

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 774

Introduced by Haar, 21; Dierks, 40; Hadley, 37; Louden, 49; Pirsch,
4; White, 8.

Read first time January 07, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2701.16, Reissue Revised Statutes of Nebraska; to
3 change provisions relating to sales taxation of net
4 metering; to provide an operative date; to repeal the
5 original section; and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701.16, Reissue Revised Statutes
2 of Nebraska, 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 described
13 in section 77-2703.04, the gross income received from furnishing
14 ancillary services, except for conference bridging services, and
15 intrastate telecommunications services, except for value-added,
16 nonvoice data service; and

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

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

25 (c) In the furnishing of gas, electricity, sewer, and

1 water service, the gross income received from the furnishing of
2 such services upon billings or statements rendered to consumers
3 for such utility services, except the gross income received from
4 the furnishing of electricity to a customer-generator as defined
5 in section 70-2002 shall be the net energy use on a billing or
6 statement rendered to the customer-generator;

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

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

24 (3) Gross receipts of every person engaged in selling,
25 leasing, or otherwise providing intellectual or entertainment

1 property means:

2 (a) In the furnishing of computer software, the gross
3 income received, including the charges for coding, punching, or
4 otherwise producing any computer software and the charges for the
5 tapes, disks, punched cards, or other properties furnished by the
6 seller; and

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

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

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

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

17 (c) The gross income received for computer software
18 training;

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

1 third-party service provider;

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

4 (f) The gross income received for labor for repair or
5 maintenance services performed with regard to tangible personal
6 property the sale of which would be subject to sales and use taxes,
7 excluding motor vehicles, except as otherwise provided in section
8 77-2704.26 or 77-2704.50;

9 (g) The gross income received for animal specialty
10 services except (i) veterinary services, (ii) specialty services
11 performed on livestock as defined in section 54-183, and (iii)
12 animal grooming performed by a licensed veterinarian or a licensed
13 veterinary technician in conjunction with medical treatment; and

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

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

1 the amount properly attributable to the purchase of the privilege,
2 benefit, or other consideration in advance, and such amount shall
3 be clearly indicated on any ticket, receipt, or other evidence
4 issued in connection with the payment.

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

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

12 (8) Gross receipts includes the sale of and recharge of
13 prepaid calling service and prepaid wireless calling service.

14 (9) Gross receipts includes the retail sale of digital
15 audio works, digital audiovisual works, digital codes, and digital
16 books delivered electronically if the products are taxable when
17 delivered on tangible storage media. A sale includes the transfer
18 of a permanent right of use, the transfer of a right of use that
19 terminates on some condition, and the transfer of a right of use
20 conditioned upon the receipt of continued payments.

21 (10) Gross receipts does not include:

22 (a) The amount of any rebate granted by a motor vehicle
23 or motorboat manufacturer or dealer at the time of sale of the
24 motor vehicle or motorboat, which rebate functions as a discount
25 from the sales price of the motor vehicle or motorboat; or

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

4 Sec. 2. This act becomes operative on August 30, 2009.

5 Sec. 3. Original section 77-2701.16, Reissue Revised
6 Statutes of Nebraska, is repealed.

7 Sec. 4. Since an emergency exists, this act takes effect
8 when passed and approved according to law.