

LEGISLATIVE BILL 901

Approved by the Governor April 19, 1994

Introduced by Kristensen, 37

AN ACT relating to sales and use tax; to amend sections 77-2701, 77-2702.07, 77-2702.13, and 77-2704.09, Revised Statutes Supplement, 1993; to redefine gross receipts and retail sale; to provide and change exemptions; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 77-2701, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2701. Sections 77-2701 to 77-27,135 and section 3 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 2. That section 77-2702.07, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2702.07. (1) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(c) The cost of transportation of the property prior to its sale to the purchaser;

(d) The amount of any excise or property tax levied against the property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

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

(a) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. Gross receipts shall not mean the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service;

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

(c) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands, manufacturing purposes, and the care of animal life, the products of which ordinarily constitute food for human consumption, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

(3) Gross receipts of every person engaged in selling, leasing, or

otherwise providing intellectual or entertainment property shall mean:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller. Gross receipts shall not mean the amount charged for training customers in the use of computer software if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the computer software; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967 and except as provided in section 3 of this act.

(4) Gross receipts shall not include any of the following:

(a) Cash discounts allowed and taken on sales;

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

(c) Sales price of property returned by customers when the full sales price is refunded either in cash or credit;

(d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property;

(e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;

(f) The value of a motor vehicle taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle; or

(g) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the property prior to June 1, 1967, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration.

Sec. 3. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, license, or rental of or the storage, use, or other consumption in this state of personal property containing copyrighted material if the purchaser, lessee, licensee, or renter is operating under a certificate from the Federal Communications Commission and possesses such personal property for rebroadcasting to the general public, regardless of whether the property is in the form of satellite transmissions, films, records, tapes, discs, or other media.

Sec. 4. That section 77-2702.13, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2702.13. (1) Retail sale or sale at retail shall mean:

(a) A sale of property for any purpose other than for resale in the regular course of business; of property;

(b) A sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal. The advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly;

(c) The delivery in this state of property by an owner or former owner thereof or by a factor or agent of such owner, former owner, or factor, if the delivery is to a customer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery in such cases shall include the delivery person's selling price of the property in his or her gross receipts;

(d) The sale of admissions which shall mean the right or privilege to have access to or to use a place or location. When an admission to an activity is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. Admissions shall not include (i) fees charged by elementary or secondary schools, public or private, (ii) fees charged by school districts, student organizations, or

parent-teacher associations pursuant to an agreement with the proper school authorities in an elementary or secondary school, public or private, during the regular school day or at an approved function of any such school, or (iii) fees charged by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act;

(e) A sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate; and

(f) A sale of any property annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2702.05 except when such annexation is incidental to the transfer of an improvement upon real estate or the real estate; and

(g) A sale of veterinary medicines and chemicals to a veterinarian, which purchases are for the treatment of animals either directly by the veterinarian or by another person. The veterinarian is and shall remain liable for the sales and use tax on the purchase even if ownership of the veterinary medicines and chemicals is transferred to another person before use.

(2) Retail sale or sale at retail shall not mean:

(a) The sale of property which will enter into and become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail;

(b) The sale of:

(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall include live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or any person engaged in the business of bartering, buying, or selling live poultry or livestock on the hoof;

(ii) Feed for any form of animal life or water which is supplied for consumption by animal life or which is otherwise used in caring for animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel. Feed shall include all grains, minerals, salts, proteins, fats, fibers, vitamins, grit, and antibiotics commonly used as feed or feed supplements;

(iii) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products, and seed legumes, seed grasses, and seed grains when sold to be used exclusively for agricultural purposes;

(iv) Agricultural chemicals for use in agriculture and applied to land or crops. Agricultural chemicals shall not mean chemicals applied to harvested grains stored in commercial elevators; or

(v) Oxygen for use in aquaculture as defined in section 2-3804.01;

or

(vi) Veterinary medicines and chemicals when sold by a licensed veterinarian who has paid the sales or use tax on such veterinary medicines and chemicals;

(c) The sale of:

(i) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(ii) Containers when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(iii) Returnable containers when sold with contents in connection with a retail sale of the contents or when resold for refilling.

The term returnable containers shall mean containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) The sale of property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale;

(e) The sale of property the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States of America when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state;

(f) The purchase in this state or the purchase outside this state, with title passing in this state, of materials and replacement parts used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common

or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers of persons or property. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that their certificate will expire and be null and void as of such date;

(g) The sale of railroad rolling stock whether purchased by a railroad or by any other person; or

(h) The sale of property annexed to real estate.

Sec. 5. That section 77-2704.09, Revised Statutes Supplement, 1993, be amended to read as follows:

77-2704.09. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of insulin and the following when sold for a patient's use under a prescription written by a person licensed under Chapter 71, article 1, or sections 71-4701 to 71-4719: Prescription medicines; durable medical equipment; home medical supplies; prosthetic devices; orthotic devices; oxygen; and oxygen equipment.

(2) For purposes of this section:

(a) Durable medical equipment shall mean equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is appropriate for use in the home;

(b) Home medical supplies shall mean supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(c) Orthotic devices shall mean devices which are used to support, or limit the movement of, parts of the body to serve a medical purpose and generally are not useful to a person in the absence of illness or injury;

(d) Oxygen equipment shall mean oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories; and

(e) Prosthetic devices shall mean devices which permanently or temporarily replace a missing part or a nonfunctioning part of the human body and shall include any supplies used with such devices.

Sec. 6. This act shall become operative on July 1, 1994.

Sec. 7. That original sections 77-2701, 77-2702.07, 77-2702.13, and 77-2704.09, Revised Statutes Supplement, 1993, are repealed.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.