

LEGISLATIVE BILL 916

Approved by the Governor April 14, 2008

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Preister, 5; Raikes, 25; White, 8.

FOR AN ACT relating to revenue and taxation; to amend sections 77-2701.32, 77-2704.26, 77-2704.45, 77-2704.46, and 77-2705, Reissue Revised Statutes of Nebraska, section 77-2708, Revised Statutes Cumulative Supplement, 2006, and sections 70-1903, 70-1904, 70-1905, 70-1907, 77-2701, 77-2701.04, 77-2701.16, 77-2701.34, 77-2703, 77-2703.01, 77-2704.09, and 77-2704.57, Revised Statutes Supplement, 2007; to change provisions relating to sales and use tax treatment of community-based energy development projects; to define and redefine terms; to provide for and change provisions relating to sales and use tax exemptions; to change provisions relating to sales and use tax retailer registration and refund claims; to provide for sales tax treatment of digital works; to eliminate obsolete provisions; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Section 70-1903, Revised Statutes Supplement, 2007, is amended to read:

70-1903 For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, ~~is owned by~~ has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, ~~is owned by~~ has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska; and

(3) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(e) A tribal council.

Sec. 2. Section 70-1904, Revised Statutes Supplement, 2007, is amended to read:

70-1904 (1) A C-BED project developer and an electric utility are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may

develop a C-BED project with an equity partner that is not a qualified owner, if not more than sixty-seven percent of the power purchase agreement payments flow to the nonqualified owners.

(3) Except for an inherited interest, the transfer of a C-BED project to any person other than a qualified owner is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

Sec. 3. Section 70-1905, Revised Statutes Supplement, 2007, is amended to read:

70-1905 An electric utility shall:

(1) Consider mechanisms to encourage the aggregation of C-BED projects located in the same general geographical area;

(2) Require any qualified owner to provide sufficient security to assure performance under the power purchase agreement; and

(3) Annually prepare a statement by March 1 summarizing its efforts to purchase energy from C-BED projects, including a list of the C-BED projects under a power purchase agreement and the amount of C-BED project energy purchased. The statement shall be posted on the electric utility's web site.

Sec. 4. Section 70-1907, Revised Statutes Supplement, 2007, is amended to read:

70-1907 To the extent feasible, a C-BED project developer shall provide, in writing, an opportunity to ~~invest~~ become a qualified owner in the C-BED project to each property owner on whose property a turbine ~~is~~ will be located.

Sec. 5. Section 77-2701, Revised Statutes Supplement, 2007, is amended to read:

77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 and sections 9 to 13, 22, and 23 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 6. Section 77-2701.04, Revised Statutes Supplement, 2007, is amended to read:

77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and sections 9 to 13, 22, and 23 of this act, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.48 and sections 9 to 13 of this act shall be used.

Sec. 7. Section 77-2701.16, Revised Statutes Supplement, 2007, is amended to read:

77-2701.16 ~~(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 77-2704.55;

(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) (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.

(8) (2) Gross receipts of every person engaged as a public utility specified in this subsection, or 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 (8)(a), (2)(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 77-2703.04, 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 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) 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 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 (8)(a) (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (8)(d) (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.

(9) (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.

(10) (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, 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 by the third-party service provider and collected and remitted by the installer;

(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 and (ii) specialty services performed on livestock as defined in section 54-183; and

(h) The gross income received for detective services.

~~(11)~~ (5) Gross receipts includes the sale of admissions which means the right or privilege to have access to or to use a place or location. An admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization. When an admission to an activity or a membership constituting an admission pursuant to this subsection 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.

~~(12)~~ (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.

~~(13)~~ (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.

~~(14)~~ (8) 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) 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.

~~(15)~~ (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.

~~(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 Laws 2003, LB 759. It is the intent of the Legislature that the Tax Commissioner adopt and promulgate rules and regulations to carry out such changes.~~

Sec. 8. Section 77-2701.32, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.32 (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 77-2701.10;

(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 ~~(10)~~ (4) of section 77-2701.16.

(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. 9. Delivered electronically means obtained by the purchaser by means other than tangible storage media.

Sec. 10. Digital audio works means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

Sec. 11. Digital audiovisual works means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Sec. 12. Digital books means works that are generally recognized in the ordinary and usual sense as books.

Sec. 13. Digital code means a code which provides a purchaser with a right to obtain one or more products delivered electronically. A digital code may be obtained by any means, including email or tangible means.

Sec. 14. Section 77-2701.34, Revised Statutes Supplement, 2007, is amended to read:

77-2701.34 Sale for resale means a sale of property or provision of a service to any purchaser who is purchasing such property or service for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased or as an attachment to or integral part of other property or service. A sale for resale includes (1) a sale of building materials to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2701.10, or a sale of building materials to a contractor or repairperson being taxed as the consumer of building materials and electing a tax-free inventory under subdivision (3) of section 77-2701.10, ~~or~~ (2) a sale of property to a purchaser for the sole purpose of that purchaser renting or leasing such property to another person, with rent or lease payments set at a fair market value, ~~or~~ (3) film rentals for use in a place where an admission is charged that is subject to tax under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate, or (4) a sale of digital products, community antenna television services, Internet services, and satellite services to a person who receives by contract the product or service transferred electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service for use in a place where an admission is charged that is subject to sales tax under the Nebraska Revenue Act of 1967.

Sec. 15. Section 77-2703, Revised Statutes Supplement, 2007, 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 as a satellite service operator, ~~or~~ any person involved in the connecting and installing of the services defined in subdivision ~~(8)(a)~~, (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection ~~(9)~~ (3) of section 77-2701.16; 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; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; ~~and~~ the gross receipts from the provision of services defined in subsection ~~(10)~~ (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) of section 77-2701.16. Except as provided in section 77-2701.03, 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.

(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 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 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 the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, 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, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer or designated county official as provided in the Motor Vehicle Registration Act at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, 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, semitrailer, or trailer 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. 16. Section 77-2703.01, Revised Statutes Supplement, 2007, is amended to read:

77-2703.01 (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 77-2703.01 to 77-2703.04.

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

(3) When the property or service 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) 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. For purposes of sourcing detective services subject to tax under subdivision ~~(10)(h)~~ (4)(h) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.

(11) The sale, not including lease or rental, of a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act shall be sourced to the place of registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state.

(12) 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. 17. Section 77-2704.09, Revised Statutes Supplement, 2007, is amended to read:

77-2704.09 (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of (a) insulin, (b) drugs, not including over-the-counter drugs, when sold for a patient's use under a prescription,

and (c) the following when sold for a patient's use under a prescription and which are of the type eligible for coverage under the medical assistance program established pursuant to the Medical Assistance Act: ~~Drugs, not including over-the-counter drugs;~~ durable Durable medical equipment; home medical supplies; prosthetic devices; oxygen; oxygen equipment; and mobility enhancing equipment.

(2) For purposes of this section:

(a) Drug means a compound, substance, preparation, and component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body;

(b) Durable medical equipment means equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, is appropriate for use in the home, and is not worn in or on the body. Durable medical equipment includes repair and replacement parts for such equipment;

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

(d) Mobility enhancing equipment means equipment which is primarily and customarily used to provide or increase the ability to move from one place to another, which is not generally used by persons with normal mobility, and which is appropriate for use either in a home or a motor vehicle. Mobility enhancing equipment includes repair and replacement parts for such equipment. Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(e) Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as such regulation existed on January 1, 2003. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation;

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

(g) Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized under the Uniform Credentialing Act; and

(h) Prosthetic devices means a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any supplies used with such device and repair and replacement parts.

Sec. 18. Section 77-2704.26, Reissue Revised Statutes of Nebraska, 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 ~~(10)~~ (4) of section 77-2701.16 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. 19. Section 77-2704.45, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.45 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 ~~(10)~~ (4) of section 77-2701.16 which will become an ingredient or component part of a service listed in subsection ~~(10)~~ (4) of section 77-2701.16 for ultimate sale at retail.

Sec. 20. Section 77-2704.46, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.46 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 form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life includes live poultry, other species of game birds subject to permit and regulation by the Game and Parks Commission, and ~~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, other species of game birds subject to permit and regulation by the Game and Parks Commission, or livestock on the hoof;

(2) 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;

(3) 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 does 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

(4) Oxygen for use in aquaculture as defined in section 2-3804.01.

Sec. 21. Section 77-2704.57, Revised Statutes Supplement, 2007, is amended to read:

77-2704.57 (1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

~~(1)~~ (a) C-BED project or community-based energy development project means a new wind energy project that:

~~(a)~~ (i) Has an ownership structure as follows:

~~(i)~~ (A) For a C-BED project that consists of more than two turbines, is owned by has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

~~(ii)~~ (B) For a C-BED project that consists of one or two turbines, is owned by has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

~~(b)~~ (ii) Has a resolution of support adopted:

~~(i)~~ (A) By the county board of each county in which the C-BED project is to be located; or

~~(ii)~~ (B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

~~(2)~~ (b) New wind energy project includes any materials used to manufacture, install, construct, repair, or replace a device, such as a wind charger, windmill, or wind turbine, that converts wind energy to a form of usable energy, and means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device,

such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

~~(3)~~ (c) Qualified owner means:

~~(a)~~ (i) A Nebraska resident;

~~(b)~~ (ii) A limited liability company that is organized under the Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

~~(c)~~ (iii) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

~~(d)~~ (iv) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

~~(i)~~ (A) Fifteen percent either directly or indirectly by a single electric supplier; and

~~(ii)~~ (B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

~~(e)~~ (v) A tribal council.

(4) Power purchase agreement payments are the total amount of payments during the life of the agreement. For the purposes of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind energy easement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would have otherwise have been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Sec. 22. Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption in this state of depositions, bills of exceptions, and transcripts or copies of such depositions, bills of exceptions, and transcripts prepared and sold by a court reporter.

Sec. 23. Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption in this state of copies of medical records provided to the patient or a person holding such patient's power of attorney for health care.

Sec. 24. Section 77-2705, Reissue Revised Statutes of Nebraska, 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) The name and address of any officer, director, partner, limited liability company member, or employee, other than an employee whose duties are purely ministerial in nature, or any person with a substantial interest in the applicant, who is or who will be responsible for the collection or remittance of the sales tax;

~~(e)~~ (d) Such other information as the Tax Commissioner may require;
and

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

(2) Every person furnishing public utility service as defined in subsection ~~(8)~~ (2) of section 77-2701.16 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 the 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 or any person required to be identified in subdivision (1)(c) of this section (i) 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, (ii) fails to provide for inspection or audit any book, record, document, or item required by law, rule, or regulation, or (iii) makes a misrepresentation of or fails to disclose a material fact to the Department of Revenue, 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. 25. Section 77-2708, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-2708 (1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twenty-fifth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay

the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer, a designated county official, or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) For all sales tax collected prior to October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, 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 to reimburse himself or herself for the cost of collecting the tax. For all sales tax collected on and after October 1, 2002, the taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. If a request for a hearing shall constitute a waiver of the one-hundred-eighty-day period. The claimant and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If a hearing has not been requested and the Tax Commissioner has neither allowed nor disallowed a claim within ~~sueh~~ either the one hundred eighty days or the period agreed to by the claimant and the Tax Commissioner, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation.

Sec. 26. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, and 27 of this act become operative on October 1, 2008. Sections 17 and 28 of this act become operative on December 1, 2008. The other section of this act becomes operative on its effective date.

Sec. 27. Original sections 77-2701.32, 77-2704.26, 77-2704.45,

77-2704.46, and 77-2705, Reissue Revised Statutes of Nebraska, section 77-2708, Revised Statutes Cumulative Supplement, 2006, and sections 70-1903, 70-1904, 70-1905, 70-1907, 77-2701, 77-2701.04, 77-2701.16, 77-2701.34, 77-2703, 77-2703.01, and 77-2704.57, Revised Statutes Supplement, 2007, are repealed.

Sec. 28. Original section 77-2704.09, Revised Statutes Supplement, 2007, is repealed.