

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 485**

Introduced by Cornett, 45.

Read first time January 20, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701.39 and 77-2704.13, Reissue Revised Statutes  
3 of Nebraska, and sections 77-2701, 77-2701.04, and  
4 77-2701.16, Revised Statutes Cumulative Supplement, 2008;  
5 to exempt natural gas from sales and use taxes; to impose  
6 an excise tax on natural gas; to provide an operative  
7 date; and to repeal the original 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 6 and 7 of this act shall be known and may  
5 be 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 6 and 7 of this act, unless the context  
10 otherwise requires, the definitions found in sections 77-2701.05 to  
11 77-2701.53 shall be used.

12           Sec. 3. Section 77-2701.16, Revised Statutes Cumulative  
13 Supplement, 2008, is amended to read:

14           77-2701.16 (1) Gross receipts means the total amount of  
15 the sale or lease or rental price, as the case may be, of the  
16 retail sales of retailers.

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

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

1 telephone service; and

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

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

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

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

19 (e) The gross income received from the provision,  
20 installation, construction, servicing, or removal of property used  
21 in conjunction with the furnishing, installing, or connecting of  
22 any public utility services specified in subdivision (2)(a) or  
23 (b) of this section or community antenna television service or  
24 satellite service specified in subdivision (2)(d) of this section,  
25 except when acting as a subcontractor for a public utility,

1 this subdivision does not apply to the gross income received by  
2 a contractor electing to be treated as a consumer of building  
3 materials under subdivision (2) or (3) of section 77-2701.10 for  
4 any such services performed on the customer's side of the utility  
5 demarcation point.

6 (3) Gross receipts of every person engaged in selling,  
7 leasing, or otherwise providing intellectual or entertainment  
8 property means:

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

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

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

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

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

24 (c) The gross income received for computer software  
25 training;

1           (d) The gross income received for installing and applying  
2 tangible personal property if the sale of the property is subject  
3 to tax. If any or all of the charge for installation is free to  
4 the customer and is paid by a third-party service provider, any  
5 tax due on that part of the activation commission, finder's fee,  
6 installation charge, or similar payment made by the third-party  
7 service provider shall be paid by the third-party service provider  
8 and collected and remitted by the installer;

9           (e) The gross income received for services of  
10 recreational vehicle parks;

11           (f) The gross income received for labor for repair or  
12 maintenance services performed with regard to tangible personal  
13 property the sale of which would be subject to sales and use taxes,  
14 excluding motor vehicles, except as otherwise provided in section  
15 77-2704.26 or 77-2704.50;

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

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

20           (5) Gross receipts includes the sale of admissions which  
21 means the right or privilege to have access to or to use a place  
22 or location. An admission includes a membership that allows access  
23 to or use of a place or location, but which membership does not  
24 include the right to hold office, vote, or change the policies of  
25 the organization. When an admission to an activity or a membership

1 constituting an admission pursuant to this subsection is combined  
2 with the solicitation of a contribution, the portion or the amount  
3 charged representing the fair market price of the admission shall  
4 be considered a retail sale subject to the tax imposed by section  
5 77-2703. The organization conducting the activity shall determine  
6 the amount properly attributable to the purchase of the privilege,  
7 benefit, or other consideration in advance, and such amount shall  
8 be clearly indicated on any ticket, receipt, or other evidence  
9 issued in connection with the payment.

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

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

17 (8) Gross receipts includes the sale of prepaid telephone  
18 calling arrangements and the recharge of prepaid telephone calling  
19 arrangements. If the sale or recharge of a prepaid telephone  
20 calling arrangement does not take place at the vendor's place of  
21 business, the sale or recharge shall be conclusively determined  
22 to take place at the customer's shipping address or, if there is  
23 no item shipped, at the customer's billing address. For purposes  
24 of this subsection, a prepaid telephone calling arrangement means  
25 the right to exclusively purchase telecommunications services that

1 are paid for in advance that enables the origination of calls  
2 using an access number or authorization code, whether manually or  
3 electronically dialed.

4 (9) Gross receipts includes the retail sale of digital  
5 audio works, digital audiovisual works, digital codes, and digital  
6 books delivered electronically if the products are taxable when  
7 delivered on tangible storage media. A sale includes the transfer  
8 of a permanent right of use, the transfer of a right of use that  
9 terminates on some condition, and the transfer of a right of use  
10 conditioned upon the receipt of continued payments.

11 (10) Gross receipts does not include:

12 (a) The amount of any rebate granted by a motor vehicle  
13 or motorboat manufacturer or dealer at the time of sale of the  
14 motor vehicle or motorboat, which rebate functions as a discount  
15 from the sales price of the motor vehicle or motorboat; or

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

19 Sec. 4. Section 77-2701.39, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 77-2701.39 Tangible personal property means personal  
22 property which may be seen, weighed, measured, felt, or touched or  
23 which is in any other manner perceptible to the senses. Tangible  
24 personal property includes electricity, water, ~~gas~~, steam, and  
25 prewritten computer software.

1           Sec. 5. Section 77-2704.13, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2704.13 Sales and use taxes shall not be imposed on  
4 the gross receipts from the sale, lease, or rental of and the  
5 storage, use, or other consumption in this state of:

6           (1) Sales and purchases of electricity, coal, ~~gas~~, fuel  
7 oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear  
8 fuel, and butane when more than fifty percent of the amount  
9 purchased is for use directly in irrigation or farming;

10          (2) Sales and purchases of such energy sources or fuels  
11 made before April 1, 1993, or after March 31, 1994, when more  
12 than fifty percent of the amount purchased is for use directly  
13 in processing, manufacturing, or refining, in the generation of  
14 electricity, or by any hospital. The state tax paid on purchases  
15 of such energy sources or fuels during the period beginning  
16 April 1, 1993, and ending March 31, 1994, shall not exceed one  
17 hundred thousand dollars for any one location when more than fifty  
18 percent of the amount purchased is for use directly in processing,  
19 manufacturing, or refining or by any hospital. All purchases  
20 of such energy sources or fuels for use in the generation of  
21 electricity during the period beginning April 1, 1993, and ending  
22 March 31, 1994, shall be taxable. Any taxpayer who has paid the  
23 limit of state tax on such energy sources or fuels at one location  
24 shall be exempt on all other qualifying purchases at such location.  
25 Such taxpayer shall be entitled to a refund of any amount of

1 state or local option tax paid on an energy source or fuel exempt  
2 under this subdivision. A refund shall be made pursuant to section  
3 77-2708; and

4 (3) Sales and purchases of water used for irrigation of  
5 agricultural lands and manufacturing purposes.

6 Sec. 6. Sales and use taxes shall not be imposed on the  
7 gross receipts from the sale, lease, or rental of and the storage,  
8 use, or other consumption in this state of natural gas used for  
9 residential purposes.

10 Sec. 7. (1) There is imposed an excise tax on all sales,  
11 use, or other consumption in this state of natural gas used for  
12 residential purposes. The tax shall be paid by the purchaser and  
13 collected by the seller. The tax rate shall be 74.15 cents per one  
14 million British thermal units, plus an additional 6.74 cents per  
15 one million British thermal units per one-half cent of local option  
16 sales tax imposed by a political subdivision.

17 (2) The tax imposed by this section shall be remitted to  
18 the Department of Revenue for credit to the General Fund or for  
19 distribution to political subdivisions that impose a local option  
20 sales tax. Payment of the tax shall be accompanied by a report  
21 setting forth the British thermal units of natural gas sold by  
22 the seller for the reporting period. The report shall be on a  
23 form prescribed by the department and shall include such other  
24 information as the Tax Commissioner deems necessary. The provisions  
25 of the Nebraska Revenue Act of 1967 applicable to sales and use

1 taxes shall apply to imposition of the tax.

2 (3) The Tax Commissioner shall adopt and promulgate rules  
3 and regulations to carry out this section.

4 Sec. 8. This act becomes operative on January 1, 2010.

5 Sec. 9. Original sections 77-2701.39 and 77-2704.13,  
6 Reissue Revised Statutes of Nebraska, and sections 77-2701,  
7 77-2701.04, and 77-2701.16, Revised Statutes Cumulative Supplement,  
8 2008, are repealed.