

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 974

Introduced by Kolowski, 31; Baker, 30.

Read first time January 14, 2016

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701 and 77-2701.04, Revised Statutes Supplement, 2015; to exempt
3 sales of clothing, school supplies, computers, and computer-related
4 accessories from sales and use taxes as prescribed; to harmonize
5 provisions; to provide an operative date; to repeal the original
6 sections; and to declare an emergency.

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

1 Section 1. Section 77-2701, Revised Statutes Supplement, 2015, is
2 amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,235, and 77-27,236
4 and section 3 of this act shall be known and may be cited as the Nebraska
5 Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Supplement, 2015, is
7 amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and
9 section 3 of this act, unless the context otherwise requires, the
10 definitions found in sections 77-2701.05 to 77-2701.55 shall be used.

11 Sec. 3. (1) Sales and use taxes shall not be imposed on the gross
12 receipts from the sale, use, or other consumption in this state of the
13 following items of tangible personal property, if sold between 12:01 a.m.
14 on the first Friday of August and 11:59 p.m. the following Sunday:

15 (a) Clothing with a sales price of one hundred dollars or less per
16 item;

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

19 (c) Computers and computer-related accessories with a sales price of
20 seven hundred fifty dollars or less per item.

21 (2) For purposes of this section:

22 (a) Computer means an electronic device that accepts information in
23 digital or similar form and manipulates such information for a result
24 based on a sequence of instructions. The term includes any electronic
25 book reader and any laptop, desktop, handheld, tablet, or tower computer
26 but does not include cellular telephones, video game consoles, digital
27 media receivers, or devices that are not primarily designed to process
28 data; and

29 (b) Computer-related accessory includes keyboards, mouse devices,
30 personal digital assistants, monitors, other peripheral devices, modems,
31 routers, and nonrecreational software, regardless of whether the

1 accessories are used in association with a personal computer base unit.
2 Computer-related accessory does not include furniture or systems,
3 devices, software, or peripherals that are designed or intended primarily
4 for recreational use. For purposes of this subdivision, monitor does not
5 include a device that includes a television tuner.

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

8 (a) Computer software intended primarily for recreational use;

9 (b) Clothing accessories or equipment;

10 (c) Protective equipment;

11 (d) Sport or recreational equipment;

12 (e) School instructional material;

13 (f) Any item for use in a trade or business;

14 (g) The sale of any item in a theme park, entertainment complex,
15 public lodging establishment, or airport; or

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

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

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

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

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

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

29 (b) A discount by the seller reduces the sales price of the eligible
30 property and the discounted sales price determines whether the sales
31 price is within the price threshold. A coupon that reduces the sales

1 price is treated as a discount if the seller is not reimbursed for the
2 coupon amount by a third party. If a discount applies to the total amount
3 paid by a purchaser, rather than to the sales price of a particular item,
4 and the purchaser has purchased both eligible property and taxable
5 property, the seller should allocate the discount based on the total
6 sales price of the taxable property compared to the total sales price of
7 all property sold in that same transaction;

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

13 (d) Eligible property that customers purchase during the exemption
14 period with use of a rain check shall qualify for the exemption,
15 regardless of when the rain check was issued. Issuance of a rain check
16 during the exemption period shall not qualify eligible property for the
17 exemption if the property is purchased after the exemption period;

18 (e) The procedure for an exchange regarding a sales tax holiday is
19 as follows:

20 (i) If a customer purchases an item of eligible property during the
21 exemption period, but later exchanges the item for a similar eligible
22 item, even if a different size, different color, or other feature, no
23 additional tax is due, even if the exchange is made after the exemption
24 period;

25 (ii) If a customer purchases an item of eligible property during the
26 exemption period but, after the exemption period has ended, the customer
27 returns the item and receives credit on the purchase of a different item,
28 the appropriate sales tax is due on the sale of the newly purchased item;
29 and

30 (iii) If a customer purchases an item of eligible property before
31 the exemption period, but during the exemption period the customer

1 returns the item and receives credit on the purchase of a different item
2 of eligible property, no sales tax is due on the sale of the new item if
3 the new item is purchased during the exemption period;

4 (f) Delivery charges, including shipping, handling, and service
5 charges, are part of the sales price of eligible property. For the
6 purpose of determining the price threshold, if all the property in a
7 shipment qualifies as eligible property and the sales price for each item
8 in the shipment is within the price threshold, then the seller does not
9 have to allocate the delivery, handling, or service charge to determine
10 if the price threshold is exceeded. The shipment shall be considered a
11 sale of eligible products. If the shipment includes eligible property and
12 taxable property, including an eligible item with a sales price in excess
13 of the price threshold, the seller should allocate the delivery charge by
14 using:

15 (i) A percentage based on the total sales prices of the taxable
16 property compared to the total sales prices of all property in the
17 shipment; or

18 (ii) A percentage based on the total weight of the taxable property
19 compared to the total weight of all property in the shipment. The seller
20 shall tax the percentage of the delivery charge allocated to the taxable
21 property, but does not have to tax the percentage allocated to the
22 eligible property;

23 (g) For the purpose of this section, eligible property qualifies for
24 exemption if:

25 (i) The item is both delivered to and paid for by the customer
26 during the exemption period; or

27 (ii) The customer orders and pays for the item and the seller
28 accepts the order during the exemption period for immediate shipment,
29 even if delivery is made after the exemption period. The seller accepts
30 an order when the seller has taken action to fill the order for immediate
31 shipment. Actions to fill an order include placement of an "in date"

1 stamp on a mail order or assignment of an "order number" to a telephone
2 order. An order is for immediate shipment when the customer does not
3 request delayed shipment. An order is for immediate shipment
4 notwithstanding that the shipment may be delayed because of a backlog of
5 orders or because stock is currently unavailable to or on back order by
6 the seller;

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

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

20 Sec. 4. This act becomes operative on July 1, 2016.

21 Sec. 5. Original sections 77-2701 and 77-2701.04, Revised Statutes
22 Supplement, 2015, are repealed.

23 Sec. 6. Since an emergency exists, this act takes effect when
24 passed and approved according to law.