

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 381

Introduced by Redfield, 12

Read first time January 15, 2003

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2703, Revised Statutes Supplement, 2002; to change
3 provisions relating to collection of sales tax on rented
4 and leased motor vehicles; to provide an operative date;
5 and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Revised Statutes Supplement,
2 2002, is amended to read:

3 77-2703. (1) There is hereby imposed a tax at the rate
4 provided in section 77-2701.02 upon the gross receipts from all
5 sales of tangible personal property sold at retail in this state,
6 the gross receipts of every person engaged as a public utility, as
7 a community antenna television service operator or any person
8 involved in the connecting and installing of the services defined
9 in subdivision (2)(a), (b), or (d) of section 77-2702.07, or as a
10 retailer of intellectual or entertainment properties referred to in
11 subsection (3) of section 77-2702.07, the gross receipts from the
12 sale of admissions in this state, the gross receipts from the sale
13 of warranties, guarantees, service agreements, or maintenance
14 agreements when the items covered are subject to tax under this
15 section, and the gross receipts from the provision of services
16 defined in subsection (4) of section 77-2702.07. For purposes of
17 this subsection, the provision of services shall be deemed to be in
18 this state for services provided to real estate if the real estate
19 is located in this state, for services provided to personal
20 property if the personal property is located in this state and the
21 service is rendered for use in this state, and for computer
22 software training under subdivision (4)(c) of section 77-2702.07 if
23 the training is performed at a location that is within this state
24 for a customer located within this state. When there is a sale,
25 the tax shall be imposed at the rate in effect at the time the
26 gross receipts are realized under the accounting basis used by the
27 retailer to maintain his or her books and records.

28 (a) The tax imposed by this section shall be collected by

1 the retailer from the consumer. It shall constitute a part of the
2 purchase price and until collected shall be a debt from the
3 consumer to the retailer and shall be recoverable at law in the
4 same manner as other debts. The tax required to be collected by
5 the retailer from the consumer constitutes a debt owed by the
6 retailer to this state.

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

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

20 (d) For the purpose of more efficiently securing the
21 payment, collection, and accounting for the sales tax and for the
22 convenience of the retailer in collecting the sales tax, it shall
23 be the duty of the Tax Commissioner to adopt and promulgate
24 appropriate rules and regulations prescribing a schedule or
25 schedules of the amounts to be collected from the consumer or user
26 to effectuate the computation and collection of the tax imposed by
27 the Nebraska Revenue Act of 1967. Such schedule or schedules shall
28 provide that the tax shall be collected from the consumer or user

1 uniformly on sales according to brackets based on sales prices of
2 the item or items, except that the Tax Commissioner may authorize
3 computation and collection of the tax uniformly on a straight
4 percentage basis in lieu of brackets in situations involving
5 machine or computer billing.

6 (e) The use of tokens or stamps for the purpose of
7 collecting or enforcing the collection of the taxes imposed in the
8 Nebraska Revenue Act of 1967 or for any other purpose in connection
9 with such taxes is prohibited.

10 (f) For the purpose of the proper administration of the
11 provisions of the Nebraska Revenue Act of 1967 and to prevent
12 evasion of the retail sales tax, it shall be presumed that all
13 gross receipts are subject to the tax until the contrary is
14 established. The burden of proving that a sale of property is not
15 a sale at retail is upon the person who makes the sale unless he or
16 she takes, in good faith, from the purchaser (i) a resale
17 certificate to the effect that the property is purchased for the
18 purpose of reselling, leasing, or renting it, (ii) an exemption
19 certificate pursuant to subsection (7) of section 77-2705, or (iii)
20 a direct payment permit pursuant to sections 77-2705.01 to
21 77-2705.03. Receipt of a resale certificate, exemption
22 certificate, or direct payment permit, taken in good faith, shall
23 be conclusive proof for the seller that the sale was made for
24 resale or was exempt or that the tax will be paid directly to the
25 state.

26 (g) In the rental or lease of automobiles, trucks,
27 trailers, semitrailers, and truck-tractors as defined in section
28 60-301, the tax shall be collected by the lessor on the rental or

1 lease price at the tax rate in effect on the date the rental or
2 lease agreement is executed, except as otherwise provided within
3 this section:

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

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

10 (h) In the rental or lease of automobiles, trucks,
11 trailers, semitrailers, and truck-tractors as defined in section
12 60-301, for periods of one year or more, the lessor may elect not
13 to collect and remit the sales tax on the gross receipts and
14 instead pay a sales tax on the cost of such vehicle. If such
15 election is made, it shall be made pursuant to the following
16 conditions:

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

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

25 (iii) When such election is made, it shall apply to all
26 vehicles of the lessor rented or leased for periods of one year or
27 more except vehicles to be leased to common or contract carriers
28 who provide to the lessor a valid common or contract carrier

1 exemption certificate. If the lessor rents or leases other
2 vehicles for periods of less than one year, such lessor shall
3 maintain his or her books and records and his or her accounting
4 procedure as the Tax Commissioner prescribes; and

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

12 (i) The tax imposed by this section on the sales of motor
13 vehicles, trailers, and semitrailers as defined in section 60-301
14 shall be the liability of the purchaser and, with the exception of
15 motor vehicles, trailers, and semitrailers registered pursuant to
16 section 60-305.09, the tax shall be collected by the county
17 treasurer or designated county official as provided in section
18 60-302 at the time the purchaser makes application for the
19 registration of the motor vehicle, trailer, or semitrailer for
20 operation upon the highways of this state. The tax imposed by this
21 section on motor vehicles, trailers, and semitrailers registered
22 pursuant to section 60-305.09 shall be collected by the Department
23 of Motor Vehicles at the time the purchaser makes application for
24 the registration of the motor vehicle, trailer, or semitrailer for
25 operation upon the highways of this state. At the time of the sale
26 of any motor vehicle, trailer, or semitrailer, the seller shall (i)
27 state on the sales invoice the dollar amount of the tax imposed
28 under this section and (ii) furnish to the purchaser a certified

1 statement of the transaction, in such form as the Tax Commissioner
2 prescribes, setting forth as a minimum the total sales price, the
3 allowance for any trade-in, and the difference between the two.
4 The sales tax due shall be computed on the difference between the
5 total sales price and the allowance for any trade-in as disclosed
6 by such certified statement. Any seller who willfully understates
7 the amount upon which the sales tax is due shall be subject to a
8 penalty of one thousand dollars. A copy of such certified
9 statement shall also be furnished to the Tax Commissioner. Any
10 seller who fails or refuses to furnish such certified statement
11 shall be guilty of a misdemeanor and shall, upon conviction
12 thereof, be punished by a fine of not less than twenty-five dollars
13 nor more than one hundred dollars. If the seller fails to state on
14 the sales invoice the dollar amount of the tax due, the purchaser
15 shall have the right and authority to rescind any agreement for
16 purchase and to declare the purchase null and void. If the
17 purchaser retains such motor vehicle, trailer, or semitrailer in
18 this state and does not register it for operation on the highways
19 of this state within thirty days of the purchase thereof, the tax
20 imposed by this section shall immediately thereafter be paid by the
21 purchaser to the county treasurer, the designated county official,
22 or the Department of Motor Vehicles. If the tax is not paid on or
23 before the thirtieth day after its purchase, the county treasurer,
24 designated county official, or Department of Motor Vehicles shall
25 also collect from the purchaser interest from the thirtieth day
26 through the date of payment and sales tax penalties as provided in
27 the Nebraska Revenue Act of 1967. The county treasurer, designated
28 county official, or Department of Motor Vehicles shall report and

1 remit the tax so collected to the Tax Commissioner by the fifteenth
2 day of the following month. The county treasurer or designated
3 county official shall deduct and withhold for the use of the county
4 general fund, from all amounts required to be collected under this
5 subsection, the collection fee permitted to be deducted by any
6 retailer collecting the sales tax. The Department of Motor
7 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
8 Division Cash Fund the collection fee permitted to be deducted by
9 any retailer collecting the sales tax. The collection fee shall be
10 forfeited if the county treasurer, designated county official, or
11 Department of Motor Vehicles violates any rule or regulation
12 pertaining to the collection of the use tax.

13 (j) (i) The tax imposed by this section on the sale of a
14 motorboat as defined in section 37-1204 shall be the liability of
15 the purchaser. The tax shall be collected by the county treasurer
16 or designated county official at the time the purchaser makes
17 application for the registration of the motorboat. At the time of
18 the sale of a motorboat, the seller shall (A) state on the sales
19 invoice the dollar amount of the tax imposed under this section and
20 (B) furnish to the purchaser a certified statement of the
21 transaction, in such form as the Tax Commissioner prescribes,
22 setting forth as a minimum the total sales price, the allowance for
23 any trade-in, and the difference between the two. The sales tax
24 due shall be computed on the difference between the total sales
25 price and the allowance for any trade-in as disclosed by such
26 certified statement. Any seller who willfully understates the
27 amount upon which the sales tax is due shall be subject to a
28 penalty of one thousand dollars. A copy of such certified

1 statement shall also be furnished to the Tax Commissioner. Any
2 seller who fails or refuses to furnish such certified statement
3 shall be guilty of a misdemeanor and shall, upon conviction
4 thereof, be punished by a fine of not less than twenty-five dollars
5 nor more than one hundred dollars. If the seller fails to state on
6 the sales invoice the dollar amount of the tax due, the purchaser
7 shall have the right and authority to rescind any agreement for
8 purchase and to declare the purchase null and void. If the
9 purchaser retains such motorboat in this state and does not
10 register it within thirty days of the purchase thereof, the tax
11 imposed by this section shall immediately thereafter be paid by the
12 purchaser to the county treasurer or designated county official.
13 If the tax is not paid on or before the thirtieth day after its
14 purchase, the county treasurer or designated county official shall
15 also collect from the purchaser interest from the thirtieth day
16 through the date of payment and sales tax penalties as provided in
17 the Nebraska Revenue Act of 1967. The county treasurer or
18 designated county official shall report and remit the tax so
19 collected to the Tax Commissioner by the fifteenth day of the
20 following month. The county treasurer or designated county
21 official shall deduct and withhold for the use of the county
22 general fund, from all amounts required to be collected under this
23 subsection, the collection fee permitted to be deducted by any
24 retailer collecting the sales tax. The collection fee shall be
25 forfeited if the county treasurer or designated county official
26 violates any rule or regulation pertaining to the collection of the
27 use tax.

28 (ii) In the rental or lease of motorboats, the tax shall

1 be collected by the lessor on the rental or lease price, except as
2 otherwise provided within this section:

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

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

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

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

18 (2) A use tax is hereby imposed on the storage, use, or
19 other consumption in this state of property purchased, leased, or
20 rented from any retailer and on any transaction the gross receipts
21 of which are subject to tax under subsection (1) of this section on
22 or after June 1, 1967, for storage, use, or other consumption in
23 this state at the rate set as provided in subsection (1) of this
24 section on the sales price of the property or, in the case of
25 leases or rentals, of the lease or rental prices.

26 (a) Every person storing, using, or otherwise consuming
27 in this state property purchased from a retailer or leased or
28 rented from another person for such purpose shall be liable for the

1 use tax at the rate in effect when his or her liability for the use
2 tax becomes certain under the accounting basis used to maintain his
3 or her books and records. His or her liability shall not be
4 extinguished until the use tax has been paid to this state, except
5 that a receipt from a retailer engaged in business in this state or
6 from a retailer who is authorized by the Tax Commissioner, under
7 such rules and regulations as he or she may prescribe, to collect
8 the sales tax and who is, for the purposes of the Nebraska Revenue
9 Act of 1967 relating to the sales tax, regarded as a retailer
10 engaged in business in this state, which receipt is given to the
11 purchaser pursuant to subdivision (b) of this subsection, shall be
12 sufficient to relieve the purchaser from further liability for the
13 tax to which the receipt refers.

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

20 (c) The Tax Commissioner, in order to facilitate the
21 proper administration of the use tax, may designate such person or
22 persons as he or she may deem necessary to be use tax collectors
23 and delegate to such persons such authority as is necessary to
24 collect any use tax which is due and payable to the State of
25 Nebraska. The Tax Commissioner may require of all persons so
26 designated a surety bond in favor of the State of Nebraska to
27 insure against any misappropriation of state funds so collected.
28 The Tax Commissioner may require any tax official, city, county, or

1 state, to collect the use tax on behalf of the state. All persons
2 designated to or required to collect the use tax shall account for
3 such collections in the manner prescribed by the Tax Commissioner.
4 Nothing in this subdivision shall be so construed as to prevent the
5 Tax Commissioner or his or her employees from collecting any use
6 taxes due and payable to the State of Nebraska.

7 (d) All persons designated to collect the use tax and all
8 persons required to collect the use tax shall forward the total of
9 such collections to the Tax Commissioner at such time and in such
10 manner as the Tax Commissioner may prescribe. For all use taxes
11 collected prior to October 1, 2002, such collectors of the use tax
12 shall deduct and withhold from the amount of taxes collected two
13 and one-half percent of the first three thousand dollars remitted
14 each month and one-half of one percent of all amounts in excess of
15 three thousand dollars remitted each month as reimbursement for the
16 cost of collecting the tax. For use taxes collected on and after
17 October 1, 2002, such collectors of the use tax shall deduct and
18 withhold from the amount of taxes collected two and one-half
19 percent of the first three thousand dollars remitted each month as
20 reimbursement for the cost of collecting the tax. Any such
21 deduction shall be forfeited to the State of Nebraska if such
22 collector violates any rule, regulation, or directive of the Tax
23 Commissioner.

24 (e) For the purpose of the proper administration of the
25 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
26 it shall be presumed that property sold, leased, or rented by any
27 person for delivery in this state is sold, leased, or rented for
28 storage, use, or other consumption in this state until the contrary

1 is established. The burden of proving the contrary is upon the
2 person who purchases, leases, or rents the property.

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

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

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

28 (iii) Subdivision (g) (i) of this subsection shall not

1 apply to an aircraft which is brought into this state within one
2 year of purchase and (A) is regularly based within this state or
3 (B) more than one-half of the aircraft's operating hours are within
4 this state.

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

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

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

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

21 Sec. 2. This act becomes operative on October 1, 2003.

22 Sec. 3. Original section 77-2703, Revised Statutes
23 Supplement, 2002, is repealed.