

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 708**

Introduced by Pahls, 31.

Read first time January 09, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2703, Revised Statutes Supplement, 2007; to adopt the  
3 Sales Tax Holiday Act; to harmonize provisions; to repeal  
4 the original section; and to declare an emergency.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 3 of this act shall be known and  
2 may be cited as the Sales Tax Holiday Act.

3           Sec. 2. For purposes of the Sales Tax Holiday Act, the  
4 definitions found in sections 77-2701.05 to 77-2701.48 shall be  
5 used.

6           Sec. 3. (1) Beginning at 12:01 a.m. on the first Friday  
7 in August and ending at midnight on the Sunday following, a  
8 retailer may elect to:

9           (a) Not collect the tax from the consumer as required  
10 in subdivision (1)(a) of section 77-2703 on any tangible personal  
11 property sold at retail in this state. For such sales, the  
12 tax shall constitute a part of the sales price and shall not  
13 be considered a debt from the consumer to the retailer or be  
14 recoverable by law in the same manner as other debts;

15           (b) Advertise, hold out, or state to the public or to any  
16 customer, directly or indirectly, that the tax or part thereof will  
17 be assumed or absorbed by the retailer, that it will be added to  
18 the sales price of any item listed under subsection (2) of this  
19 section sold, or that, if added, it or any part thereof will be  
20 refunded; or

21           (c) Combine the list price, the price advertised in the  
22 premises, the marked price, or other price on the sales check or  
23 other proof of sales of any tangible personal property sold at  
24 retail in this state with the sales tax returned under section  
25 77-2708 for any such item.

1           (2) Any retailer who makes an election pursuant to this  
2 section shall clearly designate, describe, declare, state, or  
3 advertise prior to any sale to any consumer which items of tangible  
4 personal property for sale at retail qualify for the election.

5           (3) Any retailer who makes an election under this section  
6 may advertise, state, declare, or hold out that such sales are  
7 tax-free sales.

8           Sec. 4. Section 77-2703, Revised Statutes Supplement,  
9 2007, is amended to read:

10           77-2703 (1) There is hereby imposed a tax at the rate  
11 provided in section 77-2701.02 upon the gross receipts from all  
12 sales of tangible personal property sold at retail in this state;  
13 the gross receipts of every person engaged as a public utility,  
14 as a community antenna television service operator or any person  
15 involved in the connecting and installing of the services defined  
16 in subdivision (8)(a), (b), (d), or (e) of section 77-2701.16, or  
17 as a retailer of intellectual or entertainment properties referred  
18 to in subsection (9) of section 77-2701.16; the gross receipts from  
19 the sale of admissions in this state; the gross receipts from the  
20 sale of warranties, guarantees, service agreements, or maintenance  
21 agreements when the items covered are subject to tax under this  
22 section; beginning January 1, 2008, the gross receipts from the  
23 sale of bundled transactions when one or more of the products  
24 included in the bundle are taxable; and the gross receipts from  
25 the provision of services defined in subsection (10) of section

1 77-2701.16. Except as provided in section 77-2701.03, when there is  
2 a sale, the tax shall be imposed at the rate in effect at the time  
3 the gross receipts are realized under the accounting basis used by  
4 the retailer to maintain his or her books and records.

5 (a) ~~The~~ Except as provided in the Sales Tax Holiday Act,  
6 the tax imposed by this section shall be collected by the retailer  
7 from the consumer. It shall constitute a part of the purchase  
8 price and until collected shall be a debt from the consumer to the  
9 retailer and shall be recoverable at law in the same manner as  
10 other debts. The tax required to be collected by the retailer from  
11 the consumer constitutes a debt owed by the retailer to this state.

12 (b) ~~It~~ Except as provided in the Sales Tax Holiday Act,  
13 it is unlawful for any retailer to advertise, hold out, or state to  
14 the public or to any customer, directly or indirectly, that the tax  
15 or part thereof will be assumed or absorbed by the retailer, that  
16 it will not be added to the selling, renting, or leasing price of  
17 the property sold, rented, or leased, or that, if added, it or any  
18 part thereof will be refunded. The provisions of this subdivision  
19 shall not apply to a public utility.

20 (c) ~~The~~ Except as provided in the Sales Tax Holiday  
21 Act, the tax required to be collected by the retailer from the  
22 purchaser, unless otherwise provided by statute or by rule and  
23 regulation of the Tax Commissioner, shall be displayed separately  
24 from the list price, the price advertised in the premises, the  
25 marked price, or other price on the sales check or other proof of

1 sales, rentals, or leases.

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

14 (e) The use of tokens or stamps for the purpose of  
15 collecting or enforcing the collection of the taxes imposed in the  
16 Nebraska Revenue Act of 1967 or for any other purpose in connection  
17 with such taxes is prohibited.

18 (f) For the purpose of the proper administration of the  
19 provisions of the Nebraska Revenue Act of 1967 and to prevent  
20 evasion of the retail sales tax, it shall be presumed that all  
21 gross receipts are subject to the tax until the contrary is  
22 established. The burden of proving that a sale of property is not  
23 a sale at retail is upon the person who makes the sale unless he  
24 or she takes from the purchaser (i) a resale certificate to the  
25 effect that the property is purchased for the purpose of reselling,

1 leasing, or renting it, (ii) an exemption certificate pursuant to  
2 subsection (7) of section 77-2705, or (iii) a direct payment permit  
3 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale  
4 certificate, exemption certificate, or direct payment permit shall  
5 be conclusive proof for the seller that the sale was made for  
6 resale or was exempt or that the tax will be paid directly to the  
7 state.

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

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

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

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

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

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

19           (i) The tax imposed by this section on the sales of  
20 motor vehicles, semitrailers, and trailers as defined in sections  
21 60-339, 60-348, and 60-354 shall be the liability of the purchaser  
22 and, with the exception of motor vehicles, semitrailers, and  
23 trailers registered pursuant to section 60-3,198, the tax shall  
24 be collected by the county treasurer or designated county official  
25 as provided in the Motor Vehicle Registration Act at the time

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



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

1 pertaining to the collection of the use tax.

2 (j)(i) The tax imposed by this section on the sale of a  
3 motorboat as defined in section 37-1204 shall be the liability of  
4 the purchaser. The tax shall be collected by the county treasurer  
5 or designated county official at the time the purchaser makes  
6 application for the registration of the motorboat. At the time  
7 of the sale of a motorboat, the seller shall (A) state on the  
8 sales invoice the dollar amount of the tax imposed under this  
9 section and (B) furnish to the purchaser a certified statement of  
10 the transaction, in such form as the Tax Commissioner prescribes,  
11 setting forth as a minimum the total sales price, the allowance for  
12 any trade-in, and the difference between the two. The sales tax due  
13 shall be computed on the difference between the total sales price  
14 and the allowance for any trade-in as disclosed by such certified  
15 statement. Any seller who willfully understates the amount upon  
16 which the sales tax is due shall be subject to a penalty of one  
17 thousand dollars. A copy of such certified statement shall also  
18 be furnished to the Tax Commissioner. Any seller who fails or  
19 refuses to furnish such certified statement shall be guilty of a  
20 misdemeanor and shall, upon conviction thereof, be punished by a  
21 fine of not less than twenty-five dollars nor more than one hundred  
22 dollars. If the seller fails to state on the sales invoice the  
23 dollar amount of the tax due, the purchaser shall have the right  
24 and authority to rescind any agreement for purchase and to declare  
25 the purchase null and void. If the purchaser retains such motorboat

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

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

21 (k) The Tax Commissioner shall adopt and promulgate  
22 necessary rules and regulations for determining the amount subject  
23 to the taxes imposed by this section so as to insure that the  
24 full amount of any applicable tax is paid in cases in which a  
25 sale is made of which a part is subject to the taxes imposed by

1 this section and a part of which is not so subject and a separate  
2 accounting is not practical or economical.

3 (2) A use tax is hereby imposed on the storage, use, or  
4 other consumption in this state of property purchased, leased, or  
5 rented from any retailer and on any transaction the gross receipts  
6 of which are subject to tax under subsection (1) of this section  
7 on or after June 1, 1967, for storage, use, or other consumption  
8 in this state at the rate set as provided in subsection (1) of  
9 this section on the sales price of the property or, in the case of  
10 leases or rentals, of the lease or rental prices.

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

1 tax to which the receipt refers.

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

8 (c) The Tax Commissioner, in order to facilitate the  
9 proper administration of the use tax, may designate such person or  
10 persons as he or she may deem necessary to be use tax collectors  
11 and delegate to such persons such authority as is necessary to  
12 collect any use tax which is due and payable to the State of  
13 Nebraska. The Tax Commissioner may require of all persons so  
14 designated a surety bond in favor of the State of Nebraska to  
15 insure against any misappropriation of state funds so collected.  
16 The Tax Commissioner may require any tax official, city, county, or  
17 state, to collect the use tax on behalf of the state. All persons  
18 designated to or required to collect the use tax shall account for  
19 such collections in the manner prescribed by the Tax Commissioner.  
20 Nothing in this subdivision shall be so construed as to prevent the  
21 Tax Commissioner or his or her employees from collecting any use  
22 taxes due and payable to the State of Nebraska.

23 (d) All persons designated to collect the use tax and all  
24 persons required to collect the use tax shall forward the total of  
25 such collections to the Tax Commissioner at such time and in such

1 manner as the Tax Commissioner may prescribe. For all use taxes  
2 collected prior to October 1, 2002, such collectors of the use tax  
3 shall deduct and withhold from the amount of taxes collected two  
4 and one-half percent of the first three thousand dollars remitted  
5 each month and one-half of one percent of all amounts in excess  
6 of three thousand dollars remitted each month as reimbursement  
7 for the cost of collecting the tax. For use taxes collected on  
8 and after October 1, 2002, such collectors of the use tax shall  
9 deduct and withhold from the amount of taxes collected two and  
10 one-half percent of the first three thousand dollars remitted each  
11 month as reimbursement for the cost of collecting the tax. Any  
12 such deduction shall be forfeited to the State of Nebraska if such  
13 collector violates any rule, regulation, or directive of the Tax  
14 Commissioner.

15 (e) For the purpose of the proper administration of the  
16 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
17 it shall be presumed that property sold, leased, or rented by any  
18 person for delivery in this state is sold, leased, or rented for  
19 storage, use, or other consumption in this state until the contrary  
20 is established. The burden of proving the contrary is upon the  
21 person who purchases, leases, or rents the property.

22 (f) For the purpose of the proper administration of the  
23 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,  
24 for the sale of property to an advertising agency which purchases  
25 the property as an agent for a disclosed or undisclosed principal,

1 the advertising agency is and remains liable for the sales and  
2 use tax on the purchase the same as if the principal had made the  
3 purchase directly.

4           Sec. 5. Original section 77-2703, Revised Statutes  
5 Supplement, 2007, is repealed.

6           Sec. 6. Since an emergency exists, this act takes effect  
7 when passed and approved according to law.