

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 60

Introduced By: Avery, 28;
 Read first time: January 5, 2007
 Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 77-2701 and 77-2701.04, Revised Statutes Cumulative
 3 Supplement, 2006; to exempt sales of clothing, school
 4 supplies, and computers from sales and use tax as
 5 prescribed; to harmonize provisions; to repeal the original
 6 sections; and to declare an emergency.
 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701 Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 77-2701. Sections 77-2701 to 77-27,135.01, 77-27,222, and
4 77-27,228 to 77-27,235 and section 3 of this act shall be known and
5 may be cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04 Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-2701.04. For purposes of sections 77-2701.04 to 77-2713
9 and section 3 of this act, unless the context otherwise requires, the
10 definitions found in sections 77-2701.05 to 77-2701.47 shall be used.

11 Sec. 3. (1) Sales and use tax shall not be imposed on the
12 gross receipts from the sale, use, or other consumption in this state
13 of the following items of tangible personal property, if sold between
14 12:01 a.m. on the first Friday of August and 11:59 p.m. the following
15 Sunday:

16 (a) Clothing with a sales price of one hundred dollars or
17 less per item;

18 (b) School supplies with a sales price of one hundred
19 dollars or less per item; and

20 (c) Computers with a sales price of one thousand five
21 hundred dollars or less per item.

22 (2) The exemption provided by this section does not apply
23 to the following:

24 (a) Computer software;

25 (b) Clothing accessories or equipment;

26 (c) Protective equipment;

27 (d) Sport or recreational equipment;

- 1 (e) School art supplies;
2 (f) School instructional material;
3 (g) School computer supplies;
4 (h) Any item for use in a trade or business; or
5 (i) The lease or rental of any item.

6 (3) Each retailer making exempt sales under this section
7 shall report the amount of such sales to the Tax Commissioner on the
8 retailer's sales and use tax returns.

9 (4) The exemption provided in this section shall be subject
10 to the following provisions:

11 (a) A sale of eligible property under a layaway sale
12 qualifies for exemption if:

13 (i) Final payment on a layaway order is made by, and the
14 property is given to, the purchaser during the exemption period; or

15 (ii) The purchaser selects the property and the retailer
16 accepts the order for the item during the exemption period, for
17 immediate delivery upon full payment, even if delivery is made after
18 the exemption period;

19 (b) A discount by the seller reduces the sales price of the
20 eligible property and the discounted sales price determines whether
21 the sales price is within the price threshold. A coupon that reduces
22 the sales price is treated as a discount if the seller is not
23 reimbursed for the coupon amount by a third party. If a discount
24 applies to the total amount paid by a purchaser, rather than to the
25 sales price of a particular item, and the purchaser has purchased
26 both eligible property and taxable property, the seller should
27 allocate the discount based on the total sales price of the taxable

1 property compared to the total sales price of all property sold in
2 that same transaction;

3 (c) Articles that are normally sold as a single unit shall
4 continue to be sold in that manner. Such articles cannot be priced
5 separately and sold as individual items in order to obtain the
6 exemption. For example, each shoe of a pair of shoes cannot be sold
7 separately so that the sales price of each shoe is within a sales tax
8 holiday price threshold;

9 (d) Eligible property that customers purchase during the
10 exemption period with use of a rain check shall qualify for the
11 exemption, regardless of when the rain check was issued. Issuance of
12 a rain check during the exemption period shall not qualify eligible
13 property for the exemption, if the property is purchased after the
14 exemption period;

15 (e) The procedure for an exchange regarding a sales tax
16 holiday is as follows:

17 (i) If a customer purchases an item of eligible property
18 during the exemption period, but later exchanges the item for a
19 similar eligible item, even if a different size, different color, or
20 other feature, no additional tax is due, even if the exchange is made
21 after the exemption period;

22 (ii) If a customer purchases an item of eligible property
23 during the exemption period but, after the exemption period has ended,
24 the customer returns the item and receives credit on the purchase of
25 a different item, the appropriate sales tax is due on the sale of the
26 newly purchased item; and

27 (iii) If a customer purchases an item of eligible property

1 before the exemption period, but during the exemption period the
2 customer returns the item and receives credit on the purchase of a
3 different item of eligible property, no sales tax is due on the sale
4 of the new item if the new item is purchased during the exemption
5 period;

6 (f) Delivery charges, including shipping, handling, and
7 service charges, are part of the sales price of eligible property. For
8 the purpose of determining the price threshold, if all the property
9 in a shipment qualifies as eligible property and the sales price for
10 each item in the shipment is within the price threshold, then the
11 seller does not have to allocate the delivery, handling, or service
12 charge to determine if the price threshold is exceeded. The shipment
13 shall be considered a sale of eligible products. If the shipment
14 includes eligible property and taxable property, including an
15 eligible item with a sales price in excess of the price threshold,
16 the seller should allocate the delivery charge by using:

17 (i) A percentage based on the total sales prices of the
18 taxable property compared to the total sales prices of all property in
19 the shipment; or

20 (ii) A percentage based on the total weight of the taxable
21 property compared to the total weight of all property in the shipment.
22 The seller shall tax the percentage of the delivery charge allocated
23 to the taxable property, but does not have to tax the percentage
24 allocated to the eligible property;

25 (g) For the purpose of this section, eligible property
26 qualifies for exemption if:

27 (i) The item is both delivered to and paid for by the

1 customer during the exemption period; or

2 (ii) The customer orders and pays for the item and the
3 seller accepts the order during the exemption period for immediate
4 shipment, even if delivery is made after the exemption period. The
5 seller accepts an order when the seller has taken action to fill the
6 order for immediate shipment. Actions to fill an order include
7 placement of an "in date" stamp on a mail order or assignment of an
8 "order number" to a telephone order. An order is for immediate
9 shipment when the customer does not request delayed shipment. An
10 order is for immediate shipment, notwithstanding that the shipment
11 may be delayed because of a backlog of orders, or because stock is
12 currently unavailable to or on back order by the seller;

13 (h) For the sixty-day period immediately after the
14 exemption period, when a customer returns an item that would qualify
15 for the exemption, no credit for or refund of sales tax shall be
16 given unless the customer provides a receipt or invoice that shows
17 tax was paid or the seller has sufficient documentation to show that
18 tax was paid on the specific item. The sixty-day period is set solely
19 for the purpose of designating a time period during which the
20 customer shall provide documentation that shows that sales tax was
21 paid on returned merchandise. The sixty-day period is not intended to
22 change a seller's policy on the time period during which the seller
23 will accept returns; and

24 (i) The time zone of the seller's location determines the
25 time of the exemption period when the purchaser is located in one time
26 zone and the seller is located in another.

27 Sec. 4. Original sections 77-2701 and 77-2701.04, Revised

1 Statutes Cumulative Supplement, 2006, are repealed.

2 Sec. 5. Since an emergency exists, this act takes effect

3 when passed and approved according to law.