

LEGISLATIVE BILL 1085  
Passed over the Governor's veto  
April 11, 2002.

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Dierks, 40; Hartnett, 45; Janssen, 15; Landis, 46; Raikes, 25; Redfield, 12

AN ACT relating to revenue and taxation; to amend sections 77-2702.09, 77-2702.11, 77-2702.16, 77-2702.17, 77-2704.11, 77-2704.26, 77-2704.27, 77-2704.30, 77-4008, and 77-4025, Reissue Revised Statutes of Nebraska, sections 77-2701.02, 77-2702.07, 77-2702.13, 77-2702.14, 77-2702.15, 77-2703, 77-2715.02, and 77-2716, Revised Statutes Supplement, 2000, and sections 77-2602, 77-2704.31, and 77-3442, Revised Statutes Supplement, 2001; to change tax provisions for cigarettes and tobacco products; to subject services to sales tax as prescribed; to provide and eliminate certain sales tax exemptions; to change sales and income tax rates; to provide an adjustment to federal adjusted gross income; to provide an exclusion to the property tax levy for certain schools; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 77-2704.22, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 77-2602, Revised Statutes Supplement, 2001, is amended to read:

77-2602. (1) Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, ~~thirty-four~~ sixty-four cents per package until October 1, 2004, and thirty-four cents per package commencing October 1, 2004; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package. Commencing July 1, 1994, and continuing until July 1, 2009, the State Treasurer shall place the equivalent of twenty-one cents of such tax less three million dollars each fiscal year of proceeds of such tax in the General Fund. Commencing July 1, 2009, the State Treasurer shall place the equivalent of twenty-one cents of such tax in the General Fund. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by ~~thirty-four~~ the tax rate per package of cigarettes containing not more than twenty cigarettes. The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the ~~twenty-one cent~~ distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Department of Health and Human Services Finance and Support Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the ~~twenty-one cent~~ distribution to the General Fund;

(c) Third, beginning July 1, 2001, and continuing until October 1, 2002, the State Treasurer shall place the equivalent of five cents of such tax in the Building Renewal Allocation Fund. Beginning October 1, 2002, and continuing until October 1, 2004, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. Beginning October 1, 2004, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall

place the equivalent of five cents of such tax in the Building Renewal Allocation Fund. The Legislature shall appropriate each fiscal year all sums inuring to the fund, plus interest earnings for the Task Force for Building Renewal to be used to carry out its duties and to fulfill the purposes of the Deferred Building Renewal Act. Unexpended balances existing at the end of each fiscal year shall be, and are hereby, reappropriated. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than five-sevenths of the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to five-sevenths of the FY1997-98 amount shall reduce the ~~twenty-one cent~~ distribution to the General Fund;

(d) Fourth, until October 1, 2002, and beginning on October 1, 2004, the State Treasurer shall place the difference between the equivalent of thirteen cents of such tax and the sum of the amounts distributed pursuant to subdivisions (a) through (c) and (f) through (h) of this subsection in a special fund to be known as the Nebraska Capital Construction Fund. Beginning October 1, 2002, and continuing until October 1, 2004, the State Treasurer shall place the difference between the equivalent of forty-three cents of such tax and the sum of the amounts distributed pursuant to subdivisions (a) through (c) and (f) through (i) of this subsection in the Nebraska Capital Construction Fund;

(e) Fifth, beginning July 1, 1994, and continuing until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of three million dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of three million dollars each year for fiscal year 1994-95 through fiscal year 2008-09;

(f) Sixth, beginning July 1, 2001, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund;

(g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to this subsection by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision; ~~and~~

(h) Eighth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to this subsection by such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision; ~~and~~

(i) Ninth, beginning October 1, 2002, and continuing until October 1, 2004, the State Treasurer shall place the equivalent of twenty-eight cents of such tax in the Cash Reserve Fund.

(2) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Department of Health and Human Services Finance and Support Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, ~~and~~ (h) the City of the Metropolitan Class Development Fund, and (i) the Cash Reserve Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through ~~(h)~~ (i) of this subsection.

Sec. 2. Section 77-2701.02, Revised Statutes Supplement, 2000, is amended to read:

77-2701.02. Pursuant to section 77-2715.01:

(1) Until July 1, 1998, ~~or April 15, 1998, whichever is later,~~ the rate of the sales tax levied pursuant to section 77-2703 shall be five percent;

(2) Commencing July 1, 1998, ~~or April 15, 1998, whichever is later,~~ and until July 1, 1999, the rate of the sales tax levied pursuant to section 77-2703 shall be four and one-half percent; ~~and~~

(3) Commencing July 1, 1999, and until the start of the first calendar quarter after the operative date of this section, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent;

(4) Commencing on the start of the first calendar quarter after the operative date of this section, and until the start of the fifth calendar quarter after the operative date of this section, the rate of the sales tax levied pursuant to section 77-2703 shall be five and one-half percent; and

(5) Commencing on the start of the fifth calendar quarter after the operative date of this section, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent.

Sec. 3. Section 77-2702.07, Revised Statutes Supplement, 2000, is amended to read:

77-2702.07. (1) 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 retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased 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 property, and has resold the property prior to making any use of the 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 property;

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

(c) The cost of transportation of the property;

(d) The amount of any excise or property tax levied against the property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

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

(a) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications services that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

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

(c) 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

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property shall mean:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; ~~gross receipts shall not mean the amount charged for training customers in the use of computer software if 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 computer software;~~ and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967 and except as provided in section 77-2704.39.

(4) Commencing October 1, 2002, gross receipts for providing a service shall mean:

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

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

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

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

(5) Gross receipts shall not include any of the following:

(a) Cash discounts allowed and taken on sales;

~~(b) (i) Before January 1, 1997, the amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle; and~~

~~(ii) On and after January 1, 1997, the The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;~~

(c) Sales price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit;

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

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

~~(f) (i) Before January 1, 1997, 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; and~~

~~(ii) On and after January 1, 1997, the The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat;~~

(g) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the property prior to June 1, 1967, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration; or

(h) Except as provided in subsection (2) of this section, until October 1, 2002, the amount charged for labor or services rendered in installing or applying the property sold if 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 property.

Sec. 4. Section 77-2702.09, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.09. Occasional sale shall mean:

(1) A sale, but not a lease or rental, of property which is the subject of any intercompany sale or transfer involving any parent, subsidiary, or brother-sister company relationship under section 77-2704.28 and which was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller or transferor directly or indirectly has previously paid a sales or use tax thereon, including:

(a) From one corporation to another corporation pursuant to a reorganization. For purposes of 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;

(b) 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;

(c) To a corporation for the purpose of organization of such corporation or the contribution of additional capital to 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;

(d) 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;

(e) 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;

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

(g) From a limited liability company to the members thereof when made in kind in the dissolution of such limited liability company if the portion of the property so distributed to the members of the limited liability company is substantially in proportion to the interest in the limited liability company held by the members;

(h) From one limited liability company to another limited liability company pursuant to a reorganization; or

(i) Any transaction between two persons that qualifies as a tax-free transaction under the Internal Revenue Code;

(2) A sale of household goods, ~~and~~ personal effects, and services 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 section 77-2703:

(a) 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;

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

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

(d) Such property sold was originally acquired for and used for personal use or the service provided may be performed at any individual residence without specialized equipment or supplies; and

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

(3) Commencing with any transaction occurring on or after October 1, 1985, any sale of business or farm machinery and equipment if each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(a) Such machinery or equipment was used by the seller or seller's predecessor in a sale described in subdivision (1) of this section as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(b) Such property was originally acquired prior to June 1, 1967, or if acquired thereafter, the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon; and

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

(4) Commencing October 1, 1985, a sale by an organization created exclusively for religious purposes or an agent of the organization for such

sale 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 section 77-2703:

(a) All sales occur during an activity conducted by such organization or, if more than one organization is involved, by one of the organizations owning property being sold;

(b) The organization only sells property it owns or provides the service during one such activity in a calendar year; and

(c) The activity does not last longer than three consecutive days; and

(5) Any sale that is made in connection with the sale to a single buyer of all or substantially all of a trade or business if the seller or seller's predecessor in a sale described in subdivision (1) of this section directly or indirectly has previously paid a sales or use tax thereon. This subdivision shall apply to any transaction occurring on or after October 1, 1985.

Commencing October 1, 1985, occasional sale shall not include any sale directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer.

Except for a sale listed in subdivision (1) of this section, an occasional sale shall not mean any sale of motor vehicles, trailers, and semitrailers as defined in section 60-301 or, on or after January 1, 1997, any sale of a motorboat as defined in section 37-1204.

Sec. 5. Section 77-2702.11, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.11. Purchase shall mean any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means, of property for a consideration, including a transfer of the possession of property in which the seller retains the title as security for the payment of the price and a transfer for a consideration of property which has been produced, fabricated, or printed to the special order of the customer. Purchase shall also mean the provision of a service for a consideration.

Sec. 6. Section 77-2702.13, Revised Statutes Supplement, 2000, is amended to read:

77-2702.13. (1) Retail sale or sale at retail shall mean:

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

(b) A sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal. The advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly;

(c) The delivery in this state of property and any associated labor 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 delivery person's selling price of the property in his or her gross receipts;

(d) The sale of admissions which shall mean the right or privilege to have access to or to use a place or location. When an admission to an activity is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. Admissions shall not include (i) fees charged by elementary or secondary schools, public or private, (ii) fees charged by 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, or (iii) fees charged by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act;

(e) A sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate;

(f) A sale of any property annexed to real estate and any associated labor by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2702.05 except when such annexation is incidental to the

transfer of an improvement upon real estate or the real estate; ~~and~~

(g) The sale of prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements. If the sale or recharge of a prepaid telephone calling arrangement does not take place at the vendor's place of business, the sale or recharge shall be conclusively determined to take place at the customer's shipping address or, if there is no item shipped, at the customer's billing address. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications services that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed; and

(h) Providing a service defined in subsection (4) of section 77-2702.07.

(2) Retail sale or sale at retail shall not mean:

(a) The sale of:

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

(ii) A service listed in subsection (4) of section 77-2702.07 which will become an ingredient or component part of a service listed in subsection (4) of section 77-2702.07 for ultimate sale at retail; Refractory materials, lime, synthetic slag, mill rolls, and guides for use in manufacturing of steel or cement,

(b) The sale of:

(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall include live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or any person engaged in the business of bartering, buying, or selling live poultry or livestock on the hoof;

(ii) 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;

(iii) Agricultural chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents for use in commercial agriculture and applied to land or crops and sold in any tax period that has not been closed by the applicable statute of limitations. Agricultural chemicals shall not mean chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents applied to harvested grains stored in commercial elevators; or

(iv) Oxygen for use in aquaculture as defined in section 2-3804.01;

(c) The sale of:

(i) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(ii) Containers when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(iii) Returnable containers when sold with contents in connection with a retail sale of the contents or when resold for refilling.

The term returnable containers shall mean containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) The sale of property or services 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) The sale of property or services 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 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 outside this state, with title passing in this state, of materials and replacement parts and any associated labor used as or 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 or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. All

persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that their certificate will expire and be null and void as of such date;

(g) The sale of railroad rolling stock whether purchased by a railroad or by any other person; or

(h) The sale of property annexed to real estate and any associated labor.

Sec. 7. Section 77-2702.14, Revised Statutes Supplement, 2000, is amended to read:

77-2702.14. (1) Retailer shall mean:

(a) Any seller engaged in the business of making sales subject to tax under section 77-2703 or in the business of making sales subject to tax under section 77-2703 at auction of property owned by the person or others. Retailer shall mean, in the case of sales at auction when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer, the person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, and retailer shall not include the auctioneer in such case;

(b) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 77-2702.05; ~~and~~

(c) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event; and

(d) Every person engaged in the business of providing any service defined in subsection (4) of section 77-2702.07.

(2) Retailer shall not mean:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967 or railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(b) Any person engaged in the business of furnishing rooms in a facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days; or

(c) Any person making sales at a flea market, craft show, fair, or similar event who does not have a sales tax permit and who has arranged to pay sales taxes collected to the person operating, organizing, or promoting such event.

Sec. 8. Section 77-2702.15, Revised Statutes Supplement, 2000, is amended to read:

77-2702.15. Sale shall mean 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, of property for a consideration or the provision of service for a consideration. Sale shall include, but not be limited to:

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

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

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

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

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

(6) 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 health care facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days.

Sec. 9. Section 77-2702.16, Reissue Revised Statutes of Nebraska, is amended to read:



77-2702.16. Sale for resale shall mean a sale of property or provision of a service to any purchaser who is purchasing such property or service 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 property or service. A sale for resale shall include a sale of property to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2702.05, to a contractor or repairperson being taxed as the consumer of property and electing a tax-free inventory under subdivision (3) of section 77-2702.05, or to a purchaser for the sole purpose of that purchaser renting or leasing such property to another person, with rent or lease payments set at a fair market value, or film rentals for use in a place where an admission is charged that is subject to taxation under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate.

Sec. 10. Section 77-2702.17, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.17. (1) Sales price shall mean the total amount for which property is sold valued in money whether paid in money or otherwise, without any deduction on account of:

- (a) The cost of the property sold;
- (b) The cost of material used, labor or service cost, interest paid, losses, or any other expenses;
- (c) The cost of transportation of the property. The total amount for which property is sold shall include any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;
- (d) The cost of computer software contained on the property; or
- (e) The cost of any license, franchise, or lease for the use of computer software or entertainment properties such as videotapes or movie films.

(2) Sales price shall not mean any of the following:

- (a) Cash discounts allowed and taken on sales;
- (b) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;
- (c) The amount refunded for property or services returned or rejected by customers when all or part of the amount charged therefor is refunded either in cash or credit;
- (d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property or services under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property or services;
- (e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;
- (f) The value of a motor vehicle or motorboat taken by any person in trade as all or part of the consideration for a sale of another motor vehicle or motorboat;
- (g) The amount charged for labor or services rendered in annexing property to real estate; or
- (h) ~~The~~ Until October 1, 2002, the amount charged for labor or services rendered in installing or applying the property sold if 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 property.

Sec. 11. Section 77-2703, Revised Statutes Supplement, 2000, is amended to read:

77-2703. (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 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, as a community antenna television service operator or any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), or (d) of section 77-2702.07, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2702.07, the gross receipts from the sale of admissions in this state, ~~and~~ the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section, and the gross receipts from the provision of services defined in subsection (4) of section 77-2702.07. For purposes of this subsection, the provision of services shall be deemed to be in this state for services provided to real estate if the real estate is located in this state, for services provided to personal property if the personal property is located in this state and the service is rendered for use

in this state, and for computer software training under subdivision (4)(c) of section 77-2702.07 if the training is performed at a location that is within this state for a customer located within this state. When there is a sale, 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 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 to this state.

(b) It is unlawful for any retailer to advertise, hold out, or 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, 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 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 Nebraska Revenue Act of 1967. 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, except 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 enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 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 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 (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, the tax shall be collected by the lessor on the rental or lease price, except as otherwise provided within this section:

(i) From all vehicles registered for operation upon the highways of this state which are rented or leased for periods of one year or more; or

(ii) From all vehicles delivered by the lessor within this state which are rented or leased for periods of less than one year.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, for periods of one year 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 one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; 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) The tax imposed by 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, with the exception of motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09, the tax shall be collected by the county treasurer or designated county official as provided in section 60-302 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. The tax imposed by this section on motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09 shall be collected by the Department of Motor Vehicles 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 under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, 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. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. 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 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 thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(j) (i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or designated county official at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, 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. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. 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 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 motorboat in this state and does not register it within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or designated county official. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or designated county official shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or designated county official shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer or designated county official violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price, except as otherwise provided within this section:

(A) From all motorboats registered for operation within this state which are rented or leased for periods of one year or more; or

(B) From all motorboats delivered by the lessor within this state which are rented or leased for periods of less than one year.

(iii) Subdivisions (1)(j)(i) and (ii) of this section become operative January 1, 1997.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by 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 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 property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section 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 the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be 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 shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer 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 the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting 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 such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may 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 two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax, except that for each month from October 1, 1991, to September 30, 1992, such collectors shall deduct and withhold from the amount of taxes collected three percent of the first five thousand dollars remitted each month and one percent of all amounts in excess of five thousand dollars remitted each month as reimbursement for the cost of collecting the tax and for each month from April 1, 1993, to March 31, 1994, such collectors shall deduct and withhold from the amount of taxes collected three-quarters of one percent of the first two thousand dollars remitted each month and one-quarter of one percent of all amounts in excess of two thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any 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 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that 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 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.

(g)(i) Except as provided in subdivisions (g)(ii) through (g)(v) of this subsection, when a person purchases property in another state, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country with the intent of using such property in such other state, commonwealth, territory, possession, or country and such property is actually used in the other state, commonwealth, territory, possession, or country for its intended purpose, the property shall not be subject to tax in this state.

(ii) Subdivision (g)(i) of this subsection shall only apply to a motor vehicle, trailer, or semitrailer as defined in section 60-301 when it is licensed for operation on the highways of the other state, commonwealth, territory, possession, or country prior to being brought into this state. Licensed for operation on the highways does not include any temporary registration, licensing, or in transit procedure that allows nonresidents to operate the motor vehicle, trailer, or semitrailer on the highways of the other state, commonwealth, territory, possession, or country for a limited time with the intent to remove the motor vehicle from the other state, commonwealth, territory, possession, or country.

(iii) Subdivision (g)(i) of this subsection shall not apply to an aircraft which is brought into this state within one year of purchase and (A) is regularly based within this state or (B) more than one-half of the aircraft's operating hours are within this state.

For purposes of subdivision (g)(iii) of this subsection, operation of the aircraft for the purpose of maintenance, repair, or fabrication with subsequent removal from this state upon completion of such maintenance, repair, or fabrication shall not be considered operating hours.

(iv)(A) Subdivision (g)(i) of this subsection shall only apply to a motorboat as defined in section 37-1204 when it is registered for operation in the other state, commonwealth, territory, possession, or country prior to being brought into this state.

(B) Subdivision (g)(iv)(A) of this subsection becomes operative January 1, 1997.

(v) Subdivision (g)(i) of this subsection shall not apply to any property that is manufactured, processed, or fabricated in another state and that is not used for its intended purpose in the other state after its

manufacture, processing, or fabrication.

Sec. 12. Section 77-2704.11, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.11. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of property and any associated labor, or the gross receipts from the provision of services within this state, which is shipped to a point outside this state, when the contract of sale or service is expressly or impliedly contingent upon delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the customer at airport facilities for immediate transport outside this state, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. Such exemption shall include the amount charged for fabrication, installation, or application of property furnished by the customer which is fabricated, installed, or applied in this state and then shipped by the retailer performing the fabrication, installation, or application to a point outside of this state. This shall also include the gross receipts from sales of property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier.

Sec. 13. Section 77-2704.26, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.26. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of an aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days. Sales and use taxes shall not be imposed on the gross receipts from a service listed in subsection (4) of section 77-2702.07 that is rendered to an aircraft brought into this state by an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days after the service is completed.

Sec. 14. Section 77-2704.27, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.27. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of, the service to, and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

Sec. 15. Section 77-2704.30, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.30. The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(1) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair, installation, or application and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers; and

(2) The storage, use, or consumption of property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property and any associated labor would be exempt from the sales or use tax were it purchased within this state.

Sec. 16. Section 77-2704.31, Revised Statutes Supplement, 2001, is amended to read:

77-2704.31. If any person who causes property or service to be brought into this state has already paid a tax in another state with respect to the sale or use of such property or service in an amount less than the tax imposed by sections 13-319, 13-2813, 77-2703, and 77-27,142, the provisions of subsection (2) of section 77-2703 shall apply, but at a rate measured by the difference only between the rate imposed by such sections and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by such sections, then no use tax shall be due in this state on such property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

Sec. 17. Section 77-2715.02, Revised Statutes Supplement, 2000, is amended to read:

77-2715.02. (1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) The income amounts for columns A and E shall be:

(i) \$0, \$2,400, \$17,000, and \$26,500, for single returns;

(ii) \$0, \$4,000, \$30,000, and \$46,750, for married filing joint returns;

(iii) \$0, \$3,800, \$24,000, and \$35,000, for head-of-household returns;

(iv) \$0, \$2,000, \$15,000, and \$23,375, for married filing separate returns; and

(v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(b) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(c) The amount in column D shall be the rate on the income in excess of the amount in column E;

(d) ~~The~~ For taxable years beginning or deemed to begin before January 1, 2003, and for taxable years beginning or deemed to begin on or after January 1, 2004, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6784, .9432, 1.3541, and 1.8054;

(e) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;

(f) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and

~~(f)~~ (g) One rate schedule shall be established for each federal filing status.

(3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income	but not	pay	plus	of the
over	over			amount over

(4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Sec. 18. Section 77-2716, Revised Statutes Supplement, 2000, is amended to read:

77-2716. (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or

instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e) (i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a) (5) of the Internal Revenue Code.

(8) (a) There shall be subtracted from federal adjusted gross income an amount equal to the difference between the amount qualified for calculation of a deduction as provided in section 162(1) of the Internal Revenue Code and the amount actually allowed pursuant to section 162(1)(1) of the Internal Revenue Code.

(b) For an individual who itemized deductions on his or her federal



return, the maximum amount subtracted under subdivision (8) (a) of this section shall be seven and one-half percent of federal adjusted gross income.

(9) (a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, not to exceed five hundred dollars per married filing separate return or one thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(10) (a) For income tax returns filed after September 10, 2001, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before September 11, 2004.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

Sec. 19. Section 77-3442, Revised Statutes Supplement, 2001, is amended to read:

77-3442. (1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2) (a) Except as provided in subdivision (2) (b) of this section, school districts and multiple-district school systems may levy a maximum levy of (i) one dollar and ten cents per one hundred dollars of taxable valuation of property subject to the levy until fiscal year 2001-02 and (ii) one dollar per one hundred dollars of taxable valuation of property subject to the levy for fiscal year 2001-02 and all subsequent fiscal years. Excluded from this limitation are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(b) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2) (a) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as

such title existed on September 1, 2001.

(c) Beginning with school fiscal year 2002-03 through school fiscal year 2004-05, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2) (a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the changes made by Legislative Bill 898, Ninety-seventh Legislature, Second Session, 2002, for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided under the act as amended by Legislative Bill 898, Ninety-seventh Legislature, Second Session, 2002. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded pursuant to subdivision (2) (c) of this section on or before May 15, 2002, for school fiscal year 2002-03, February 15, 2003, for school fiscal year 2003-04, and February 15, 2004, for school fiscal year 2004-05.

(3) Community colleges may levy a maximum levy on each one hundred dollars of taxable property subject to the levy of (a) eight cents for fiscal year 1998-99 and fiscal year 1999-2000 and (b) seven cents for fiscal year 2000-01 and each fiscal year thereafter.

(4) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(5) Educational service units may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6) (a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred

dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Property tax levies for judgments obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.

(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

Sec. 20. Section 77-4008, Reissue Revised Statutes of Nebraska, is amended to read:

77-4008. (1) Commencing on or after January 1, 1988, a tax is hereby imposed upon the first owner of tobacco products to be sold in this state. The Prior to October 1, 2002, and on and after October 1, 2004, the tax shall be fifteen percent, and on and after October 1, 2002, and continuing until October 1, 2004, the tax shall be twenty percent, of (a) the purchase price of such tobacco products paid by the first owner or (b) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others. Such tax shall be in addition to all other taxes.

(2) Whenever any person who is licensed under section 77-4009 purchases tobacco products from another person licensed under section 77-4009, the seller shall be liable for the payment of the tax.

(3) On and after October 1, 2002, and continuing until October 1, 2004, the Tax Commissioner shall remit the amount collected pursuant to this section to the State Treasurer, and the State Treasurer shall credit three-fourths of such amount to the General Fund and one-fourth of such amount to the Cash Reserve Fund. On and after October 1, 2004, amounts collected shall be used and distributed pursuant to section 77-4025.

Sec. 21. Section 77-4025, Reissue Revised Statutes of Nebraska, is amended to read:

77-4025. There is hereby created a cash fund in the Department of Revenue to be known as the Tobacco Products Administration Cash Fund. Except as otherwise provided in section 77-4008, all All revenue collected or received by the Tax Commissioner from the license fees and taxes imposed by the Tobacco Products Tax Act shall be remitted to the State Treasurer for credit to the Tobacco Products Administration Cash Fund. All costs required for administration of the Tobacco Products Tax Act shall be paid from such fund. Credits and refunds allowed under the act shall be paid from the Tobacco Products Administration Cash Fund. Any receipts, after credits and refunds, in excess of the amounts sufficient to cover the costs of administration shall lapse to the General Fund. Any money in the Tobacco Products Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 22. Sections 2, 17 to 19, 22, 23, and 26 of this act become operative on their effective date. The other sections of this act become operative on October 1, 2002.

Sec. 23. Original sections 77-2701.02, 77-2715.02, and 77-2716, Revised Statutes Supplement, 2000, and section 77-3442, Revised Statutes Supplement, 2001, are repealed.

Sec. 24. Original sections 77-2702.09, 77-2702.11, 77-2702.16,

77-2702.17, 77-2704.11, 77-2704.26, 77-2704.27, 77-2704.30, 77-4008, and 77-4025, Reissue Revised Statutes of Nebraska, sections 77-2702.07, 77-2702.13, 77-2702.14, 77-2702.15, and 77-2703, Revised Statutes Supplement, 2000, and sections 77-2602 and 77-2704.31, Revised Statutes Supplement, 2001, are repealed.

Sec. 25. The following section is outright repealed: Section 77-2704.22, Reissue Revised Statutes of Nebraska.