

LEGISLATIVE BILL 759
Passed over the Governor's veto
May 27, 2003.

Introduced by Brashear, 4; D. Pederson, 42; Thompson, 14

AN ACT relating to revenue and taxation; to amend sections 53-160, 77-2702.05, 77-2704.07, 77-2704.23, 77-2704.33, and 77-27,132, Reissue Revised Statutes of Nebraska, sections 77-2101.03, 77-2602, 77-2701, 77-2701.02, 77-2702.03, 77-2702.13, 77-2702.17, 77-2715.02, 77-27,222, and 77-4008, Revised Statutes Supplement, 2002, sections 77-2702.07, 77-2702.14, 77-2703, 77-2704.26, and 77-2705, Revised Statutes Supplement, 2002, as amended by sections 20, 36, 48, 58, and 70, respectively, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, and sections 49 and 60, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003; to change provisions relating to alcohol taxes, estate taxes, cigarette taxes, sales and use taxes, income taxes, child care tax credits, and tobacco products taxes; to provide penalties; to harmonize provisions; to provide operative dates; to provide severability; and to repeal the original sections.

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

Section 1. Section 53-160, Reissue Revised Statutes of Nebraska, is amended to read:

53-160. (1) For the purpose of raising revenue, a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of ~~twenty-three~~ thirty-one cents per gallon on all beer; ~~seventy-five~~ ninety-five cents per gallon for wine, ~~containing not more than fourteen percent but not less than five-tenths of one percent of alcohol by volume and one dollar and thirty-five cents per gallon for wines and other dilute alcoholic beverages containing more than fourteen percent of alcohol by volume,~~ except for wines produced in farm wineries; ~~five~~ six cents per gallon for wine produced in farm wineries; and ~~three dollars~~ three dollars and seventy-five cents per gallon on alcohol and spirits manufactured and sold by such manufacturer or shipped for sale in this state by such wholesaler in the course of such business. The gallonage tax imposed by this subsection shall be imposed only on alcoholic liquor upon which a federal excise tax is imposed.

(2) Manufacturers or wholesalers of alcoholic liquor shall be exempt from the payment of the gallonage tax on such alcoholic liquor upon satisfactory proof, including bills of lading furnished to the commission by affidavit or otherwise as the commission may require, that such alcoholic liquor was manufactured in this state but shipped out of the state for sale and consumption outside this state.

(3) Dry wines or fortified wines manufactured or shipped into this state solely and exclusively for sacramental purposes and uses shall not be subject to the gallonage tax.

(4) The gallonage tax shall not be imposed upon any alcoholic liquor, whether manufactured in or shipped into this state, when sold to a licensed nonbeverage user for use in the manufacture of any of the following when such products are unfit for beverage purposes: Patent and proprietary medicines and medicinal, antiseptic, and toilet preparations; flavoring extracts, syrups, food products, and confections or candy; scientific, industrial, and chemical products, except denatured alcohol; or products for scientific, chemical, experimental, or mechanical purposes.

(5) The gallonage tax shall not be imposed upon the privilege of engaging in any business in interstate commerce or otherwise, which business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this state.

(6) The gallonage tax shall be in addition to all other occupation or privilege taxes imposed by this state or by any municipal corporation or political subdivision thereof.

(7) The commission shall collect the gallonage tax and shall account for and remit to the State Treasurer at least once each week all money collected pursuant to this section. If any alcoholic liquor manufactured in or shipped into this state is sold to a licensed manufacturer or wholesaler of this state to be used solely as an ingredient in the manufacture of any beverage for human consumption, the tax imposed upon such manufacturer or wholesaler shall be reduced by the amount of the taxes which have been paid as to such alcoholic liquor so used under the Nebraska Liquor Control Act. The

net proceeds of all revenue arising under this section shall be credited to the General Fund.

Sec. 2. Section 77-2101.03, Revised Statutes Supplement, 2002, is amended to read:

77-2101.03. (1) For decedents dying on or after January 1, 2003, and before October 1, 2003, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table: The following table shall be used to determine the tax on the Nebraska taxable estate.

Nebraska taxable estate		Tax =	+	%	Of Excess Over
At least	But less than				
\$ 0	\$ 40,000	\$ 0		0	\$ 0
40,000	90,000	0		.8	40,000
90,000	140,000	400		1.6	90,000
140,000	240,000	1,200		2.4	140,000
240,000	440,000	3,600		3.2	240,000
440,000	640,000	10,000		4	440,000
640,000	840,000	18,000		4.8	640,000
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000		1,082,800		16	10,040,000

(2) For decedents dying on or after October 1, 2003, the following table shall be used to determine the tax on the Nebraska taxable estate:

Nebraska taxable estate		Tax =	+	%	Of Excess Over
At least	But less than				
\$ 0	\$ 100,000	\$ 0		41	\$ 0
100,000	500,000	41,000		6.4	100,000
500,000	1,000,000	66,600		7.2	500,000
1,000,000	1,500,000	102,600		8	1,000,000
1,500,000	2,000,000	142,600		8.8	1,500,000
2,000,000	2,500,000	186,600		9.6	2,000,000
2,500,000	3,000,000	234,600		10.4	2,500,000
3,000,000	4,000,000	286,600		11.2	3,000,000
4,000,000	5,000,000	398,600		12	4,000,000
5,000,000	6,000,000	518,600		12.8	5,000,000
6,000,000	7,000,000	646,600		13.6	6,000,000
7,000,000	8,000,000	782,600		14.4	7,000,000
8,000,000	9,000,000	926,600		15.2	8,000,000
9,000,000		1,078,600		16	9,000,000

~~(2)~~ (3) Taxable generation-skipping transfers shall be taxed at a rate of sixteen percent of the Nebraska taxable transfer.

Sec. 3. Section 77-2602, Revised Statutes Supplement, 2002, is amended to read:

77-2602. (1) Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, sixty-four cents per package; ~~until October 1, 2004, and thirty-four cents per package commencing October 1, 2004,~~ and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package.

(2) Commencing July 1, 1994, and continuing until ~~July 1, 2009~~ October 1, 2004, the State Treasurer shall place the equivalent of twenty-one cents of such tax ~~less three million dollars each fiscal year of proceeds of such tax~~ in the General Fund. Commencing October 1, 2004, Commencing July 1, 2009, the State Treasurer shall place the equivalent of ~~twenty-one~~ forty-nine

cents of such tax in the General Fund. The State Treasurer shall reduce the amount placed in the General Fund under this subsection by the amount prescribed in subdivision (3)(d) of this section. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by the tax rate per package of cigarettes containing not more than twenty cigarettes.

(3) The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Department of Health and Human Services Finance and Support Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(c) Third, beginning July 1, 2001, and continuing until October 1, 2002, the State Treasurer shall place the equivalent of five cents of such tax in the Building Renewal Allocation Fund. Beginning October 1, 2002, and continuing until ~~October 1, 2004~~ all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. ~~Beginning October 1, 2004, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of five cents of such tax in the Building Renewal Allocation Fund.~~ The Legislature shall appropriate each fiscal year all sums inuring to the fund, plus interest earnings, for the Task Force for Building Renewal to be used to carry out its duties and to fulfill the purposes of the Deferred Building Renewal Act. Unexpended balances existing at the end of each fiscal year shall be, and are hereby, reappropriated. ~~For fiscal year distributions occurring after FY1998-99, the~~ The distribution under this subdivision shall not be less than ~~five-sevenths~~ of the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to ~~five-sevenths~~ of the FY1997-98 amount shall reduce the distribution to the General Fund;

(d) Fourth, ~~until October 1, 2002, and beginning on October 1, 2004,~~ the State Treasurer shall place the difference between the equivalent of thirteen cents of such tax and the sum of the amounts distributed pursuant to subdivisions (a) through (c) and ~~(f) through (h)~~ of this subsection in a special fund to be known as the Nebraska Capital Construction Fund. ~~Beginning October 1, 2002, and continuing until October 1, 2004, the State Treasurer shall place the difference between the equivalent of forty-three cents of such tax and the sum of the amounts distributed pursuant to subdivisions (a) through (c) and (f) through (i) of this subsection in the Nebraska Capital Construction Fund;~~

~~(e) Fifth,~~ beginning July 1, 1994, and continuing until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of three million dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of three million dollars each year for fiscal year 1994-95 through fiscal year 2008-09;

~~(f) Sixth~~ (e) Fifth, beginning July 1, 2001, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund;

~~(g) Seventh~~ (f) Sixth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to ~~this subsection~~ subsection (2) of this section by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision;

~~(h) Eighth~~ (g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class

Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to ~~this subsection~~ subsection (2) of this section by such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision; and

~~(i) Ninth~~ (h) Eighth, beginning October 1, 2002, and continuing until October 1, 2004, the State Treasurer shall place the equivalent of twenty-eight cents of such tax in the Cash Reserve Fund.

(4) If, after distributing the proceeds of such tax pursuant to subsections (2) and (3) of this section, any proceeds of such tax remain, the State Treasurer shall place such remainder in the Nebraska Capital Construction Fund.

~~(2)~~ (5) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Department of Health and Human Services Finance and Support Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, (h) the City of the Metropolitan Class Development Fund, and (i) the Cash Reserve Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through (i) of this subsection.

Sec. 4. Section 77-2701, Revised Statutes Supplement, 2002, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222 and sections 8, 10, and 17 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 5. Section 77-2701.02, Revised Statutes Supplement, 2002, is amended to read:

77-2701.02. Pursuant to section 77-2715.01:

(1) Until July 1, 1998, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent;

(2) Commencing July 1, 1998, and until July 1, 1999, the rate of the sales tax levied pursuant to section 77-2703 shall be four and one-half percent;

(3) Commencing July 1, 1999, and until the start of the first calendar quarter after July 20, 2002, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent; and

(4) Commencing on the start of the first calendar quarter after July 20, 2002, ~~and until the start of the fifth calendar quarter after July 20, 2002,~~ the rate of the sales tax levied pursuant to section 77-2703 shall be five and one-half percent. ~~+ and~~

~~(5) Commencing on the start of the fifth calendar quarter after July 20, 2002, the rate of the sales tax levied pursuant to section 77-2703 shall be five percent.~~

Sec. 6. Section 77-2702.03, Revised Statutes Supplement, 2002, is amended to read:

77-2702.03. For purposes of sections 77-2702.03 to 77-2713 and sections 8, 10, and 17 of this act, unless the context otherwise requires, the definitions found in sections 77-2702.04 to 77-2702.23, 77-2702.25, and 77-2702.26 and sections 8 and 10 of this act shall be used.

Sec. 7. Section 77-2702.05, Reissue Revised Statutes of Nebraska, is amended to read:

77-2702.05. Contractor or repairperson shall mean any person who performs any repair services upon property annexed to, or who annexes property to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, annexes property belonging to him or her to the real estate being so repaired or annexed. Contractor or

repairperson shall not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer shall be considered to be the consumer of such property furnished by him or her and annexed to the real estate being so repaired or annexed for all the purposes of the Nebraska Revenue Act of 1967. The contractor or repairperson:

(1) Shall be permitted to make an election that he or she will be taxed as a retailer in which case he or she shall not be considered the final consumer of property annexed to real estate; ~~except when the transfer of the annexed property is incidental to the transfer of an improvement upon real estate or the real estate;~~

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

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

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

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

Any change in the election shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all property in inventory which may be annexed to real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on property in inventory at the time the property is sold. The credit shall be applied against the tax collected on sales of such property.

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

Sec. 8. Section 77-2702.07, Revised Statutes Supplement, 2002, as amended by section 20, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

~~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;

(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, other than mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. In the furnishing of mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska. Gross receipts shall not mean (i) 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 or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications service that is paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(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 and manufacturing purposes, 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; 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 77-2704.39.

(4) Gross receipts for providing a service shall mean:

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

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

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

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax;

(e) The gross income received for labor by a contractor except as provided in section 17 of this act;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in subdivision (2) (f) of section 77-2702.13 or section 77-2704.26;

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

(i) The gross income received for detective services.

(5) 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 or motorboat

manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;

(c) Sales price of property or services returned or rejected 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 or services 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 or services;

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

(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; or

(h) Except as provided in subsection (2) of this section, until October 1, 2002, the amount charged for labor or services rendered in installing or applying the property sold 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 property.

(6) Subsections (1) through (6) of this section terminate on January 1, 2004.

(7) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

~~(2)~~ (8) 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)~~ (8)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 52 of this act, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service; and

(ii) In the furnishing of mobile telecommunications service as described in section 52 of this act, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(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, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(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; and

(e) The 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)~~ (8)(a) or (b) of this section or community antenna television service specified in subdivision ~~(2)(d)~~ (8)(d) of this section.

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

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

~~(4)~~ (10) Gross receipts for providing a service means:

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

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

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

(d) The gross income received for installing and applying tangible

personal property if the sale of the property is subject to tax;

(e) The gross income received for labor by a contractor except as provided in section 17 of this act;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or section 65, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003;

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

(i) The gross income received for detective services.

~~(5)~~ (11) Gross receipts includes the sale of admissions which means 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.

~~(6)~~ (12) Gross receipts includes the 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.

~~(7)~~ (13) Gross receipts includes the sale of any property annexed to real estate and any associated labor by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 14 of this act. ~~except when such annexation is incidental to the transfer of an improvement upon real estate or the real estate.~~

~~(8)~~ (14) Gross receipts includes the sale of prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements. If the sale or recharge of a prepaid telephone calling arrangement does not take place at the vendor's place of business, the sale or recharge shall be conclusively determined to take place at the customer's shipping address or, if there is no item shipped, at the customer's billing address. For purposes of this subsection, a prepaid telephone calling arrangement means the right to exclusively purchase telecommunications services that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.

~~(9)~~ (15) Gross receipts does not include:

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

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

~~(c) The amount charged for labor and services rendered in annexing property to real estate.~~

(16) Subsections (7) through (15) of this section become operative on January 1, 2004.

(17) The Tax Commissioner shall hold a hearing on rules and regulations to carry out the changes made to this section by this legislative bill. It is the intent of the Legislature that the Tax Commissioner adopt and promulgate rules and regulations to carry out such changes.

Sec. 9. Section 77-2702.13, Revised Statutes Supplement, 2002, is amended to read:

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;

(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 and any associated labor 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;

(f) A sale of any property annexed to real estate and any associated labor 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;~~

(g) The sale of prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements. If the sale or recharge of a prepaid telephone calling arrangement does not take place at the vendor's place of business, the sale or recharge shall be conclusively determined to take place at the customer's shipping address or, if there is no item shipped, at the customer's billing address. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications ~~services that are~~ service that is paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed; and

(h) Providing a service defined in subsection (4) of section ~~77-2702.07~~ 8 of this act.

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

(a) The sale of:

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

(ii) A service listed in subsection (4) of section ~~77-2702.07~~ 8 of this act which will become an ingredient or component part of a service listed in subsection (4) of section ~~77-2702.07~~ 8 of this act 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) 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;

(iii) Agricultural chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents for use in commercial agriculture and applied to land or crops and sold in any tax period that has not been closed by the applicable statute of limitations. Agricultural chemicals shall not mean chemicals, adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents applied to harvested grains stored in commercial elevators; or

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

(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 or services 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 or services 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 and any associated labor 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 or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers. 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. ~~and any associated labor.~~

Sec. 10. Section 77-2702.14, Revised Statutes Supplement, 2002, as amended by section 36, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

~~77-2702.14.~~ (1) Retailer means any seller.

(2) To facilitate the proper administration of the Nebraska Revenue Act of 1967, the following persons have the duties and responsibilities of sellers for the purposes of sales and use taxes:

(a) Any person in the business of making sales subject to tax under section 77-2703 at auction of property owned by the person or others;

(b) Any person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer. The seller does not include the auctioneer in such case;

(c) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 14 of this act;

(d) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event; and

(e) Every person engaged in the business of providing any service defined in subsection ~~(4)~~ (10) of section ~~20 of this act~~ 8 of this act.

(3) For the proper administration of the Nebraska Revenue Act of 1967, the following persons do not have the duties and responsibilities of a seller for purposes of sales and use taxes:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967;

(b) Any person who leases or rents railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(c) Any person engaged in the business of furnishing rooms in a facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days; or

(d) Any person making sales at a flea market, craft show, fair, or similar event when such person does not have a sales tax permit and has arranged to pay sales taxes collected to the person operating, organizing, or

promoting such event.

Sec. 11. Section 77-2702.17, Revised Statutes Supplement, 2002, is amended to read:

77-2702.17. (1) Sales price shall mean the total amount for which property is sold valued in money whether paid in money or otherwise, without any deduction on account of:

(a) The cost of the property sold;

(b) The cost of material used, labor or service cost, interest paid, losses, or any other expenses;

(c) The cost of transportation of the property. The total amount for which property is sold shall include any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;

(d) The cost of computer software contained on the property; or

(e) The cost of any license, franchise, or lease for the use of computer software or entertainment properties such as videotapes or movie films.

(2) Sales price shall not mean any of the following:

(a) Cash discounts allowed and taken on sales;

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

(c) The amount refunded for property or services returned or rejected by customers when all or part of the amount charged therefor 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 or services 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 or services;

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

(g) ~~The amount charged for labor or services rendered in annexing property to real estate; or~~

~~(h) Until October 1, 2002, the amount charged for labor or services rendered in installing or applying the property sold 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 property.~~

Sec. 12. Section 77-2703, Revised Statutes Supplement, 2002, as amended by section 48, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

77-2703. (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state, the gross receipts of every person engaged as a public utility, as a community antenna television service operator or any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), or (d), ~~or (e)~~ of section 20 of ~~this act~~ 8 of this act until January 1, 2004, and the services defined in subdivision (8)(a), (b), (d), or (e) of section 8 of this act beginning on January 1, 2004, or as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 20 of this act 8 of this act until January 1, 2004, and subsection (9) of section 8 of this act beginning on January 1, 2004, the gross receipts from the sale of admissions in this state, the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section, and the gross receipts from the provision of services defined in subsection (4) of section 20 of this act 8 of this act until January 1, 2004, and services defined in subsection (10) of section 8 of this act beginning on January 1, 2004. Except as provided in section 7 of this act, when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records. For purposes of this subsection until January 1, 2004, the provision of services shall be deemed to be in this state for services provided to real estate if the real estate is located in this state; for services provided to personal property or animals if the personal property or animal is located in this state and the service is rendered for use in this state; for detective services under subdivision (4)(i) of section 8 of this act, in the case of a customer who is an individual, if the individual is residing in this state, or in the case of a

business customer, if the principal place of the business is located in this state; and for computer software training under subdivision (4)(c) of section 8 of this act if the training is performed at a location that is within this state for a customer located within this state.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes, in good faith, from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, the tax shall be collected by the lessor on the rental or lease price except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in section 60-301, for periods of one year or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the

contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and, with the exception of motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09, the tax shall be collected by the county treasurer or designated county official as provided in section 60-302 at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, trailers, and semitrailers registered pursuant to section 60-305.09 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer, or semitrailer in this state and does not register it for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or designated county official at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar

amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motorboat in this state and does not register it within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or designated county official. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or designated county official shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or designated county official shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer or designated county official violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of

three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the 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.

Sec. 13. Section 49, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

Sec. 49. (1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 shall be governed by the sourcing rules in sections 49 to 52 of this act.

(2) When the property is received by the purchaser at a business location of the retailer, the sale is sourced to that business location.

(3) When the property is not received by the purchaser at a business location of the retailer, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the retailer.

(4) When subsection (2) or (3) of this section does not apply, the sale is sourced to the location indicated by an address or other information for the purchaser that is available from the business records of the retailer that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.

(5) When subsection (2), (3), or (4) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsection (2), (3), (4), or (5) of this section does not apply, including the circumstance in which the retailer is without sufficient information to apply the rules in any such subsection, then the location will be determined by the address from which property was shipped, from which the digital good was first available for transmission by the retailer, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(7) The lease or rental of tangible personal property, other than property identified in subsection (8) or (9) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(8) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment under subsection

(9) of this section shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(9) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsections (2) through (6) of this section. Transportation equipment means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (9)(a) through (c) of this section.

(10) The provision of services shall be sourced to this state for services provided to real estate if the real estate is located in this state; ~~7~~ for services provided to personal property or animals if the personal property or animal is located in this state and the service is rendered for use in this state; for detective services under subdivision (10)(i) of section 8 of this act, in the case of a customer who is an individual, if the individual is residing in this state, or in the case of a business customer, if the principal place of the business is located in this state; ~~7~~ and for computer software training under subdivision ~~(4)(c)~~ (10)(c) of section ~~20~~ of this act 8 of this act if the training is performed at a location that is within this state for a customer located within this state.

(11) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser.

(12) The sales, not including lease or rental, of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be sourced to the place of registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state.

(13) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.

Sec. 14. Section 77-2704.07, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.07. 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 ~~(1) any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events.~~ ~~or (2) any newspaper advertising supplement distributed with any newspaper regardless of whether or not the retailer takes possession of the supplement from the printer before delivery of the supplement is made to the newspaper.~~

Sec. 15. Section 77-2704.23, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.23. 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 sales and purchases of semen and insemination services for use in ranching or farming or for commercial or industrial uses.

Sec. 16. Section 77-2704.26, Revised Statutes Supplement, 2002, as amended by section 58, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

77-2704.26. 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 an aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days. Sales and use taxes shall not be imposed on the gross receipts from a service listed in subsection ~~(4)~~ (10) of section ~~20 of this act~~ 8 of this act that is rendered to an aircraft brought into this state by an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days after the service is completed.

Sec. 17. (1) Sales and use taxes shall not be imposed on the labor of a contractor purchased in connection with:

(a) The first or original construction of a structure;
(b) The addition of an entire room or floor to any existing building;

(c) The completion of an unfinished portion of an existing structure;

(d) The restoration, reconstruction, or replacement of a structure damaged or destroyed by fire, flood, tornado, lightning, explosion, ice storm, or other natural disaster;

(e) The construction, repair, or annexation of any structure used for the generation, transmission, or distribution of electricity; or

(f) The major renovation of an existing building or a unit of an existing building described in subdivision (2)(e)(ii) of this section. The exemption granted in this subdivision shall be conditioned upon notice from the contractor to the Department of Revenue of the nature of the project and an explanation of why the renovation will qualify for the exemption.

(2) For purposes of this section:

(a) Building means any freestanding structure annexed to land, enclosed within a roof and exterior walls, regardless of whether enclosed on all sides;

(b) Building materials means items that will be annexed to land or an improvement on land. Building materials do not include tools, supplies, or items that will not be annexed;

(c) Contractor means any person who repairs property annexed to or who annexes property to real estate, including leased property, by attaching such person's own building materials to the improvement or annexed property being built or repaired. This includes the installation of fixtures and the repair of a building, structure, or fixture;

(d) Fixture means a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item;

(e) Major renovation of an existing building or a unit of an existing building means a single renovation project that:

(i) Increases the market value of the building or unit by at least one hundred percent; or

(ii) Entails the renovation of no less than seventy-five percent of the square feet of the building or unit;

(f) Renovation means the rehabilitation, replacement, or reconfiguration of walls or fixtures. Mere replacement of floor coverings does not constitute renovation for purposes of subdivision (1)(f) of this section;

(g) Structure means any construction composed of parts arranged and fitted together in some way. Structure includes, but is not limited to, streets and roadways, street lighting, and sewers and waterlines; and

(h) Unit means a physical portion of a building designated for separate ownership, rental, or occupancy.

(3) A taxpayer shall be entitled to a refund of any sales tax paid on construction, annexation, or repair labor for any major renovation described in subdivision (2)(e)(i) of this section. The refund granted in this section shall be conditioned upon filing a claim for the refund on a form developed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the labor purchased qualifies for the refund. Any information received pursuant to the requirements of this subsection may be disclosed to any tax official in this state. Any taxpayer who provides false information on the forms required by the Tax Commissioner

for purposes of this subsection shall be subject to the penalties provided in subsection (8) of section 77-2705.

Sec. 18. Section 77-2704.33, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.33. (1) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the materials annexed to real estate in the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a contractor to pay the decreased sales tax amount as provided in this subsection ~~section~~ shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

(2) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the annexation or repair labor became subject to the sales and use tax during the term of that fixed-price contract, the taxpayer may apply for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The taxpayer shall be refunded such increased amount if the taxpayer certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the labor applied to materials annexed to real estate in the project. The taxpayer shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that annexation or repair labor is removed from the sales and use tax base during the term of a fixed-price contract, the taxpayer shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a taxpayer to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

Sec. 19. Section 60, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

Sec. 60. 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:

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

(2) A service listed in subsection (4) (10) of section 20 of this act 8 of this act which will become an ingredient or component part of a service listed in subsection (4) (10) of section 20 of this act 8 of this act for ultimate sale at retail.

Sec. 20. Section 77-2705, Revised Statutes Supplement, 2002, as amended by section 70, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, is amended to read:

77-2705. (1) Except as provided in subsection (10) of this section, every retailer shall register with the Tax Commissioner and give:

(a) The name and address of all agents operating in this state;

(b) The location of all distribution or sales houses or offices or other places of business in this state;

(c) Such other information as the Tax Commissioner may require; and

(d) If the retailer is an individual, his or her social security number.

(2) Every person furnishing public utility service as defined in subsection (2) (8) of section 20 of this act 8 of this act shall register with the Tax Commissioner and give:

(a) The address of each office open to the public in which such public utility service business is transacted with consumers; and

(b) Such other information as the Tax Commissioner may require.

(3) It shall be unlawful for any person to engage in or transact business as a seller within this state after June 1, 1967, unless a permit or permits shall have been issued to him or her as prescribed in this section. Every person desiring to engage in or to conduct business as a seller within

this state shall file with the Tax Commissioner an application for a permit for each place of business. There shall be no charge to the retailer for the application for or issuance of a permit except as otherwise provided in this section.

(4) Every application for a permit shall:

(a) Be made upon a form prescribed by the Tax Commissioner;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his or her place or places of business;

(c) Set forth such other information as the Tax Commissioner may require; and

(d) Be signed by the owner and include his or her social security number if he or she is a natural person; in the case of an association or partnership, by a member or partner; in case of a limited liability company, by a member or some person authorized by the limited liability company to sign such kinds of applications; and in the case of a corporation, by an executive officer or some person authorized by the corporation to sign such kinds of applications.

(5) After compliance with subsections (1) through (4) of this section by the applicant, the Tax Commissioner shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued and shall be valid and effective until revoked by the Tax Commissioner.

(6) (a) Whenever the holder of a permit issued under subsection (5) of this section fails to comply with any provision of the Nebraska Revenue Act of 1967 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under such act, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commissioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(b) The Tax Commissioner shall have the power to restore permits which have been revoked but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of such act relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been previously suspended or revoked under this subsection shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation.

(c) The action of the Tax Commissioner may be appealed by the taxpayer in the same manner as a final deficiency determination.

(7) For the purpose of more efficiently securing the payment, collection, and accounting for the sales and use taxes and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations providing a form and method for the registration of exempt purchases and the documentation of exempt sales.

(8) If any person, firm, corporation, association, or agent thereof presents an exempt sale certificate to the seller for property which is purchased by a taxpayer or for a use other than those enumerated in the Nebraska Revenue Act of 1967 as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

(9) Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

(10) Pursuant to the streamlined sales and use tax agreement, the state shall participate in an online registration system that will allow retailers to register in all the member states. The state hereby agrees to

honor and abide by the retailer registration decisions made by the governing board pursuant to the agreement.

Sec. 21. Section 77-2715.02, Revised Statutes Supplement, 2002, is amended to read:

77-2715.02. (1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) The income amounts for columns A and E shall be:

(i) \$0, \$2,400, \$17,000, and \$26,500, for single returns;

(ii) \$0, \$4,000, \$30,000, and \$46,750, for married filing joint returns;

(iii) \$0, \$3,800, \$24,000, and \$35,000, for head-of-household returns;

(iv) \$0, \$2,000, \$15,000, and \$23,375, for married filing separate returns; and

(v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;

(b) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(c) The amount in column D shall be the rate on the income in excess of the amount in column E;

(d) For taxable years beginning or deemed to begin before January 1, 2003, and for taxable years beginning or deemed to begin on or after January 1, 2004, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6784, .9432, 1.3541, and 1.8054;

(e) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;

(f) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and

(g) One rate schedule shall be established for each federal filing status.

(3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income	but not	pay	plus	of the
over	over			amount over

(4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Sec. 22. Section 77-27,132, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,132. (1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the State Treasurer shall credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from motor vehicles, trailers, and

semitrailers, except that the proceeds equal to any sales tax rate provided for in section 77-2701.02 that is in excess of five percent derived from motor vehicles, trailers, and semitrailers shall be credited to the General Fund. The balance of ~~the~~ all amounts ~~so paid~~ collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Sec. 23. Section 77-27,222, Revised Statutes Supplement, 2002, is amended to read:

77-27,222. (1) For purposes of this section:

(a) Accredited means accredited by the National Association for Family Child Care, the National Association for the Education of Young Children, the National School-Age Care Alliance, or a comparable accreditation process approved by the State Department of Education;

(b) Business firm means any business entity, including a corporation, a fiduciary, a sole proprietorship, a partnership, a limited liability company, or a corporation subject to the state income tax imposed by section 77-2715 or 77-2734.02, an insurance company paying premium or related retaliatory taxes in this state pursuant to section 44-150 or 77-908, or a financial institution paying the tax imposed pursuant to sections 77-3801 to 77-3807;

(c) Costs incurred by the business firm in providing child care services for children of employees means the amounts expended by the business firm during the year for improvements to the premises for purposes of making the premises suitable in whole or in part for use as a child care facility, including furnishing the facility with fencing, landscaping, sidewalks, furniture, fixtures, equipment, supplies, and other improvements and materials reasonably required to operate a child care facility and the direct operating costs of staffing, operating, and maintaining a child care facility. The costs include the payroll taxes and employee benefit costs of staffing the child care facility and sales and use taxes on purchases included in the costs of providing child care, but not an allocation of the business firm's general, administrative, and other operating expenses. The costs do not include the acquisition of land or the construction of new buildings. The costs include payments to third parties to reimburse the third parties for amounts expended by them and which would have been costs incurred by the business firm in providing child care services if incurred directly by the business firm or to subsidize the cost of providing child care for the children of employees in such third parties' facilities; and

(d) Providing child care services means expending funds to improve, furnish, license, accredit, qualify for accreditation, staff, operate, or subsidize a child care facility licensed by the Department of Health and Human Services Regulation and Licensure which provides child care services to children of employees of the business firm or contracting with a child care facility licensed by the department to provide child care services to children of such employees.

(2) ~~Any~~ For taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended, any business firm which provides child care services shall be allowed a credit against the individual income tax, corporate income tax, premium or related retaliatory tax, or franchise tax equal to thirty percent of the costs incurred by the business firm in providing child care services for children of employees for each taxable year, up to fifty percent of such business firm's total tax liability. In the case of a sole proprietorship, partnership, or limited liability company which is taxed as a pass-through entity or a corporation which has in effect an election under subchapter S of the Internal Revenue Code, the maximum allowable amount of credit shall be fifty percent of the income tax liability determined as if such business firm had been a corporation subject to the state income tax imposed by section 77-2734.02. Such pass-through entities shall allocate the allowable credit among their proprietors, partners, members, or shareholders in the same manner as taxable income is allocated. In the case of a fiduciary, the maximum allowable amount of the credit shall be fifty percent of the income tax liability of the fiduciary computed without any deduction for distributions, and the allowable credit shall be allocated among the fiduciary and its beneficiaries in proportion to the taxable income included by each beneficiary in his or her Nebraska income tax returns. In the case of a corporation which is part of a unitary group as defined in section 77-2734.04 and which is included in the combined income tax return of such group, the unitary group shall be the business firm which is providing child care services. Entities which are disregarded for federal income tax purposes shall be disregarded for purposes of defining the business firm which is providing child care services. The credit shall only be used to reduce the tax liabilities of the business firm, or in the case of pass-through entities, the beneficiaries, proprietors,

partners, members, or shareholders, for the year in which the costs were incurred. The credit may not be carried forward to the next taxable year. The credit may be taken by the business firm for not more than three taxable years, except that if the child care facility is accredited under section 43-2620 or becomes accredited under section 43-2620 during the three-taxable-year period, the credit may be taken for an additional consecutive two taxable years after the end of the third taxable year for which a credit was taken under this section.

(3) Costs incurred by the business firm in providing child care services for children of employees shall be reduced by payments received by the business firm from employees. If the business firm provides child care services for the children of employees and also for the children of non-employees, the direct operating costs of staffing, operating, and maintaining the child care facility, including the related payroll taxes, employee benefits, and sales and use taxes, shall be multiplied by a fraction, the numerator of which is the total child hours of care provided to the children of employees and the denominator of which is the total child hours of care provided in the child care facility. Child hour means one hour of care provided for one child. For purposes of calculating child hours, if the business firm does not in the ordinary course of its business compile the actual child hours of care, it may determine the number of child hours based on a reasonable convention if such convention is used consistently for each year that the credit is claimed or the business firm obtains the advance consent of the Tax Commissioner to change the convention. Costs shall be considered incurred in the taxable year in which they are either accruable or are paid in accordance with the business firm's overall income tax method of accounting.

(4) A business firm operating a child care facility on January 1, ~~2003~~ 2007, shall only qualify for the two years of tax credits allowed under subsection (2) of this section relating to expenditures by the business firm for direct operating costs if the child care facility is accredited after January 1, ~~2003~~ 2007.

(5) A business firm shall not be considered to be providing child care services for purposes of this section unless the child care services are provided to the employees of the firm who qualify under classifications established by the business firm which are found by the Tax Commissioner not to be discriminatory in favor of highly compensated employees. For purposes of this section, highly compensated employee means an employee who was a five-percent owner of the business firm at any time during the year or the preceding year or, for the preceding year, either (a) had compensation from the employer in excess of eighty thousand dollars or (b) was among the highest twenty percent of employees ranked by compensation, whichever results in the smaller group. Whether an employer's classifications are nondiscriminatory shall be determined on the basis of employees' eligibility to place children in the child care facility.

(6) No amount paid or incurred by an employer to provide child care assistance to an employee shall qualify for the credit if the amount was paid or incurred pursuant to a salary reduction plan or is not paid for services performed within this state.

(7) This section shall only apply to business firms that meet the requirements of this section on or before December 31, ~~2007~~ 2011.

(8) If two or more business firms share in the cost of providing child care services for children of such business firms' employees, each business firm shall be allowed a tax credit in proportion to such business firm's share of the total costs.

(9) The Department of Revenue and the Department of Insurance shall issue a joint report by December 1, ~~2004~~ 2008, and by each December 1 thereafter for so long as the credit is effective, that provides the following information:

(a) The number of business firms qualifying for the credit under this section during taxable years ending on or before the previous December 31;

(b) The number and location by county of child care facilities qualifying for the credit under this section during the taxable years ending on or before the previous December 31;

(c) The total child-years of child care provided, the range of child-years of child care provided per qualifying business, and the average and median child-years of care provided per qualifying business, sorted in reasonable groupings by maximum enrollment during the year that include a sufficient number of qualifying businesses in each group to maintain the confidentiality of the taxpayers qualifying for the credit;

(d) The percentage of costs paid by the employees in each size

grouping in subdivision (c) of this subsection;

(e) The percentage of such child-years of care provided in accredited facilities in each size grouping in subdivision (c) of this subsection; and

(f) The total credits claimed and the total credits allowed in each size grouping in subdivision (c) of this subsection.

(10) The Department of Revenue shall develop a form for claiming the credit allowed by this section stating that any business firm seeking a credit under this section must supply the information listed in subsection (9) of this section as a condition for receiving the credit.

(11) The Tax Commissioner and Director of Insurance may adopt and promulgate rules and regulations as necessary to carry out this section.

Sec. 24. Section 77-4008, Revised Statutes Supplement, 2002, is amended to read:

77-4008. (1) ~~Commencing on or after January 1, 1988, a~~ A tax is hereby imposed upon the first owner of tobacco products to be sold in this state. ~~Prior to October 1, 2002, and on and after October 1, 2004, the tax shall be fifteen percent, and on and after October 1, 2002, and continuing until October 1, 2004, the~~ The tax shall be twenty percent, of (a) the purchase price of such tobacco products paid by the first owner or (b) the price at which a first owner who made, manufactured, or fabricated the tobacco product sells the items to others. Such tax shall be in addition to all other taxes.

(2) Whenever any person who is licensed under section 77-4009 purchases tobacco products from another person licensed under section 77-4009, the seller shall be liable for the payment of the tax.

(3) On and after October 1, 2002, and continuing until October 1, 2004, the Tax Commissioner shall remit the amount collected pursuant to this section to the State Treasurer, and the State Treasurer shall credit three-fourths of such amount to the General Fund and one-fourth of such amount to the Cash Reserve Fund. On and after October 1, 2004, amounts collected shall be used and distributed pursuant to section 77-4025.

Sec. 25. Sections 10, 13, 16, 19, 20, and 27 of this act become operative on January 1, 2004. The other sections of this act become operative on October 1, 2003.

Sec. 26. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 27. Original sections 77-2702.14, 77-2704.26, and 77-2705, Revised Statutes Supplement, 2002, as amended by sections 36, 58, and 70, respectively, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, and sections 49 and 60, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, are repealed.

Sec. 28. Original sections 53-160, 77-2702.05, 77-2704.07, 77-2704.23, 77-2704.33, and 77-27,132, Reissue Revised Statutes of Nebraska, sections 77-2101.03, 77-2602, 77-2701, 77-2701.02, 77-2702.03, 77-2702.13, 77-2702.17, 77-2715.02, 77-27,222, and 77-4008, Revised Statutes Supplement, 2002, and sections 77-2702.07 and 77-2703, Revised Statutes Supplement, 2002, as amended by sections 20 and 48, respectively, Legislative Bill 282, Ninety-eighth Legislature, First Session, 2003, are repealed.