

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 802**

Introduced by Coash, 27.

Read first time January 08, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701.10 and 77-2701.16, Reissue Revised Statutes of  
3 Nebraska; to redefine contractor or repairperson and  
4 gross receipts to exclude sod as prescribed; to provide  
5 an operative date; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2701.10, Reissue Revised Statutes  
2 of Nebraska, is amended to read:

3           77-2701.10 Contractor or repairperson means any person  
4 who performs any repair services upon property annexed to, or  
5 who annexes building materials to, real estate, including leased  
6 property, and who, as a necessary and incidental part of performing  
7 such services, annexes building materials to the real estate being  
8 so repaired or annexed or arranges for such annexation. Contractor  
9 or repairperson does not include any person who incorporates  
10 live plants, except for sod, into real estate except when such  
11 incorporation is incidental to the transfer of an improvement upon  
12 real estate or the real estate. The contractor or repairperson  
13 not electing to be taxed as a retailer is considered to be the  
14 consumer of such building materials furnished by him or her and  
15 annexed to the real estate being so repaired or annexed for all  
16 the purposes of the Nebraska Revenue Act of 1967. The contractor or  
17 repairperson:

18           (1) Shall be permitted to make an election that he or she  
19 will be taxed as a retailer in which case he or she shall not be  
20 considered the final consumer of building materials annexed to real  
21 estate;

22           (2) Shall be permitted to make an election that he or she  
23 will be taxed as the consumer of building materials annexed to real  
24 estate, will pay the sales tax or remit the use tax at the time of  
25 purchase, and will maintain a tax-paid inventory; or

1           (3) Shall be permitted to make an election that he or  
2 she will be taxed as the consumer of building materials annexed  
3 to real estate and may issue a resale certificate when purchasing  
4 building materials that will be annexed to real estate. Such person  
5 shall then remit the appropriate use tax on any building materials  
6 when withdrawn from inventory for the purpose of being annexed to  
7 real estate at the rate in effect at the time and place of the  
8 withdrawal from inventory.

9           The provisions of this section shall not excuse any  
10 person from the obligation to collect sales tax on retail sales of  
11 property not annexed to real estate or from the obligation to pay  
12 the sales tax or remit the use tax on tools, services, and other  
13 materials consumed that are not annexed to real estate.

14           The Department of Revenue shall not prescribe any  
15 requirements of Nebraska sales revenue, percentage or otherwise,  
16 restricting any person's election. Any change in an election shall  
17 require prior approval by the Tax Commissioner.

18           Any change in the election shall, if filed on or prior to  
19 the fifteenth of the month, become effective at the beginning of  
20 the following month or, if filed after the fifteenth of the month,  
21 become effective on the first day of the next succeeding month. Any  
22 person who changes his or her election and becomes a contractor  
23 or repairperson shall pay the tax on all building materials in  
24 inventory which may be annexed to real estate at the time of making  
25 the change in election except when such contractor or repairperson

1 elects to purchase inventory with a resale certificate. Any person  
2 who changes his or her election and becomes a retailer shall not be  
3 entitled to a refund but shall receive a credit for the tax paid on  
4 building materials in inventory at the time the building materials  
5 are sold. The credit shall be applied against the tax collected on  
6 sales of such building materials.

7 Any contractor or repairperson who has not completed and  
8 filed an election as required in this section within three months  
9 after beginning to operate as a contractor or repairperson shall be  
10 considered a retailer for all periods until an election has been  
11 made.

12 Sec. 2. Section 77-2701.16, Reissue Revised Statutes of  
13 Nebraska, 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 ancillary services, except for conference bridging services, and

1 intrastate telecommunications services, except for value-added,  
2 nonvoice data service; and

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) The gross income received for computer software

1 training;

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

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

12 (f) The gross income received for labor for repair or  
13 maintenance services performed with regard to tangible personal  
14 property the sale of which would be subject to sales and use taxes,  
15 excluding motor vehicles, except as otherwise provided in section  
16 77-2704.26 or 77-2704.50;

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

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

23 (5) Gross receipts includes the sale of admissions which  
24 means the right or privilege to have access to or to use a place  
25 or location. An admission includes a membership that allows access

1 to or use of a place or location, but which membership does not  
2 include the right to hold office, vote, or change the policies of  
3 the organization. When an admission to an activity or a membership  
4 constituting an admission pursuant to this subsection is combined  
5 with the solicitation of a contribution, the portion or the amount  
6 charged representing the fair market price of the admission shall  
7 be considered a retail sale subject to the tax imposed by section  
8 77-2703. The organization conducting the activity shall determine  
9 the amount properly attributable to the purchase of the privilege,  
10 benefit, or other consideration in advance, and such amount shall  
11 be clearly indicated on any ticket, receipt, or other evidence  
12 issued in connection with the payment.

13 (6) Gross receipts includes the sale of live plants,  
14 except for sod, incorporated into real estate except when such  
15 incorporation is incidental to the transfer of an improvement upon  
16 real estate or the real estate.

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

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

22 (9) Gross receipts includes the retail sale of digital  
23 audio works, digital audiovisual works, digital codes, and digital  
24 books delivered electronically if the products are taxable when  
25 delivered on tangible storage media. A sale includes the transfer



1 of a permanent right of use, the transfer of a right of use that  
2 terminates on some condition, and the transfer of a right of use  
3 conditioned upon the receipt of continued payments.

4 (10) Gross receipts does not include:

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

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

12 Sec. 3. This act becomes operative on October 1, 2010.

13 Sec. 4. Original sections 77-2701.10 and 77-2701.16,  
14 Reissue Revised Statutes of Nebraska, are repealed.