

LEGISLATIVE BILL 282

Approved by the Governor May 6, 2003

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 13-324, 77-3,117, 77-2702.04 to 77-2702.06, 77-2702.08, 77-2702.10, 77-2702.18 to 77-2702.26, 77-2704.10, 77-2704.13, 77-2704.14, 77-2704.24, 77-2708.01, 77-2713, 77-27,119.03, 77-27,142, and 77-27,143, Reissue Revised Statutes of Nebraska, and sections 9-306.01, 13-319, 13-326, 77-2701, 77-2702.03, 77-2702.07, 77-2702.09, 77-2702.11, 77-2702.14 to 77-2702.16, 77-2703, 77-2704.09, 77-2704.26, 77-2705, 77-2708, 77-2711, 77-2712.02 to 77-2712.05, 77-27,147, and 77-27,223, Revised Statutes Supplement, 2002; to provide, change, and eliminate sales and use tax provisions to carry out the streamlined sales tax system; to eliminate the Uniform Sales and Use Tax Administration Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal section 77-2702.12, Reissue Revised Statutes of Nebraska, and sections 77-2702.13, 77-2702.17, 77-2706.02, 77-2712, 77-2712.01, and 77-2712.08, Revised Statutes Supplement, 2002.

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

Section 1. Section 9-306.01, Revised Statutes Supplement, 2002, is amended to read:

9-306.01. Designated premises shall mean one location selected by a licensed organization at which individual pickle cards may be sold as opportunities for participation in a lottery by the sale of pickle cards. Only one of the following types of locations may be selected as a designated premises: (1) In the case of an organization holding a certificate of exemption under section 501(c)(3), (c)(4), or (c)(5) of the Internal Revenue Code or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, one piece of real property which is owned, leased, or used by the organization as its principal office, which is in use by the organization primarily for purposes other than the conduct of gaming activities, and which is not used in connection with any other type of retail business activity other than an occasional sale as defined in section ~~77-2702.09~~ 28 of this act; or (2) in the case of an organization holding a certificate of exemption under section 501(c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code, one piece of real property which is owned, leased, or used by the organization as its principal office and which is in use by the organization primarily for purposes other than the conduct of gaming activities. For purposes of this section, principal office shall mean the place where the principal affairs and business of the licensed organization are transacted, including where the officers and members assemble to discuss and transact the business of the organization, where its meetings are held, and generally where its records are kept.

Sec. 2. Section 13-319, Revised Statutes Supplement, 2002, is amended to read:

13-319. Any county by resolution of the governing body may impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions sourced as provided in sections 49 to 52 of this act within the county, but outside any incorporated municipality which has adopted a local sales tax pursuant to section 77-27,142, on which the state is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. Any sales and use tax imposed pursuant to this section must be used to finance public services provided by a public safety commission or to provide the county share of funds required under any other agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act. A sales and use tax shall not be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved the tax pursuant to sections 13-322 and 13-323.

Sec. 3. Section 13-324, Reissue Revised Statutes of Nebraska, is amended to read:

13-324. (1) The Tax Commissioner shall administer all sales and use taxes adopted under section 13-319. The Tax Commissioner may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The county shall furnish a certified copy of the adopting or repealing resolution to the Tax

Commissioner in accordance with such rules and regulations. The tax shall begin the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the adopted resolution. ~~if the certified copy of the adopted resolution is received sixty days prior to the start of the next calendar quarter.~~ The Tax Commissioner shall provide at least sixty days' notice of the adoption of the tax or a change in the rate to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For resolutions containing a termination date, the termination date is the first day of a calendar quarter. The county shall furnish a certified statement to the Tax Commissioner no more than one hundred ~~twenty~~ eighty days and at least ~~sixty~~ one hundred twenty days before the termination date that the termination date stated in the resolution is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least ~~sixty~~ one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the resolution. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the county. Notice to retailers may be provided through the web site of the department or other electronic means.

(3) The Tax Commissioner shall collect the sales and use tax concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the counties imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three-percent administrative fee shall be deposited in the state General Fund.

(4) Upon any claim of illegal assessment and collection, the taxpayer has the same remedies provided for claims of illegal assessment and collection of the state tax. It is the intention of the Legislature that the provisions of law which apply to the recovery of state taxes illegally assessed and collected apply to the recovery of sales and use taxes illegally assessed and collected under section 13-319.

(5) Boundary changes or the adoption of a sales and use tax by an incorporated municipality that affects any tax imposed by this section shall be governed as provided in subsections (3) through (9) of section 77-27,143.

Sec. 4. Section 13-326, Revised Statutes Supplement, 2002, is amended to read:

13-326. (1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 13-319, 13-324, and 13-325, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a county.

(2) For the purposes of the sales and use tax imposed by a county, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are ~~consummated~~ sourced as provided in sections 49 to 52 of this act.

(a) ~~At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and motorboats, if a purchaser takes possession of tangible personal property within a county which has enacted a tax under section 13-319, regardless of the business location of the Nebraska retailer,~~

(b) ~~At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that (i) Nebraska intrastate message toll telephone and telegraph services, other than mobile telecommunications service as described in section 77-2706.02, which are consummated in the county where the customer is normally billed for such services and (ii) such mobile telecommunications service that originates and terminates in the same state shall be consummated in the county where the customer has a place of primary use,~~

(c) ~~At the physical location of individual vending machines, and~~

(d) ~~At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and motorboats sold or leased or rented for more than one year.~~

Sec. 5. Section 77-3,117, Reissue Revised Statutes of Nebraska, is amended to read:

77-3,117. (1) When the Department of Revenue finds that the

administration of the revenue laws might be more efficiently and economically conducted, the department may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts will be rounded to the nearest dollar, with amounts ending in fifty cents or more rounded to the next highest dollar.

(2) The department may, on an annual basis, eliminate account balances of one dollar or less under uniform procedures developed by the department.

(3) For sales and use tax purposes, the tax computation shall be carried to the third decimal place and rounded down to a whole cent whenever the third decimal place is four or less and rounded up to a whole cent whenever the third decimal place is greater than four.

Sec. 6. Section 77-2701, Revised Statutes Supplement, 2002, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222 and sections 7 to 47, 49 to 52, and 59 to 69 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 7. (1) The sales tax rate may only be changed effective at the beginning of a calendar quarter.

(2) Any sales tax exemption or repeal of any sales tax exemption shall only be effective at the beginning of a calendar quarter.

(3) Any change in sales tax rate or base dealing with a service covering a period of time starting before and ending after the effective date of the change shall be effective as follows: (a) For a rate increase or base expansion, the change shall apply to the first billing period commencing on or after the effective date; and (b) for a rate decrease or base contraction, the change shall apply to bills rendered on or after the effective date.

Sec. 8. Section 77-2702.03, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.03.~~ For purposes of sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act, unless the context otherwise requires, the definitions found in sections ~~77-2702.04 to 77-2702.23, 77-2702.25, and 77-2702.26~~ 9 to 47 of this act shall be used.

Sec. 9. Agent means a person appointed by a seller to represent the seller before the member states.

Sec. 10. Section 77-2702.24, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.24.~~ For purposes of the Nebraska Revenue Act of 1967, an item of property shall be deemed to be annexed Annexed to real estate or other property annexed to real estate if means attaching property to real estate so that (1) the property becomes real estate or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional as determined by the Department of Revenue by rule and regulation.

Sec. 11. Section 77-2702.04, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.04.~~ Business ~~shall mean~~ means any activity engaged in by any person or caused to be engaged in by him or her with the object of gain, benefit, or advantage, either direct or indirect.

Sec. 12. Certified automated system means software certified under the streamlined sales and use tax agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate member state, and maintain a record of the transaction.

Sec. 13. Certified service provider means an agent certified under the streamlined sales and use tax agreement to perform all of the seller's sales tax collection functions, other than to remit tax on its own retail purchases.

Sec. 14. Section 77-2702.05, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.05.~~ Contractor or repairperson ~~shall mean~~ means any person who performs any repair services upon property annexed to, or who annexes property 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 to the real estate being so repaired or annexed. Contractor or repairperson ~~shall~~ 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 ~~shall be~~ is considered to be the consumer of such property 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 annexed to real estate except when the transfer of the annexed property is incidental to the transfer of an improvement upon real estate or the real estate;

(2) Shall be permitted to make an election that he or she will be taxed as the consumer of property 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 annexed to real estate and may issue a resale certificate when purchasing property that will be annexed to real estate. Such person shall then remit the appropriate use tax on any 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 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 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 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 in inventory at the time the property is sold. The credit shall be applied against the tax collected on sales of such property.

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. 15. Delivery charges means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

Sec. 16. Direct mail means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

Sec. 17. Section 77-2702.06, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.06.~~ Engaged in business in this state ~~shall mean~~ means any of the following:

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

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

(3) Deriving rentals from a lease of property in this state by any retailer;

(4) Soliciting retail sales of property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

(5) Soliciting orders from residents of this state for property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the location in

this state of authorized installation, servicing, or repair facilities;

(6) Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state; or

(7) Maintaining or having a franchisee or licensee operating under the retailer's trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967.

Sec. 18. Entity-based exemption means an exemption based on who purchases the product or who sells the product.

Sec. 19. Governing board means the body containing representatives from each state that is a member of the streamlined sales and use tax agreement that is responsible for approving membership or withdrawal of states to the agreement, registering retailers to collect sales and use tax from purchasers in the member states, certifying service providers and automated systems for collecting sales and use taxes, approving monetary allowances for certified service providers and certified automated systems, resolving disputes among member states or with retailers or certified service providers, and otherwise executing the provisions of the agreement for the benefit of the member states under the terms of the agreement.

Sec. 20. Section 77-2702.07, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.07.~~ (1) Gross receipts ~~shall mean~~ means 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~~ means:

(a) (i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section ~~77-2706.02~~ 52 of this act, 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 ~~77-2706.02~~ 52 of this act, 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 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; and -

(e) ~~The 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 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. ~~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 Commencing October 1, 2002, gross receipts for providing a service shall mean 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; 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 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.

(6) 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.

(7) Gross receipts includes the 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 14 of this act except when such annexation is incidental to the transfer of an improvement upon real estate or the real estate.

(8) 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.

(9) Gross receipts shall does 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;~~

~~(b) The (-e) Sales price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit; or~~

~~(c) The amount charged for labor and services rendered in annexing property to real estate. +~~

~~(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.

Sec. 21. Section 77-2702.08, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.08.~~ In this state or within the state shall mean means within the exterior limits of the State of Nebraska and ~~shall include~~ includes all the territory within these limits owned by or ceded to the United States of America.

Sec. 22. (1) Lease or rental means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(2) Lease or rental does not include:

(a) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(b) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(c) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For purposes of this subsection, an operator must do more than maintain, inspect, or set up the tangible personal property.

(3) Lease includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined for federal income tax purposes.

(4) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

(5) This definition shall be applied only prospectively from the operative date of this section and shall have no retroactive impact on existing leases or rentals.

Sec. 23. Section 77-2702.25, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.25.~~ (1) Maintenance agreement shall mean means any contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is subject to tax under section 77-2703, for a stated period of time or interval of use. Maintenance agreement shall include includes any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement shall include includes contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

(2) Maintenance agreement shall does not include any contract or agreement subject to the premium tax under Chapter 77, article 9, from a service contract business operating with a certificate of authority from the Department of Insurance.

(3) The selling price of a maintenance agreement shall not have to be separately stated and may be included as a part of the selling price of the item covered.

Sec. 24. Member states means any and all states that have been approved initially or later admitted by the governing board for participation in the streamlined sales and use tax agreement.

Sec. 25. Model 1 seller means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own retail purchases.

Sec. 26. Model 2 seller means a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax.

Sec. 27. Model 3 seller means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. Seller includes an affiliated group of sellers using the same proprietary system.

Sec. 28. Section 77-2702.09, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.09.~~ Occasional sale ~~shall mean~~ means:

(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~~ means 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, 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~~ does 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~~ does 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. 29. Section 77-2702.10, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.10.~~ Person ~~shall mean~~ means any individual, firm, partnership, limited liability company, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or other group or combination acting as a unit. Person ~~shall also mean~~ also means the United States or any agency of the United States, this state or any agency of this state, or any city, county, district, or other political subdivision of this state or any agency thereof.

Sec. 30. Product-based exemption means an exemption based on the description of the product that is the subject of the transaction and not based on the identity of the person purchasing or selling the product or the ultimate use of the product.

Sec. 31. Section 77-2702.26, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.26.~~ Property ~~shall mean~~ means all tangible and intangible property that is subject to tax under subsection (1) of section 77-2703 and all rights, licenses, and franchises that are subject to tax under such subsection.

Sec. 32. Section 77-2702.11, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.11.~~ Purchase ~~shall mean~~ means 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~~ also means the provision of a service for a consideration.

Sec. 33. Purchase price applies to the measure subject to use tax and has the same meaning as sales price.

Sec. 34. Purchaser means a person to whom a sale of personal property is made or to whom a service is furnished.

Sec. 35. Retail sale or sale at retail means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

Sec. 36. Section 77-2702.14, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.14.~~ (1) ~~Retailer shall mean:~~ means any seller.

(2) To facilitate the proper administration of the Nebraska Revenue Act of 1967, the following persons have the duties and responsibilities of sellers for the purposes of sales and use taxes:

(a) Any person ~~(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~~

(b) Any person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer. The seller and retailer shall ~~does not~~ include the auctioneer in such case;

(c) ~~(b)~~ Every person who has elected to be considered a retailer pursuant to subdivision (1) of section ~~77-2702.05~~ 14 of this act;

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

(e) ~~(d)~~ Every person engaged in the business of providing any service defined in subsection (4) of section ~~77-2702.07~~ 20 of this act.

~~(2) Retailer shall not mean:~~

(3) For the proper administration of the Nebraska Revenue Act of 1967, the following persons do not have the duties and responsibilities of a seller for purposes of sales and use taxes:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967;

(b) Any person who leases or rents ~~or~~ railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(c) ~~(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

(d) ~~(c)~~ Any person making sales at a flea market, craft show, fair, or similar event ~~who~~ when such person 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. 37. Section 77-2702.15, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.15.~~ Sale shall mean ~~means~~ 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 ~~includes, but is not~~ 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; and

(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. 38. Section 77-2702.16, Revised Statutes Supplement, 2002, is amended to read:

~~77-2702.16.~~ Sale for resale ~~shall mean~~ 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 ~~shall include~~ includes a sale of property to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section ~~77-2702.05~~ 14 of this act, 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~~ 14 of this act, 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~~ tax under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate.

Sec. 39. (1) Sales price applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (a) The seller's cost of the property sold;
- (b) The cost of materials used, the cost of labor or service, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (c) Charges by the seller for any services necessary to complete the sale;
- (d) Delivery charges;
- (e) Installation charges; and
- (f) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(2) Sales price does not include:

- (a) Any discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (b) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
- (d) Credit for any trade-in as follows:
 - (i) 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; or
 - (ii) 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.

Sec. 40. Section 77-2702.18, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.18.~~ Seller ~~shall include~~ includes every person engaged in the business of selling, leasing, or renting property of a kind the gross receipts from the retail sale, lease, or rental of which are required to be included in the measure of the sales tax.

Sec. 41. Section 77-2702.19, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.19.~~ (1) Storage shall include includes any retention in this state for any purposes except sale in the regular course of business or subsequent use solely outside this state of property purchased from a

retailer, other than property which will enter into or become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail.

~~(2) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, storage shall not include the keeping, retaining, or exercising of any right or power over property for the purpose of subsequently transporting it outside the state or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other property to be transported outside the state and thereafter used solely outside the state.~~

Sec. 42. Streamlined sales and use tax agreement means the streamlined sales and use tax agreement approved by the implementing states on November 12, 2002.

Sec. 43. Section 77-2702.20, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.20. Tangible personal property shall mean means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. including tangible personal property which is used to convey computer software.~~

Sec. 44. Section 77-2702.21, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.21. Tax Commissioner shall mean means the Tax Commissioner of the State of Nebraska.~~

Sec. 45. Section 77-2702.22, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.22. Taxpayer shall mean means any person subject to a tax imposed by sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act.~~

Sec. 46. Section 77-2702.23, Reissue Revised Statutes of Nebraska, is amended to read:

~~77-2702.23. (1) Use shall mean means the exercise of any right or power over property incident to the ownership or possession of that property, except that use shall 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 shall include includes the annexation of property to real estate or the withdrawal of property 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 ~~77-2702.05~~ 14 of this act, for annexation to real estate or to improvements upon real estate without regard to the fact that such property is manufactured, processed, or fabricated prior to annexation or that such real estate and improvements may subsequently be sold as such.~~

~~(2) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, use shall not include the keeping, retaining, or exercising of any right or power over property for the purpose of subsequently transporting it outside the state or for the purpose of being processed, fabricated, or manufactured into, attached to, or annexed to other property to be transported outside the state and thereafter used solely outside the state.~~

Sec. 47. Use-based exemption means an exemption based on the purchaser's ultimate use of the product.

Sec. 48. Section 77-2703, Revised Statutes Supplement, 2002, 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), or (e) of section ~~77-2702.07~~ 20 of this act, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section ~~77-2702.07~~ 20 of this act, 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 20 of this act. Except as provided in section 7 of this act, when ~~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~~ 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. r ~~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. 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. 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. 49. (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 49 to 52 of this act.

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

(3) When the property 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 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 20 of this act 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.

(12) 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) 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. 50. (1) Notwithstanding section 49 of this act, 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 or a service that the digital good 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 or a service that will be concurrently available for use in more than one jurisdiction.

Sec. 51. (1) Notwithstanding section 49 of this act, a purchaser of direct mail that is not a holder of a direct payment permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct-pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the

purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(4) If the purchaser of direct mail does not have a direct payment permit and does not provide the seller with either a direct mail form or delivery information as required by subsection (1) of this section, the seller shall collect the tax according to subsection (6) of section 49 of this act. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(5) If a purchaser of direct mail provides the seller with documentation of direct-pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

Sec. 52. (1) Except for the telecommunications service defined in subsection (3) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications service defined in subsection (3) of this section, a sale of telecommunications service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3) (a) For mobile telecommunications service provided and billed to a customer by a home service provider:

(i) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(ii) All taxable charges for such mobile telecommunications service shall be subject to tax by the state or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(iii) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(b) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on July 20, 2002, the Tax Commissioner may, but is not required to:

(i) Provide or contract for a tax assignment data base based upon standards identified in 4 U.S.C. 119, as such section existed on July 20, 2002, with the following conditions:

(A) If such data base is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base; or

(B) If such data base is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on July 20, 2002; and

(ii) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on July 20, 2002.

(c) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to tax unless the home service provider can reasonably separate charges not subject to tax using the records of the home service provider that are kept in the regular course of business.

(d) For purposes of this subsection:

(i) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(ii) Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide mobile telecommunications service;

(iii) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes

(A) both one-way and two-way wireless communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any personal communication service;

(iv) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the customer and shall be within the service area of the home service provider; and

(v) Tax means the sales taxes levied under sections 13-319, 77-2703, and 77-27,142, the surcharges levied under the Enhanced Wireless 911 Services Act, the Nebraska Telecommunications Universal Service Fund Act, and the Telecommunications Relay System Act, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

(4) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) A sale of prepaid calling service is sourced in accordance with section 49 of this act, except that in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in section 49 of this act shall include as an option the location associated with the mobile telephone number.

(6) A sale of a private communication service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(b) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(7) For purposes of this section:

(a) Air-to-ground radiotelephone service means a radio service, as that term is defined in 47 C.F.R. 22.99, as such regulation existed on January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(b) Call-by-call basis means any method of charging for telecommunications service where the price is measured by individual calls;

(c) Communications channel means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(d) Customer means the person or entity that contracts with the seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications service under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(e) Customer channel termination point means the location where the customer either inputs or receives the communications;

(f) End user means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity;

(g) Post-paid calling service means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number which is not

associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service;

(h) Prepaid calling service means the right to access exclusively telecommunications service, which is paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(i) Private communication service means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and

(j) Service address means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications service first identified either by the seller's telecommunications system, or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If both locations are not known, the service address means the location of the customer's place of primary use.

Sec. 53. Section 77-2704.09, Revised Statutes Supplement, 2002, is amended to read:

77-2704.09. (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 insulin and the following when sold for a patient's use under a prescription ~~written by a person licensed under Chapter 71, article 1, or sections 71-4701 to 71-4719.~~ Prescription medicines and which are of the type eligible for coverage under the medical assistance program established pursuant to sections 68-1018 to 68-1025: Drugs, not including over-the-counter drugs; durable medical equipment; home medical supplies; prosthetic devices; ~~orthotic devices;~~ oxygen; oxygen equipment; and mobility enhancing equipment.

(2) For purposes of this section:

(a) Drug means a compound, substance, preparation, and component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body;

(b) Durable medical equipment means equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is appropriate for use in the home, and is not worn in or on the body. Durable medical equipment includes repair and replacement parts for such equipment;

(c) ~~(b)~~ Home medical supplies means supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(d) ~~(c)~~ Mobility enhancing equipment means equipment which is primarily and customarily used to provide or increase the ability to move from one place to another, which is not generally used by persons with normal mobility, ~~for a person required to use durable medical equipment, orthotics, or prosthetics for locomotion~~ and which is appropriate for use either in a home or a motor vehicle. Mobility enhancing equipment includes repair and replacement parts for such equipment. Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(e) Orthotic devices means devices which are used to support, or limit the movement of, parts of the body to serve a medical purpose and generally are not useful to a person in the absence of illness or injury;

(f) Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as such regulation existed on January 1, 2003. The over-the-counter drug label

includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation;

(f) Oxygen equipment means oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories;

(g) Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized under the Advanced Practice Registered Nurse Act, Chapter 71, article 1, or sections 71-4701 to 71-4719; and

(h) Prosthetic devices means a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any supplies used with such device and repair and replacement parts. and

~~(f) Prosthetic devices means devices which permanently or temporarily replace a missing part or a nonfunctioning part of the human body and includes any supplies used with such devices.~~

Sec. 54. Section 77-2704.10, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.10. 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:

(1) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(2) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church;

(3) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings; ~~and~~

(4) Meals and food products, including soft drinks and candy, for human consumption when sold at a political event by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act or fees and admissions charged for such political event;

(5) Meals and food products sold to the elderly, handicapped, or recipients of Supplemental Security Income by an organization that actually accepts electronic benefits transfer or food coupons under regulations issued by the United States Department of Agriculture although it is not necessary for the purchaser to use electronic benefits transfer or food coupons to pay for the meal; and

(6) Fees and admissions charged by a public or private elementary or secondary school and fees and admissions charged by a school district, student organization, or parent-teacher association, pursuant to an agreement with the proper school authorities, in a public or private elementary or secondary school during the regular school day or at an approved function of any such school.

Sec. 55. Section 77-2704.13, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.13. 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:

(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than fifty percent of the amount purchased is for use directly in irrigation or farming; ~~and~~

(2) Sales and purchases of such energy sources or fuels made before April 1, 1993, or after March 31, 1994, when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining, in the generation of electricity, or by any hospital. The state tax paid on purchases of such energy sources or fuels during the period beginning April 1, 1993, and ending March 31, 1994, shall not exceed one hundred thousand dollars for any one location when more than fifty percent of the

amount purchased is for use directly in processing, manufacturing, or refining or by any hospital. All purchases of such energy sources or fuels for use in the generation of electricity during the period beginning April 1, 1993, and ending March 31, 1994, shall be taxable. Any taxpayer who has paid the limit of state tax on such energy sources or fuels at one location shall be exempt on all other qualifying purchases at such location. Such taxpayer shall be entitled to a refund of any amount of state or local option tax paid on an energy source or fuel exempt under this subdivision. A refund shall be made pursuant to section 77-2708; and

(3) Sales and purchases of water used for irrigation of agricultural lands and manufacturing purposes.

Sec. 56. Section 77-2704.14, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.14. 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 the use of coin-operated machines used for laundering and cleaning except the cleaning or washing of motor vehicles.

Sec. 57. Section 77-2704.24, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.24. (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 food or food ingredients except for prepared food and food sold through vending machines.

(2) For purposes of this section:

(a) Alcoholic beverages means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) Dietary supplement means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subdivisions (2)(b)(i) through (v) of this section; that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not presented as conventional food and is not represented for use as a sole item of a meal or of the diet; and that is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. 101.36, as such regulation existed on January 1, 2003;

(c) Food and food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients does not include alcoholic beverages, dietary supplements, or tobacco;

(d) Food sold through vending machines means food that is dispensed from a machine or other mechanical device that accepts payment;

(e) Prepared food means:

(i) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; and

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item and food sold in a heated state or heated by the seller, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller;

(B) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of its Food Code, as it existed on January 1, 2003, so as to prevent food borne illnesses;

(C) Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118, bakeries;

(D) Food sold in an unheated state by weight or volume as a single item; and

(E) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas; and

(f) Tobacco means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. ~~products for human consumption which are eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to regulations in effect on October 1, 1983, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. For purposes of this section, food~~

shall not include meals or other food prepared for immediate consumption on or off the premises of the retailer and shall not include foods sold through vending machines.

Sec. 58. Section 77-2704.26, Revised Statutes Supplement, 2002, 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~~ 20 of this act 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. 59. (1) Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, use tax shall not be imposed on the keeping, retaining, or exercising of any right or power over property for the purpose of subsequently transporting it outside the state or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other property to be transported outside the state and thereafter used solely outside the state.

(2) (a) Except as provided in subdivisions (b) through (e) 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.

(b) Subdivision (a) of this subsection only applies 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.

(c) Subdivision (a) of this subsection does not apply to an aircraft which is brought into this state within one year after purchase and (i) is regularly based within this state or (ii) more than one-half of the aircraft's operating hours are within this state. For purposes of this subdivision, 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.

(d) Subdivision (a) 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.

(e) Subdivision (a) of this subsection does 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. 60. 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:

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

(2) A service listed in subsection (4) of section 20 of this act which will become an ingredient or component part of a service listed in subsection (4) of section 20 of this act for ultimate sale at retail.

Sec. 61. 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:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life includes 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;

(2) 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;

(3) 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 does 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

(4) Oxygen for use in aquaculture as defined in section 2-3804.01.

Sec. 62. 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:

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

(2) 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

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

For purposes of this section, returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers.

Sec. 63. 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 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.

Sec. 64. 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 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. 65. 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 from 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 the certificate will expire and be null and void as of such date.

Sec. 66. 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 sales of telecommunications service between telecommunications companies, including division of revenue, settlements, or carrier access charges.

Sec. 67. 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 services rendered using a prepaid telephone calling arrangement.

Sec. 68. 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 from the sale or rental of 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.

Sec. 69. 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 from the sale or rental of food or food ingredients which are actually purchased by electronic benefits transfer or with food coupons under regulations issued by the United States Department of Agriculture.

Sec. 70. Section 77-2705, Revised Statutes Supplement, 2002, is amended to read:

77-2705. (1) ~~Every~~ Except as provided in subsection (10) of this section, every retailer shall register with the Tax Commissioner and give:

- (a) The name and address of all agents operating in this state;
- (b) The location of all distribution or sales houses or offices or other places of business in this state;
- (c) Such other information as the Tax Commissioner may require; and
- (d) If the retailer is an individual, his or her social security number.

(2) Every person furnishing public utility service as defined in subsection (2) of section ~~77-2702.07~~ 20 of this act shall register with the Tax Commissioner and give:

- (a) The address of each office open to the public in which such public utility service business is transacted with consumers; and
- (b) Such other information as the Tax Commissioner may require.

(3) It shall be unlawful for any person to engage in or transact business as a seller within this state after June 1, 1967, unless a permit or permits shall have been issued to him or her as prescribed in this section. Every person desiring to engage in or to conduct business as a seller within this state shall file with the Tax Commissioner an application for a permit for each place of business. There shall be no charge to the retailer for the application for or issuance of a permit except as otherwise provided in this section.

- (4) Every application for a permit shall:
 - (a) Be made upon a form prescribed by the Tax Commissioner;
 - (b) Set forth the name under which the applicant transacts or intends to transact business and the location of his or her place or places of business;
 - (c) Set forth such other information as the Tax Commissioner may require; and
 - (d) Be signed by the owner and include his or her social security number if he or she is a natural person; in the case of an association or partnership, by a member or partner; in case of a limited liability company, by a member or some person authorized by the limited liability company to sign such kinds of applications; and in the case of a corporation, by an executive officer or some person authorized by the corporation to sign such kinds of applications.

(5) After compliance with subsections (1) through (4) of this section by the applicant, the Tax Commissioner shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued and shall be valid and effective until revoked by the Tax Commissioner.

(6) (a) Whenever the holder of a permit issued under subsection (5) of this section fails to comply with any provision of the Nebraska Revenue Act of 1967 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under such act, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commissioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(b) The Tax Commissioner shall have the power to restore permits which have been revoked but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of such act relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been

previously suspended or revoked under this subsection shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation.

(c) The action of the Tax Commissioner may be appealed by the taxpayer in the same manner as a final deficiency determination.

(7) For the purpose of more efficiently securing the payment, collection, and accounting for the sales and use taxes and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations providing a form and method for the registration of exempt purchases and the documentation of exempt sales.

(8) If any person, firm, corporation, association, or agent thereof presents an exempt sale certificate to the seller for property which is purchased by a taxpayer or for a use other than those enumerated in the Nebraska Revenue Act of 1967 as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

(9) Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

(10) Pursuant to the streamlined sales and use tax agreement, the state shall participate in an online registration system that will allow retailers to register in all the member states. The state hereby agrees to honor and abide by the retailer registration decisions made by the governing board pursuant to the agreement.

Sec. 71. Section 77-2708, Revised Statutes Supplement, 2002, is amended to read:

77-2708. (1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual ~~Annual~~ returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this

subdivision, common ownership ~~shall mean~~ means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns ~~Returns shall be~~ signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, ~~The~~ taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a designated county official, or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) For all sales tax collected prior to October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, 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 to reimburse himself or herself for the cost of collecting the tax. For all sales tax collected on and after October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her

attorney, assignee, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

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

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

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

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

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j) (i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund

claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation. +

(i) Sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes. If such accounts are thereafter collected by the retailer, contractor, or repairperson, a tax shall be paid upon the amount so collected, or

(ii) The portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

Sec. 72. Section 77-2708.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2708.01. (1) Any ~~(1)(a)~~ Any purchaser of depreciable agricultural machinery or equipment purchased on or after January 1, 1992, and before January 1, 1993, for use in commercial agriculture may apply for a refund of all of the Nebraska sales or use taxes and all of the local option sales or use taxes paid on the machinery or equipment.

(b) On or after January 1, 1993, any purchaser of depreciable repairs or parts for agricultural machinery or equipment used in commercial agriculture may apply for a refund of all of the Nebraska sales or use taxes and all of the local option sales or use taxes paid on the repairs or parts.

(2) The purchaser shall file a claim within three years after the date of purchase with the Tax Commissioner pursuant to section 77-2708. The information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state.

Sec. 73. Section 77-2711, Revised Statutes Supplement, 2002, is amended to read:

77-2711. (1)(a) The Tax Commissioner shall enforce sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records

available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, or (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-1254 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part

of any penalties provided by the provisions of such act, but may not waive the minimum interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted, except interest on use taxes voluntarily reported by an individual.

(12) (a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (12) (d) (iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data

for governmental purposes.

Sec. 74. Section 77-2712.02, Revised Statutes Supplement, 2002, is amended to read:

77-2712.02. (1) The Legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all sellers to collect this state's sales and use tax. The Legislature further finds that this state should participate in a multistate discussions to review or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

(2) It is the purpose of the streamlined sales and use tax agreement to simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of compliance. The agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through all of the following:

- (a) State-level administration of sales and use tax collections;
- (b) Uniformity in the state and local tax bases;
- (c) Uniformity of major tax base definitions;
- (d) A central, electronic registration system for all member states;
- (e) Simplification of state and local tax rates;
- (f) Uniform sourcing rules for all taxable transactions;
- (g) Simplified administration of exemptions;
- (h) Simplified tax returns;
- (i) Simplification of tax remittances; and
- (j) Protection of consumer privacy.

(3) This agreement shall not be construed as intending to influence a member state to impose a tax on or provide an exemption from tax for any item or service. However, exemptions granted shall adhere to uniform definitions as set out in the agreement.

Sec. 75. Section 77-2712.03, Revised Statutes Supplement, 2002, is amended to read:

77-2712.03. (1) The streamlined sales and use tax agreement, as adopted by the streamlined sales tax implementing states on November 12, 2002, is hereby ratified by the Legislature. The Governor is authorized and directed to shall enter into the agreement, subject to legislative approval, with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are signatories to members under Articles VII or VIII of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions permissible under law reasonably required to implement the provisions set forth in the Uniform Sales and Use Tax Administration Act agreement. Other actions authorized by this section include, but are not limited to, the adoption and promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(2) The Tax Commissioner or his or her designee is and two representatives of the Legislature appointed by the Executive Board of the Legislative Council are authorized to represent Nebraska before the other member states that are signatories to under the agreement. Any agreement under this section shall be ratified by the Legislature by legislative bill. The state also agrees to participate in and comply with the procedures of and decisions made by the governing board of the member states. These provisions of the agreement include the creation of the organization as provided in Article VII of the agreement, the requirements for state entry and withdrawal as provided in Article VIII of the agreement, amendments to the agreement as provided in Article IX of the agreement, and a dispute resolution process as provided in Article X of the agreement.

Sec. 76. Section 77-2712.04, Revised Statutes Supplement, 2002, is amended to read:

77-2712.04. No provision of the streamlined sales and use tax agreement in whole or in part invalidates or amends any provision of the law of Nebraska. Adoption and ratification of the agreement by Nebraska does not amend or modify any law of Nebraska. Any provision of the agreement that is in conflict with state law, whether adopted before, at, or after membership of Nebraska in the agreement, shall be implemented by legislation or rule and regulation, as is appropriate.

Sec. 77. Section 77-2712.05, Revised Statutes Supplement, 2002, is amended to read:

77-2712.05. ~~The Governor shall not enter into the agreement unless the agreement requires each state~~ 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 agreement shall set 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 agreement shall establish state hereby establishes uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions as provided in sections 49 to 52 of this act;

(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 agreement shall require states to develop and adopt state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions shall 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 agreement shall provide 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 agreement shall provide state agrees that registration with the central registration system and the collection of sales and use taxes in the member states state will not be used as a factor in determining whether the seller has constitutional nexus with a the state for any tax at any time;

(6) Local sales and use taxes. The agreement shall provide for requires the reduction of the burdens of complying with local sales and use taxes through as provided in sections 13-319, 13-324, 13-326, 77-27,142, 77-27,143, and 77-27,144 and section 7 of this act that require the following:

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

(b) Statewide administration of Requiring states to administer 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 Restricting 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 Providing uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Monetary allowances. The agreement shall outline 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;

(8) State compliance. The agreement shall require each 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;

(9) Consumer privacy. The agreement shall require each state to adopt 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

(10) Advisory councils. The agreement shall provide for 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. 78. Section 77-2713, Reissue Revised Statutes of Nebraska, is amended to read:

77-2713. (1) Any person required under the provisions of sections ~~77-2702-03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act to collect, account for, or pay over any tax imposed by the Nebraska Revenue Act of 1967 who willfully fails to collect or truthfully account for or pay over such tax and any person who willfully attempts in any manner to evade any tax imposed by such provisions of such act or the payment thereof shall, in addition to other penalties provided by law, be guilty of a Class IV felony.

(2) Any person who willfully aids or assists in, procures, counsels, or advises the preparation or presentation of a false or fraudulent return, affidavit, claim, or document under or in connection with any matter arising under sections ~~77-2703~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52,

and 59 to 69 of this act shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, be guilty of a Class IV felony.

(3) A person who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended and each officer of any corporation which so engages in business shall be guilty of a Class IV misdemeanor. Each day of such operation shall constitute a separate offense.

(4) Any person who gives a resale certificate to the seller for property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business shall be guilty of a Class IV misdemeanor.

(5) Any violation of the provisions of sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act, except as otherwise provided, shall be a Class IV misdemeanor.

(6) Any prosecution under sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act shall be instituted within three years after the commission of the offense. If such offense is the failure to do an act required by any of such sections to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date. The failure to do any act required by sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47, 49 to 52, and 59 to 69 of this act shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution under the provisions of the Nebraska Revenue Act of 1967 may be conducted in any county where the person or corporation to whose liability the proceeding relates resides or has a place of business or in any county in which such criminal act is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of any offenses under the provisions of the Nebraska Revenue Act of 1967.

Sec. 79. Section 77-27,119.03, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,119.03. Notwithstanding any other provision of the Nebraska Revenue Act of 1967, the Tax Commissioner or any employee of the Department of Revenue may disclose the election of another person made pursuant to section ~~77-2702.05~~ 14 of this act.

Sec. 80. Section 77-27,142, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,142. (1) Any incorporated municipality by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions that are sourced under the provisions of sections 49 to 52 of this act within such incorporated municipality on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. No sales and use tax shall be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved such tax pursuant to sections 77-27,142.01 and 77-27,142.02.

(2) A city of the metropolitan class is hereby authorized to increase any city sales and use tax existing on January 1, 1978, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at the primary or general election in 1980 if the city council shall submit a certified copy of a resolution to that effect to the election commissioner not later than forty-one days prior to the primary or general election. Notwithstanding the provisions of section 77-27,143, if the increase is approved by the voters at the primary or general election in 1980, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held. If the increase is not approved by the voters at the primary or general election in 1980, no tax increased pursuant to this section shall remain in effect after December 31, 1980.

(3) A city of the primary class is hereby authorized to increase any city sales and use tax existing on January 1, 1985, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at the next primary or general election or at a special election if the city council shall submit a certified copy of a resolution proposing the tax increase to the election commissioner within a reasonable time prior to the primary, general, or special election. If the

increase is approved by the voters at the primary, general, or special election, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held. If the voters of a city of the primary class have not approved such an increase by December 31, 1987, the question of such an increase shall not be submitted thereafter to the voters and there shall be no increase in the city sales and use tax.

(4) A city of the first or second class or village is hereby authorized to increase any city sales and use tax existing on January 1, 1986, imposed pursuant to this section by an amount not to exceed one-half of one percent if the question of such tax increase is submitted to the voters of such city or village and the voters by a majority vote approve such increase. The question of such increase shall be submitted to the voters at any primary or general election or at a special election if the city council or village board shall submit a certified copy of a resolution proposing the tax increase to the election commissioner or county clerk within a reasonable time prior to the primary, general, or special election. If the increase is approved by the voters at the primary, general, or special election, the election commissioner shall file a certified copy of the election results with the Tax Commissioner on or before the last day of the month in which the election is held.

Sec. 81. Section 77-27,143, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,143. (1) The administration of all sales and use taxes adopted under the Local Option Revenue Act shall be by the Tax Commissioner who may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the act for the making of returns and for the ascertainment, assessment, and collection of taxes imposed under such act. The incorporated municipality shall furnish a certified copy of the adopting or repealing ordinance to the Tax Commissioner in accordance with such rules and regulations as he or she may adopt and promulgate. For ordinances passed after October 1, 1969, the effective date shall be the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the ordinance. ~~if the certified copy of the adopted ordinance is received sixty days prior to the start of the next calendar quarter.~~ The Tax Commissioner shall provide at least sixty days' notice of the change in tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For ordinances containing a termination date and passed after October 1, 1986, the termination date shall be the first day of a calendar quarter. The incorporated municipality shall furnish a certified statement to the Tax Commissioner no more than one hundred ~~twenty~~ eighty days and at least ~~sixty~~ one hundred twenty days prior to the termination date that the termination date stated in the ordinance is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least ~~sixty~~ one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the department or by other electronic means.

(3) For sales and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the Tax Commissioner and sixty days' notice to sellers.

(4) The state shall provide and maintain a data base that describes boundary changes for all local taxing jurisdictions. This data base shall include a description of any change and the effective date of the change for sales and use tax purposes.

(5) The state shall provide and maintain a data base of all sales and use tax rates for all of the local jurisdictions levying taxes within the state. For the identification of counties, cities, and villages, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology.

(6) The state shall provide and maintain a data base that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. For purposes of the streamlined sales and use tax agreement, the data base shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of

taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code of the purchaser.

(7) For purposes of the streamlined sales and use tax agreement, the state shall participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119, as such act existed on January 1, 2003. The governing board may allow a member state to require sellers that register under the agreement to use an address-based system provided by that member state. If any member state develops an address-based assignment system pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119, as such act existed on January 1, 2003, a seller may use that system in place of the system provided for in subsection (6) of this section.

(8) Pursuant to the streamlined sales and use tax agreement, the state shall relieve retailers and certified service providers from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the retailer or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. A member state that provides an address-based system for assigning taxing jurisdictions pursuant to subsection (7) of this section or pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119, as such act existed on January 1, 2003, will not be required to provide liability relief for errors resulting from the reliance on the information provided by the member state under the provisions of subsection (6) of this section.

(9) The electronic data bases provided for in this section shall be in a downloadable format approved by the governing board pursuant to the streamlined sales and use tax agreement. The provisions of subsections (6) and (7) of this section do not apply when the purchased product is received by the purchaser at the business location of the seller.

Sec. 82. Section 77-27,147, Revised Statutes Supplement, 2002, is amended to read:

77-27,147. All relevant provisions of the Nebraska Revenue Act of 1967, as amended from time to time, and not inconsistent with the Local Option Revenue Act, shall govern transactions, proceedings, and activities pursuant to any tax imposed under the Local Option Revenue Act.

For the purposes of the Local Option Revenue Act, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, shall be sourced according to the provisions of sections 49 to 52 of this act. ~~are consummated.~~

~~(1) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and commencing January 1, 1997, motorboats, if a purchaser takes possession of tangible personal property within a municipality which has enacted a tax under the Local Option Revenue Act, regardless of the business location of the Nebraska retailer;~~

~~(2) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that (a) Nebraska intrastate message toll telephone and telegraph services, other than mobile telecommunications service as described in section 77-2706.02, shall be consummated in the municipality where the customer is normally billed for such service and (b) such mobile telecommunications service that originates and terminates in the same state shall be consummated in the municipality where the customer has a place of primary use;~~

~~(3) At the physical location of individual vending machines; and~~

~~(4) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and commencing January 1, 1997, motorboats sold or leased or rented for more than one year.~~

Sec. 83. Section 77-27,223, Revised Statutes Supplement, 2002, is amended to read:

77-27,223. A county may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business engaged in the sale of admissions to recreational, cultural, entertainment, or concert events that are subject to sales tax under sections ~~77-2702.03~~ 77-2703 to 77-2713 and sections 8 to 47,

49 to 52, and 59 to 69 of this act that occur outside any incorporated municipality, but within the boundary limits of the county. The tax shall be uniform in respect to the class upon which it is imposed. The tax shall be based upon a certain percentage of gross receipts from sales in the county of the person, partnership, limited liability company, corporation, or business, and may include sales of other goods and services at such locations and events, not to exceed one and one-half percent. A county may not impose the tax on sales that are within an incorporated city or village. No county shall levy and collect a license or occupation tax under this section unless approved by a majority of those voting on the question at a special, primary, or general election.

Sec. 84. Sections 74 to 77, 84, and 85 of this act become operative on their effective date. The other sections of this act become operative on January 1, 2004.

Sec. 85. Original sections 77-2712.02 to 77-2712.05, Revised Statutes Supplement, 2002, are repealed.

Sec. 86. Original sections 13-324, 77-3,117, 77-2702.04 to 77-2702.06, 77-2702.08, 77-2702.10, 77-2702.18 to 77-2702.26, 77-2704.10, 77-2704.13, 77-2704.14, 77-2704.24, 77-2708.01, 77-2713, 77-27,119.03, 77-27,142, and 77-27,143, Reissue Revised Statutes of Nebraska, and sections 9-306.01, 13-319, 13-326, 77-2701, 77-2702.03, 77-2702.07, 77-2702.09, 77-2702.11, 77-2702.14 to 77-2702.16, 77-2703, 77-2704.09, 77-2704.26, 77-2705, 77-2708, 77-2711, 77-27,147, and 77-27,223, Revised Statutes Supplement, 2002, are repealed.

Sec. 87. The following sections are outright repealed: Section 77-2702.12, Reissue Revised Statutes of Nebraska, and sections 77-2702.13, 77-2702.17, 77-2706.02, 77-2712, 77-2712.01, and 77-2712.08, Revised Statutes Supplement, 2002.