LEGISLATIVE BILL 508

Introduced by Briese, 41.

Read first time January 22, 2019

Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-382, 77-2701.16, 77-2704.10, 77-2704.24, and 77-27,132, Reissue Revised Statutes of Nebraska; to impose sales and use taxes on certain services; to change and eliminate certain sales and use tax exemptions; to provide for the use of certain sales and use tax revenue; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal sections 77-2704.08 and 77-2704.52, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-382, Reissue Revised Statutes of Nebraska, is amended to read:

77-382 (1) The department shall prepare a tax expenditure report describing (a) the basic provisions of the Nebraska tax laws, (b) the actual or estimated revenue loss caused by the exemptions, deductions, exclusions, deferrals, credits, and preferential rates in effect on July 1 of each year and allowed under Nebraska's tax structure and in the property tax, (c) the actual or estimated revenue loss caused by failure to impose sales and use tax on services purchased for nonbusiness use, and (d) the elements which make up the tax base for state and local income, including income, sales and use, property, and miscellaneous taxes.

(2) The department shall review the major tax exemptions for which state general funds are used to reduce the impact of revenue lost due to a tax expenditure. The report shall indicate an estimate of the amount of the reduction in revenue resulting from the operation of all tax expenditures. The report shall list each tax expenditure relating to sales and use tax under the following categories:

(a) Agriculture, which shall include a separate listing for the following items: Agricultural machinery; agricultural chemicals; seeds sold to commercial producers; water for irrigation and manufacturing; commercial artificial insemination; mineral oil as dust suppressant; animal grooming; oxygen for use in aquaculture; animal life whose products constitute food for human consumption; and grains;

(b) Business across state lines, which shall include a separate listing for the following items: Property shipped out-of-state; fabrication labor for items to be shipped out-of-state; property to be transported out-of-state; property purchased in other states to be used in Nebraska; aircraft delivery to an out-of-state resident or business; state reciprocal agreements for industrial machinery; and property taxed in another state;
(c) Common carrier and logistics, which shall include a separate listing for the following items: Railroad rolling stock and repair parts and services; common or contract carriers and repair parts and services; common or contract carrier accessories; and common or contract carrier safety equipment;

(d) Consumer goods, which shall include a separate listing for the following items: Motor vehicles and motorboat trade-ins; merchandise trade-ins; certain medical equipment and medicine; newspapers; laundromats; and telefloral deliveries; motor vehicle discounts for the disabled; and political campaign fundraisers;

(e) Energy, which shall include a separate listing for the following items: Motor fuels; energy used in industry; energy used in agriculture; aviation fuel; and minerals, oil, and gas severed from real property;

(f) Food, which shall include a separate listing for the following items: Food for home consumption; Supplemental Nutrition Assistance Program; school lunches; meals sold by hospitals; meals sold by institutions at a flat rate; food for the elderly, handicapped, and Supplemental Security Income recipients; and meals sold by churches;

(g) General business, which shall include a separate listing for the following items: Component and ingredient parts; manufacturing machinery; containers; film rentals; molds and dies; syndicated programming; intercompany sales; intercompany leases; sale of a business or farm machinery; and transfer of property in a change of business ownership;

(h) Lodging and shelter, which shall include a separate listing for the following item: Room rentals by certain institutions;

(i) Miscellaneous, which shall include a separate listing for the following items: Cash discounts and coupons; separately stated finance charges; casual sales; lease-to-purchase agreements; and separately stated taxes;

(j) Nonprofits, governments, and exempt entities, which shall include a separate listing for the following items: Purchases by
political subdivisions of the state; purchases by churches and nonprofit
colleges and medical facilities; purchasing agents for public real estate
construction improvements; contractor as purchasing agent for public
agencies; Nebraska lottery; admissions to school events; sales on Native
American Indian reservations; school-supporting fundraisers; fine art
purchases by a museum; purchases by the Nebraska State Fair Board;
purchases by the Nebraska Investment Finance Authority and licensees of
the State Racing Commission; purchases by the United States Government;
public records; and sales by religious organizations;

(k) Recent sales tax expenditures, which shall include a separate
listing for each sales tax expenditure created by statute or rule and
regulation after July 19, 2012;

(l) Services purchased for nonbusiness use, which shall include a
separate listing for each such service, including, but not limited to,
the following items: Personal Motor vehicle cleaning, maintenance, and
repair services; cleaning and repair of clothing; cleaning, maintenance,
and repair of other tangible personal property; maintenance, painting,
and repair of real property; entertainment admissions; personal care
services; lawn care, gardening, and landscaping services; pet-related
services; storage and moving services; household utilities; other
personal services; taxi, limousine, and other transportation services;
legal services; accounting services; other professional services; and
other real estate services; and

(m) Telecommunications, which shall include a separate listing for
the following items: Telecommunications access charges; prepaid calling
arrangements; conference bridging services; and nonvoice data services.

(3) It is the intent of the Legislature that nothing in the Tax
Expenditure Reporting Act shall cause the valuation or assessment of any
property exempt from taxation on the basis of its use exclusively for
religious, educational, or charitable purposes.

Sec. 2. Section 77-2701.16, Reissue Revised Statutes of Nebraska, is
amended to read:

77-2701.16 (1) 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) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunication service as described in section 77-2703.04, the gross income received from furnishing ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service.

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, 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)(i) In the furnishing of gas, sewer, water, and electricity service, other than electricity service to a customer-generator as defined in section 70-2002, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services.

(ii) In the furnishing of electricity service to a customer-generator as defined in section 70-2002, the net energy use upon billings or statements rendered to customer-generators for such electricity service;
(d) In the furnishing of community antenna television service or satellite 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 or satellite service; 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) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

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

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

(f) 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 77-2704.50;

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

(h) The gross income received for detective services;

(i) The gross income received for the cleaning of tangible personal property;

(j) The gross income received for storage and moving services;

(k) The gross income received for investment advice;

(l) The gross income received for hair care services;

(m) The gross income received for maintenance, painting, and repair services for single-family housing;

(n) The gross income received for limousine, taxi, and other transportation services;

(o) The gross income received for plumbing services;

(p) The gross income received for lawn care, gardening, and landscaping services:
(q) The gross income received for parking services;

(r) The gross income received for swimming pool cleaning and maintenance services;

(s) The gross income received for dating and escort services;

(t) The gross income received for instruction in music, dance, golf, and other recreational activities;

(u) The gross income received for clothing alteration services;

(v) The gross income received for tanning services;

(w) The gross income received for telefloral delivery services; and

(x) The gross income received for massage services, excluding massage services prescribed by a licensed health care professional.

(5) Gross receipts includes the sale of admissions. When an admission to an activity or a membership constituting an admission 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) 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) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

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

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

(10) 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.

Sec. 3. Section 77-2704.10, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.10 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) Prepared food and food and food ingredients served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution. This exemption does not apply to sales by an institution of higher education at any facility or function which is open to the general public;

(1) (2) Prepared food and food and food ingredients served by a church at a function of such church;

(2) (3) Prepared food and food and food ingredients served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(4) Fees and admissions charged for political events by ballot
question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act;

(3) Prepared food and food and food ingredients sold to the elderly, handicapped, or recipients of Supplemental Security Income by an organization that actually accepts electronic benefits transfer under regulations issued by the United States Department of Agriculture although it is not necessary for the purchaser to use electronic benefits transfer to pay for the prepared food and food and food ingredients; and

(4) Fees and admissions charged by a public or private elementary or secondary school and fees and admissions charged by a school district, student organization, or parent-teacher association, pursuant to an agreement with the proper school authorities, in a public or private elementary or secondary school during the regular school day or at an approved function of any such school; and

(7) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization conducts statewide sport events with multiple sports for both adults and youth; and

(8) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization is affiliated with a national organization, primarily dedicated to youth development and healthy living, and offers sports instruction and sports leagues or sports events in multiple sports.

Sec. 4. Section 77-2704.24, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.24 (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of food or food ingredients except for
prepared food and food sold through vending machines.

(2) For purposes of this section:

(a) Alcoholic beverages means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) Dietary supplement means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an herb or other botanical, (iv) an amino acid, (v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subdivisions (2)(b)(i) through (v) of this section; that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not presented as conventional food and is not represented for use as a sole item of a meal or of the diet; and that is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 C.F.R. 101.36, as such regulation existed on January 1, 2003;

(c) Food and food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients does not include alcoholic beverages, dietary supplements, or tobacco, soft drinks, or candy;

(d) Food sold through vending machines means food that is dispensed from a machine or other mechanical device that accepts payment;

(e)(i) Prepared food means:

(A) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or
(B) (i) Two or more food ingredients mixed or combined by the seller for sale as a single item and food sold in a heated state or heated by the seller, except:

(I) (A) Food that is only cut, repackaged, or pasteurized by the seller;

(II) (B) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, part 401.11 of its Food Code, as it existed on January 1, 2003, so as to prevent food borne illnesses;

(III) (C) Food sold by a seller whose proper primary North American Industry Classification System classification is manufacturing in sector 311, except subsector 3118, bakeries;

(IV) (D) Food sold in an unheated state by weight or volume as a single item;

(V) (E) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas; and

(VI) (E) Food that ordinarily requires additional cooking to finish the product to its desired final condition; and

(ii) Prepared food includes food sold by fraternities, sororities, dormitories, boarding houses, retirement communities, and other residential facilities where food is provided by the facility as part of the agreement for occupancy; and

(f) Tobacco means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

Sec. 5. 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:

(a) For transactions occurring on or after October 1, 2014, and before October 1, 2022, credit to the Game and Parks Commission Capital Maintenance Fund all of the proceeds of the sales and use taxes imposed pursuant to section 77-2703 on the sale or lease of motorboats as defined in section 37-1204, personal watercraft as defined in section 37-1204.01, all-terrain vehicles as defined in section 60-103, and utility-type vehicles as defined in section 60-135.01;

(b) Credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from the sale or lease for periods of more than thirty-one days of 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 the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers shall be credited to the Highway Allocation Fund;

(c) For transactions occurring on or after July 1, 2013, and before July 1, 2033, of the proceeds of the sales and use taxes derived from transactions other than those listed in subdivisions (2)(a) and (b) of this section from a sales tax rate of one-quarter of one percent, credit monthly eighty-five percent to the State Highway Capital Improvement Fund and fifteen percent to the Highway Allocation Fund; and
(d) Of the proceeds of the sales and use taxes derived from transactions other than those listed in subdivisions (2)(a) and (b) of this section, credit to the Property Tax Credit Cash Fund the amount certified under section 77-27,237, if any such certification is made, and —

(e) Credit to the Property Tax Credit Cash Fund an amount equal to the net increase in state sales and use tax revenue received as a result of the changes made by this legislative bill. Such amount shall be determined annually by the Tax Commissioner.

The balance of all amounts collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Sec. 6. This act becomes operative on January 1, 2020.

Sec. 7. Original sections 77-382, 77-2701.16, 77-2704.10, 77-2704.24, and 77-27,132, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 8. The following sections are outright repealed: Sections 77-2704.08 and 77-2704.52, Reissue Revised Statutes of Nebraska.