

## LEGISLATIVE BILL 1017

Approved by the Governor April 15, 2004

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 77-2701, 77-2701.04, 77-2701.10, 77-2701.16, 77-2701.34, 77-2701.42, 77-2703, 77-2703.01, 77-2703.02, 77-2704.12, 77-2704.15, 77-2704.32, 77-2704.33, 77-2704.36, 77-2704.49, 77-2704.55, 77-2712.05, 77-27,188.01, and 77-3101, Reissue Revised Statutes of Nebraska, and section 49-801.01, Revised Statutes Supplement, 2003; to provide, change, and eliminate definitions; to change provisions relating to references to the Internal Revenue Code, the sales and use taxes on building materials and construction services, sourcing provisions for sales tax on services, sales and use tax exemptions, and nonresident contractor registration; to provide requirements for compliance with the streamlined sales and use tax agreement; to provide a tax amnesty program; to create funds; to provide powers and duties; to appropriate funds; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 49-801.01, Revised Statutes Supplement, 2003, is amended to read:

49-801.01. Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, and 77-5539, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on February 21, 2003 the operative date of this section.

Sec. 2. Section 77-2701, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222 and sections 4 and 5 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 3. Section 77-2701.04, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.04. For purposes of sections 77-2701.04 to 77-2713, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.43 and sections 4 and 5 of this act shall be used.

Sec. 4. Building materials means any property that will be annexed to real estate or to an improvement on real estate. Building materials does not include tools, supplies, or property that will not be annexed.

Sec. 5. Construction services means annexing building materials to real estate, repair of a structure as defined in section 77-2704.55, or repair of building materials that are or will be annexed to real estate. Construction services includes installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (8)(a) or (b) of section 77-2701.16 or community antenna television service specified in subdivision (8)(d) of section 77-2701.16. Construction services does not include the cost of the raw land or finished lot, impact fees, title insurance, property insurance, lender fees, closing costs, inspection fees, real estate brokerage commissions and fees, or any other taxes or fees levied on the transfer of property.

Sec. 6. Section 77-2701.10, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.10. Contractor or repairperson means any person who performs any repair services upon property annexed to, or who annexes ~~property~~ building materials to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, annexes ~~property belonging to him or her~~ building materials to the real estate being so repaired or annexed or arranges for such annexation. Contractor or repairperson does not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer is considered to be the consumer of such ~~property~~ building materials furnished by him or her and annexed to the real estate being so repaired or annexed for all the purposes

of the Nebraska Revenue Act of 1967. The contractor or repairperson:

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

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

(3) Shall be permitted to make an election that he or she will be taxed as the consumer of ~~property~~ building materials annexed to real estate and may issue a resale certificate when purchasing ~~property~~ building materials that will be annexed to real estate. Such person shall then remit the appropriate use tax on any building materials when withdrawn from inventory for the purpose of being annexed to real estate at the rate in effect at the time and place of the withdrawal from inventory.

The contractor shall collect and remit the tax on his or her gross receipts for labor in performing construction services as payments are received except as provided in section 77-2704.55.

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

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

Any change in the election shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all ~~property~~ building materials in inventory which may be annexed to real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on ~~property~~ building materials in inventory at the time the ~~property is~~ building materials are sold. The credit shall be applied against the tax collected on sales of such ~~property~~ building materials.

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

Sec. 7. Section 77-2701.16, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.16. (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, other than

mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. In the furnishing of mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska. 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 service that is 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; 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) 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;

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

(e) The gross income received for labor by a contractor except as provided in section 77-2704.55;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

(h) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

(i) The gross income received for detective services.

(5) Gross receipts shall not include 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) 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) 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.

(6) Subsections (1) through (6) of this section terminate on January 1, 2004.

(7) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(8) 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 (8)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service; and

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

(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, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(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; and

(e) The 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 (8)(a) or (b) of this section or community antenna television service specified in subdivision (8)(d) of this section, which shall be considered construction services.

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

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

(10) Gross receipts for providing a service means:

(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;

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

(e) The gross ~~income~~ receipts received for labor by a contractor

electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 except as provided in section 77-2704.55. For purposes of this subdivision, the gross receipts received for labor shall be sixty percent of the sales price for building materials and construction services less an allowance for sales tax paid on building materials. The allowance for sales tax paid on building materials shall equal the sales tax rate in effect at the time payment is received at the location of the project times forty percent of the sales price for building materials and construction services;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(h) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

(i) The gross income received for detective services.

(11) Gross receipts includes the sale of admissions which means 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.

(12) Gross receipts includes the 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.

(13) Gross receipts includes the sale of any property building materials annexed to real estate and any associated labor construction services by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(14) Gross receipts includes 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 subsection, a prepaid telephone calling arrangement means 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.

(15) Gross receipts does not include:

(a) 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; or

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

(16) Subsections (7) through (15) of this section become operative on January 1, 2004.

(17) The Tax Commissioner shall hold a hearing on rules and regulations to carry out the changes made to this section by Laws 2003, LB 759. It is the intent of the Legislature that the Tax Commissioner adopt and promulgate rules and regulations to carry out such changes.

Sec. 8. Section 77-2701.34, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.34. Sale for resale means 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 includes a sale of property building materials to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2701.10, a sale of building materials to a contractor or repairperson being taxed as the consumer of property building materials and electing a tax-free inventory under subdivision (3) of section 77-2701.10, or a sale of property 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 tax under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate. A sale for resale also includes the sale by a contractor of construction services to another contractor.

Sec. 9. Section 77-2701.42, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.42. Use means the exercise of any right or power over property incident to the ownership or possession of that property, except that use does not include the sale of that property in the regular course of business or the exercise of any right or power over property which will enter into or become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically includes the annexation of property building materials to real estate or the withdrawal of property or building materials from inventory, which inventory is subject to sales tax under the Nebraska Revenue Act of 1967 or would be subject to the sales tax under the act except for an election under section 77-2701.10, for annexation to real estate or to improvements upon real estate without regard to the fact that such property is building materials are manufactured, processed, or fabricated prior to annexation or that such real estate and improvements may subsequently be sold as such.

Sec. 10. Section 77-2703, Reissue Revised Statutes of Nebraska, 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 77-2701.16 until January 1, 2004, and the services defined in subdivision (8)(a), (b), (d), or (e) of section 77-2701.16 beginning on January 1, 2004, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2701.16 until January 1, 2004, and subsection (9) of section 77-2701.16 beginning on January 1, 2004, the gross receipts from the sale of admissions in this state, 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 77-2701.16 until January 1, 2004, and services defined in subsection (10) of section 77-2701.16 beginning on January 1, 2004. Except as provided in section 77-2701.03, 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 or for a contractor when the payment or payments are received for construction services. For purposes of this subsection until January 1, 2004, 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 or animals if the personal property or animal is located in this state and the service is rendered for use in this state; for detective services under subdivision (4)(i) of section 77-2701.16, in the case of a customer who is an individual, if the individual is residing in this state, or in the case of a business customer, if the principal place of the business is located in this state; and for computer software training under subdivision (4)(c) of section 77-2701.16 if the training is performed at a location that is within this state for a customer located within this state.

(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 provide 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. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(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 at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee, except as otherwise provided within this section.

(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 60-356, 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 60-356 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.



(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. For all use taxes collected prior to October 1, 2002, 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. For use taxes collected on and after October 1, 2002, 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 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) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the 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.

Sec. 11. Section 77-2703.01, Reissue Revised Statutes of Nebraska,

is amended to read:

77-2703.01. (1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 shall be governed by the sourcing rules in sections 77-2703.01 to 77-2703.04.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Locomotives and railcars that are utilized for the carriage of

persons or property in interstate commerce;

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

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

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

~~(10) The provision of services shall be sourced to this state for services provided to real estate if the real estate is located in this state, for services provided to personal property or animals if the personal property or animal is located in this state and the service is rendered for use in this state, for detective services under subdivision (10)(i) of section 77-2701.16, in the case of a customer who is an individual, if the individual is residing in this state, or in the case of a business customer, if the principal place of the business is located in this state, and for computer software training under subdivision (10)(c) of section 77-2701.16 if the training is performed at a location that is within this state for a customer located within this state.~~

~~(11) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser. For purposes of sourcing detective services subject to tax under subdivision (10)(i) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.~~

~~(12) (11) The sales, not including lease or rental, of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be sourced to the place of registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state.~~

~~(13) (12) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.~~

Sec. 12. Section 77-2703.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-2703.02. (1) Notwithstanding section 77-2703.01, a business purchaser that is not a holder of a direct payment permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software, or service will be concurrently available for use in more than one jurisdiction shall deliver to the retailer in conjunction with its purchase a multiple points of use exemption form disclosing this fact.

(2) Upon receipt of the exemption form, the retailer is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct-pay basis.

(3) A purchaser delivering the exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(4) The exemption form will remain in effect for all future sales by the seller to the purchaser except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (3) of this section and the facts existing at the time of the sale until it is revoked in writing.

(5) A holder of a direct payment permit shall not be required to deliver an exemption form to the seller. A direct payment permit holder shall follow the provisions of subsection (3) of this section in apportioning the tax due on a digital good, computer software delivered electronically, or a service that will be concurrently available for use in more than one jurisdiction.

Sec. 13. Section 77-2704.12, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.12. (1) 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 purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under sections 79-1601 to 79-1607, any private college or university established under sections 85-1101 to 85-1111, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, skilled nursing facility, intermediate care facility, or nursing facility licensed under the Health Care Facility Licensure Act and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of ~~property building materials~~ which ~~is~~ are physically annexed to the structure and which ~~subsequently belongs~~ belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any ~~property building materials~~ annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to ~~property~~ the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the ~~property building materials~~ physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming ~~property building materials~~ in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which ~~property is~~ building materials are annexed to real estate and which ~~subsequently belongs~~ belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the ~~property building materials~~ physically annexed to real estate in the construction, improvement, or repair.

Sec. 14. Section 77-2704.15, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.15. (1) 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 purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resources district, elected county fair board, or joint entity or agency formed to fulfill the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the

purpose of altering the status of the construction contractor as the ultimate consumer of ~~property~~ building materials which ~~is~~ are physically annexed to the structure and which subsequently ~~belongs~~ belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any ~~property~~ building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to ~~property~~ the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the ~~property~~ building materials physically annexed to real estate in the construction, improvement, or repair.

Sec. 15. Section 77-2704.32, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.32. When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on ~~property~~ building materials actually annexed to real estate in the project outside of the United States or its territories or possessions.

Sec. 16. Section 77-2704.33, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.33. (1) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the building materials annexed to real estate in the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a contractor to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

(2) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the ~~annexation or repair labor~~ construction services became subject to the sales and use tax during the term of that fixed-price contract, the taxpayer may apply for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The taxpayer shall be refunded such increased amount if the taxpayer certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the ~~labor applied to materials annexed to real estate in the project~~ construction services. The taxpayer shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that ~~annexation or repair labor~~ is construction services are removed from the sales and use tax base during the term of a fixed-price contract, the taxpayer shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a taxpayer to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

Sec. 17. Section 77-2704.36, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.36. Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of depreciable agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture.

Sec. 18. Section 77-2704.49, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.49. Sales and use taxes tax 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 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 when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state.

Sec. 19. Section 77-2704.55, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.55. (1) Sales and use taxes shall not be imposed on the labor of a contractor purchased in connection with the following types of construction projects:

(a) The first or original construction of a structure;  
 (b) The addition of an entire room or floor to any existing building;  
 (c) The completion of an unfinished portion of an existing structure;

(d) The restoration, reconstruction, or replacement of a structure damaged or destroyed by fire, flood, tornado, lightning, explosion, ice storm, or ~~other~~ natural disaster;

(e) The construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; or

(f) The major renovation of an existing building or a unit of an existing building described in subdivision ~~(2)(e)(ii)~~ (2)(c)(ii) of this section. The For a project on a building other than an existing dwelling designed for occupancy by one family or a duplex designed for occupancy by two families, the exemption granted in this subdivision shall be conditioned upon notice from the contractor to the Department of Revenue of the nature of the project and an explanation of why the renovation will qualify for the exemption the taxpayer seeking approval from the Department of Revenue that the project, if substantially completed according to designs, plans, specifications, or other materials submitted with the application to the department, meets the requirements for a major renovation under subdivision (2)(c)(ii) of this section and the construction services will be exempt from tax. For a project on an existing dwelling designed for occupancy by one family or a duplex designed for occupancy by two families, the exemption may be granted either upon approval by the department that the project, if substantially completed according to plans submitted with the application to the department, meets the requirements for a major renovation under subdivision (2)(c)(ii) of this section or notice from the contractor to the department of the nature of the project and an explanation of why the renovation will qualify for the exemption. Approval may be granted in accordance with the procedures set forth in subsection (4) of this section.

(2) For purposes of this section:

(a) Building means any freestanding structure annexed to land, enclosed within a roof and exterior walls, regardless of whether enclosed on all sides;

(b) Building materials means items that will be annexed to land or an improvement on land. Building materials do not include tools, supplies, or items that will not be annexed;

~~(c) Contractor means any person who repairs property annexed to or who annexes property to real estate, including leased property, by attaching building materials to the improvement or annexed property being built or repaired. This includes the installation of fixtures and the repair of a building, structure, or fixture;~~

~~(d) Fixture means a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item;~~

~~(e) (c) Major renovation of an existing building or a unit of an existing building means a single renovation project that:~~

~~(i) Increases the market value of the building or unit by at least one hundred percent; or~~

~~(ii) Entails the renovation of no less than seventy-five percent of the square feet of the building or unit;~~

~~(f) (d) Renovation means the rehabilitation, replacement, or reconfiguration of walls or fixtures. Mere replacement of floor coverings does not constitute renovation for purposes of subdivision (1)(f) of this section;~~

~~(g) (e) Structure means any construction composed of parts building materials arranged and fitted together in some way. Structure includes, but is not limited to, streets and roadways, street lighting, and sewers and waterlines; and~~

~~(h)~~ (f) Unit means a physical portion of a building designated for separate ownership, rental, or occupancy.

(3) A taxpayer shall be entitled to a refund of any sales tax paid ~~on construction, annexation, or repair labor for any major renovation described in subdivision (2)(e)(i) of this section~~ to a contractor on the gross receipts from the labor of a contractor for any major renovation described in subdivision (2)(c)(i) of this section or, if prior approval of the renovation pursuant to this section has not been obtained, for any major renovation described in subdivision (2)(c)(ii) of this section. The refund granted in this section shall be conditioned upon filing a claim for the refund on a form developed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the ~~labor purchased project~~ qualifies for the refund. Any information received pursuant to the requirements of this subsection may be disclosed to any tax official in this state. Any taxpayer who provides false information on the forms required by the Tax Commissioner for purposes of this subsection shall be subject to the penalties provided in subsection (8) of section 77-2705.

(4)(a) A taxpayer may apply to the Tax Commissioner for approval that a proposed construction project meets the requirements for a major renovation described in subdivision (2)(c)(ii) of this section.

(b) The approval granted in this section shall be conditioned upon filing an application on a form developed by the Tax Commissioner with an application fee of five hundred dollars. The application fee shall be remitted to the State Treasurer for credit to the Department of Revenue Contractor Enforcement Fund. The application shall be supported by designs, plans, specifications, or other materials, signed by a licensed architect or engineer, that indicate the extent of the renovation, the work that is planned to be performed, and the square footage of the floor space that is to be renovated. Any requirements imposed by the Tax Commissioner shall be related to ensuring that the project qualifies for the exemption so long as the project is completed in substantial conformity with the designs, plans, specifications, or other materials submitted with the application.

(c) The Tax Commissioner shall approve or deny the application within sixty business days after receiving the application. Within sixty days after the completion of the renovation, a licensed architect or engineer shall certify to the Tax Commissioner that the renovation was completed in substantial conformity with the designs, plans, specifications, or other materials submitted with the application or shall amend the original application to describe the project as actually completed.

(d) Any information received pursuant to the requirements of this subsection may be disclosed to any tax official in this state. Any person who provides false information on the forms or plans, specifications, and materials required by the Tax Commissioner for purposes of this subsection shall be subject to the penalties provided in subsection (8) of section 77-2705.

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

(6) The Department of Revenue Contractor Enforcement Fund is created. Any money in the 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. 20. Section 77-2712.05, Reissue Revised Statutes of Nebraska, is amended to read:

77-2712.05. By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

(a) Limiting the number of state rates;  
 (b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;

(b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;

(c) Allowances a seller can take for bad debts as provided in

section 77-2708; and

(d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

(i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states. Under the system:

(a) A retailer registering under the agreement is registered in this state;

(b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;

(c) A written signature from the retailer is not required;

(d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;

(e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the retailer of its liability for remitting to the proper states any taxes collected; and

(f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

(i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and

(iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated



system;

(5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;

(6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144 that require the following:

(a) No variation between the state and local tax bases;

(b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Complete a taxability matrix approved by the governing board.

(a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.

(b) The entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board.

(c) Sellers and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix;

(8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;

~~(9)~~ (9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

~~(10)~~ (10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and

~~(11)~~ (11) Advisory councils. The state agrees to the appointment of an advisory council of private-sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Sec. 21. Section 77-27,188.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,188.01. (1) The credit allowed under section 77-27,188 may be used to obtain a refund of state sales and use taxes paid or against the income tax liability of the taxpayer or may be used as a refundable credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer.

(2) A claim for the credit may be filed quarterly for refund of the state sales and use taxes paid, either directly or indirectly, after the filing of the income tax return for the taxable year in which the credit was first allowed.

(3) The credit may be used to obtain a refund of state sales and use taxes paid before the end of the taxable year for which the credit was allowed, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid, either directly or indirectly, by the taxpayer on the qualifying investment.

(4) For purposes of subsections (2) and (3) of this section, the taxpayer shall be deemed to have paid indirectly any state sales or use taxes paid by a contractor on ~~property~~ building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the Nebraska state sales and use taxes paid on the building materials, or the taxpayer, with the permission of the Tax Commissioner and a certification from the contractor that Nebraska state sales and use taxes were paid on all building materials, may presume that fifty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

(5) No claim for refund of sales and use taxes under this section

may be filed prior to January 1, 1989.

(6) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary under section 77-27,194 may be used against the income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

(7) For taxpayers who met the job and investment thresholds of the Employment Expansion and Investment Incentive Act for a tax year beginning before January 1, 2004, subsection (6) of this section and subdivision (1)(b) of section 77-27,188, as such section existed immediately prior to such date, shall continue to apply to such taxpayer. The changes made by Laws 2003, LB 608, shall not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2004.

Sec. 22. Section 77-3101, Reissue Revised Statutes of Nebraska, is amended to read:

77-3101. As used in sections 77-3101 to 77-3112, unless the context otherwise requires:

(1) Contractor shall include individuals, firms, partnerships, limited liability companies, corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement coming within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor shall also include any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person; ~~and further including all subcontractors;~~ and

(2) Nonresident contractor shall mean a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state.

Sec. 23. (1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before the operative date of this section.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the

five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from instate taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Any money in the funds 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. The Department of Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Sec. 24. There is hereby appropriated \$279,125 from the General Fund for FY2004-05 to the Department of Revenue, for Program 102, to aid in carrying out the provisions of Legislative Bill 1017, Ninety-eighth Legislature, Second Session, 2004.

No expenditures for permanent and temporary salaries and per diems for state employees shall be made from funds appropriated in this section.

Sec. 25. Sections 1, 22 to 26, and 28 of this act become operative on their effective date. The other sections of this act become operative on July 1, 2004.

Sec. 26. Original section 77-3101, Reissue Revised Statutes of Nebraska, and section 49-801.01, Revised Statutes Supplement, 2003, are repealed.

Sec. 27. Original sections 77-2701, 77-2701.04, 77-2701.10, 77-2701.16, 77-2701.34, 77-2701.42, 77-2703, 77-2703.01, 77-2703.02, 77-2704.12, 77-2704.15, 77-2704.32, 77-2704.33, 77-2704.36, 77-2704.49, 77-2704.55, 77-2712.05, and 77-27,188.01, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 28. Since an emergency exists, this act takes effect when passed and approved according to law.