

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 127

Introduced by Avery, 28.

Read first time January 09, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701 and 77-2701.04, Revised Statutes Cumulative
3 Supplement, 2008; to define a term; to exempt sales of
4 college textbooks and certain clothing, school supplies,
5 and computers from sales and use tax as prescribed;
6 to harmonize provisions; and to repeal the original
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to
4 77-27,236 and sections 3 to 5 of this act shall be known and may be
5 cited as the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to
9 77-2713 and sections 3 to 5 of this act, unless the context
10 otherwise requires, the definitions found in sections 77-2701.05 to
11 77-2701.53 and section 3 of this act shall be used.

12 Sec. 3. College textbooks means new or used books and
13 related workbooks required or recommended for a course at an
14 institution of higher education.

15 Sec. 4. Commencing October 1, 2009, sales and use taxes
16 shall not be imposed on the gross receipts from the sales in this
17 state of college textbooks to full-time and part-time students
18 enrolled at institutions of higher education if the student
19 presents a valid student identification card.

20 Sec. 5. (1) Sales and use tax shall not be imposed on
21 the gross receipts from the sale, use, or other consumption in this
22 state of the following items of tangible personal property, if sold
23 between 12:01 a.m. on the first Friday of August and 11:59 p.m. the
24 following Sunday:

25 (a) Clothing with a sales price of one hundred dollars or

1 less per item;

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

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

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

8 (a) Computer software;

9 (b) Clothing accessories or equipment;

10 (c) Protective equipment;

11 (d) Sport or recreational equipment;

12 (e) School art supplies;

13 (f) School instructional material;

14 (g) School computer supplies;

15 (h) Any item for use in a trade or business; or

16 (i) The lease or rental of any item.

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

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

22 (a) A sale of eligible property under a layaway sale
23 qualifies for exemption if:

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

1 (ii) The purchaser selects the property and the retailer
2 accepts the order for the item during the exemption period, for
3 immediate delivery upon full payment, even if delivery is made
4 after the exemption period;

5 (b) A discount by the seller reduces the sales price of
6 the eligible property and the discounted sales price determines
7 whether the sales price is within the price threshold. A coupon
8 that reduces the sales price is treated as a discount if the seller
9 is not reimbursed for the coupon amount by a third party. If a
10 discount applies to the total amount paid by a purchaser, rather
11 than to the sales price of a particular item, and the purchaser has
12 purchased both eligible property and taxable property, the seller
13 shall allocate the discount based on the total sales price of the
14 taxable property compared to the total sales price of all property
15 sold in that same transaction;

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

22 (d) Eligible property purchased during the exemption
23 period with the use of a rain check qualifies for the exemption,
24 regardless of when the rain check was issued. Issuance of a
25 rain check during the exemption period does not qualify eligible

1 property for the exemption if the eligible property is purchased
2 after the exemption period;

3 (e) The procedure for an exchange or return of eligible
4 property is as follows:

5 (i) If eligible property is purchased during the
6 exemption period, but later exchanged for similar eligible
7 property, even if the eligible property exchanged is a different
8 size, different color, or has some other different feature, no
9 additional tax is due, even if the exchange is made after the
10 exemption period;

11 (ii) If eligible property is purchased during the
12 exemption period but, after the exemption period has ended, the
13 purchaser returns the eligible property and receives credit on the
14 purchase of a different item, the appropriate sales tax is due on
15 the sale of the newly purchased item; and

16 (iii) If eligible property is purchased before the
17 exemption period, but during the exemption period the purchaser
18 returns the eligible property and receives credit on the purchase
19 of different eligible property, no sales tax is due on the sale of
20 the new eligible property if the new eligible property is purchased
21 during the exemption period;

22 (f) Delivery charges, including shipping, handling, and
23 service charges, are part of the sales price of eligible property.
24 For the purpose of determining the price threshold for eligible
25 property, if all the property in a shipment qualifies as eligible

1 property and the sales price for each item in the shipment is
2 within the price threshold for eligible property, then the seller
3 does not have to allocate the delivery, handling, or service
4 charge to determine if the price threshold for eligible property is
5 exceeded and the shipment shall be considered a sale of eligible
6 property. If the shipment includes eligible property and other
7 taxable property, including taxable property that would be eligible
8 property except for the fact that the sales price is in excess
9 of the price threshold for eligible property, the seller shall
10 allocate the delivery charge by using:

11 (i) A percentage based on the total sales prices of the
12 taxable property compared to the total sales prices of all property
13 in the shipment; or

14 (ii) A percentage based on the total weight of the
15 taxable property compared to the total weight of all property in
16 the shipment. The seller shall tax the percentage of the delivery
17 charge allocated to the taxable property, but shall not tax the
18 percentage allocated to the eligible property;

19 (g) For purposes of this section, eligible property
20 qualifies for exemption if:

21 (i) The eligible property is both delivered to and paid
22 for by the purchaser during the exemption period; or

23 (ii) The purchaser orders and pays for eligible property
24 and the seller accepts the order during the exemption period for
25 immediate shipment, even if delivery is made after the exemption

1 period. The seller accepts an order when the seller has taken
2 action to fill the order for immediate shipment. Actions to fill an
3 order include placement of an "in date" stamp on a mail order or
4 assignment of an "order number" to a telephone order. An order is
5 for immediate shipment when the purchaser does not request delayed
6 shipment. An order is for immediate shipment, notwithstanding that
7 the shipment may be delayed because of a backlog of orders or
8 because stock is currently unavailable to or on back order by the
9 seller;

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

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

25 Sec. 6. Original sections 77-2701 and 77-2701.04, Revised

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1 Statutes Cumulative Supplement, 2008, are repealed.