

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 165

Introduced by Cornett, 45.

Read first time January 12, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend
2 sections 77-2701.03 and 77-2704.52, Reissue Revised
3 Statutes of Nebraska, and sections 66-1521, 77-1783.01,
4 77-1784, 77-2701.16, 77-2701.24, 77-2703.04, 77-2704.09,
5 77-2704.12, 77-2711, 77-2712.05, and 77-2780, Revised
6 Statutes Cumulative Supplement, 2008; to change
7 provisions relating to administrative costs, tax
8 payments, sales tax, and income tax; to provide operative
9 dates; to repeal the original sections; and to declare
10 an emergency.

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

1 Section 1. Section 66-1521, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 66-1521 (1) A petroleum release remedial action fee is
4 hereby imposed upon the producer, refiner, importer, distributor,
5 wholesaler, or supplier who engages in the sale, distribution,
6 delivery, and use of petroleum within this state, except that the
7 fee shall not be imposed on petroleum that is exported. The fee
8 shall also be imposed on diesel fuel which is indelibly dyed. The
9 amount of the fee shall be nine-tenths of one cent per gallon on
10 motor vehicle fuel as defined in section 66-482 and three-tenths of
11 one cent per gallon on diesel fuel as defined in section 66-482.
12 The amount of the fee shall be used first for payment of claims
13 approved by the State Claims Board pursuant to section 66-1531;
14 second, up to three million dollars of the fee per year shall be
15 used for reimbursement of owners and operators under the Petroleum
16 Release Remedial Action Act for investigations of releases ordered
17 pursuant to section 81-15,124; and third, the remainder of the fee
18 shall be used for any other purpose authorized by section 66-1519.
19 The fee shall be paid by all producers, refiners, importers,
20 distributors, wholesalers, and suppliers subject to the fee by
21 filing a monthly return on or before the twenty-fifth day of
22 the calendar month following the monthly period to which it
23 relates. The pertinent provisions, specifically including penalty
24 provisions, of the motor fuel laws as defined in section 66-712
25 shall apply to the administration and collection of the fee except

1 for the treatment given refunds. There shall be a refund allowed
2 on any fee paid on petroleum which was taxed and then exported,
3 destroyed, or purchased for use by the United States Government
4 or its agencies. The department may also adjust for all errors in
5 the payment of the fee. In each calendar year, no claim for refund
6 related to the fee can be for an amount less than ten dollars.

7 (2) No producer, refiner, importer, distributor,
8 wholesaler, or supplier shall engage in the sale, distribution,
9 delivery, or use of petroleum in this state without having first
10 obtained a petroleum release remedial action license. Application
11 for a license shall be made to the Motor Fuel Tax Enforcement
12 and Collection Division of the Department of Revenue upon a form
13 prepared and furnished by the division. If the applicant is an
14 individual, the application shall include the applicant's social
15 security number. Failure to obtain a license prior to engaging
16 in the sale, distribution, delivery, or use of petroleum shall
17 be a Class IV misdemeanor. The division may suspend or cancel
18 the license of any producer, refiner, importer, distributor,
19 wholesaler, or supplier who fails to pay the fee imposed by
20 subsection (1) of this section in the same manner as licenses are
21 suspended or canceled pursuant to section 66-720.

22 (3) The division may adopt and promulgate rules and
23 regulations necessary to carry out this section.

24 (4) The division shall deduct and withhold from the
25 petroleum release remedial action fee collected pursuant to this

1 section an amount sufficient to reimburse the direct costs of
2 collecting and administering the petroleum release remedial action
3 fee. Such costs shall not exceed ~~twenty-eight~~ one hundred fifty
4 thousand dollars for each fiscal year. The ~~twenty-eight~~ one hundred
5 fifty thousand dollars shall be prorated, based on the number
6 of months the fee is collected, whenever the fee is collected
7 for only a portion of a year. The amount deducted and withheld
8 for costs shall be deposited in the Petroleum Release Remedial
9 Action Collection Fund which is hereby created. The Petroleum
10 Release Remedial Action Collection Fund shall be appropriated
11 to the Department of Revenue. Any money in the fund available
12 for investment shall be invested by the state investment officer
13 pursuant to the Nebraska Capital Expansion Act and the Nebraska
14 State Funds Investment Act.

15 (5) The division shall collect the fee imposed by
16 subsection (1) of this section.

17 Sec. 2. Section 77-1783.01, Revised Statutes Cumulative
18 Supplement, 2008, is amended to read:

19 77-1783.01 (1) Any officer or employee with the duty
20 to collect, account for, or pay over any taxes imposed upon a
21 corporation or with the authority to decide whether the corporation
22 will pay taxes imposed upon a corporation shall be personally
23 liable for the payment of such taxes in the event of willful
24 failure on his or her part to have a corporation perform such act.
25 Such taxes shall be collected in the same manner as provided under

1 the Uniform State Tax Lien Registration and Enforcement Act.

2 (2) Within sixty days after the day on which the notice
3 and demand are made for the payment of such taxes, any officer or
4 employee seeking to challenge the Tax Commissioner's determination
5 as to his or her personal liability for the corporation's unpaid
6 taxes may petition for a redetermination. The petition may include
7 a request for the redetermination of the personal liability of
8 the corporate officer or employee, the redetermination of the
9 amount of the corporation's unpaid taxes, or both. If a petition
10 for redetermination is not filed within the sixty-day period, the
11 determination becomes final at the expiration of the period.

12 (3) If the requirements prescribed in subsection (2)
13 of this section are satisfied, the Tax Commissioner shall abate
14 collection proceedings and shall grant the officer or employee an
15 oral hearing and give him or her ten days' notice of the time
16 and place of such hearing. The Tax Commissioner may continue the
17 hearing from time to time as necessary.

18 (4) Any notice required under this section shall be
19 served personally or by mail in the manner provided in section
20 77-27,135.

21 (5) If the Tax Commissioner determines that further delay
22 in the collection of such taxes from the officer or employee will
23 jeopardize future collection proceedings, nothing in this section
24 shall prevent the immediate collection of such taxes.

25 (6) No notice or demand for payment may be issued against

1 any officer or employee with the duty to collect, account for, or
2 pay over any taxes imposed upon a corporation or with the authority
3 to decide whether the corporation will pay taxes imposed upon a
4 corporation more than three years after the final determination of
5 the corporation's liability.

6 ~~(6)~~ (7) For purposes of this section:

7 (a) Corporation shall mean any corporation and any other
8 entity that is taxed as a corporation under the Internal Revenue
9 Code;

10 (b) Taxes shall mean all taxes and additions to taxes
11 including interest and penalties imposed under the revenue laws of
12 this state which are administered by the Tax Commissioner; and

13 (c) Willful failure shall mean that failure which was the
14 result of an intentional, conscious, and voluntary action.

15 Sec. 3. Section 77-1784, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 77-1784 (1) The Tax Commissioner may accept electronic
18 filing of applications, returns, and any other document required to
19 be filed with the Tax Commissioner.

20 (2) The Tax Commissioner may use electronic fund
21 transfers to collect any taxes, fees, or other amounts required
22 to be paid to or collected by the Tax Commissioner or to pay any
23 refunds of such amounts.

24 (3) The Tax Commissioner may adopt rules and regulations
25 to establish the criteria for acceptability of filing documents

1 and making payments electronically. The criteria may include
2 requirements for electronic signatures, the type of tax for
3 which electronic filings or payments will be accepted, the method
4 of transfer, or minimum amounts which may be transferred. The
5 Tax Commissioner may refuse to accept any electronic filings or
6 payments that do not meet the criteria established.

7 (4) For payments due after January 1, 2006, the Tax
8 Commissioner may require the use of electronic fund transfers for
9 any taxes, fees, or amounts required to be paid to or collected by
10 the Tax Commissioner for any taxpayer who made payments exceeding
11 twenty thousand dollars for a tax program in the prior year for
12 that tax program. The requirement to make electronic fund transfers
13 may be phased in as deemed necessary by the Tax Commissioner.
14 Notice of the requirement to make electronic fund transfers shall
15 be provided at least three months prior to the date the first
16 electronic payment is required to be made.

17 (5) Any person who fails to make a required payment by
18 electronic fund transfer shall be subject to a penalty of one
19 hundred dollars for each required payment that was not made by
20 electronic fund transfer. The penalty provided by this section
21 shall be in addition to all other penalties and applies even if
22 payment by some other method is timely made. The Tax Commissioner
23 may waive the penalty provided in this section upon a showing of
24 good cause.

25 (6) The use of electronic filing of documents and

1 electronic fund transfers shall not change the rights of any
2 party from the rights such party would have if a different method
3 of filing or payment were used. Until criteria for electronic
4 signatures are adopted under subsection (3) of this section, the
5 document produced during the electronic filing of a taxpayer's
6 information with the state shall be prima facie evidence for all
7 purposes that the taxpayer's signature accompanied the taxpayer's
8 information in the electronic transmission.

9 (7) For tax returns due on or after January 1, 2010,
10 the Tax Commissioner may require any person that aids, procures,
11 advises, or assists in the preparation of and files any tax return
12 on behalf of any taxpayer for profit to file an electronic return
13 if the person filed twenty-five or more tax returns in the prior
14 calendar year. The requirement to require electronic filing may be
15 phased in as deemed necessary by the Tax Commissioner.

16 Any person that files a tax return on behalf of a
17 taxpayer must disclose in writing to the taxpayer that the return
18 will be filed in an electronic format and in accordance with rules
19 and regulations prescribed by the Tax Commissioner.

20 (8) Any person who fails to file an electronic return
21 as required under subsection (7) of this section shall be subject
22 to a penalty of one hundred dollars for each return that was not
23 properly filed in addition to other penalties provided by law. The
24 Tax Commissioner may waive the penalty provided in this section
25 upon a showing of good cause.

1 Sec. 4. Section 77-2701.03, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-2701.03 (1) The sales tax rate may only be changed
4 effective at the beginning of a calendar quarter.

5 (2) Any sales tax exemption or repeal of any sales tax
6 exemption shall only be effective at the beginning of a calendar
7 quarter.

8 (3) Any change in sales tax rate or base dealing with a
9 service covering a period of time starting before and ending after
10 the effective date of the change shall be effective as follows: (a)
11 For a rate increase or base expansion, the change shall apply to
12 the first billing period commencing on or after the effective date;
13 and (b) for a rate decrease or base contraction, the change shall
14 apply to bills rendered on or after the effective date.

15 (4) A seller shall be relieved of liability for failing
16 to collect tax at the new effective rate if the state fails to
17 provide a period of at least thirty days between enactment of the
18 statute providing for a rate change and the effective date of such
19 rate change, the seller collected tax at the immediately preceding
20 effective rate, and the seller's failure to collect at the newly
21 effective rate does not extend beyond thirty days after the date of
22 enactment of the new rate.

23 (5) Subsection (4) of this section shall not apply if the
24 seller fraudulently failed to collect at the new rate or solicits
25 purchasers based on the immediately preceding effective rate.

1 Sec. 5. Section 77-2701.16, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-2701.16 (1) Gross receipts means the total amount of
4 the sale or lease or rental price, as the case may be, of the
5 retail sales of retailers.

6 (2) Gross receipts of every person engaged as a public
7 utility specified in this subsection, as a community antenna
8 television service operator, or as a satellite service operator or
9 any person involved in connecting and installing services defined
10 in subdivision (2)(a), (b), or (d) of this section means:

11 (a)(i) In the furnishing of telephone communication
12 service, other than mobile telecommunications service as
13 described in section 77-2703.04, the gross income received
14 from furnishing ~~local exchange telephone service and intrastate~~
15 ~~message toll telephone service;~~ ancillary services and intrastate
16 telecommunications services, except for conference bridging
17 services and value-added, nonvoice data service; and

18 (ii) In the furnishing of mobile telecommunications
19 service as described in section 77-2703.04, the gross income
20 received from furnishing mobile telecommunications service that
21 originates and terminates in the same state to a customer with a
22 place of primary use in Nebraska;

23 (b) In the furnishing of telegraph service, the gross
24 income received from the furnishing of intrastate telegraph
25 services;

1 (c) In the furnishing of gas, electricity, sewer, and
2 water service, the gross income received from the furnishing of
3 such services upon billings or statements rendered to consumers for
4 such utility services;

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

10 (e) The gross income received from the provision,
11 installation, construction, servicing, or removal of property used
12 in conjunction with the furnishing, installing, or connecting of
13 any public utility services specified in subdivision (2)(a) or
14 (b) of this section or community antenna television service or
15 satellite service specified in subdivision (2)(d) of this section,
16 except when acting as a subcontractor for a public utility,
17 this subdivision does not apply to the gross income received by
18 a contractor electing to be treated as a consumer of building
19 materials under subdivision (2) or (3) of section 77-2701.10 for
20 any such services performed on the customer's side of the utility
21 demarcation point.

22 (3) Gross receipts of every person engaged in selling,
23 leasing, or otherwise providing intellectual or entertainment
24 property means:

25 (a) In the furnishing of computer software, the gross

1 income received, including the charges for coding, punching, or
2 otherwise producing any computer software and the charges for the
3 tapes, disks, punched cards, or other properties furnished by the
4 seller; and

5 (b) In the furnishing of videotapes, movie film,
6 satellite programming, satellite programming service, and satellite
7 television signal descrambling or decoding devices, the gross
8 income received from the license, franchise, or other method
9 establishing the charge.

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

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

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

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

17 (d) The gross income received for installing and applying
18 tangible personal property if the sale of the property is subject
19 to tax. If any or all of the charge for installation is free to
20 the customer and is paid by a third-party service provider to the
21 installer, any tax due on that part of the activation commission,
22 finder's fee, installation charge, or similar payment made by the
23 third-party service provider shall be paid and remitted by the
24 third-party service provider; ~~and collected and remitted by the~~
25 ~~installer;~~

1 (e) The gross income received for services of
2 recreational vehicle parks;

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

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

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

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

1 issued in connection with the payment.

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

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

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

24 (9) Gross receipts includes the retail sale of digital
25 audio works, digital audiovisual works, digital codes, and digital

1 books delivered electronically if the products are taxable when
2 delivered on tangible storage media. A sale includes the transfer
3 of a permanent right of use, the transfer of a right of use that
4 terminates on some condition, and the transfer of a right of use
5 conditioned upon the receipt of continued payments.

6 (10) Gross receipts does not include:

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

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

14 Sec. 6. Section 77-2701.24, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

16 77-2701.24 Occasional sale means:

17 (1) A sale, but not a lease or rental, of property which
18 is the subject of any intercompany sale or transfer involving
19 any parent, subsidiary, or brother-sister company relationship
20 under section 77-2704.28 and which was either originally acquired
21 prior to June 1, 1967, or, if acquired thereafter, the seller or
22 transferor directly or indirectly has previously paid a sales or
23 use tax thereon, including:

24 (a) From one corporation to another corporation
25 pursuant to a reorganization. For purposes of this subdivision,

1 reorganization means a statutory merger or consolidation or the
2 acquisition by a corporation of substantially all of the properties
3 of another corporation when the consideration is solely all or a
4 part of the voting stock of the acquiring corporation or of its
5 parent or subsidiary corporation;

6 (b) In connection with the winding up, dissolution, or
7 liquidation of a corporation only when there is a distribution of
8 the property of such corporation to the shareholders in kind if
9 the portion of the property so distributed to the shareholder is
10 substantially in proportion to the share of stock or securities
11 held by the shareholder;

12 (c) To a corporation for the purpose of organization of
13 such corporation or the contribution of additional capital to such
14 corporation when the former owners of the property transferred
15 are immediately after the transfer in control of the corporation
16 and the stock or securities received by each is substantially in
17 proportion to his or her interest in the property prior to the
18 transfer;

19 (d) To a partnership in the organization of such
20 partnership if the former owners of the property transferred
21 are immediately after the transfer members of such partnership and
22 the interest in the partnership received by each is substantially
23 in proportion to his or her interest in the property prior to the
24 transfer;

25 (e) From a partnership to the members thereof when made

1 in kind in the dissolution of such partnership if the portion of
2 the property so distributed to the members of the partnership is
3 substantially in proportion to the interest in the partnership held
4 by the members;

5 (f) To a limited liability company in the organization of
6 such limited liability company if the former owners of the property
7 transferred are immediately after the transfer members of such
8 limited liability company and the interest in the limited liability
9 company received by each is substantially in proportion to his or
10 her interest in the property prior to the transfer;

11 (g) From a limited liability company to the members
12 thereof when made in kind in the dissolution of such limited
13 liability company if the portion of the property so distributed to
14 the members of the limited liability company is substantially in
15 proportion to the interest in the limited liability company held by
16 the members;

17 (h) From one limited liability company to another limited
18 liability company pursuant to a reorganization; or

19 (i) Any transaction between two persons that qualifies as
20 a tax-free transaction under the Internal Revenue Code;

21 (2) A sale of household goods, personal effects, and
22 services if each of the following conditions is met and if any
23 one condition is not met then the entire gross receipts shall be
24 subject to the tax imposed by section 77-2703:

25 (a) Such sales are by an individual at his or her

1 residence or if more than one individual's property is involved
2 such sales are by one of the individuals involved at the residence
3 of one of the individuals or such sales are by an individual on an
4 online auction site;

5 (b) Such sales do not occur at any residence or on an
6 online auction site for more than three days during a calendar
7 year;

8 (c) Such individual or individuals or any member of any
9 of their households does not conduct or engage in a trade or
10 business in which similar items are sold or services provided;

11 (d) Such property sold was originally acquired for and
12 used for personal use or the service provided may be performed at
13 any individual residence without specialized equipment or supplies;
14 and

15 (e) Such property is not otherwise excepted from the
16 definition of occasional sale;

17 (3) Commencing with any transaction occurring on or after
18 October 1, 1985, any sale of business or farm machinery and
19 equipment if each of the following conditions is met and if any one
20 condition is not met the entire gross receipts shall be subject to
21 the tax imposed by section 77-2703:

22 (a) Such machinery or equipment was used by the seller or
23 seller's predecessor in a sale described in subdivision (1) of this
24 section as a depreciable capital asset in connection with the farm
25 or business for a period of at least one year;

1 (b) Such property was originally acquired prior to June
2 1, 1967, or if acquired thereafter, the seller or seller's
3 predecessor in a sale described in subdivision (1) of this section
4 directly or indirectly has previously paid a sales or use tax
5 thereon; and

6 (c) Such property is not otherwise excepted from the
7 definition of occasional sale;

8 (4) Commencing October 1, 1985, a sale by an organization
9 created exclusively for religious purposes or an agent of the
10 organization for such sale if each of the following conditions is
11 met and if any one condition is not met then the entire gross
12 receipts shall be subject to the tax imposed by section 77-2703:

13 (a) All sales occur during an activity conducted by such
14 organization or, if more than one organization is involved, by one
15 of the organizations owning property being sold;

16 (b) The organization only sells property it owns or
17 provides the service during one such activity in a calendar year;
18 and

19 (c) The activity does not last longer than three
20 consecutive days; and

21 (5) Any sale that is made in connection with the sale
22 to a single buyer of all or substantially all of a trade or
23 business if the seller or seller's predecessor in a sale described
24 in subdivision (1) of this section directly or indirectly has
25 previously paid a sales or use tax thereon. This subdivision shall

1 apply to any transaction occurring on or after October 1, 1985.

2 Commencing October 1, 1985, occasional sale does not
3 include any sale directly by or any sale which is supervised or
4 aided by an auctioneer or an agent or employee of an auctioneer.

5 Except for a sale listed in subdivision (1) of this
6 section, an occasional sale does not mean any sale of motor
7 vehicles, semitrailers, or trailers as defined in the Motor Vehicle
8 Registration Act or any sale of a motorboat as defined in section
9 37-1204.

10 Sec. 7. Section 77-2703.04, Revised Statutes Cumulative
11 Supplement, 2008, is amended to read:

12 77-2703.04 (1) Except for the telecommunications
13 service defined in subsection (3) of this section, the sale of
14 telecommunications service sold on a call-by-call basis shall be
15 sourced to (a) each level of taxing jurisdiction where the call
16 originates and terminates in that jurisdiction or (b) each level of
17 taxing jurisdiction where the call either originates or terminates
18 and in which the service address is also located.

19 (2) Except for the telecommunications service defined
20 in subsection (3) of this section and ancillary services, a
21 sale of telecommunications service sold on a basis other than a
22 call-by-call basis is sourced to the customer's place of primary
23 use.

24 (3)(a) For mobile telecommunications service and
25 ancillary services provided and billed to a customer by a home

1 service provider:

2 (i) Notwithstanding any other provision of law or any
3 local ordinance or resolution, such mobile telecommunications
4 service is deemed to be provided by the customer's home service
5 provider;

6 (ii) All taxable charges for such mobile
7 telecommunications service and ancillary services shall be subject
8 to tax by the state or other taxing jurisdiction in this state
9 whose territorial limits encompass the customer's place of primary
10 use regardless of where the mobile telecommunications service
11 originates, terminates, or passes through; and

12 (iii) No taxes, charges, or fees may be imposed on a
13 customer with a place of primary use outside this state.

14 (b) In accordance with the federal Mobile
15 Telecommunications Sourcing Act, as such act existed on July 20,
16 2002, the Tax Commissioner may, but is not required to:

17 (i) Provide or contract for a tax assignment data base
18 based upon standards identified in 4 U.S.C. 119, as such section
19 existed on July 20, 2002, with the following conditions:

20 (A) If such data base is provided, a home service
21 provider shall be held harmless for any tax that otherwise would
22 result from any errors or omissions attributable to reliance on
23 such data base; or

24 (B) If such data base is not provided, a home service
25 provider may rely on an enhanced zip code for identifying the

1 proper taxing jurisdictions and shall be held harmless for any
2 tax that otherwise would result from any errors or omissions
3 attributable to reliance on such enhanced zip code if the home
4 service provider identified the taxing jurisdiction through the
5 exercise of due diligence and complied with any procedures that may
6 be adopted by the Tax Commissioner. Any such procedure shall be in
7 accordance with 4 U.S.C. 120, as such section existed on July 20,
8 2002; and

9 (ii) Adopt procedures for correcting errors in the
10 assignment of primary use that are consistent with 4 U.S.C.
11 121, as such section existed on July 20, 2002.

12 (c) If charges for mobile telecommunications service that
13 are not subject to tax are aggregated with and not separately
14 stated on the bill from charges that are subject to tax, the total
15 charge to the customer shall be subject to tax unless the home
16 service provider can reasonably separate charges not subject to tax
17 using the records of the home service provider that are kept in the
18 regular course of business.

19 (d) For purposes of this subsection:

20 (i) Customer means an individual, business, organization,
21 or other person contracting to receive mobile telecommunications
22 service from a home service provider. Customer does not include a
23 reseller of mobile telecommunications service or a serving carrier
24 under an arrangement to serve the customer outside the home service
25 provider's service area;

1 (ii) Home service provider means a telecommunications
2 company as defined in section 86-322 that has contracted with a
3 customer to provide mobile telecommunications service;

4 (iii) Mobile telecommunications service means a wireless
5 communication service carried on between mobile stations or
6 receivers and land stations, and by mobile stations communicating
7 among themselves, and includes (A) both one-way and two-way
8 wireless communication services, (B) a mobile service which
9 provides a regularly interacting group of base, mobile, portable,
10 and associated control and relay stations, whether on an
11 individual, cooperative, or multiple basis for private one-way or
12 two-way land mobile radio communications by eligible users over
13 designated areas of operation, and (C) any personal communication
14 service;

15 (iv) Place of primary use means the street address
16 representative of where the customer's use of mobile
17 telecommunications service primarily occurs. The place of
18 primary use shall be the residential street address or the primary
19 business street address of the customer and shall be within the
20 service area of the home service provider; and

21 (v) Tax means the sales taxes levied under sections
22 13-319, 77-2703, and 77-27,142, the surcharges levied under the
23 Enhanced Wireless 911 Services Act, the Nebraska Telecommunications
24 Universal Service Fund Act, and the Telecommunications Relay System
25 Act, and any other tax levied against the customer based on the

1 amount charged to the customer. Tax does not mean an income tax,
2 property tax, franchise tax, or any other tax levied on the home
3 service provider that is not based on the amount charged to the
4 customer.

5 (4) A sale of post-paid calling service is sourced to
6 the origination point of the telecommunications signal as first
7 identified by either (a) the seller's telecommunications system, or
8 (b) information received by the seller from its service provider,
9 where the system used to transport such signals is not that of the
10 seller.

11 (5) A sale of prepaid calling service is sourced in
12 accordance with section 77-2703.01, except that in the case of
13 a sale of mobile telecommunications service that is a prepaid
14 telecommunications service, the rule provided in section 77-2703.01
15 shall include as an option the location associated with the mobile
16 telephone number.

17 (6) A sale of a private communication service is sourced
18 as follows:

19 (a) Service for a separate charge related to a customer
20 channel termination point is sourced to each level of jurisdiction
21 in which such customer channel termination point is located;

22 (b) Service where all customer termination points are
23 located entirely within one jurisdiction or levels of jurisdiction
24 is sourced in such jurisdiction in which the customer channel
25 termination points are located;

1 (c) Service for segments of a channel between two
2 customer channel termination points located in different
3 jurisdictions and which segments of channel are separately charged
4 is sourced fifty percent in each level of jurisdiction in which the
5 customer channel termination points are located; and

6 (d) Service for segments of a channel located in more
7 than one jurisdiction or levels of jurisdiction and which segments
8 are not separately billed is sourced in each jurisdiction based
9 on the percentage determined by dividing the number of customer
10 channel termination points in such jurisdiction by the total number
11 of customer channel termination points.

12 (7) For purposes of this section:

13 (a) 800 service means a telecommunications service that
14 allows a caller to dial a toll-free number without incurring a
15 charge for the call. The service is typically marketed under
16 the name 800, 855, 866, 877, and 888 toll-free calling, and
17 any subsequent numbers designated by the Federal Communications
18 Commission;

19 (b) 900 service means an inbound toll telecommunications
20 service purchased by a subscriber that allows the subscriber's
21 customers to call in to the subscriber's prerecorded announcement
22 or live service. 900 service does not include the charge
23 for collection services provided by the seller of the
24 telecommunications services to the subscriber or service or product
25 sold by the subscriber to the subscriber's customer. The service is

1 typically marketed under the name 900 service, and any subsequent
2 numbers designated by the Federal Communications Commission;

3 (c) Air-to-ground radiotelephone service means a radio
4 telecommunication service, as that term is defined in 47 C.F.R.
5 22.99, as such regulation existed on January 1, 2007, in which
6 common carriers are authorized to offer and provide radio
7 telecommunications service for hire to subscribers in aircraft;

8 (d) Ancillary services means services that are associated
9 with or incidental to the provision of telecommunications services,
10 including, but not limited to, detailed telecommunications
11 billings, directory assistance, vertical service, and voice mail
12 services;

13 (e) Call-by-call basis means any method of charging
14 for telecommunications service where the price is measured by
15 individual calls;

16 (f) Coin-operated telephone service means a
17 telecommunications service paid for by inserting money into a
18 telephone accepting direct deposits of money to operate;

19 (g) Communications channel means a physical or virtual
20 path of communications over which signals are transmitted between
21 or among customer channel termination points;

22 (h) Conference bridging service means an ancillary
23 service that links two or more participants of an audio or
24 video conference call and may include the provision of a
25 telephone number. Conference bridging service does not include the

1 telecommunications services used to reach the conference bridge;

2 (i) Customer means the person or entity that contracts
3 with the seller of telecommunications service. If the end user
4 of telecommunications service is not the contracting party, the
5 end user of the telecommunications service is the customer of the
6 telecommunications service, but this sentence only applies for the
7 purpose of sourcing sales of telecommunications service under this
8 section. Customer does not include a reseller of telecommunications
9 service or for mobile telecommunications service of a serving
10 carrier under an agreement to serve the customer outside the home
11 service provider's licensed service area;

12 (j) Customer channel termination point means the location
13 where the customer either inputs or receives the communications;

14 (k) Detailed telecommunications billing service means an
15 ancillary service of separately stating information pertaining to
16 individual calls on a customer's billing statement;

17 (l) Directory assistance means an ancillary service of
18 providing telephone number information and address information;

19 (m) End user means the person who utilizes the
20 telecommunications service. In the case of an entity, end user
21 means the individual who utilizes the service on behalf of the
22 entity;

23 (n) Fixed wireless service means a telecommunications
24 service that provides radio communication between fixed points;

25 (o) International means a telecommunications service that

1 originates or terminates in the United States and terminates or
2 originates outside the United States, respectively. United States
3 includes the District of Columbia or a United States territory or
4 possession;

5 (p) Interstate means a telecommunications service that
6 originates in one state of the United States, or a territory or
7 possession of the United States, and terminates in a different
8 state, territory, or possession of the United States;

9 (q) Intrastate means a telecommunications service that
10 originates in one state of the United States, or a territory or
11 possession of the United States, and terminates in the same state,
12 territory, or possession of the United States;

13 (r) Mobile wireless service means a telecommunications
14 service that is transmitted, conveyed, or routed regardless of the
15 technology used, whereby the origination and termination points of
16 the transmission, conveyance, or routing are not fixed, including,
17 by way of example only, telecommunications services that are
18 provided by a commercial mobile radio service provider;

19 (s) Paging service means a telecommunications service
20 that provides transmission of coded radio signals for the purpose
21 of activating specific pagers. Such transmission may include
22 messages and sounds;

23 (t) Pay telephone services means a telecommunications
24 service provided through pay telephones;

25 (u) Post-paid calling service means the

1 telecommunications service obtained by making a payment on a
2 call-by-call basis either through the use of a credit card or
3 payment mechanism, such as a bank card, travel card, credit card,
4 or debit card, or by a charge made to a telephone number which
5 is not associated with the origination or termination of the
6 telecommunications service. A post-paid calling service includes
7 a telecommunications service, except a prepaid wireless calling
8 service, that would be a prepaid calling service except it is not
9 exclusively a telecommunications service;

10 (v) Prepaid calling service means the right to access
11 exclusively telecommunications service, which is paid for in
12 advance and which enables the origination of calls using an access
13 number or authorization code, whether manually or electronically
14 dialed, and that is sold in predetermined units or dollars of which
15 the number declines with use in a known amount;

16 (w) Prepaid wireless calling service means a
17 telecommunications service that provides the right to utilize
18 mobile wireless service as well as other nontelecommunications
19 services, including the download of digital products delivered
20 electronically, content, and ancillary services, which must be paid
21 for in advance, that is sold in predetermined units of dollars or
22 which the number declines with use in a known amount;

23 (x) Private communication service means a
24 telecommunications service that entitles the customer to exclusive
25 or priority use of a communications channel or group of channels

1 between or among termination points, regardless of the manner
2 in which such channel or channels are connected, and includes
3 switching capacity, extension lines, stations, and any other
4 associated services that are provided in connection with the use of
5 such channel or channels;

6 (y) Residential telecommunications service means a
7 telecommunications service or ancillary services provided to an
8 individual for personal use at a residential address, including
9 an individual dwelling unit such as an apartment. In the case of
10 institutions where individuals reside, such as schools or nursing
11 homes, telecommunications service is considered residential if it
12 is provided to and paid for by an individual resident rather than
13 the institution;

14 (z) Service address means the location of the
15 telecommunications equipment to which a customer's call is charged
16 and from which the call originates or terminates, regardless of
17 where the call is billed or paid. If this location is not known,
18 service address means the origination point of the signal of the
19 telecommunications service first identified either by the seller's
20 telecommunications system, or in information received by the seller
21 from its service provider, where the system used to transport such
22 signals is not that of the seller. If both locations are not known,
23 the service address means the location of the customer's place of
24 primary use;

25 (aa) Telecommunications service means the electronic

1 transmission, conveyance, or routing of voice, data, audio, video,
2 or any other information or signals to a point, or between or among
3 points. Telecommunications service includes such transmission,
4 conveyance, or routing in which computer processing applications
5 are used to act on the form, code, or protocol of the content for
6 purposes of transmission, conveyance, or routing without regard to
7 whether such service is referred to as voice over Internet protocol
8 services or is classified by the Federal Communications Commission
9 as enhanced or value-added. Telecommunications service does not
10 include:

11 (i) Data processing and information services that allow
12 data to be generated, acquired, stored, processed, or retrieved and
13 delivered by an electronic transmission to a purchaser when such
14 purchaser's primary purpose for the underlying transaction is the
15 processed data or information;

16 (ii) Installation or maintenance of wiring or equipment
17 on a customer's premises;

18 (iii) Tangible personal property;

19 (iv) Advertising, including, but not limited to,
20 directory advertising;

21 (v) Billing and collection services provided to third
22 parties;

23 (vi) Internet access service;

24 (vii) Radio and television audio and video programming
25 services, regardless of the medium, including the furnishing of

1 transmission, conveyance, and routing of such services by the
2 programming service provider. Radio and television audio and video
3 programming services shall include, but not be limited to, cable
4 service as defined in 47 U.S.C. 522, as such section existed on
5 January 1, 2007, and audio and video programming services delivered
6 by providers of commercial mobile radio service as defined in 47
7 C.F.R. 20.3, as such regulation existed on January 1, 2007;

8 (viii) Ancillary services; or

9 (ix) Digital products delivered electronically,
10 including, but not limited to, software, music, video, reading
11 materials, or ring tones;

12 (bb) Value-added, non-voice data service means a service
13 that otherwise meets the definition of telecommunications services
14 in which computer processing applications are used to act on
15 the form, content, code, or protocol of the information or data
16 primarily for a purpose other than transmission, conveyance, or
17 routing;

18 (cc) Vertical service means an ancillary service that is
19 offered in connection with one or more telecommunications services,
20 which offers advanced calling features that allow customers to
21 identify callers and to manage multiple calls and call connections,
22 including conference bridging services; and

23 (dd) Voice mail service means an ancillary service that
24 enables the customer to store, send, or receive recorded messages.
25 Voice mail service does not include any vertical services that the

1 customer may be required to have in order to utilize the voice mail
2 service.

3 Sec. 8. Section 77-2704.09, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 77-2704.09 (1) Sales and use taxes shall not be imposed
6 on the gross receipts from the sale, lease, or rental of and
7 the storage, use, or other consumption in this state of (a)
8 insulin, (b) mobility enhancing equipment and drugs, not including
9 over-the-counter drugs, when sold for a patient's use under a
10 prescription, and (c) the following when sold for a patient's
11 use under a prescription and which are of the type eligible for
12 coverage under the medical assistance program established pursuant
13 to the Medical Assistance Act: Durable medical equipment; home
14 medical supplies; prosthetic devices; oxygen; and oxygen equipment.
15 ~~÷ and mobility enhancing equipment.~~

16 (2) For purposes of this section:

17 (a) Drug means a compound, substance, preparation, and
18 component of a compound, substance, or preparation, other than food
19 and food ingredients, dietary supplements, or alcoholic beverages:

20 (i) Recognized in the official United States
21 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
22 States, or official National Formulary, and any supplement to any
23 of them;

24 (ii) Intended for use in the diagnosis, cure, mitigation,
25 treatment, or prevention of disease; or

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

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

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

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

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

1 a statement of the active ingredients with a list of those
2 ingredients contained in the compound, substance, or preparation;

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

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

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

19 Sec. 9. Section 77-2704.12, Revised Statutes Cumulative
20 Supplement, 2008, is amended to read:

21 77-2704.12 (1) Sales and use taxes shall not be imposed
22 on the gross receipts from the sale, lease, or rental of
23 and the storage, use, or other consumption in this state of
24 purchases by (a) any nonprofit organization created exclusively
25 for religious purposes, (b) any nonprofit organization providing

1 services exclusively to the blind, (c) any nonprofit private
 2 educational institution established under sections 79-1601 to
 3 79-1607, or (d) any nonprofit private college or university
 4 established under sections 85-1101 to 85-1111, or ~~(e) any nonprofit~~
 5 ~~(i) hospital,~~ ~~(ii) health clinic when two or more hospitals or~~
 6 ~~the parent corporations of the hospitals own or control the health~~
 7 ~~clinic for the purpose of reducing the cost of health services or~~
 8 ~~when the health clinic receives federal funds through the United~~
 9 ~~States Public Health Service for the purpose of serving populations~~
 10 ~~that are medically underserved,~~ ~~(iii) skilled nursing facility,~~
 11 ~~(iv) intermediate care facility,~~ ~~(v) assisted-living facility,~~ ~~(vi)~~
 12 ~~intermediate care facility for the mentally retarded,~~ ~~(vii) nursing~~
 13 ~~facility,~~ ~~(viii) home health agency,~~ ~~(ix) hospice or hospice~~
 14 ~~service,~~ or ~~(x) respite care service licensed under the Health Care~~
 15 ~~Facility Licensure Act,~~ ~~(f)~~

16 (2) Sales and use taxes shall not be imposed on the
 17 gross receipts from the sale, lease, or rental of and the storage,
 18 use, or other consumption in this state of purchases by (a)
 19 any nonprofit licensed child-caring agency, ~~(g)~~ (b) any nonprofit
 20 licensed child placement agency, ~~or (h)~~ and (c) any nonprofit
 21 organization certified by the Department of Health and Human
 22 Services to provide community-based services for persons with
 23 developmental disabilities. The exemptions in this subsection are
 24 limited to purchases made for use in the exempt health care
 25 activities or services that are licensed or certified by the

1 Department of Health and Human Services.

2 (3) Sales and use taxes shall not be imposed on the gross
3 receipts from the sale, lease, or rental of and the storage, use,
4 or other consumption in this state of purchases by any nonprofit
5 licensed (a) hospital, (b) health clinic when two or more hospitals
6 or the parent corporations of the hospitals own or control the
7 health clinic for the purpose of reducing the cost of health
8 services or when the health clinic receives federal funds through
9 the United States Public Health Service for the purpose of serving
10 populations that are medically underserved, (c) nursing facility,
11 (d) skilled nursing facility, (e) assisted-living facility, (f)
12 intermediate care facility, (g) intermediate care facility for the
13 mentally retarded, (h) home health agency, (i) hospice or hospice
14 service, or (j) respite care service. The exemptions in this
15 subsection are limited to purchases made for use at the facility or
16 the portion of a facility that is licensed under the Health Care
17 Facility Licensure Act or use in the exempt health care activities
18 or services licensed under the act.

19 ~~(2)~~ (4) Any organization listed in subsection (1), (2),
20 or (3) of this section shall apply for an exemption on forms
21 provided by the Tax Commissioner. The application shall be approved
22 and a numbered certificate of exemption received by the applicant
23 organization in order to be exempt from the sales and use tax.

24 ~~(3)~~ (5) The appointment of purchasing agents shall
25 be recognized for the purpose of altering the status of the

1 construction contractor as the ultimate consumer of building
2 materials which are physically annexed to the structure and
3 which subsequently belong to the owner of the organization or
4 institution. The appointment of purchasing agents shall be in
5 writing and occur prior to having any building materials annexed
6 to real estate in the construction, improvement, or repair. The
7 contractor who has been appointed as a purchasing agent may apply
8 for a refund of or use as a credit against a future use tax
9 liability the tax paid on inventory items annexed to real estate
10 in the construction, improvement, or repair of a project for a
11 licensed not-for-profit institution.

12 ~~(4)~~ (6) Any organization listed in subsection (1),
13 (2), or (3) of this section which enters into a contract of
14 construction, improvement, or repair upon property annexed to real
15 estate without first issuing a purchasing agent authorization to a
16 contractor or repairperson prior to the building materials being
17 annexed to real estate in the project may apply to the Tax
18 Commissioner for a refund of any sales and use tax paid by the
19 contractor or repairperson on the building materials physically
20 annexed to real estate in the construction, improvement, or repair.

21 ~~(5)~~ (7) Any person purchasing, storing, using, or
22 otherwise consuming building materials in the performance of any
23 construction, improvement, or repair by or for any institution
24 enumerated in subsection (1), (2), or (3) of this section which
25 is licensed upon completion although not licensed at the time of

1 construction or improvement, which building materials are annexed
2 to real estate and which subsequently belong to the owner of the
3 institution, shall pay any applicable sales or use tax thereon.
4 Upon becoming licensed and receiving a numbered certificate of
5 exemption, the institution organized not for profit shall be
6 entitled to a refund of the amount of taxes so paid in the
7 performance of such construction, improvement, or repair and shall
8 submit whatever evidence is required by the Tax Commissioner
9 sufficient to establish the total sales and use tax paid upon
10 the building materials physically annexed to real estate in the
11 construction, improvement, or repair.

12 Sec. 10. Section 77-2704.52, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-2704.52 Sales and use taxes shall not be imposed on
15 the gross receipts from the sale, lease, or rental of and the
16 storage, use, or other consumption in this state of services
17 rendered using a prepaid telephone calling arrangement. calling
18 service and prepaid wireless calling service.

19 Sec. 11. Section 77-2711, Revised Statutes Cumulative
20 Supplement, 2008, is amended to read:

21 77-2711 (1)(a) The Tax Commissioner shall enforce
22 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
23 enforce rules and regulations relating to the administration and
24 enforcement of such sections.

25 (b) The Tax Commissioner may prescribe the extent to

1 which any ruling or regulation shall be applied without retroactive
2 effect.

3 (2) The Tax Commissioner may employ accountants,
4 auditors, investigators, assistants, and clerks necessary for the
5 efficient administration of the Nebraska Revenue Act of 1967 and
6 may delegate authority to his or her representatives to conduct
7 hearings, prescribe regulations, or perform any other duties
8 imposed by such act.

9 (3)(a) Every seller, every retailer, and every person
10 storing, using, or otherwise consuming in this state property
11 purchased from a retailer shall keep such records, receipts,
12 invoices, and other pertinent papers in such form as the Tax
13 Commissioner may reasonably require.

14 (b) Every such seller, retailer, or person shall keep
15 such records for not less than three years from the making of such
16 records unless the Tax Commissioner in writing sooner authorized
17 their destruction.

18 (4) The Tax Commissioner or any person authorized in
19 writing by him or her may examine the books, papers, records, and
20 equipment of any person selling property and any person liable for
21 the use tax and may investigate the character of the business of
22 the person in order to verify the accuracy of any return made or,
23 if no return is made by the person, to ascertain and determine
24 the amount required to be paid. In the examination of any person
25 selling property or of any person liable for the use tax, an

1 inquiry shall be made as to the accuracy of the reporting of city
2 sales and use taxes for which the person is liable under the Local
3 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
4 the accuracy of the allocation made between the various counties,
5 cities, villages, and municipal counties of the tax due. The Tax
6 Commissioner may make or cause to be made copies of resale or
7 exemption certificates and may pay a reasonable amount to the
8 person having custody of the records for providing such copies.

9 (5) The taxpayer shall have the right to keep or store
10 his or her records at a point outside this state and shall make his
11 or her records available to the Tax Commissioner at all times.

12 (6) In administration of the use tax, the Tax
13 Commissioner may require the filing of reports by any person or
14 class of persons having in his, her, or their possession or custody
15 information relating to sales of property, the storage, use, or
16 other consumption of which is subject to the tax. The report shall
17 be filed when the Tax Commissioner requires and shall set forth the
18 names and addresses of purchasers of the property, the sales price
19 of the property, the date of sale, and such other information as
20 the Tax Commissioner may require.

21 (7) It shall be a Class I misdemeanor for the Tax
22 Commissioner or any official or employee of the Tax Commissioner,
23 the State Treasurer, or the Department of Administrative Services
24 to make known in any manner whatever the business affairs,
25 operations, or information obtained by an investigation of records

1 and activities of any retailer or any other person visited
2 or examined in the discharge of official duty or the amount
3 or source of income, profits, losses, expenditures, or any
4 particular thereof, set forth or disclosed in any return, or
5 to permit any return or copy thereof, or any book containing
6 any abstract or particulars thereof to be seen or examined by
7 any person not connected with the Tax Commissioner. Nothing in
8 this section shall be construed to prohibit (a) the delivery to
9 a taxpayer, his or her duly authorized representative, or his
10 or her successors, receivers, trustees, executors, administrators,
11 assignees, or guarantors, if directly interested, of a certified
12 copy of any return or report in connection with his or her tax,
13 (b) the publication of statistics so classified as to prevent
14 the identification of particular reports or returns and the items
15 thereof, (c) the inspection by the Attorney General, other legal
16 representative of the state, or county attorney of the reports
17 or returns of any taxpayer when either (i) information on the
18 reports or returns is considered by the Attorney General to be
19 relevant to any action or proceeding instituted by the taxpayer
20 or against whom an action or proceeding is being considered or
21 has been commenced by any state agency or the county or (ii) the
22 taxpayer has instituted an action to review the tax based thereon
23 or an action or proceeding against the taxpayer for collection of
24 tax or failure to comply with the Nebraska Revenue Act of 1967 is
25 being considered or has been commenced, (d) the furnishing of any

1 information to the United States Government or to states allowing
2 similar privileges to the Tax Commissioner, (e) the disclosure of
3 information and records to a collection agency contracting with the
4 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
5 the disclosure to another party to a transaction of information
6 and records concerning the transaction between the taxpayer and
7 the other party, or (g) the disclosure of information pursuant to
8 section 77-27,195 or 77-5731.

9 (8) Notwithstanding the provisions of subsection (7) of
10 this section, the Tax Commissioner may permit the Postal Inspector
11 of the United States Postal Service or his or her delegates to
12 inspect the reports or returns of any person filed pursuant to the
13 Nebraska Revenue Act of 1967 when information on the reports or
14 returns is relevant to any action or proceeding instituted or being
15 considered by the United States Postal Service against such person
16 for the fraudulent use of the mails to carry and deliver false and
17 fraudulent tax returns to the Tax Commissioner with the intent to
18 defraud the State of Nebraska or to evade the payment of Nebraska
19 state taxes.

20 (9) Notwithstanding the provisions of subsection (7) of
21 this section, the Tax Commissioner may permit other tax officials
22 of this state to inspect the tax returns, reports, and applications
23 filed under sections 77-2701.04 to 77-2713, but such inspection
24 shall be permitted only for purposes of enforcing a tax law and
25 only to the extent and under the conditions prescribed by the rules

1 and regulations of the Tax Commissioner.

2 (10) Notwithstanding the provisions of subsection (7)
3 of this section, the Tax Commissioner may, upon request, provide
4 the county board of any county which has exercised the authority
5 granted by section 81-1254 with a list of the names and addresses
6 of the hotels located within the county for which lodging sales tax
7 returns have been filed or for which lodging sales taxes have been
8 remitted for the county's County Visitors Promotion Fund under the
9 Nebraska Visitors Development Act.

10 The information provided by the Tax Commissioner shall
11 indicate only the names and addresses of the hotels located within
12 the requesting county for which lodging sales tax returns have been
13 filed for a specified period and the fact that lodging sales taxes
14 remitted by or on behalf of the hotel have constituted a portion of
15 the total sum remitted by the state to the county for a specified
16 period under the provisions of the Nebraska Visitors Development
17 Act. No additional information shall be revealed.

18 (11)(a) Notwithstanding the provisions of subsection (7)
19 of this section, the Tax Commissioner shall, upon written request
20 by the Auditor of Public Accounts or the Legislative Performance
21 Audit Committee, make tax returns and tax return information open
22 to inspection by or disclosure to Auditor of Public Accounts or
23 Legislative Performance Audit Section employees for the purpose of
24 and to the extent necessary in making an audit of the Department
25 of Revenue pursuant to section 50-1205 or 84-304. Confidential

1 tax returns and tax return information shall be audited only upon
2 the premises of the Department of Revenue. All audit workpapers
3 pertaining to the audit of the Department of Revenue shall be
4 stored in a secure place in the Department of Revenue.

5 (b) No employee of the Auditor of Public Accounts or
6 Legislative Performance Audit Section shall disclose to any person,
7 other than another Auditor of Public Accounts or Legislative
8 Performance Audit Section employee whose official duties require
9 such disclosure or as provided in subsections (2) and (3) of
10 section 50-1213, any return or return information described in the
11 Nebraska Revenue Act of 1967 in a form which can be associated
12 with or otherwise identify, directly or indirectly, a particular
13 taxpayer.

14 (c) Any person who violates the provisions of this
15 subsection shall be guilty of a Class I misdemeanor. For purposes
16 of this subsection, employee includes a former Auditor of Public
17 Accounts or Legislative Performance Audit Section employee.

18 (12) For purposes of this subsection and subsection (11)
19 of this section:

20 (a) Disclosure means the making known to any person in
21 any manner a tax return or return information;

22 (b) Return information means:

23 (i) A taxpayer's identification number and (A) the
24 nature, source, or amount of his or her income, payments, receipts,
25 deductions, exemptions, credits, assets, liabilities, net worth,

1 tax liability, tax withheld, deficiencies, overassessments, or tax
2 payments, whether the taxpayer's return was, is being, or will be
3 examined or subject to other investigation or processing or (B) any
4 other data received by, recorded by, prepared by, furnished to, or
5 collected by the Tax Commissioner with respect to a return or the
6 determination of the existence or possible existence of liability
7 or the amount of liability of any person for any tax, penalty,
8 interest, fine, forfeiture, or other imposition or offense; and

9 (ii) Any part of any written determination or any
10 background file document relating to such written determination;
11 and

12 (c) Tax return or return means any tax or information
13 return or claim for refund required by, provided for, or permitted
14 under sections 77-2701 to 77-2713 which is filed with the Tax
15 Commissioner by, on behalf of, or with respect to any person
16 and any amendment or supplement thereto, including supporting
17 schedules, attachments, or lists which are supplemental to or part
18 of the filed return.

19 (13) Notwithstanding the provisions of subsection (7) of
20 this section, the Tax Commissioner shall, upon request, provide
21 any municipality which has adopted the local option sales tax
22 under the Local Option Revenue Act with a list of the names and
23 addresses of the retailers which have collected the local option
24 sales tax for the municipality. The request may be made annually
25 and shall be submitted to the Tax Commissioner on or before June

1 30 of each year. The information provided by the Tax Commissioner
2 shall indicate only the names and addresses of the retailers.
3 ~~No additional information shall be revealed.~~ The Tax Commissioner
4 may provide additional information to a municipality so long as
5 the information does not include any data detailing the specific
6 revenue, expenses, or operations of any particular business.

7 (14) In all proceedings under the Nebraska Revenue Act
8 of 1967, the Tax Commissioner may act for and on behalf of the
9 people of the State of Nebraska. The Tax Commissioner in his or her
10 discretion may waive all or part of any penalties provided by the
11 provisions of such act or interest on delinquent taxes specified in
12 section 45-104.02, as such rate may from time to time be adjusted.

13 (15)(a) The purpose of this subsection is to set forth
14 the state's policy for the protection of the confidentiality
15 rights of all participants in the system operated pursuant to
16 the streamlined sales and use tax agreement and of the privacy
17 interests of consumers who deal with model 1 sellers.

18 (b) For purposes of this subsection:

19 (i) Anonymous data means information that does not
20 identify a person;

21 (ii) Confidential taxpayer information means all
22 information that is protected under a member state's laws,
23 regulations, and privileges; and

24 (iii) Personally identifiable information means
25 information that identifies a person.

1 (c) The state agrees that a fundamental precept for model
2 1 sellers is to preserve the privacy of consumers by protecting
3 their anonymity. With very limited exceptions, a certified service
4 provider shall perform its tax calculation, remittance, and
5 reporting functions without retaining the personally identifiable
6 information of consumers.

7 (d) The governing board of the member states in the
8 streamlined sales and use tax agreement may certify a certified
9 service provider only if that certified service provider certifies
10 that:

11 (i) Its system has been designed and tested to ensure
12 that the fundamental precept of anonymity is respected;

13 (ii) Personally identifiable information is only used and
14 retained to the extent necessary for the administration of model 1
15 with respect to exempt purchasers;

16 (iii) It provides consumers clear and conspicuous
17 notice of its information practices, including what information
18 it collects, how it collects the information, how it uses the
19 information, how long, if at all, it retains the information, and
20 whether it discloses the information to member states. Such notice
21 shall be satisfied by a written privacy policy statement accessible
22 by the public on the web site of the certified service provider;

23 (iv) Its collection, use, and retention of personally
24 identifiable information is limited to that required by the member
25 states to ensure the validity of exemptions from taxation that are

1 claimed by reason of a consumer's status or the intended use of the
2 goods or services purchased; and

3 (v) It provides adequate technical, physical, and
4 administrative safeguards so as to protect personally identifiable
5 information from unauthorized access and disclosure.

6 (e) The state shall provide public notification to
7 consumers, including exempt purchasers, of the state's practices
8 relating to the collection, use, and retention of personally
9 identifiable information.

10 (f) When any personally identifiable information that
11 has been collected and retained is no longer required for the
12 purposes set forth in subdivision (15)(d)(iv) of this section, such
13 information shall no longer be retained by the member states.

14 (g) When personally identifiable information regarding an
15 individual is retained by or on behalf of the state, it shall
16 provide reasonable access by such individual to his or her own
17 information in the state's possession and a right to correct any
18 inaccurately recorded information.

19 (h) If anyone other than a member state, or a person
20 authorized by that state's law or the agreement, seeks to discover
21 personally identifiable information, the state from whom the
22 information is sought should make a reasonable and timely effort to
23 notify the individual of such request.

24 (i) This privacy policy is subject to enforcement by the
25 Attorney General.

1 (j) All other laws and regulations regarding the
2 collection, use, and maintenance of confidential taxpayer
3 information remain fully applicable and binding. Without
4 limitation, this subsection does not enlarge or limit the state's
5 authority to:

6 (i) Conduct audits or other reviews as provided under the
7 agreement and state law;

8 (ii) Provide records pursuant to the federal Freedom of
9 Information Act, disclosure laws with governmental agencies, or
10 other regulations;

11 (iii) Prevent, consistent with state law, disclosure of
12 confidential taxpayer information;

13 (iv) Prevent, consistent with federal law, disclosure or
14 misuse of federal return information obtained under a disclosure
15 agreement with the Internal Revenue Service; and

16 (v) Collect, disclose, disseminate, or otherwise use
17 anonymous data for governmental purposes.

18 Sec. 12. Section 77-2712.05, Revised Statutes Cumulative
19 Supplement, 2008, is amended to read:

20 77-2712.05 By agreeing to the terms of the streamlined
21 sales and use tax agreement, this state agrees to abide by the
22 following requirements:

23 (1) Uniform state rate. The state shall comply with
24 restrictions to achieve over time more uniform state rates through
25 the following:

- 1 (a) Limiting the number of state rates;
- 2 (b) Limiting the application of maximums on the amount of
3 state tax that is due on a transaction; and
- 4 (c) Limiting the application of thresholds on the
5 application of state tax;
- 6 (2) Uniform standards. The state hereby establishes
7 uniform standards for the following:
- 8 (a) Sourcing of transactions to taxing jurisdictions as
9 provided in sections 77-2703.01 to 77-2703.04;
- 10 (b) Administration of exempt sales as set out by the
11 agreement and using procedures as determined by the governing
12 board;
- 13 (c) Allowances a seller can take for bad debts as
14 provided in section 77-2708; and
- 15 (d) Sales and use tax returns and remittances. To comply
16 with the agreement, the Tax Commissioner shall:
- 17 (i) Require only one remittance for each return except
18 as provided in this subdivision. If any additional remittance is
19 required, it may only be required from retailers that collect more
20 than thirty thousand dollars in sales and use taxes in the state
21 during the preceding calendar year as provided in this subdivision.
22 The amount of any additional remittance may be determined through
23 a calculation method rather than actual collections. Any additional
24 remittance shall not require the filing of an additional return;
- 25 (ii) Require, at his or her discretion, all remittances

1 from sellers under models 1, 2, and 3 to be remitted
2 electronically;

3 (iii) Allow for electronic payments by both automated
4 clearinghouse credit and debit;

5 (iv) Provide an alternative method for making same day
6 payments if an electronic funds transfer fails;

7 (v) Provide that if a due date falls on a legal banking
8 holiday, the taxes are due to that state on the next succeeding
9 business day; and

10 (vi) Require that any data that accompanies a remittance
11 be formatted using uniform tax type and payment type codes approved
12 by the governing board of the member states to the streamlined
13 sales and use tax agreement;

14 (3) Uniform definitions. (a) The state shall utilize the
15 uniform definitions of sales and use tax terms as provided in the
16 agreement. The definitions enable Nebraska to preserve its ability
17 to make taxability and exemption choices not inconsistent with the
18 uniform definitions.

19 (b) The state may enact a product-based exemption without
20 restriction if the agreement does not have a definition for the
21 product or for a term that includes the product. If the agreement
22 has a definition for the product or for a term that includes
23 the product, the state may exempt all items included within the
24 definition but shall not exempt only part of the items included
25 within the definition unless the agreement sets out the exemption

1 for part of the items as an acceptable variation.

2 (c) The state may enact an entity-based or a use-based
3 exemption without restriction if the agreement does not have a
4 definition for the product whose use or purchase by a specific
5 entity is exempt or for a term that includes the product. If the
6 agreement has a definition for the product whose use or specific
7 purchase is exempt, states may enact an entity-based or a use-based
8 exemption that applies to that product as long as the exemption
9 utilizes the agreement definition of the product. If the agreement
10 does not have a definition for the product whose use or specific
11 purchase is exempt but has a definition for a term that includes
12 the product, states may enact an entity-based or a use-based
13 exemption for the product without restriction.

14 (d) For purposes of complying with the requirements in
15 this section, the inclusion of a product within the definition of
16 tangible personal property is disregarded;

17 (4) Central registration. The state shall participate in
18 an electronic central registration system that allows a seller to
19 register to collect and remit sales and use taxes for all member
20 states. Under the system:

21 (a) A retailer registering under the agreement is
22 registered in this state;

23 (b) The state agrees not to require the payment of any
24 registration fees or other charges for a retailer to register in
25 the state if the retailer has no legal requirement to register;

1 (c) A written signature from the retailer is not
2 required;

3 (d) An agent may register a retailer under uniform
4 procedures adopted by the member states pursuant to the agreement;

5 (e) A retailer may cancel its registration under the
6 system at any time under uniform procedures adopted by the
7 governing board. Cancellation does not relieve the retailer of its
8 liability for remitting to the proper states any taxes collected;

9 (f) When registering, the retailer that is registered
10 under the agreement may select one of the following methods of
11 remittances or other method allowed by state law to remit the taxes
12 collected:

13 (i) Model 1, wherein a seller selects a certified service
14 provider as an agent to perform all the seller's sales or use tax
15 functions, other than the seller's obligation to remit tax on its
16 own purchases;

17 (ii) Model 2, wherein a seller selects a certified
18 automated system to use which calculates the amount of tax due on a
19 transaction; and

20 (iii) Model 3, wherein a seller utilizes its own
21 proprietary automated sales tax system that has been certified
22 as a certified automated system; and

23 (g) Sellers who register within twelve months after this
24 state's first approval of a certified service provider are relieved
25 from liability, including the local option tax, for tax not

1 collected or paid if the seller was not registered between October
2 1, 2004, and September 30, 2005. Such relief from liability shall
3 be in accordance with the terms of the agreement;

4 (5) No nexus attribution. The state agrees that
5 registration with the central registration system and the
6 collection of sales and use taxes in the state will not be used as
7 a factor in determining whether the seller has nexus with the state
8 for any tax at any time;

9 (6) Local sales and use taxes. The agreement requires
10 the reduction of the burdens of complying with local sales and use
11 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,
12 77-27,142, 77-27,143, and 77-27,144 that require the following:

13 (a) No variation between the state and local tax bases;

14 (b) Statewide administration of all sales and use taxes
15 levied by local jurisdictions within the state so that sellers
16 collecting and remitting these taxes will not have to register or
17 file returns with, remit funds to, or be subject to independent
18 audits from local taxing jurisdictions;

19 (c) Limitations on the frequency of changes in the local
20 sales and use tax rates and setting effective dates for the
21 application of local jurisdictional boundary changes to local sales
22 and use taxes; and

23 (d) Uniform notice of changes in local sales and use
24 tax rates and of changes in the boundaries of local taxing
25 jurisdictions;

1 (7) Complete a taxability matrix approved by the
2 governing board. (a) Notice of changes in the taxability of the
3 products or services listed will be provided as required by the
4 governing board.

5 (b) The entries in the matrix shall be provided and
6 maintained in a data base that is in a downloadable format approved
7 by the governing board.

8 (c) Sellers, model 2 sellers, and certified service
9 providers are relieved from liability, including the local option
10 tax, for having charged and collected the incorrect amount of sales
11 or use tax resulting from the seller or certified service provider
12 relying on erroneous data provided by the member state in the
13 taxability matrix or for relying on product-based classifications
14 that have been reviewed and approved by the state. The state shall
15 notify the certified service provider or model 2 seller if an item
16 or transaction is incorrectly classified as to its taxability.

17 (d) Purchasers are relieved from liability for penalty
18 for having failed to pay the correct amount of tax resulting from
19 the purchaser's reliance on erroneous data provided by the member
20 state in the taxability matrix or rates and boundaries data bases
21 or for relying on product-based classifications that have been
22 reviewed and approved by the state;

23 (8) Monetary allowances. The state agrees to allow any
24 monetary allowances that are to be provided by the states to
25 sellers or certified service providers in exchange for collecting

1 sales and use taxes as provided in Article VI of the agreement;

2 (9) State compliance. The agreement requires the state to
3 certify compliance with the terms of the agreement prior to joining
4 and to maintain compliance, under the laws of the member state,
5 with all provisions of the agreement while a member;

6 (10) Consumer privacy. The state hereby adopts a uniform
7 policy for certified service providers that protects the privacy of
8 consumers and maintains the confidentiality of tax information as
9 provided in section 77-2711; and

10 (11) Advisory councils. The state agrees to
11 the recognition of an advisory council of private-sector
12 representatives and an advisory council of member and nonmember
13 state representatives to consult with in the administration of the
14 agreement.

15 Sec. 13. Section 77-2780, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 77-2780 The action of the Tax Commissioner on the
18 taxpayer's protest shall be final upon the expiration of ~~sixty~~
19 thirty days after the date when the Tax Commissioner mails notice
20 of his or her action to the taxpayer unless within this period the
21 taxpayer seeks review of the Tax Commissioner's determination as
22 provided in the Nebraska Revenue Act of 1967.

23 Sec. 14. This section and sections 1, 15, and 18 of this
24 act become operative on July 1, 2009. Sections 3 and 16 of this act
25 become operative on January 1, 2010. The other sections of this act

1 become operative on October 1, 2009.

2 Sec. 15. Original section 66-1521, Revised Statutes
3 Cumulative Supplement, 2008, is repealed.

4 Sec. 16. Original section 77-1784, Revised Statutes
5 Cumulative Supplement, 2008, is repealed.

6 Sec. 17. Original sections 77-2701.03 and 77-2704.52,
7 Reissue Revised Statutes of Nebraska, and sections 77-1783.01,
8 77-2701.16, 77-2701.24, 77-2703.04, 77-2704.09, 77-2704.12,
9 77-2711, 77-2712.05, and 77-2780, Revised Statutes Cumulative
10 Supplement, 2008, are repealed.

11 Sec. 18. Since an emergency exists, this act takes effect
12 when passed and approved according to law.