of the armed forces of the United States serving in this state in compliance with military or naval orders shall not be subject to the provisions of sections 77-1239 to 77-1242.02 if such person ~~(1)~~ is a resident of a state other than Nebraska, ~~and (2) pays the taxes and fees pertaining to such motor vehicles provided for by statute in the state of such person's residence; Provided, no county treasurer shall issue a license to a member of the armed forces as described in this section unless he produces a tax receipt from some state for the current year.~~

Sec. 10. That section 77-1303, Revised Statutes Supplement, 1980, be amended to read as follows:

77-1303. On or before January 1 at 12:01 a.m. of each year the county assessor or county clerk, where he or she is ex officio county assessor or in those counties having unit tax ledgers which are prepared by the county clerk, shall make up for the several townships, precincts, cities, and villages in the county in computer files, or in books, or unit valuation ledgers in counties that shall adopt or have adopted the use thereof, which books or unit valuation ledgers are to be provided for that purpose by county boards, containing a list of the taxable lands and lots in his or her county. When a whole section, half section, quarter section, or half quarter section belongs to one owner, it shall be listed as one tract. If all the lots in the same block belong to one owner, they shall be listed as a block. When several adjoining lots in the same block belong to the same owner, they shall be included in one description. When any tract or parcel of real estate is situated in more than one township, precinct, or school, road, or other district, the portion thereof in each of such townships, precincts, or districts shall be listed separately. The county assessor or county clerk, as the case may be, shall enter in the proper column, opposite each respective tract or lot, the name of the owner thereof, so far as he or she shall be able to ascertain

the same. Such books, or unit valuation ledgers in the counties that shall adopt or have adopted the use thereof, shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value, and such other columns as may be required.

Sec. 11. That section 77-1320.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1320.04. If a return is voluntarily filed or omitted property is voluntarily reported after the final date for returning such property has passed for the current taxing period and the three previous taxing periods or any taxing period included therein, the property shall be taxed at the same rate as imposed upon the property in the governmental subdivision of the State of Nebraska in which the property should have been returned for taxation. To the tax shall be added a penalty of ten per cent of the amount of tax due on tangible personal property. The county assessor, in his or her discretion and with the approval of the county board of equalization, may waive all or part of the penalty. If the omission or failure to return or report property was caused by the fact that such property had not been required to be reported in previous years, or that such property was timely reported in the wrong taxing district, the entire penalty shall be waived. Appeals may be taken under the same conditions and in the same manner as provided in section 77-1320.05. A return shall be deemed to be voluntarily filed or omitted property shall be deemed to have been voluntarily reported if the action is done without notice from any taxing official or if the taxpayer prior to such notice notified the county assessor in writing that such return would be filed late and the return was subsequently filed within thirty days. Returns voluntarily filed or omitted property voluntarily reported as provided in this section shall not be subjected to any other penalty. ~~nor shall the penalty provided by this section be subject to waiver.~~ The provisions of this section shall not be so construed as to prohibit any taxing official from the proper discovery, assessment, taxation, and penalization of and for any property not listed or returned, regardless of when or in what manner the return was filed.

Sec. 12. That section 77-1701, Revised Statutes Supplement, 1980, be amended to read as follows:

77-1701. The county treasurer shall be ex officio county collector of all taxes levied within the

county. The county board is authorized to direct that a statement of the amount of taxes due and notice that special assessments are due, be mailed or otherwise delivered to the person, firm, association, or corporation against whom such taxes are assessed. † ~~Provided, that failure~~ Failure to receive such statement shall not relieve the taxpayer from any liability to pay such taxes or special assessments and penalties accrued thereon. † ~~and provided further, that--amounts--due--for taxes and--special--assessments--are--shown--as--separate amounts--and--that--the--special--assessments--be--identified.~~ In any county in which a city of the metropolitan class is located, all statements of taxes shall also include notice that special assessments for cutting weeds, removing litter, and demolishing buildings are due.

Sec. 13. That section 77-2702, Revised Statutes Supplement, 1980, be amended to read as follows:

77-2702. For the purpose of sections 77-2702 to 77-2713, unless the context otherwise requires:

(1) Business shall mean any activity engaged in by any person or caused to be engaged in by him or her with the object of gain, benefit, or advantage, either direct or indirect;

(2) Tax Commissioner shall mean the Tax Commissioner of the State of Nebraska;

(3) Contractor or repairman shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services incorporates tangible personal property belonging to him or her into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him or her and incorporated into the property being so repaired or improved, for all the purposes of sections 77-2701 to 77-27,135;

(4) (a) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of the retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(i) The cost of tangible personal property sold. In accordance with such rules and regulations as the Tax Commissioner may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for

some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the tangible personal property, and has resold the property prior to making any use of the tangible personal property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the tangible personal property;

(ii) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(iii) The cost of transportation of the tangible personal property prior to its sale to the purchaser; or

(iv) The amount of any excise or property tax levied against the tangible personal property, except as otherwise provided in sections 77-2701 to 77-27,135.

(b) Gross receipts of every person engaged as a public utility or as a community antenna television service operator shall mean:

(i) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service;

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

(iii) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands and manufacturing purposes, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(iv) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under the provisions of sections 18-2201 to 18-2205;

Gross receipts shall not mean gross income received from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of any such public utility services or community antenna television service,

or from telephone directory advertising;

(c) Gross receipts does not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit;

(iii) The amount charged for labor or services rendered in installing or applying the tangible personal property sold; Provided, that said amount is separately stated, and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(iv) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal property under contracts providing for deferred payments of the purchase price; Provided, that such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(v) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature;

(vi) The value of a motor vehicle taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle;

~~(vii)~~ (vii) Charges for transportation of tangible personal property after sale;

~~(viii)~~ (viii) For purposes of the sales or use tax, if the retailer establishes to the satisfaction of the Tax Commissioner, and has been given prior approval by the Tax Commissioner, that the sales or use tax has been added to the total amount of the sale price and has not been absorbed by him or her, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed; or

~~(ix)~~ (ix) Receipts from conditional sale contracts, installment sale contracts, rentals and leases executed in writing prior to June 1, 1967, and with delivery of the tangible personal property prior to June 1, 1967, are not subject to the tax imposed by sections 77-2701 to 77-27,135; Provided, such conditional sale

contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration;

(5) In this state or within the state shall mean within the exterior limits of the State of Nebraska, and includes all the territory within these limits owned by or ceded to the United States of America;

(6) Occasional sale shall mean:

(a) A sale of tangible personal property by a person who is not engaged in the business of selling such property except motor vehicles as defined in section 60-301, and shall include, but not be limited to, a sale whereby a person liquidates his or her business in a single transaction or scraps or sells as salvage in a single transaction or series of transactions any such property previously productively used by such seller as a depreciable capital asset in his or her trade, business, utility, or agriculture for more than one year and such property was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon, or is the subject of any intercompany sale involving any parent, subsidiary, or brother-sister company relationship under subsection (5) of section 77-2704, and such property was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon; Provided, that occasional sale shall include the sale of motor vehicles, when the seller has previously paid the tax, as follows:

(i) From one corporation to another corporation pursuant to a reorganization. As used in this subdivision, reorganization shall mean a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

(ii) In connection with the winding up, dissolution, or liquidation of a corporation only when there is a distribution of the property of such corporation to the shareholders in kind if the portion of the property so distributed to the shareholder is substantially in proportion to the share of stock or securities held by the shareholder;

(iii) To a corporation for the purpose of organization of such corporation when the former owners

of the property transferred are immediately after the transfer in control of the corporation, and the stock or securities received by each is substantially in proportion to his or her interest in the property prior to the transfer;

(iv) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnership and the interest in the partnership, received by each, is substantially in proportion to his or her interest in the property prior to the transfer; or

(v) From a partnership to the members thereof when made in kind in the dissolution of such partnership if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members; and

(b) A sale of tangible personal property consisting of household goods and personal effects if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by the provisions of section 77-2703:

(i) Such sales are by an individual at his or her residence or if more than one individual's property is involved such sales are by one of the individuals involved at the residence of one of the individuals;

(ii) Such sales do not occur at any residence for more than three days during a calendar year;

(iii) Such individual or individuals or any member of any of their households do not conduct or engage in a trade or business in which similar items are sold;

(iv) Such property sold was originally acquired for and used for personal use; and

(v) Such property is not otherwise excepted from the definition of occasional sale;

(7) Person shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall also include the United States or any agency thereof, this state or any agency

hereof, or any city, county, district, or other political subdivision of this state, or agency thereof;

(8) Purchase shall mean any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration, including, but not limited to, a transfer of the possession of tangible personal property in which the seller retains the title as security for the payment of the price, and a transfer, for a consideration, of tangible personal property which has been produced, fabricated, or printed to the special order of the customer;

(9) Rental price or lease price shall mean the total amount for which tangible personal property is rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of (a) the cost of the tangible personal property rented or leased, (b) the cost of material used, labor or service cost, interest charged, losses, or any other expenses, or (c) the cost of transportation of tangible personal property at any time. The total amount for which tangible personal property is rented or leased includes any services which are a part of the lease or rental and any amount for which credit is given to the lessee or rentee by the lessor or renter;

(10) Retail sale or sale at retail shall mean:

(a) A sale for any purpose other than for resale in the regular course of business of tangible personal property;

(b) The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a customer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his or her gross receipts; and

(c) The sale of admissions which shall mean the right or privilege to have access to or use a place or location, except admissions charged by (i) elementary or secondary schools, public or private, or (ii) school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school, public or private, during the regular school day or at an

approved function of any such school;

(11) Retail sale or sale at retail shall not include the sale of:

(a) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail;

(b) (i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall be defined in part, but not limited to, live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or by any person engaged in the business of bartering, buying, or selling live poultry or livestock on the hoof;

(ii) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel; feed shall mean and include, but is not limited to, all grains, minerals, salts, proteins, fats, fibers, vitamins, grit, and antibiotics commonly used as feed or feed supplements;

(iii) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products; and seed legumes, seed grasses, and seed grains when sold to be used exclusively for agricultural purposes; and

(iv) Agricultural chemicals to be applied to land or crops the products of which are to be used as food for human consumption or sold in the regular course of business;

(c) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by sections 77-2701 to 77-27,135; and returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling. The term returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) Tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale;

(e) Tangible personal property the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States of America; ~~Provided, that~~ when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state;

(f) The purchase in this state or the purchase without this state, with title passing in this state, of materials and replacement parts, when used as, or when used directly in the repair and maintenance or manufacture of railroad rolling stock whether owned by a railroad or by any person whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers of persons or property;

(g) Railroad rolling stock whether purchased by a railroad or by any other person; or

(h) Barges;

(12) Retailer shall mean:

(a) (i) Every seller engaged in the business of making sales of tangible personal property for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption;

(ii) Every person who leases or rents to another tangible personal property for storage, use, or other consumption, except film rentals where an admission tax is charged under sections 77-2701 to 77-27,135 and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;

(iii) Every person engaged in the business of renting or furnishing for periods of less than thirty days any room or rooms, lodgings, or accommodations, in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a consideration, shall be and constitute a retail merchant

in respect thereto and the gross income received therefrom shall constitute gross income of a retail merchant received from transactions constituting selling at retail; and

(iv) Every person engaged as a public utility in furnishing telephone, telegraph, gas, electricity, sewer, and water service, and every person engaged in furnishing community antenna television service as defined in subdivision (4) (b) of this section; and

(b) When the Tax Commissioner determines that it is necessary for the efficient administration of sections 77-2701 to 77-27,135 to regard any salesperson, representatives, peddlers, canvassers, or auctioneers and persons conducting auction sales as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, auctioneers, or employers, the Tax Commissioner may, at his or her discretion, treat such agent as the vendor jointly responsible with his or her principal, distributor, supervisor, or employer for the purposes of sections 77-2701 to 77-27,135;

(13) Sale shall mean and include any transfer of title or possession or segregation in contemplation of transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. Sale shall include:

(a) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others;

(c) The furnishing, preparing, or serving for a consideration of food, meals, or drinks;

(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer; and

(f) The renting or furnishing for periods of less than thirty days of any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a consideration;

(14) Sale for resale shall mean a sale of tangible personal property to any purchaser who is purchasing such tangible personal property for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing such tangible personal property to another person, but not if incidental to the renting or leasing of real estate;

(15) (a) Sales price shall mean the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of:

(i) The cost of the tangible personal property sold;

(ii) The cost of material used, labor or service cost, interest paid, losses, or any other expenses; or

(iii) The cost of transportation of the tangible personal property prior to its sale or purchase. The total amount for which tangible personal property is sold includes any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;

(b) Sales price does not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit;

(iii) The amount charged for labor or services rendered in installing and applying the property sold; Provided, that such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(iv) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal property under contracts providing for deferred payments of the purchase price; Provided, that such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(v) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature; or

(vi) The value of a motor vehicle taken by any person in trade as all or part of the consideration for a sale of another motor vehicle; or

~~(v*)~~ (vii) Charges for transportation of tangible personal property after sale;

(16) Seller shall include every person engaged in the business of selling, leasing, or renting tangible personal property of a kind the gross receipts from the retail sale, lease, or rental of which are required to be included in the measure of the sales tax;

(17) Storage shall include any retention in this state for any purposes except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer, other than tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. Neither storage nor use as defined in this subdivision shall include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;

(18) Tangible personal property shall mean personal property which may be seen, weighed, measured,

felt, or touched, or which is in any other manner perceptible to the senses;

(19) Taxpayer shall mean any person subject to a tax imposed by sections 77-2702 to 77-2713; and

(20) Use shall mean the exercise of any right or power over tangible personal property incident to the ownership or possession of that tangible personal property, except that it does not include the sale of that tangible personal property in the regular course of business or the exercise of any right or power over tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such; and =

(21) Engaged in business in this state shall mean and include any of the following:

(a) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse, storage place, or other place of business in this state;

(b) Having any representative, agent, salesperson, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking of orders for any tangible personal property; or

(c) Deriving rentals from a lease of tangible personal property in this state by any retailer.

Sec. 14. That section 77-2703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax of two per cent upon the gross receipts from all sales of tangible personal property sold at retail in this state, the gross receipts of every person engaged as a public utility or as a community antenna television service operator, and the gross receipts from the sale of admissions in this state until January 1, 1970, and on and after such date the rate shall be that which is set by the State Board of Equalization and Assessment as

provided in section 77-2715.01. When there is a sale, as defined in subdivision (13) of section 77-2702, after March 26, 1974, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

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

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

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

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax, and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate adopt and promulgate appropriate rules and regulations prescribing a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the provisions of sections 77-2701 to 77-27,135. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items and shall provide that no tax be collected on sales below a sum of fifteen cents; Provided, that the Tax Commissioner may authorize computation and collection of the tax uniformly on a straight percentage basis in lieu of brackets in situations involving machine or computer billing;

(e) The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the taxes imposed in sections 77-2701 to 77-27,135 or for any other purpose in connection with such taxes is prohibited;

(f) For the purpose of the proper administration of the provisions of sections 77-2701 to 77-27,135 and to prevent evasion of the retail sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it or takes, in good faith, an exemption certificate pursuant to subsection (7) of section 77-2705. Receipt of a resale certificate or exemption certificate, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt;

(g) Whenever any retailer shall make delivery of any tangible personal property in this state on or after June 1, 1967, it shall be conclusively presumed that such property was sold at retail on or after June 1, 1967, unless the delivery thereof is made pursuant to a contract executed in writing for a fixed price before June 1, 1967, with at least twenty-five per cent of the total price paid prior to June 1, 1967, and such delivery is made prior to August 31, 1967;

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, for periods of thirty days or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

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

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

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of thirty days or more. If the lessor rents or leases other vehicles for periods of less than thirty days, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner shall prescribe; and

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

(i) If a sales or use tax has been paid on the purchase, storage, use, or other consumption of tangible personal property used in the performance of a construction contract, which contract is with the project owner, is for a fixed price, and has been executed prior to June 1, 1967, and which tangible personal property is incorporated into the project and transferred to the owner of the structure constructed upon the completion of the contract, the person having paid such sales or use tax shall be entitled to a refund of the amount of taxes so paid. The Tax Commissioner shall by rule and regulation provide the manner and means of applying for such refund and shall require the furnishing of such proof as may reasonably be required to establish the fact that such property was used in the completion of a contract as defined in this subdivision and that any sales or use tax has in fact been paid on such tangible personal property;

(j) The tax imposed by the provisions of this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and the tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed hereunder, and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner shall prescribe, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as

disclosed by such certified statement. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement or who willfully falsifies any such statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer, or semitrailer in this state and does not register it for operation on the highways of this state within twenty days of the purchase thereof, the tax imposed by the provisions of this section shall immediately thereafter be paid by the purchaser to the county treasurer. The county treasurer shall report and remit the tax so collected to the Tax Commissioner at such times as the Tax Commissioner may require by rule and regulation. The county treasurer shall deduct and withhold for the use of the county general fund the collection fee permitted to be deducted by any retailer collecting the sales tax; provided, this collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax; and

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

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased, leased, or rented from any retailer on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of said lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used

to maintain his or her books and records. His or her liability is not extinguished until the use tax has been paid to this state, except that a receipt from a retailer maintaining-a-place-of engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of sections 77-2701 to 77-27,135 relating to the sales tax, regarded as a retailer maintaining-a-place-of engaged in business in this state, given to the purchaser pursuant to subdivision (b) of this subsection is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

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

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to said persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner shall require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. Such collectors of the use tax shall deduct and withhold from the amount of taxes collected three per cent thereof as reimbursement for the cost of collecting the tax, but such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the provisions of sections 77-2701 to 77-27,135 and to prevent evasion of the use tax, it shall be presumed that tangible personal property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this state by the purchaser after June 1, 1967, was purchased from a retailer on or after that date for storage, use, or other consumption in this state.

Sec. 15. That section 77-2708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2708. (1) (a) The sales and use taxes imposed by the provisions of sections 77-2701 to 77-27,135 shall be due and payable to the Tax Commissioner monthly on or before the last day of the month next succeeding each monthly period, unless otherwise provided pursuant to the provisions of sections 77-2701 to 77-27,135.

(b) (i) On or before the last day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe, and containing such information as the Tax Commissioner deems necessary for the proper administration of the provisions of sections 77-2701 to 77-27,135; Provided, the Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods, in the case of a particular seller, retailer, or purchaser, as the case may be; and provided further, the Tax Commissioner may by rule and regulation permit or require quarterly, semiannual, or annual reports and tax payments from sellers, retailers, or purchasers as the case may be who have small tax liabilities, but no such reports or payments may be permitted or required when the tax liability exceeds sixty dollars in any quarter, one hundred twenty dollars in any semiannual period, or two hundred forty dollars in any year;

(ii) For purposes of the sales tax a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax. For purposes of the use tax a return shall be filed by every retailer ~~maintaining a piece of~~ engaged in business in the this state and by every person who has purchased tangible personal property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax;

(iii) Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath; and

(iv) A taxpayer who keeps his or her regular books and records on a cash basis or on an accrual basis or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the sales and use tax returns required by sections 77-2701 to 77-27,135 on the same accounting basis that is used for the regular books and records; Provided, that on credit, conditional, and installment sales the retailer may elect to pay the tax upon the collections made during each month if this accounting method correctly reflects the operation of the business and is the same accounting method used for the regular books and records. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon he or she will not be permitted to change from that basis without first having obtained the permission of the Tax Commissioner.

(c) The taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty of forfeiture of the collection fee allowed pursuant to subdivision (d) of this subsection or five dollars, whichever is greater.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, three per cent thereof to reimburse himself or herself for the cost of collecting the tax.

(2) (a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, or has been erroneously or

illegally collected or computed, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the provisions of sections 77-2701 to 77-27,135. Any balance may be refunded to the person by whom it was paid, or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, assignee, executor, or administrator, within three years from the last day of the month following the close of the period for which the overpayment was made, or within six months after any determination becomes final under the provisions of section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

(d) The Tax Commissioner shall allow or disallow a claim within ninety days after it has been filed. If the Tax Commissioner has neither allowed nor disallowed a claim within such ninety days, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the provisions of sections 77-2701 to 77-27,135, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as hereinafter provided in section 77-27,126.

(g) Upon the allowance of a credit or refund, of any sum erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully

collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of six per cent per annum from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within one year from the date of refund or credit, in the name of the state, in a court of competent jurisdiction in the county in which the taxpayer involved is located.

(j) The action shall be tried in the county in which the taxpayer involved is a resident unless the court orders a change of place of trial.

(k) The Attorney General shall prosecute the action provided for in subdivision (i) of this subsection, and the provisions of state law and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(l) Credit shall be allowed to the retailer, contractor, or repairman for sales or use taxes paid pursuant to sections 77-2701 to 77-27,135 on (i) sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes; Provided, that if such accounts are thereafter collected by the retailer, contractor, or repairman, a tax shall be paid upon the amount so collected; or (ii) on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

Sec. 16. That section 77-2712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2712. (1) (a) If any person is delinquent in the payment of any sales or use tax required under the

provisions of sections 77-2701 to 77-27,135 to be paid by him or her or in the event a determination has been made against him or her which remains unpaid, the Tax Commissioner may, not later than three years after the payment became delinquent or within three years after the last recording of a certificate under subsection (2) of this section, give notice thereof personally or by registered or certified mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person.

(b) After receiving the notice provided for in subdivision (1) (a) of this section, the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the Tax Commissioner consents to a transfer or disposition, or until sixty days elapse after the receipt of the notice, whichever period expires earlier.

(c) All persons so notified shall, within twenty days after receipt of the notice, report in writing to the Tax Commissioner all such credits, other personal property, or debts in their possession, under their control, or owing by them.

(d) If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, in order to be effective, shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held.

(e) If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld under the provisions of this subsection, he or she shall be liable to the state to the extent of the value of the property or the amount of the debts thus transferred or paid for any indebtedness due under the provisions of sections 77-2701 to 77-27,135 from the person with respect to whose obligation the notice was given.

(2) (a) If any sales or use tax amount required to be paid to the state under sections 77-2701 to

77-27,135 is not paid when due, the Tax Commissioner may, within three years after the amount is due, file for record in the office of any county register of deeds a certificate specifying the amount, interest, and penalty due, the name and address as it appears on the records of the Tax Commissioner of the person liable for the same, and the fact that the Tax Commissioner has complied with all provisions of sections 77-2701 to 77-27,135 in the determination of the amount required to be paid.

(b) (i) When the certificate provided for in subdivision (2) (a) of this section is filed with any register of deeds it shall constitute a lien from the time of filing upon all real property of the named individual located in such county. Upon the filing of such certificate, the register of deeds shall enter the same in an alphabetical state tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount due. The fee for filing and indexing each notice of lien shall be one dollar. All such notices shall be retained in numerical order in a file designated state tax lien notices; Provided, that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained; and

(ii) When a certificate of discharge of any tax lien issued by the Tax Commissioner is filed in the office where the notice of lien is filed, the appropriate county official shall enter the same with the date of filing in the state tax lien index on the line where notice of the lien so discharged is entered, and shall file the certificate of discharge with the notice of lien. The fee for filing and indexing each certificate of discharge shall be fifty cents.

(c) From the time of the filing for record, the amount required to be paid together with interest and penalty shall constitute a lien upon all real property in the county owned by the person or afterwards and before the lien expires acquired by him or her. The lien shall have the force, effect, and priority of a judgment lien and shall continue for five years from the time of the filing of the certificate unless sooner released or otherwise discharged.

(d) The lien may, within five years from the date of the filing of the certificate or within five years from the date of the last extension of the lien in the manner provided in this subsection, be extended by filing for record a new certificate in the office of the county register of deeds of any county, and from the time of

such filing, the lien shall be extended to the real property in such county for five years, unless sooner released or otherwise discharged. The fee for filing and indexing each new certificate shall be one dollar.

(e) The Tax Commissioner may at the request of the person involved at any time release all or any portion of the property subject to any lien provided for in sections 77-2701 to 77-27,135 from the lien or subordinate the lien to other liens and encumbrances if he or she determines that the amount, interest, and penalties have been paid or are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties. The fee for filing and indexing each certificate of release shall be one dollar.

(f) The register of deeds of each county shall bill the Tax Commissioner on a quarterly basis for fees for documents filed by him or her for the Tax Commissioner.

(g) A certificate by the Tax Commissioner to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, shall be conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

(3) (a) At any time within three years after any amount of sales or use tax to be collected under the provisions of sections 77-2701 to 77-27,135 becomes due and payable or within three years after the last recording of a certificate under subsection (2) of this section, the Tax Commissioner may bring an action in the courts of this state, or any other state, or of the United States, in the name of the people of the State of Nebraska, to collect the amount delinquent together with penalties and interest.

(b) The Attorney General shall prosecute the action, and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(c) In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

(d) In the action a certificate by the Tax Commissioner showing the delinquency shall be prima facie evidence of the determination of such tax or the amount

of such tax, the delinquency of the amounts set forth, and of the compliance by the Tax Commissioner with all the provisions of sections 77-2701 to 77-27,135 in relation to the computation and determination of the amounts.

(e) In any action relating to the use tax brought under the provisions of sections 77-2701 to 77-27,135, process may be served according to the rules of civil procedure or may be served upon any agent or clerk in this state employed by any retailer engaged in a place of business maintained by the retailer in this state. In the latter case, a copy of the process shall forthwith be sent by registered or certified mail to the retailer at his or her principal or home office.

(f) (i) The sales and use tax amounts required to be paid by any person under the provisions of sections 77-2701 to 77-27,135 together with interest and penalties shall be satisfied first in any of the following cases: Whenever the person is insolvent; whenever the person makes a voluntary assignment of his or her assets; whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased; or whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under sections 77-2701 to 77-27,135 are levied upon by process of law; and

(ii) The state sales tax and the use tax shall be collected by the retailer, as agent for the State of Nebraska, on any transaction as set forth in section 77-2703, which taxes shall constitute a trust fund in the hands of the retailer and shall be owned by the state as of the time they are owing to the retailer.

(g) When a judgment has been obtained for the recovery of any sales or use tax, interest, and penalties as provided in sections 77-2701 to 77-27,135, the Tax Commissioner shall cause such judgment to be enforced and collected in the same manner as provided by the laws of this state for the enforcement and collection of other judgments for the recovery of money.

(4) (a) At any time within three years after any person is delinquent in the payment of any sales or use tax under the provisions of sections 77-2701 to 77-27,135, the Tax Commissioner may forthwith collect the amount in the following manner: The Tax Commissioner shall seize any personal property, other than property exempt from execution under the laws of this state, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with

any interest or penalties imposed for the delinquency and any costs incurred on account of a seizure and sale. Any seizure made to collect a sales tax due shall be only of property of the vendor not exempt from execution under the laws of this state.

(b) Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least twenty days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for retail sales taxes due, at his or her last-known address or place of business, and, in case of a sale for use taxes due, at his or her last-known residence or place of business in this state. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs, are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(c) At the sale the Tax Commissioner shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(d) Whenever any property which is seized and sold under the provisions of this subsection is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff, constable, or deputy commissioner may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid.

(e) If upon the sale the money received exceeds the total of all amounts, including interest, penalties, and costs due the state, the Tax Commissioner shall return the excess to the person liable for the amounts and obtain his or her receipts. If any person having an interest in or lien upon the property files with the Tax Commissioner prior to the sale notice of his or her interest or lien, the Tax Commissioner shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his or her heirs, successors, or assigns. No interest earned, if any, will become the property of the person liable for the amount.

(5) No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state to enjoin the collection under the provisions of sections 77-2701 to 77-27,135 of any tax or any amount of tax required to be collected.

Sec. 17. That section 77-2762, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2762. (1) A husband and wife, both residents, may make a joint return with respect to the income tax imposed by the provisions of sections 77-2701 to 77-27,135 even though one of the spouses has neither gross income nor deductions except that:

(a) No joint return shall be made if the spouses are not permitted to file a joint federal income tax return;

(b) If the federal income tax liability of either spouse is determined on a separate federal return their income tax liabilities under the provisions of sections 77-2701 to 77-27,135 shall be determined on separate returns; and

(c) If the federal income tax liabilities of husband and wife, other than a husband and wife described in subsection (2) of this section, are determined on a joint federal return, they shall file a joint return under the provisions of sections 77-2701 to 77-27,135 and their tax liabilities shall be joint and several.

(2) If either husband or wife is a resident and the other a nonresident, they shall file separate income tax returns in this state on such forms as may be required by the Tax Commissioner in which event their tax liabilities shall be separate; but they may elect to determine their joint taxable income as if both were residents, and in such case, their liabilities shall be joint and several. During the time a claim for credit or refund may be filed pursuant to section 77-2793, such husband and wife may revoke the election to determine their joint taxable income as if both were residents, by filing separate returns on such forms and in such manner as may be required by the Tax Commissioner.

Sec. 18. That section 77-3505, Revised Statutes Supplement, 1980, be amended to read as follows:

77-3505. A qualified claimant shall mean an owner of a homestead during the calendar year for which the claim is made, who was sixty-five years of age or older during such year, and who shall be entitled to relief pursuant to section 77-3507.

Sec. 19. That section 77-3507, Revised Statutes Supplement, 1980, be amended to read as follows:

77-3507. (1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation a percentage of the first thirty-five thousand dollars of the actual value of the homestead of qualified claimants based on income and status as a claimant pursuant to subsections (2) to (4) of this section.

(2) For a single qualified claimant ~~sixty-five years-of-age-or-older~~, the percentage of the exemption for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's income in Column A in the table found in this subsection.

Column A	Column B
Household Income	Percentage
In Dollars	of Relief
0 through 4,300	100
4,301 through 4,800	80
4,801 through 5,300	60
5,301 through 5,800	40
5,801 through 6,300	20

(3) For a married qualified claimant ~~with one whose spouse is less than~~ sixty-five years of age, ~~or older~~, the percentage of the exemption for which the claimant shall be eligible shall be the percentage in

Column B which corresponds with the claimant's income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage of Relief
0 through 7,400	100
7,401 through 7,900	80
7,901 through 8,400	60
8,401 through 8,900	40
8,901 through 9,400	20

(4) For a married qualified claimant with--both spouses whose spouse is sixty-five years of age or older, the percentage of the exemption for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage of Relief
0 through 8,400	100
8,401 through 8,900	80
8,901 through 9,400	60
9,401 through 9,900	40
9,901 through 10,400	20

Sec. 20. That section 3, Legislative Bill 284, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 3. Each county shall receive a share of the funds distributed pursuant to section 2 of this act based on the percentage figure obtained by dividing the total actual value of agricultural, commercial-industrial, and suburban-residential real estate in the county by the total actual value of agricultural, commercial-industrial, and suburban-residential real estate in the state. The Tax Commissioner shall determine the amount to be distributed to the various counties for distribution to the political subdivisions within such county and shall certify such amounts to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 5, 1980, and December 5, 1981. For fiscal year 1980-81 the fund shall be distributed according to the same schedule except that any monthly payment not made prior to the effective date of this act shall be added to the initial payment made following the effective date of this act. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available

in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification, draw warrants against funds appropriated.

Out of the amount of funds distributed to a county under this section, the county treasurer shall retain one per cent thereof and then shall distribute the remainder to each of the political subdivisions within his or her county as set forth in section 4, Legislative Bill 284, Eighty-seventh Legislature, First Session, 1981.

Sec. 21. That section 9, Legislative Bill 284, Eighty-seventh Legislature, First Session, 1981, be amended to read as follows:

Sec. 9. For fiscal year 1982-83 and each fiscal year thereafter each county shall receive an amount from the Political Subdivision Property Tax Relief Fund based on the percentage figure obtained by dividing the actual valuation of real and personal property in the county by the actual valuation of real and personal property in the state based on the values stated in the most recent certificate of taxes levied pursuant to section 77-628. The Tax Commissioner shall determine the amount to be distributed to the various counties for distribution to the political subdivisions within such county and shall certify such amounts to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 5, 1982, and each December 5 thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification, draw warrants against funds appropriated.

Out of the amount of funds distributed to a county under this section, the county treasurer shall retain one per cent thereof and then shall distribute the remainder to each of the political subdivisions within his or her county as set forth in section 10, Legislative Bill 284, Eighty-seventh Legislature, First Session, 1981.

Sec. 22. Sections 17 and 23 of this act shall be operative for all tax years beginning on or after January 1, 1980. The remaining sections shall be operative on their effective date.

Sec. 23. That original section 77-2762, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 24. That original sections 76-214, 77-652, 77-801, 77-1242.01, 77-1320.04, 77-2703, 77-2708, and 77-2712, Reissue Revised Statutes of Nebraska, 1943, sections 77-202.03, 77-603, 77-624, 77-625, 77-1303, 77-1701, 77-2702, 77-3505, and 77-3507, Revised Statutes Supplement, 1980, and sections 3 and 9, Legislative Bill 284, Eighty-seventh Legislature, First Session, 1981, are repealed.

Sec. 25. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.