

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -
2008**

COMMITTEE STATEMENT

LB916

Hearing Date: January 23, 2008

Committee On: Revenue

Introducer(s): (Revenue Committee)

Title: Change sales tax provisions

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

7 Yes	Senators Burling, Cornett, Janssen, Langemeier, Preister, Raikes and White
0 No	
1 Absent	Senator Dierks
0 Present, not voting	

Proponents:

George Kilpatrick, Legal Counsel
Doug Ewald

Representing:

Committee on Revenue
Department of Revenue

Opponents:

Larry L. Chambers

Representing:

Diode Communications

Neutral:

Korby Gilbertson

Representing:

Motion Picture Association of America

Summary of purpose and/or change:

LB 916 would amend several sections of the sales tax statutes to enact definitions, clarify definitions, and otherwise aid the Department of Revenue in enforcing the sales tax statutes. It would also provide for enforcement of sales tax through a responsible officer or employee and allow the taxpayer and Tax Commissioner to waive the deadline for resolving disputes by agreement. It is a combination of two different requests for legislation proposed by the Department of Revenue.

Section by section summary

Sections 1 and 2 would amend sections 77-2701 and 77-2701.04 to include four new definitions into the revenue act and the sales tax statutes.

Section 3 would amend section 77-2701.16, the definition of "gross receipts" (our sales tax base) to strike the first six subsections. Pursuant to LB 759 (2003) the first six subsections terminated January 1, 2004, while the next eight became operative on that date. LB 916 would delete these obsolete sections from the statute.

This section would also provide that contractor labor performed by a public utility that is an option 2 or option 3 contractor for satellite service is not taxable with regard to any work performed on the customer's side of the demarcation point. Finally, this section would provide that the sale of digital goods delivered electronically is taxable if the sale would be taxable had the product been delivered on a tangible medium like a CD or video disk. This is consistent with case law in Nebraska

Sections 4, 9, 10, 12, and 13 would amend sections 77-2701.32, 77-2703, 77-2703.01, 77-2704.26, and 77-2704.45 to harmonize the renumbered subsections of section 77-2701.16. Section 9 would also add a reference to digital goods to the section that imposes the sales tax.

Section 5 would define "delivered electronically" as a means other than delivery of tangible storage media. Section 6 would define "digital audio works" as any sounds including ring tones. Section 7 would define "digital audiovisual works" as pictures and sound, and section 8 would define "digital books" as something which would be recognized as a book. Sales of all of these products are taxable under Nebraska sales tax law as interpreted by the Nebraska Supreme Court in *May Broadcasting v Boehm*, 241 Neb. 660 (1992). LB 916 would state this in statute.

Section 11 would amend section 77-2704.09 to rewrite the sales tax exemption for insulin, prescription drugs and prosthetic devices. Under LB 916, there would be three

categories of exemption: (a) insulin, in all cases, (b) drugs, when dispensed pursuant to a prescription, and (c) durable medical equipment, home medical supplies, and prostheses when sold under a prescription *and* eligible for reimbursement under the Medical Assistance Act. Currently, there is some ambiguity, resolved by the regulations of the Department, as to whether or not prescription drugs must also be reimbursable under Medicaid.

Section 14 would amend section 77-2705 to require retailers to register the name and address of any employee, officer, director, shareholder, member, or any other person who will be responsible for collecting and remitting sales taxes. These person's actions are then attributed to the business for purposes of audit or misrepresentation. Such persons may also be personally liable for the unpaid sales tax of the business.

Section 15 would amend section 77-2708 (sales tax enforcement) to allow the Tax Commissioner and any taxpayer seeking a refund to agree to waive the 180 day deadline for resolving disputes. A request for a hearing on the refund claim would automatically be considered a waiver of the 180 day period. Under current law, if the Tax Commissioner does not rule within 180 days, the claim is deemed to be allowed. LB 916 would provide for waiver under these conditions.

Section 16 would provide an operative date of October 1, 2008 and section 17 would repeal the original sections.

Explanation of amendments, if any:

The Committee amendments make a couple of changes to clarify aspects of LB 916 and add the provisions of LB 1137, which clarifies the sales tax exemption for Community-Based Energy Development projects that was enacted last year; LB 1126, to exempt originals and copies of depositions and court documents and copies of medical records obtained by patients; and LB 1134, to expand the exemption for livestock to include game birds.

Section by section summary of the bill as amended

Section 1 would amend section 70-1903, the definition of C-BED projects for purposes of the development act and the sales tax exemption. This amendment would clarify that the restrictions on ownership prohibits "individuals" from owning "directly or indirectly" more than 15 percent of the project. These changes recognize ownership by partnerships, cooperatives, and other pass-through entities. Changes to these sections also clarify the restrictions requiring that at least 33 percent of the "gross"

power purchase payments must go to the owners or local community. Currently, the restrictions do not specify whether the calculation is to be on the gross or the net receipts. **(LB 1137)**

Section 2 would amend section 70-1904, dealing with the negotiated power purchase agreements, to require the C-BED developer to notify the utility if there is a change in ownership that would disqualify the project from the benefits of the act. **(LB 1137)**

Section 3 would amend section 70-1905 to require utilities to report by each March 1st their efforts to purchase power from C-BED projects. **(LB 1137)**

Section 4 would amend section 70-1907 to clarify that an investor must be a qualified owner under the act. **(LB 1137)**

Sections 5 and 6 would amend sections 77-2701 and 77-2701.04 to include five new definitions and two new exemptions into the revenue act and the sales tax statutes. **(Original LB 916 and LB 1126)**

Section 7 would amend section 77-2701.16, the definition of "gross receipts" (our sales tax base) to strike the first six subsections. Pursuant to LB 759 (2003) the first six subsections terminated January 1, 2004, while the next eight became operative on that date. LB 916 would delete these obsolete sections from the statute.

This section would also insert satellite TV installation as taxable alongside cable services. Under current law, installation of utilities including cable is taxable. However, contractor labor performed by a public utility that is an option 2 or option 3 contractor is not taxable with regard to any work performed on the customer's side of the demarcation point. This part is changed from original LB 916 which included a separate subsection dealing with satellite TV. The Committee amendments add references to satellite TV alongside cable to emphasize that the sales tax treatment is the same.

Finally, this section would provide that the retail sale of digital goods delivered electronically is taxable if the sale would be taxable had the product been delivered on a tangible medium like a CD or video disk. This is consistent with case law in Nebraska, but not general practice. **(Original LB 916)**

Sections 8, 15, 16, 18, and 19 would amend sections 77-2701.32, 77-2703, 77-2703.01, 77-2704.26, and 77-2704.45 to harmonize the renumbered subsections of section 77-2701.16. Section 15 would also add a reference to digital goods to the section that imposes the sales tax. **(Original LB 916)**

Section 9 would define “delivered electronically” as a means other than delivery of tangible storage media. Section 10 would define “digital audio works” as any sounds including ring tones. Section 11 would define “digital audiovisual works” as pictures and sound, and section 12 would define “digital books” as something which would be recognized as a book. Section 13 would define “digital code” a code granting the purchaser a right to access products delivered electronically. Sales of all of these products are taxable under Nebraska sales tax law as interpreted by the Nebraska Supreme Court. LB 916 with the Committee amendments would state this in statute. **(Original LB 916)**

Section 14 would amend section 77-2701.34, the definition of sale for resale, to specifically include digital products within the exclusion of sales for resale. **(Added clarification to original LB 916)**

Section 17 would amend section 77-2704.09 to rewrite the sales tax exemption for insulin, prescription drugs and prosthetic devices. Under LB 916, there would be three categories of exemption: (a) insulin, in all cases, (b) drugs, when dispensed pursuant to a prescription, and (c) durable medical equipment, home medical supplies, and prostheses when sold under a prescription *and* eligible for reimbursement under the Medical Assistance Act. Currently, there is some ambiguity, resolved by the regulations of the Department, as to whether or not prescription drugs must also be reimbursable under Medicaid. **(Original LB 916)**

Section 20 would amend section 77-2704.48 to add species of game birds subject to permit and regulation of the Game and Parks Commission to the sales tax exemption for animal life. **(LB 1134)**

Section 21 would amend section 77-2704.57 to require the C-BED developer to show the Tax Commissioner the ownership structure and the power purchase agreement to assure qualification. Also, the Tax Commissioner is to notify the utility if there is a change in ownership that would disqualify the project. If an electric utility purchases a project, the sales tax exemption would be extinguished, but there would be no

recovery of past benefits that were received. This section would also clarify that a new wind energy project means tangible personal property which is used to convert wind energy into electricity.

This section also adds definitions of “power purchase agreements payments” as the total payments during the life of the agreement. Payments to the local community are to include payments for real and personal property leases and real and personal property tax receipts. The Department of Revenue may examine the receipts and

other records to determine if the projected payment agreements were met. If not, the department may “recover” all of sales tax that was not paid until three years after the end of the power purchase agreement. Also the project may voluntarily surrender the sales tax exemption and pay the amount of sales and use taxes that would have been due. Interest shall be paid on recovered sales taxes at the statutory rate. **(LB 1137 with amendments)**

Section 22 would enact a new sales tax exemption for originals and copies of depositions, bills of exceptions, and transcripts prepared by a court reporter. **(LB 1126 with clarifying amendment)**

Section 23 would enact a new sales tax exemption for copies of medical records provided to the patient or another person holding the patient’s power of attorney for health care. **(LB 1126 with clarifying amendment)**

Section 24 would amend section 77-2705 to require retailers to register the name and address of any employee, officer, director, shareholder, member, or any other person who will be responsible for collecting and remitting sales taxes. These person’s actions are then attributed to the business for purposes of audit or misrepresentation. Such persons may also be personally liable for the unpaid sales tax of the business. **(Original LB 916)**

Section 25 would amend section 77-2708 (sales tax enforcement) to allow the Tax Commissioner and any taxpayer seeking a refund to agree to waive the 180-day deadline for resolving disputes. A request for a hearing on the refund claim would automatically be considered a waiver of the 180-day period. Under current law, if the Tax Commissioner does not rule within 180 days, the claim is deemed to be allowed. LB 916 would provide for waiver under these conditions. **(Original LB 916)**

Section 26 would provide an operative date of October 1, 2008 and section 27 would repeal the original sections. **(Original LB 916 with a uniform operative date for all sections.)**

Senator Ray Janssen, Chairperson