

E AND R AMENDMENTS TO LB 916

Introduced by Enrollment and Review Committee: McGill, 26,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 70-1903, Revised Statutes Supplement,  
4 2007, is amended to read:

5           70-1903 For purposes of the Rural Community-Based Energy  
6 Development Act:

7           (1) C-BED project or community-based energy development  
8 project means a new wind energy project that:

9           (a) Has an ownership structure as follows:

10           (i) For a C-BED project that consists of more than two  
11 turbines, ~~is owned by~~ has one or more qualified owners with no  
12 single individual qualified owner owning directly or indirectly  
13 more than fifteen percent of the project and with at least  
14 thirty-three percent of the gross power purchase agreement payments  
15 flowing to the qualified owner or owners or local community; or

16           (ii) For a C-BED project that consists of one or two  
17 turbines, ~~is owned by~~ has one or more qualified owners with at  
18 least thirty-three percent of the gross power purchase agreement  
19 payments flowing to a qualified owner or owners or local community;  
20 and

21           (b) Has a resolution of support adopted:

22           (i) By the county board of each county in which the C-BED  
23 project is to be located; or

1 (ii) By the tribal council for a C-BED project located  
2 within the boundaries of an Indian reservation;

3 (2) Electric utility means an electric supplier that:

4 (a) Owns more than one hundred miles of  
5 one-hundred-fifteen-kilovolt or larger transmission lines in the  
6 State of Nebraska;

7 (b) Owns more than two hundred megawatts of electric  
8 generating facilities; and

9 (c) Has the obligation to directly serve more than two  
10 hundred megawatts of wholesale or retail electric load in the State  
11 of Nebraska; and

12 (3) Qualified owner means:

13 (a) A Nebraska resident;

14 (b) A limited liability company that is organized under  
15 the Limited Liability Company Act and that is made up of members  
16 who are Nebraska residents;

17 (c) A Nebraska nonprofit corporation organized under the  
18 Nebraska Nonprofit Corporation Act;

19 (d) An electric supplier as defined in section  
20 70-1001.01, except that ownership in a single C-BED project is  
21 limited to no more than:

22 (i) Fifteen percent either directly or indirectly by a  
23 single electric supplier; and

24 (ii) A combined total of twenty-five percent ownership  
25 either directly or indirectly by multiple electric suppliers; or

26 (e) A tribal council.

27 Sec. 2. Section 70-1904, Revised Statutes Supplement,

1 2007, is amended to read:

2 70-1904 (1) A C-BED project developer and an electric  
3 utility are authorized to negotiate in good faith mutually  
4 agreeable power purchase agreement terms.

5 (2) A qualified owner or any combination of qualified  
6 owners may develop a C-BED project with an equity partner that is  
7 not a qualified owner, if not more than sixty-seven percent of the  
8 power purchase agreement payments flow to the nonqualified owners.

9 (3) Except for an inherited interest, the transfer of  
10 a C-BED project to any person other than a qualified owner is  
11 prohibited during the initial ten years of the power purchase  
12 agreement.

13 (4) A C-BED project that is operating under a power  
14 purchase agreement is not eligible for any applicable net energy  
15 billing.

16 (5) A C-BED project shall be subject to approval by the  
17 Nebraska Power Review Board in accordance with Chapter 70, article  
18 10, or shall receive certification as a qualifying facility in  
19 accordance with the federal Public Utility Regulatory Policies Act  
20 of 1978, 16 U.S.C. 2601 et seq., with written notice of such  
21 certification provided to the Nebraska Power Review Board.

22 (6) A C-BED project developer shall notify the electric  
23 utility that has a power purchase agreement with a C-BED project if  
24 there is a change in project ownership which makes the project no  
25 longer eligible as a C-BED project.

26 Sec. 3. Section 70-1905, Revised Statutes Supplement,  
27 2007, is amended to read:

1                   70-1905 An electric utility shall:

2                   (1) Consider mechanisms to encourage the aggregation of  
3 C-BED projects located in the same general geographical area;

4                   (2) Require any qualified owner to provide sufficient  
5 security to assure performance under the power purchase agreement;  
6 and

7                   (3) Annually prepare a statement by March 1 summarizing  
8 its efforts to purchase energy from C-BED projects, including a  
9 list of the C-BED projects under a power purchase agreement and the  
10 amount of C-BED project energy purchased. The statement shall be  
11 posted on the electric utility's web site.

12                   Sec. 4. Section 70-1907, Revised Statutes Supplement,  
13 2007, is amended to read:

14                   70-1907 To the extent feasible, a C-BED project developer  
15 shall provide, in writing, an opportunity to ~~invest~~ become a  
16 qualified owner in the C-BED project to each property owner on  
17 whose property a turbine ~~is~~ will be located.

18                   Sec. 5. Section 77-2701, Revised Statutes Supplement,  
19 2007, is amended to read:

20                   77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to  
21 77-27,236 and sections 9 to 13, 22, and 23 of this act shall be  
22 known and may be cited as the Nebraska Revenue Act of 1967.

23                   Sec. 6. Section 77-2701.04, Revised Statutes Supplement,  
24 2007, is amended to read:

25                   77-2701.04 For purposes of sections 77-2701.04 to 77-2713  
26 and sections 9 to 13, 22, and 23 of this act, unless the context  
27 otherwise requires, the definitions found in sections 77-2701.05 to

1 77-2701.48 and sections 9 to 13 of this act shall be used.

2 Sec. 7. Section 77-2701.16, Revised Statutes Supplement,  
3 2007, is amended to read:

4 77-2701.16 ~~(1) Gross receipts shall mean the total amount~~  
5 ~~of the sale or lease or rental price, as the case may be, of~~  
6 ~~the retail sales of retailers valued in money whether received in~~  
7 ~~money or otherwise, without any deduction on account of any of the~~  
8 ~~following:~~

9 ~~(a) The cost of property sold. In accordance with rules~~  
10 ~~and regulations adopted and promulgated by the Tax Commissioner, a~~  
11 ~~deduction may be taken if the retailer has purchased property for~~  
12 ~~some purpose other than resale, has reimbursed his or her vendor~~  
13 ~~for tax which the vendor is required to pay to the state or has~~  
14 ~~paid the use tax with respect to the property, and has resold~~  
15 ~~the property prior to making any use of the property other than~~  
16 ~~retention, demonstration, or display while holding it for sale in~~  
17 ~~the regular course of business. If such a deduction is taken by the~~  
18 ~~retailer, no refund or credit will be allowed to his or her vendor~~  
19 ~~with respect to the sale of the property;~~

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

22 ~~(c) The cost of transportation of the property;~~

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

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

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

6           ~~(a) In the furnishing of telephone communication service,~~  
7 ~~other than mobile telecommunications service as described in~~  
8 ~~section 77-2706.02, the gross income received from furnishing local~~  
9 ~~exchange telephone service and intrastate message toll telephone~~  
10 ~~service. In the furnishing of mobile telecommunications service~~  
11 ~~as described in section 77-2706.02, the gross income received~~  
12 ~~from furnishing mobile telecommunications service that originates~~  
13 ~~and terminates in the same state to a customer with a place~~  
14 ~~of primary use in Nebraska. Gross receipts shall not mean (i)~~  
15 ~~the gross income, including division of revenue, settlements, or~~  
16 ~~carrier access charges received on or after January 1, 1984, from~~  
17 ~~the sale of a telephone communication service to a communication~~  
18 ~~service provider for purposes of furnishing telephone communication~~  
19 ~~service or (ii) the gross income attributable to services rendered~~  
20 ~~using a prepaid telephone calling arrangement. For purposes of~~  
21 ~~this subdivision, a prepaid telephone calling arrangement shall~~  
22 ~~mean the right to exclusively purchase telecommunications service~~  
23 ~~that is paid for in advance that enables the origination of calls~~  
24 ~~using an access number or authorization code, whether manually or~~  
25 ~~electronically dialed;~~

26           ~~(b) In the furnishing of telegraph service, the gross~~  
27 ~~income received from the furnishing of intrastate telegraph~~

1 ~~services;~~

2           ~~(c) In the furnishing of gas, electricity, sewer, and~~  
3 ~~water service except water used for irrigation of agricultural~~  
4 ~~lands and manufacturing purposes, the gross income received from~~  
5 ~~the furnishing of such services upon billings or statements~~  
6 ~~rendered to consumers for such utility services; and~~

7           ~~(d) In the furnishing of community antenna television~~  
8 ~~service, the gross income received from the furnishing of such~~  
9 ~~community antenna television service as regulated under sections~~  
10 ~~18-2201 to 18-2205 or 23-383 to 23-388.~~

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

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

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

27           ~~(b) In the furnishing of videotapes, movie film,~~

1 ~~satellite programming, satellite programming service, and satellite~~  
2 ~~television signal descrambling or decoding devices, the gross~~  
3 ~~income received from the license, franchise, or other method~~  
4 ~~establishing the charge except the gross income received from~~  
5 ~~videotape and film rentals, satellite programming, and satellite~~  
6 ~~programming service when the sales tax or the admission tax is~~  
7 ~~charged under the Nebraska Revenue Act of 1967 and except as~~  
8 ~~provided in section 77-2704.39.~~

9 ~~(4) Gross receipts for providing a service shall mean:~~

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

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

14 ~~(c) The gross income received for computer software~~  
15 ~~training;~~

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

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

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

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



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

4           ~~(i) The gross income received for detective services.~~

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

7           ~~(a) Cash discounts allowed and taken on sales;~~

8           ~~(b) The amount of any rebate granted by a motor vehicle~~  
9 ~~or motorboat manufacturer or dealer at the time of sale of the~~  
10 ~~motor vehicle or motorboat, which rebate functions as a discount~~  
11 ~~from the sales price of the motor vehicle or motorboat;~~

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

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

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

24           ~~(f) The value of a motor vehicle or motorboat taken by~~  
25 ~~any person in trade as all or a part of the consideration for a~~  
26 ~~sale of another motor vehicle or motorboat;~~

27           ~~(g) Receipts from conditional sale contracts, installment~~

1 sale contracts, rentals, and leases executed in writing prior to  
2 June 1, 1967, and with delivery of the property prior to June  
3 1, 1967, if such conditional sale contracts, installment sale  
4 contracts, rentals, or leases are for a fixed price and are not  
5 subject to negotiation or alteration, or

6 ~~(h)~~ Except as provided in subsection ~~(2)~~ of this section,  
7 until October 1, 2002, the amount charged for labor or services  
8 rendered in installing or applying the property sold if such amount  
9 is separately stated and such separate statement is not used as a  
10 means of avoiding imposition of the tax upon the actual sales price  
11 of the property.

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

14 ~~(7)~~ (1) Gross receipts means the total amount of the sale  
15 or lease or rental price, as the case may be, of the retail sales  
16 of retailers.

17 ~~(8)~~ (2) Gross receipts of every person engaged as a  
18 public utility specified in this subsection, ~~or~~ as a community  
19 antenna television service operator, or as a satellite service  
20 operator or any person involved in connecting and installing  
21 services defined in subdivision ~~(8)(a)~~, (2)(a), (b), or (d) of this  
22 section means:

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

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

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

9           (c) In the furnishing of gas, electricity, sewer, and  
10 water service, the gross income received from the furnishing of  
11 such services upon billings or statements rendered to consumers for  
12 such utility services;

13           (d) In the furnishing of community antenna television  
14 service or satellite service, the gross income received from  
15 the furnishing of such community antenna television service as  
16 regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or  
17 satellite service; and

18           (e) The gross income received from the provision,  
19 installation, construction, servicing, or removal of property used  
20 in conjunction with the furnishing, installing, or connecting of  
21 any public utility services specified in subdivision ~~(8)-(a)~~ (2)(a)  
22 or (b) of this section or community antenna television service  
23 or satellite service specified in subdivision ~~(8)-(d)~~ (2)(d) of  
24 this section, except when acting as a subcontractor for a public  
25 utility, this subdivision does not apply to the gross income  
26 received by a contractor electing to be treated as a consumer  
27 of building materials under subdivision (2) or (3) of section

1 77-2701.10 for any such services performed on the customer's side  
2 of the utility demarcation point.

3 ~~(9)~~ (3) Gross receipts of every person engaged  
4 in selling, leasing, or otherwise providing intellectual or  
5 entertainment property means:

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

11 (b) In the furnishing of videotapes, movie film,  
12 satellite programming, satellite programming service, and satellite  
13 television signal descrambling or decoding devices, the gross  
14 income received from the license, franchise, or other method  
15 establishing the charge.

16 ~~(10)~~ (4) Gross receipts for providing a service means:

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

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

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

23 (d) The gross income received for installing and applying  
24 tangible personal property if the sale of the property is subject  
25 to tax. If any or all of the charge for installation is free to  
26 the customer and is paid by a third-party service provider, any  
27 tax due on that part of the activation commission, finder's fee,

1 installation charge, or similar payment made by the third-party  
2 service provider shall be paid by the third-party service provider  
3 and collected and remitted by the installer;

4 (e) The gross income received for services of  
5 recreational vehicle parks;

6 (f) The gross income received for labor for repair or  
7 maintenance services performed with regard to tangible personal  
8 property the sale of which would be subject to sales and use taxes,  
9 excluding motor vehicles, except as otherwise provided in section  
10 77-2704.26 or 77-2704.50;

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

14 (h) The gross income received for detective services.

15 ~~(11)~~ (5) Gross receipts includes the sale of admissions  
16 which means the right or privilege to have access to or to use a  
17 place or location. An admission includes a membership that allows  
18 access to or use of a place or location, but which membership  
19 does not include the right to hold office, vote, or change the  
20 policies of the organization. When an admission to an activity or  
21 a membership constituting an admission pursuant to this subsection  
22 is combined with the solicitation of a contribution, the portion  
23 or the amount charged representing the fair market price of  
24 the admission shall be considered a retail sale subject to the  
25 tax imposed by section 77-2703. The organization conducting the  
26 activity shall determine the amount properly attributable to the  
27 purchase of the privilege, benefit, or other consideration in

1 advance, and such amount shall be clearly indicated on any ticket,  
2 receipt, or other evidence issued in connection with the payment.

3 ~~(12)~~ (6) Gross receipts includes the sale of live plants  
4 incorporated into real estate except when such incorporation is  
5 incidental to the transfer of an improvement upon real estate or  
6 the real estate.

7 ~~(13)~~ (7) Gross receipts includes the sale of any building  
8 materials annexed to real estate by a person electing to be taxed  
9 as a retailer pursuant to subdivision (1) of section 77-2701.10.

10 ~~(14)~~ (8) Gross receipts includes the sale of prepaid  
11 telephone calling arrangements and the recharge of prepaid  
12 telephone calling arrangements. If the sale or recharge of a  
13 prepaid telephone calling arrangement does not take place at  
14 the vendor's place of business, the sale or recharge shall be  
15 conclusively determined to take place at the customer's shipping  
16 address or, if there is no item shipped, at the customer's  
17 billing address. For purposes of this subsection, a prepaid  
18 telephone calling arrangement means the right to exclusively  
19 purchase telecommunications services that are paid for in advance  
20 that enables the origination of calls using an access number or  
21 authorization code, whether manually or electronically dialed.

22 (9) Gross receipts includes the retail sale of digital  
23 audio works, digital audiovisual works, digital codes, and digital  
24 books delivered electronically if the products are taxable when  
25 delivered on tangible storage media. A sale includes the transfer  
26 of a permanent right of use, the transfer of a right of use that  
27 terminates on some condition, and the transfer of a right of use

1 conditioned upon the receipt of continued payments.

2 ~~(15)~~ (10) Gross receipts does not include:

3 (a) The amount of any rebate granted by a motor vehicle  
4 or motorboat manufacturer or dealer at the time of sale of the  
5 motor vehicle or motorboat, which rebate functions as a discount  
6 from the sales price of the motor vehicle or motorboat; or

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

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

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

17 Sec. 8. Section 77-2701.32, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 77-2701.32 (1) Retailer means any seller.

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

24 (a) Any person in the business of making sales subject  
25 to tax under section 77-2703 at auction of property owned by the  
26 person or others;

27 (b) Any person collecting the proceeds of the auction,

1 other than the owner of the property, together with his or her  
2 principal, if any, when the person collecting the proceeds of the  
3 auction is not the auctioneer or an agent or employee of the  
4 auctioneer. The seller does not include the auctioneer in such  
5 case;

6 (c) Every person who has elected to be considered a  
7 retailer pursuant to subdivision (1) of section 77-2701.10;

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

10 (e) Every person engaged in the business of providing any  
11 service defined in subsection ~~(10)~~ (4) of section 77-2701.16.

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

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

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

20 (c) Any person engaged in the business of furnishing  
21 rooms in a facility licensed under the Health Care Facility  
22 Licensure Act in which rooms, lodgings, or accommodations are  
23 regularly furnished for a consideration or a facility operated by  
24 an educational institution established under Chapter 79 or Chapter  
25 85 in which rooms are regularly used to house students for a  
26 consideration for periods in excess of thirty days; or

27 (d) Any person making sales at a flea market, craft show,



1 fair, or similar event when such person does not have a sales tax  
2 permit and has arranged to pay sales taxes collected to the person  
3 operating, organizing, or promoting such event.

4 Sec. 9. Delivered electronically means obtained by the  
5 purchaser by means other than tangible storage media.

6 Sec. 10. Digital audio works means works that result from  
7 the fixation of a series of musical, spoken, or other sounds,  
8 including ringtones.

9 Sec. 11. Digital audiovisual works means a series  
10 of related images which, when shown in succession, impart an  
11 impression of motion, together with accompanying sounds, if any.

12 Sec. 12. Digital books means works that are generally  
13 recognized in the ordinary and usual sense as books.

14 Sec. 13. Digital code means a code which provides a  
15 purchaser with a right to obtain one or more products delivered  
16 electronically. A digital code may be obtained by any means,  
17 including email or tangible means.

18 Sec. 14. Section 77-2701.34, Revised Statutes Supplement,  
19 2007, is amended to read:

20 77-2701.34 Sale for resale means a sale of property or  
21 provision of a service to any purchaser who is purchasing such  
22 property or service for the purpose of reselling it in the normal  
23 course of his or her business, either in the form or condition in  
24 which it is purchased or as an attachment to or integral part of  
25 other property or service. A sale for resale includes (1) a sale  
26 of building materials to a contractor or repairperson electing to  
27 be taxed as a retailer under subdivision (1) of section 77-2701.10~~7~~

1 or a sale of building materials to a contractor or repairperson  
2 being taxed as the consumer of building materials and electing  
3 a tax-free inventory under subdivision (3) of section 77-2701.10,  
4 ~~or~~ (2) a sale of property to a purchaser for the sole purpose  
5 of that purchaser renting or leasing such property to another  
6 person, with rent or lease payments set at a fair market value,  
7 ~~or~~ (3) film rentals for use in a place where an admission is  
8 charged that is subject to tax under the Nebraska Revenue Act  
9 of 1967 but not if incidental to the renting or leasing of real  
10 estate, or (4) a sale of digital products, community antenna  
11 television services, Internet services, and satellite services to a  
12 person who receives by contract the product or service transferred  
13 electronically for further broadcast, transmission, retransmission,  
14 licensing, relicensing, distribution, redistribution, or exhibition  
15 of the product or service for use in a place where an admission is  
16 charged that is subject to sales tax under the Nebraska Revenue Act  
17 of 1967.

18           Sec. 15. Section 77-2703, Revised Statutes Supplement,  
19 2007, is amended to read:

20           77-2703 (1) There is hereby imposed a tax at the rate  
21 provided in section 77-2701.02 upon the gross receipts from all  
22 sales of tangible personal property sold at retail in this state;  
23 the gross receipts of every person engaged as a public utility, as  
24 a community antenna television service operator, or as a satellite  
25 service operator, ~~or~~ any person involved in the connecting and  
26 installing of the services defined in subdivision ~~(8)(a)~~, (2)(a),  
27 (b), (d), or (e) of section 77-2701.16, or every person engaged

1 as a retailer of intellectual or entertainment properties referred  
2 to in subsection ~~(9)~~ (3) of section 77-2701.16; the gross receipts  
3 from the sale of admissions in this state; the gross receipts  
4 from the sale of warranties, guarantees, service agreements, or  
5 maintenance agreements when the items covered are subject to tax  
6 under this section; beginning January 1, 2008, the gross receipts  
7 from the sale of bundled transactions when one or more of the  
8 products included in the bundle are taxable; ~~and~~ the gross receipts  
9 from the provision of services defined in subsection ~~(10)~~ (4)  
10 of section 77-2701.16; and the gross receipts from the sale of  
11 products delivered electronically as described in subsection (9) of  
12 section 77-2701.16. Except as provided in section 77-2701.03, when  
13 there is a sale, the tax shall be imposed at the rate in effect at  
14 the time the gross receipts are realized under the accounting basis  
15 used by the retailer to maintain his or her books and records.

16 (a) The tax imposed by this section shall be collected  
17 by the retailer from the consumer. It shall constitute a part of  
18 the purchase price and until collected shall be a debt from the  
19 consumer to the retailer and shall be recoverable at law in the  
20 same manner as other debts. The tax required to be collected by the  
21 retailer from the consumer constitutes a debt owed by the retailer  
22 to this state.

23 (b) It is unlawful for any retailer to advertise, hold  
24 out, or state to the public or to any customer, directly or  
25 indirectly, that the tax or part thereof will be assumed or  
26 absorbed by the retailer, that it will not be added to the selling,  
27 renting, or leasing price of the property sold, rented, or leased,

1 or that, if added, it or any part thereof will be refunded. The  
2 provisions of this subdivision shall not apply to a public utility.

3 (c) The tax required to be collected by the retailer from  
4 the purchaser, unless otherwise provided by statute or by rule and  
5 regulation of the Tax Commissioner, shall be displayed separately  
6 from the list price, the price advertised in the premises, the  
7 marked price, or other price on the sales check or other proof of  
8 sales, rentals, or leases.

9 (d) For the purpose of more efficiently securing the  
10 payment, collection, and accounting for the sales tax and for the  
11 convenience of the retailer in collecting the sales tax, it shall  
12 be the duty of the Tax Commissioner to provide a schedule or  
13 schedules of the amounts to be collected from the consumer or user  
14 to effectuate the computation and collection of the tax imposed  
15 by the Nebraska Revenue Act of 1967. Such schedule or schedules  
16 shall provide that the tax shall be collected from the consumer  
17 or user uniformly on sales according to brackets based on sales  
18 prices of the item or items. Retailers may compute the tax due on  
19 any transaction on an item or an invoice basis. The rounding rule  
20 provided in section 77-3,117 applies.

21 (e) The use of tokens or stamps for the purpose of  
22 collecting or enforcing the collection of the taxes imposed in the  
23 Nebraska Revenue Act of 1967 or for any other purpose in connection  
24 with such taxes is prohibited.

25 (f) For the purpose of the proper administration of the  
26 provisions of the Nebraska Revenue Act of 1967 and to prevent  
27 evasion of the retail sales tax, it shall be presumed that all

1 gross receipts are subject to the tax until the contrary is  
2 established. The burden of proving that a sale of property is not  
3 a sale at retail is upon the person who makes the sale unless he  
4 or she takes from the purchaser (i) a resale certificate to the  
5 effect that the property is purchased for the purpose of reselling,  
6 leasing, or renting it, (ii) an exemption certificate pursuant to  
7 subsection (7) of section 77-2705, or (iii) a direct payment permit  
8 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale  
9 certificate, exemption certificate, or direct payment permit shall  
10 be conclusive proof for the seller that the sale was made for  
11 resale or was exempt or that the tax will be paid directly to the  
12 state.

13 (g) In the rental or lease of automobiles, trucks,  
14 trailers, semitrailers, and truck-tractors as defined in the Motor  
15 Vehicle Registration Act, the tax shall be collected by the lessor  
16 on the rental or lease price at the tax rate in effect on the date  
17 the automobile, truck, trailer, semitrailer, or truck-tractor is  
18 delivered to the lessee, except as otherwise provided within this  
19 section.

20 (h) In the rental or lease of automobiles, trucks,  
21 trailers, semitrailers, and truck-tractors as defined in the act,  
22 for periods of one year or more, the lessor may elect not to  
23 collect and remit the sales tax on the gross receipts and instead  
24 pay a sales tax on the cost of such vehicle. If such election is  
25 made, it shall be made pursuant to the following conditions:

26 (i) Notice of the desire to make such election shall  
27 be filed with the Tax Commissioner and shall not become effective

1 until the Tax Commissioner is satisfied that the taxpayer has  
2 complied with all conditions of this subsection and all rules and  
3 regulations of the Tax Commissioner;

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

7 (iii) When such election is made, it shall apply to all  
8 vehicles of the lessor rented or leased for periods of one year or  
9 more except vehicles to be leased to common or contract carriers  
10 who provide to the lessor a valid common or contract carrier  
11 exemption certificate. If the lessor rents or leases other vehicles  
12 for periods of less than one year, such lessor shall maintain his  
13 or her books and records and his or her accounting procedure as the  
14 Tax Commissioner prescribes; and

15 (iv) The Tax Commissioner by rule and regulation shall  
16 prescribe the contents and form of the notice of election, a  
17 procedure for the determination of the tax base of vehicles which  
18 are under an existing lease at the time such election becomes  
19 effective, the method and manner for terminating such election, and  
20 such other rules and regulations as may be necessary for the proper  
21 administration of this subdivision.

22 (i) The tax imposed by this section on the sales of  
23 motor vehicles, semitrailers, and trailers as defined in sections  
24 60-339, 60-348, and 60-354 shall be the liability of the purchaser  
25 and, with the exception of motor vehicles, semitrailers, and  
26 trailers registered pursuant to section 60-3,198, the tax shall  
27 be collected by the county treasurer or designated county official

1 as provided in the Motor Vehicle Registration Act at the time  
2 the purchaser makes application for the registration of the motor  
3 vehicle, semitrailer, or trailer for operation upon the highways  
4 of this state. The tax imposed by this section on motor vehicles,  
5 semitrailers, and trailers registered pursuant to section 60-3,198  
6 shall be collected by the Department of Motor Vehicles at the time  
7 the purchaser makes application for the registration of the motor  
8 vehicle, semitrailer, or trailer for operation upon the highways  
9 of this state. At the time of the sale of any motor vehicle,  
10 semitrailer, or trailer, the seller shall (i) state on the sales  
11 invoice the dollar amount of the tax imposed under this section  
12 and (ii) furnish to the purchaser a certified statement of the  
13 transaction, in such form as the Tax Commissioner prescribes,  
14 setting forth as a minimum the total sales price, the allowance for  
15 any trade-in, and the difference between the two. The sales tax due  
16 shall be computed on the difference between the total sales price  
17 and the allowance for any trade-in as disclosed by such certified  
18 statement. Any seller who willfully understates the amount upon  
19 which the sales tax is due shall be subject to a penalty of one  
20 thousand dollars. A copy of such certified statement shall also  
21 be furnished to the Tax Commissioner. Any seller who fails or  
22 refuses to furnish such certified statement shall be guilty of  
23 a misdemeanor and shall, upon conviction thereof, be punished by  
24 a fine of not less than twenty-five dollars nor more than one  
25 hundred dollars. If the seller fails to state on the sales invoice  
26 the dollar amount of the tax due, the purchaser shall have the  
27 right and authority to rescind any agreement for purchase and

1 to declare the purchase null and void. If the purchaser retains  
2 such motor vehicle, semitrailer, or trailer in this state and  
3 does not register it for operation on the highways of this state  
4 within thirty days of the purchase thereof, the tax imposed by  
5 this section shall immediately thereafter be paid by the purchaser  
6 to the county treasurer, the designated county official, or the  
7 Department of Motor Vehicles. If the tax is not paid on or  
8 before the thirtieth day after its purchase, the county treasurer,  
9 designated county official, or Department of Motor Vehicles shall  
10 also collect from the purchaser interest from the thirtieth day  
11 through the date of payment and sales tax penalties as provided in  
12 the Nebraska Revenue Act of 1967. The county treasurer, designated  
13 county official, or Department of Motor Vehicles shall report and  
14 remit the tax so collected to the Tax Commissioner by the fifteenth  
15 day of the following month. The county treasurer or designated  
16 county official shall deduct and withhold for the use of the county  
17 general fund, from all amounts required to be collected under  
18 this subsection, the collection fee permitted to be deducted by  
19 any retailer collecting the sales tax. The Department of Motor  
20 Vehicles shall deduct, withhold, and deposit in the Motor Carrier  
21 Division Cash Fund the collection fee permitted to be deducted by  
22 any retailer collecting the sales tax. The collection fee shall  
23 be forfeited if the county treasurer, designated county official,  
24 or Department of Motor Vehicles violates any rule or regulation  
25 pertaining to the collection of the use tax.

26 (j) (i) The tax imposed by this section on the sale of a  
27 motorboat as defined in section 37-1204 shall be the liability of



1 the purchaser. The tax shall be collected by the county treasurer  
2 or designated county official at the time the purchaser makes  
3 application for the registration of the motorboat. At the time  
4 of the sale of a motorboat, the seller shall (A) state on the  
5 sales invoice the dollar amount of the tax imposed under this  
6 section and (B) furnish to the purchaser a certified statement of  
7 the transaction, in such form as the Tax Commissioner prescribes,  
8 setting forth as a minimum the total sales price, the allowance for  
9 any trade-in, and the difference between the two. The sales tax due  
10 shall be computed on the difference between the total sales price  
11 and the allowance for any trade-in as disclosed by such certified  
12 statement. Any seller who willfully understates the amount upon  
13 which the sales tax is due shall be subject to a penalty of one  
14 thousand dollars. A copy of such certified statement shall also  
15 be furnished to the Tax Commissioner. Any seller who fails or  
16 refuses to furnish such certified statement shall be guilty of a  
17 misdemeanor and shall, upon conviction thereof, be punished by a  
18 fine of not less than twenty-five dollars nor more than one hundred  
19 dollars. If the seller fails to state on the sales invoice the  
20 dollar amount of the tax due, the purchaser shall have the right  
21 and authority to rescind any agreement for purchase and to declare  
22 the purchase null and void. If the purchaser retains such motorboat  
23 in this state and does not register it within thirty days of the  
24 purchase thereof, the tax imposed by this section shall immediately  
25 thereafter be paid by the purchaser to the county treasurer or  
26 designated county official. If the tax is not paid on or before  
27 the thirtieth day after its purchase, the county treasurer or

1 designated county official shall also collect from the purchaser  
2 interest from the thirtieth day through the date of payment and  
3 sales tax penalties as provided in the Nebraska Revenue Act of  
4 1967. The county treasurer or designated county official shall  
5 report and remit the tax so collected to the Tax Commissioner by  
6 the fifteenth day of the following month. The county treasurer or  
7 designated county official shall deduct and withhold for the use of  
8 the county general fund, from all amounts required to be collected  
9 under this subsection, the collection fee permitted to be deducted  
10 by any retailer collecting the sales tax. The collection fee shall  
11 be forfeited if the county treasurer or designated county official  
12 violates any rule or regulation pertaining to the collection of the  
13 use tax.

14 (ii) In the rental or lease of motorboats, the tax shall  
15 be collected by the lessor on the rental or lease price.

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

23 (2) A use tax is hereby imposed on the storage, use, or  
24 other consumption in this state of property purchased, leased, or  
25 rented from any retailer and on any transaction the gross receipts  
26 of which are subject to tax under subsection (1) of this section  
27 on or after June 1, 1967, for storage, use, or other consumption

1 in this state at the rate set as provided in subsection (1) of  
2 this section on the sales price of the property or, in the case of  
3 leases or rentals, of the lease or rental prices.

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

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

26 (c) The Tax Commissioner, in order to facilitate the  
27 proper administration of the use tax, may designate such person or

1 persons as he or she may deem necessary to be use tax collectors  
2 and delegate to such persons such authority as is necessary to  
3 collect any use tax which is due and payable to the State of  
4 Nebraska. The Tax Commissioner may require of all persons so  
5 designated a surety bond in favor of the State of Nebraska to  
6 insure against any misappropriation of state funds so collected.  
7 The Tax Commissioner may require any tax official, city, county, or  
8 state, to collect the use tax on behalf of the state. All persons  
9 designated to or required to collect the use tax shall account for  
10 such collections in the manner prescribed by the Tax Commissioner.  
11 Nothing in this subdivision shall be so construed as to prevent the  
12 Tax Commissioner or his or her employees from collecting any use  
13 taxes due and payable to the State of Nebraska.

14 (d) All persons designated to collect the use tax and all  
15 persons required to collect the use tax shall forward the total of  
16 such collections to the Tax Commissioner at such time and in such  
17 manner as the Tax Commissioner may prescribe. For all use taxes  
18 collected prior to October 1, 2002, such collectors of the use tax  
19 shall deduct and withhold from the amount of taxes collected two  
20 and one-half percent of the first three thousand dollars remitted  
21 each month and one-half of one percent of all amounts in excess  
22 of three thousand dollars remitted each month as reimbursement  
23 for the cost of collecting the tax. For use taxes collected on  
24 and after October 1, 2002, such collectors of the use tax shall  
25 deduct and withhold from the amount of taxes collected two and  
26 one-half percent of the first three thousand dollars remitted each  
27 month as reimbursement for the cost of collecting the tax. Any

1 such deduction shall be forfeited to the State of Nebraska if such  
2 collector violates any rule, regulation, or directive of the Tax  
3 Commissioner.

4 (e) For the purpose of the proper administration of the  
5 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
6 it shall be presumed that property sold, leased, or rented by any  
7 person for delivery in this state is sold, leased, or rented for  
8 storage, use, or other consumption in this state until the contrary  
9 is established. The burden of proving the contrary is upon the  
10 person who purchases, leases, or rents the property.

11 (f) For the purpose of the proper administration of the  
12 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
13 for the sale of property to an advertising agency which purchases  
14 the property as an agent for a disclosed or undisclosed principal,  
15 the advertising agency is and remains liable for the sales and  
16 use tax on the purchase the same as if the principal had made the  
17 purchase directly.

18 Sec. 16. Section 77-2703.01, Revised Statutes Supplement,  
19 2007, is amended to read:

20 77-2703.01 (1) The determination of whether a sale or use  
21 of property or the provision of services is in this state, in a  
22 municipality that has adopted a tax under the Local Option Revenue  
23 Act, or in a county that has adopted a tax under section 13-319  
24 shall be governed by the sourcing rules in sections 77-2703.01 to  
25 77-2703.04.

26 (2) When the property or service is received by the  
27 purchaser at a business location of the retailer, the sale is

1 sourced to that business location.

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

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

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

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

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

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

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

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

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

1 follows:

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

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

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

18 (9) The retail sale, including lease or rental, of  
19 transportation equipment shall be sourced the same as a retail sale  
20 in accordance with subsections (2) through (6) of this section.

21 Transportation equipment means any of the following:

22 (a) Locomotives and railcars that are utilized for the  
23 carriage of persons or property in interstate commerce;

24 (b) Trucks and truck-tractors with a gross vehicle  
25 weight rating of ten thousand one pounds or greater, trailers,  
26 semitrailers, or passenger buses that are (i) registered through  
27 the International Registration Plan and (ii) operated under



1 authority of a carrier authorized and certificated by the United  
2 States Department of Transportation or another federal authority  
3 to engage in the carriage of persons or property in interstate  
4 commerce;

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

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

13 (10) For purposes of this section, receive and receipt  
14 mean taking possession of tangible personal property, making first  
15 use of services, or taking possession or making first use of  
16 digital goods, whichever comes first. The terms receive and receipt  
17 do not include possession by a shipping company on behalf of the  
18 purchaser. For purposes of sourcing detective services subject to  
19 tax under subdivision ~~(10)(h)~~ (4)(h) of section 77-2701.16, making  
20 first use of a service shall be deemed to be at the individual's  
21 residence, in the case of a customer who is an individual, or  
22 at the principal place of business, in the case of a business  
23 customer.

24 (11) The sale, not including lease or rental, of a motor  
25 vehicle, semitrailer, or trailer as defined in the Motor Vehicle  
26 Registration Act shall be sourced to the place of registration of  
27 the motor vehicle, semitrailer, or trailer for operation upon the

1 highways of this state.

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

6 Sec. 17. Section 77-2704.09, Revised Statutes Supplement,  
7 2007, is amended to read:

8 77-2704.09 (1) Sales and use taxes shall not be imposed  
9 on the gross receipts from the sale, lease, or rental of and  
10 the storage, use, or other consumption in this state of (a)  
11 insulin, (b) drugs, not including over-the-counter drugs, when  
12 sold for a patient's use under a prescription, and (c) the  
13 following when sold for a patient's use under a prescription and  
14 which are of the type eligible for coverage under the medical  
15 assistance program established pursuant to the Medical Assistance  
16 Act: ~~Drugs, not including over-the-counter drugs; durable~~ Durable  
17 medical equipment; home medical supplies; prosthetic devices;  
18 oxygen; oxygen equipment; and mobility enhancing equipment.

19 (2) For purposes of this section:

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

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

27 (ii) Intended for use in the diagnosis, cure, mitigation,

1 treatment, or prevention of disease; or

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

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

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

14 (d) Mobility enhancing equipment means equipment which  
15 is primarily and customarily used to provide or increase the  
16 ability to move from one place to another, which is not generally  
17 used by persons with normal mobility, and which is appropriate  
18 for use either in a home or a motor vehicle. Mobility enhancing  
19 equipment includes repair and replacement parts for such equipment.  
20 Mobility enhancing equipment does not include any motor vehicle or  
21 equipment on a motor vehicle normally provided by a motor vehicle  
22 manufacturer;

23 (e) Over-the-counter drug means a drug that contains a  
24 label that identifies the product as a drug as required by 21  
25 C.F.R. 201.66, as such regulation existed on January 1, 2003.  
26 The over-the-counter drug label includes a drug facts panel or  
27 a statement of the active ingredients with a list of those

1 ingredients contained in the compound, substance, or preparation;

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

8 (g) Prescription means an order, formula, or recipe  
9 issued in any form of oral, written, electronic, or other means of  
10 transmission by a duly licensed practitioner authorized under the  
11 Uniform Credentialing Act; and

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

18 Sec. 18. Section 77-2704.26, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-2704.26 Sales and use taxes shall not be imposed on  
21 the gross receipts from the sale, lease, or rental of and the  
22 storage, use, or other consumption in this state of an aircraft  
23 delivered in this state to an individual who is a resident of  
24 another state or any other person who has a business location in  
25 another state when the aircraft is not to be registered or based in  
26 this state and it will not remain in this state more than ten days.  
27 Sales and use taxes shall not be imposed on the gross receipts from

1 a service listed in subsection ~~(10)~~ (4) of section 77-2701.16 that  
2 is rendered to an aircraft brought into this state by an individual  
3 who is a resident of another state or any other person who has a  
4 business location in another state when the aircraft is not to be  
5 registered or based in this state and it will not remain in this  
6 state more than ten days after the service is completed.

7 Sec. 19. Section 77-2704.45, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 77-2704.45 Sales and use taxes shall not be imposed on  
10 the gross receipts from the sale, lease, or rental of and the  
11 storage, use, or other consumption in this state of:

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

15 (2) A service listed in subsection ~~(10)~~ (4) of section  
16 77-2701.16 which will become an ingredient or component part of a  
17 service listed in subsection ~~(10)~~ (4) of section 77-2701.16 for  
18 ultimate sale at retail.

19 Sec. 20. Section 77-2704.46, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 77-2704.46 Sales and use taxes shall not be imposed on  
22 the gross receipts from the sale, lease, or rental of and the  
23 storage, use, or other consumption in this state of:

24 (1) Any form of animal life of a kind the products of  
25 which ordinarily constitute food for human consumption. Animal life  
26 includes live poultry, other species of game birds subject to  
27 permit and regulation by the Game and Parks Commission, and ~~or~~

1 livestock on the hoof when sales are made by the grower, producer,  
2 feeder, or any person engaged in the business of bartering, buying,  
3 or selling live poultry, other species of game birds subject  
4 to permit and regulation by the Game and Parks Commission, or  
5 livestock on the hoof;

6 (2) Seeds and annual plants, the products of which  
7 ordinarily constitute food for human consumption and which seeds  
8 and annual plants are sold to commercial producers of such  
9 products, and seed legumes, seed grasses, and seed grains when  
10 sold to be used exclusively for agricultural purposes;

11 (3) Agricultural chemicals, adjuvants, surfactants,  
12 bonding agents, clays, oils, and any other additives or  
13 compatibility agents for use in commercial agriculture and applied  
14 to land or crops and sold in any tax period that has not been  
15 closed by the applicable statute of limitations. Agricultural  
16 chemicals does not mean chemicals, adjuvants, surfactants, bonding  
17 agents, clays, oils, and any other additives or compatibility  
18 agents applied to harvested grains stored in commercial elevators;  
19 or

20 (4) Oxygen for use in aquaculture as defined in section  
21 2-3804.01.

22 Sec. 21. Section 77-2704.57, Revised Statutes Supplement,  
23 2007, is amended to read:

24 77-2704.57 (1) Sales and use tax shall not be imposed  
25 on the gross receipts from the sale, lease, or rental of personal  
26 property for use in a C-BED project or community-based energy  
27 development project. This exemption shall be conditioned upon

1 filing requirements for the exemption as imposed by the Tax  
2 Commissioner. The requirements imposed by the Tax Commissioner  
3 shall be related to ensuring that the property purchased qualifies  
4 for the exemption. The Tax Commissioner may require the filing  
5 of the documents showing compliance with section 70-1907, the  
6 organization of the project, the distribution of the payments,  
7 the power purchase agreements, the project pro forma, articles of  
8 incorporation, operating agreements, and any amendments or changes  
9 to these documents during the life of the power purchase agreement.

10 (2) The Tax Commissioner shall notify an electric utility  
11 that has a power purchase agreement with a C-BED project if  
12 there is a change in project ownership which makes the project no  
13 longer eligible as a C-BED project. Purchase of a C-BED project  
14 by an electric utility prior to the end of the power purchase  
15 agreement disqualifies the C-BED project for the exemption, but the  
16 Department of Revenue may not recover the amount of the sales and  
17 use tax that was not paid by the project prior to the purchase.

18 (3) For purposes of this section:

19 (1) (a) C-BED project or community-based energy  
20 development project means a new wind energy project that:

21 (a) (i) Has an ownership structure as follows:

22 (i) (A) For a C-BED project that consists of more than  
23 two turbines, ~~is owned by~~ has one or more qualified owners with  
24 no single individual qualified owner owning directly or indirectly  
25 more than fifteen percent of the project and with at least  
26 thirty-three percent of the gross power purchase agreement payments  
27 flowing to the qualified owner or owners or local community; or

1           ~~(ii)~~ (B) For a C-BED project that consists of one or two  
2 turbines, ~~is owned by~~ has one or more qualified owners with at  
3 least thirty-three percent of the gross power purchase agreement  
4 payments flowing to a qualified owner or owners or local community;  
5 and

6           ~~(b)~~ (ii) Has a resolution of support adopted:

7           ~~(i)~~ (A) By the county board of each county in which the  
8 C-BED project is to be located; or

9           ~~(ii)~~ (B) By the tribal council for a C-BED project  
10 located within the boundaries of an Indian reservation;

11           ~~(2)~~ (b) New wind energy project includes any materials  
12 used to manufacture, install, construct, repair, or replace a  
13 device, such as a wind charger, windmill, or wind turbine, that  
14 converts wind energy to a form of usable energy; and means  
15 any tangible personal property incorporated into the manufacture,  
16 installation, construction, repair, or replacement of a device,  
17 such as a wind charger, windmill, or wind turbine, which is used to  
18 convert wind energy to electrical energy or for the transmission of  
19 electricity to the purchaser; and

20           ~~(3)~~ (c) Qualified owner means:

21           ~~(a)~~ (i) A Nebraska resident;

22           ~~(b)~~ (ii) A limited liability company that is organized  
23 under the Limited Liability Company Act and that is entirely made  
24 up of members who are Nebraska residents;

25           ~~(e)~~ (iii) A Nebraska nonprofit corporation organized  
26 under the Nebraska Nonprofit Corporation Act;

27           ~~(d)~~ (iv) An electric supplier as defined in section



1 70-1001.01, except that ownership in a single C-BED project is  
2 limited to no more than:

3 ~~(i)~~ (A) Fifteen percent either directly or indirectly by  
4 a single electric supplier; and

5 ~~(ii)~~ (B) A combined total of twenty-five percent  
6 ownership either directly or indirectly by multiple electric  
7 suppliers; or

8 ~~(e)~~ (v) A tribal council.

9 (4) Power purchase agreement payments are the total  
10 amount of payments during the life of the agreement. For the  
11 purposes of determining eligibility of the project, an estimate of  
12 the payments and their recipients shall be used.

13 (5) Payments to the local community include, but are not  
14 limited to, lease payments to property owners on whose property a  
15 turbine is located, wind energy easement payments, and real and  
16 personal property tax receipts from the C-BED project.

17 (6) The Department of Revenue may examine the actual  
18 payments and the distribution of the payments to determine if the  
19 projected distributions were met. If the payment distributions to  
20 qualified owners do not meet the requirements of this section, the  
21 department may recover the amount of the sales or use tax that was  
22 not paid by the project at any time up until the end of three years  
23 after the end of the power purchase agreement.

24 (7) At any time prior to the end of the power purchase  
25 agreements, the project may voluntarily surrender the exemption  
26 granted by the Tax Commissioner and pay the amount of sales and use  
27 tax that would have otherwise have been due.

1           (8) The amount of the tax due under either subsection  
2 (6) or (7) of this section shall be increased by interest at the  
3 rate specified in section 45-104.02, as such rate may from time to  
4 time be adjusted, from the date the tax would have been due if no  
5 exemption was granted until the date paid.

6           Sec. 22. Sales and use taxes shall not be imposed on  
7 the gross receipts from the sale, use, or other consumption in  
8 this state of depositions, bills of exceptions, and transcripts or  
9 copies of such depositions, bills of exceptions, and transcripts  
10 prepared and sold by a court reporter.

11           Sec. 23. Sales and use taxes shall not be imposed on the  
12 gross receipts from the sale, use, or other consumption in this  
13 state of copies of medical records provided to the patient or a  
14 person holding such patient's power of attorney for health care.

15           Sec. 24. Section 77-2705, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           77-2705 (1) Except as provided in subsection (10) of this  
18 section, every retailer shall register with the Tax Commissioner  
19 and give:

20           (a) The name and address of all agents operating in this  
21 state;

22           (b) The location of all distribution or sales houses or  
23 offices or other places of business in this state;

24           (c) The name and address of any officer, director,  
25 partner, limited liability company member, or employee, other than  
26 an employee whose duties are purely ministerial in nature, or any  
27 person with a substantial interest in the applicant, who is or who

1 will be responsible for the collection or remittance of the sales  
2 tax;

3 ~~(e)~~ (d) Such other information as the Tax Commissioner  
4 may require; and

5 ~~(d)~~ (e) If the retailer is an individual, his or her  
6 social security number.

7 (2) Every person furnishing public utility service as  
8 defined in subsection ~~(8)~~ (2) of section 77-2701.16 shall register  
9 with the Tax Commissioner and give:

10 (a) The address of each office open to the public in  
11 which such public utility service business is transacted with  
12 consumers; and

13 (b) Such other information as the Tax Commissioner may  
14 require.

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

24 (4) Every application for a permit shall:

25 (a) Be made upon a form prescribed by the Tax  
26 Commissioner;

27 (b) Set forth the name under which the applicant

1 transacts or intends to transact business and the location of  
2 his or her place or places of business;

3 (c) Set forth such other information as the Tax  
4 Commissioner may require; and

5 (d) Be signed by the owner and include his or her social  
6 security number if he or she is a natural person; in the case  
7 of an association or partnership, by a member or partner; in the  
8 case of a limited liability company, by a member or some person  
9 authorized by the limited liability company to sign such kinds of  
10 applications; and in the case of a corporation, by an executive  
11 officer or some person authorized by the corporation to sign such  
12 kinds of applications.

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

22 (6) (a) Whenever the holder of a permit issued under  
23 subsection (5) of this section or any person required to be  
24 identified in subdivision (1)(c) of this section (i) fails to  
25 comply with any provision of the Nebraska Revenue Act of 1967  
26 relating to the retail sales tax or with any rule or regulation of  
27 the Tax Commissioner relating to such tax prescribed and adopted

1 under such act, (ii) fails to provide for inspection or audit  
2 any book, record, document, or item required by law, rule, or  
3 regulation, or (iii) makes a misrepresentation of or fails to  
4 disclose a material fact to the Department of Revenue, the Tax  
5 Commissioner upon hearing, after giving the person twenty days'  
6 notice in writing specifying the time and place of hearing and  
7 requiring him or her to show cause why his or her permit or permits  
8 should not be revoked, may revoke or suspend any one or more of  
9 the permits held by the person. The Tax Commissioner shall give to  
10 the person written notice of the suspension or revocation of any  
11 of his or her permits. The notices may be served personally or by  
12 mail in the manner prescribed for service of notice of a deficiency  
13 determination.

14 (b) The Tax Commissioner shall have the power to restore  
15 permits which have been revoked but shall not issue a new permit  
16 after the revocation of a permit unless he or she is satisfied that  
17 the former holder of the permit will comply with the provisions  
18 of such act relating to the retail sales tax and the regulations  
19 of the Tax Commissioner. A seller whose permit has been previously  
20 suspended or revoked under this subsection shall pay the Tax  
21 Commissioner a fee of twenty-five dollars for the renewal or  
22 issuance of a permit in the event of a first revocation and fifty  
23 dollars for renewal after each successive revocation.

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

27 (7) For the purpose of more efficiently securing the

1 payment, collection, and accounting for the sales and use taxes  
2 and for the convenience of the retailer in collecting the sales  
3 tax, it shall be the duty of the Tax Commissioner to formulate  
4 and promulgate appropriate rules and regulations providing a form  
5 and method for the registration of exempt purchases and the  
6 documentation of exempt sales.

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

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

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

1 agreement.

2           Sec. 25. Section 77-2708, Revised Statutes Cumulative  
3 Supplement, 2006, is amended to read:

4           77-2708 (1)(a) The sales and use taxes imposed by the  
5 Nebraska Revenue Act of 1967 shall be due and payable to the  
6 Tax Commissioner monthly on or before the twenty-fifth day of the  
7 month next succeeding each monthly period unless otherwise provided  
8 pursuant to the Nebraska Revenue Act of 1967.

9           (b)(i) On or before the twenty-fifth day of the month  
10 following each monthly period or such other period as the Tax  
11 Commissioner may require, a return for such period, along with all  
12 taxes due, shall be filed with the Tax Commissioner in such form  
13 and content as the Tax Commissioner may prescribe and containing  
14 such information as the Tax Commissioner deems necessary for the  
15 proper administration of the Nebraska Revenue Act of 1967. The Tax  
16 Commissioner, if he or she deems it necessary in order to insure  
17 payment to or facilitate the collection by the state of the amount  
18 of sales or use taxes due, may require returns and payment of the  
19 amount of such taxes for periods other than monthly periods in the  
20 case of a particular seller, retailer, or purchaser, as the case  
21 may be. The Tax Commissioner shall by rule and regulation require  
22 reports and tax payments from sellers, retailers, or purchasers  
23 depending on their yearly tax liability. Except as required by  
24 the streamlined sales and use tax agreement, annual returns shall  
25 be required if such sellers', retailers', or purchasers' yearly  
26 tax liability is less than nine hundred dollars, quarterly returns  
27 shall be required if their yearly tax liability is nine hundred

1 dollars or more and less than three thousand dollars, and monthly  
2 returns shall be required if their yearly tax liability is three  
3 thousand dollars or more. The Tax Commissioner shall have the  
4 discretion to allow an annual return for seasonal retailers, even  
5 when their yearly tax liability exceeds the amounts listed in this  
6 subdivision.

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

19           (ii) For purposes of the sales tax, a return shall be  
20 filed by every retailer liable for collection from a purchaser and  
21 payment to the state of the tax, except that a combined sales tax  
22 return may be filed for all licensed locations which are subject  
23 to common ownership. For purposes of this subdivision, common  
24 ownership means the same person or persons own eighty percent or  
25 more of each licensed location. For purposes of the use tax, a  
26 return shall be filed by every retailer engaged in business in this  
27 state and by every person who has purchased property, the storage,



1 use, or other consumption of which is subject to the use tax, but  
2 who has not paid the use tax due to a retailer required to collect  
3 the tax.

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

7 (iv) A taxpayer who keeps his or her regular books  
8 and records on a cash basis, an accrual basis, or any generally  
9 recognized accounting basis which correctly reflects the operation  
10 of the business may file the sales and use tax returns required  
11 by the Nebraska Revenue Act of 1967 on the same accounting basis  
12 that is used for the regular books and records, except that on  
13 credit, conditional, and installment sales, the retailer who keeps  
14 his or her books on an accrual basis may report such sales on  
15 the cash basis and pay the tax upon the collections made during  
16 each month. If a taxpayer transfers, sells, assigns, or otherwise  
17 disposes of an account receivable, he or she shall be deemed  
18 to have received the full balance of the consideration for the  
19 original sale and shall be liable for the remittance of the sales  
20 tax on the balance of the total sale price not previously reported,  
21 except that such transfer, sale, assignment, or other disposition  
22 of an account receivable by a retailer to a subsidiary shall not be  
23 deemed to require the retailer to pay the sales tax on the credit  
24 sale represented by the account transferred prior to the time the  
25 customer makes payment on such account. If the subsidiary does not  
26 obtain a Nebraska sales tax permit, the taxpayer shall obtain a  
27 surety bond in favor of the State of Nebraska to insure payment

1 of the tax and any interest and penalty imposed thereon under this  
2 section in an amount not less than two times the amount of tax  
3 payable on outstanding accounts receivable held by the subsidiary  
4 as of the end of the prior calendar year. Failure to obtain either  
5 a sales tax permit or a surety bond in accordance with this section  
6 shall result in the payment on the next required filing date of  
7 all sales taxes not previously remitted. When the retailer has  
8 adopted one basis or the other of reporting credit, conditional, or  
9 installment sales and paying the tax thereon, he or she will not be  
10 permitted to change from that basis without first having notified  
11 the Tax Commissioner.

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

26 (d) For all sales tax collected prior to October 1, 2002,  
27 the taxpayer shall deduct and withhold, from the taxes otherwise

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

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

24 (b) No refund shall be allowed unless a claim therefor  
25 is filed with the Tax Commissioner by the person who made the  
26 overpayment or his or her attorney, executor, or administrator  
27 within three years from the required filing date following the

1 close of the period for which the overpayment was made, within six  
2 months after any determination becomes final under section 77-2709,  
3 or within six months from the date of overpayment with respect  
4 to such determinations, whichever of these three periods expires  
5 later, unless the credit relates to a period for which a waiver has  
6 been given. Failure to file a claim within the time prescribed in  
7 this subsection shall constitute a waiver of any demand against the  
8 state on account of overpayment.

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

13 (d) The Tax Commissioner shall allow or disallow  
14 a claim within one hundred eighty days after it has been  
15 filed. If A request for a hearing shall constitute a waiver  
16 of the one-hundred-eighty-day period. The claimant and the Tax  
17 Commissioner may also agree to extend the one-hundred-eighty-day  
18 period. If a hearing has not been requested and the Tax  
19 Commissioner has neither allowed nor disallowed a claim within such  
20 either the one hundred eighty days or the period agreed to by the  
21 claimant and the Tax Commissioner, the claim shall be deemed to  
22 have been allowed.

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

27 (f) Within thirty days after the mailing of the notice

1 of the Tax Commissioner's action upon a claim filed pursuant  
2 to the Nebraska Revenue Act of 1967, the action of the Tax  
3 Commissioner shall be final unless the taxpayer seeks review of the  
4 Tax Commissioner's determination as provided in section 77-27,127.

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

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

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

1           (j)(i) Credit shall be allowed to the retailer,  
2 contractor, or repairperson for sales or use taxes paid pursuant  
3 to the Nebraska Revenue Act of 1967 on any deduction taken that  
4 is attributed to bad debts not including interest. Bad debt has  
5 the same meaning as in 26 U.S.C. 166, as such section existed  
6 on January 1, 2003. However, the amount calculated pursuant to  
7 26 U.S.C. 166 shall be adjusted to exclude: Financing charges  
8 or interest; sales or use taxes charged on the purchase price;  
9 uncollectible amounts on property that remains in the possession  
10 of the seller until the full purchase price is paid; and expenses  
11 incurred in attempting to collect any debt and repossessed  
12 property.

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

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

26           (iv) When the amount of bad debt exceeds the amount  
27 of taxable sales for the period during which the bad debt is

1 written off, a refund claim may be filed within the otherwise  
2 applicable statute of limitations for refund claims. The statute of  
3 limitations shall be measured from the due date of the return on  
4 which the bad debt could first be claimed.

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

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

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

20 Sec. 26. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,  
21 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, and 27 of this act  
22 become operative on October 1, 2008. Sections 17 and 28 of this act  
23 become operative on December 1, 2008. The other section of this act  
24 becomes operative on its effective date.

25 Sec. 27. Original sections 77-2701.32, 77-2704.26,  
26 77-2704.45, 77-2704.46, and 77-2705, Reissue Revised Statutes of  
27 Nebraska, section 77-2708, Revised Statutes Cumulative Supplement,

1 2006, and sections 70-1903, 70-1904, 70-1905, 70-1907, 77-2701,  
2 77-2701.04, 77-2701.16, 77-2701.34, 77-2703, 77-2703.01, and  
3 77-2704.57, Revised Statutes Supplement, 2007, are repealed.

4           Sec. 28. Original section 77-2704.09, Revised Statutes  
5 Supplement, 2007, is repealed.

6           2. On page 1, strike lines 2 through 11 and insert  
7 "77-2701.32, 77-2704.26, 77-2704.45, 77-2704.46, and 77-2705,  
8 Reissue Revised Statutes of Nebraska, section 77-2708, Revised  
9 Statutes Cumulative Supplement, 2006, and sections 70-1903,  
10 70-1904, 70-1905, 70-1907, 77-2701, 77-2701.04, 77-2701.16,  
11 77-2701.34, 77-2703, 77-2703.01, and 77-2704.57, Revised Statutes  
12 Supplement, 2007; to change provisions relating to sales and use  
13 tax treatment of community-based energy development projects; to  
14 define and redefine terms; to provide for and change provisions  
15 relating to sales and use tax exemptions; to change provisions  
16 relating to sales and use tax retailer registration and refund  
17 claims; to provide for sales tax treatment of digital works; to  
18 eliminate obsolete provisions; to harmonize provisions; to provide  
19 operative dates; and to repeal the original sections."