

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 165**

Introduced by Cornett, 45.

Read first time January 12, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend  
2 sections 77-2701.03 and 77-2704.52, Reissue Revised  
3 Statutes of Nebraska, and sections 66-1521, 77-1783.01,  
4 77-1784, 77-2701.16, 77-2701.24, 77-2703.04, 77-2704.09,  
5 77-2704.12, 77-2711, 77-2712.05, and 77-2780, Revised  
6 Statutes Cumulative Supplement, 2008; to change  
7 provisions relating to administrative costs, tax  
8 payments, sales tax, and income tax; to provide operative  
9 dates; to repeal the original sections; and to declare  
10 an emergency.

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

1           Section 1. Section 66-1521, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           66-1521 (1) A petroleum release remedial action fee is  
4 hereby imposed upon the producer, refiner, importer, distributor,  
5 wholesaler, or supplier who engages in the sale, distribution,  
6 delivery, and use of petroleum within this state, except that the  
7 fee shall not be imposed on petroleum that is exported. The fee  
8 shall also be imposed on diesel fuel which is indelibly dyed. The  
9 amount of the fee shall be nine-tenths of one cent per gallon on  
10 motor vehicle fuel as defined in section 66-482 and three-tenths of  
11 one cent per gallon on diesel fuel as defined in section 66-482.  
12 The amount of the fee shall be used first for payment of claims  
13 approved by the State Claims Board pursuant to section 66-1531;  
14 second, up to three million dollars of the fee per year shall be  
15 used for reimbursement of owners and operators under the Petroleum  
16 Release Remedial Action Act for investigations of releases ordered  
17 pursuant to section 81-15,124; and third, the remainder of the fee  
18 shall be used for any other purpose authorized by section 66-1519.  
19 The fee shall be paid by all producers, refiners, importers,  
20 distributors, wholesalers, and suppliers subject to the fee by  
21 filing a monthly return on or before the twenty-fifth day of  
22 the calendar month following the monthly period to which it  
23 relates. The pertinent provisions, specifically including penalty  
24 provisions, of the motor fuel laws as defined in section 66-712  
25 shall apply to the administration and collection of the fee except

1 for the treatment given refunds. There shall be a refund allowed  
2 on any fee paid on petroleum which was taxed and then exported,  
3 destroyed, or purchased for use by the United States Government  
4 or its agencies. The department may also adjust for all errors in  
5 the payment of the fee. In each calendar year, no claim for refund  
6 related to the fee can be for an amount less than ten dollars.

7 (2) No producer, refiner, importer, distributor,  
8 wholesaler, or supplier shall engage in the sale, distribution,  
9 delivery, or use of petroleum in this state without having first  
10 obtained a petroleum release remedial action license. Application  
11 for a license shall be made to the Motor Fuel Tax Enforcement  
12 and Collection Division of the Department of Revenue upon a form  
13 prepared and furnished by the division. If the applicant is an  
14 individual, the application shall include the applicant's social  
15 security number. Failure to obtain a license prior to engaging  
16 in the sale, distribution, delivery, or use of petroleum shall  
17 be a Class IV misdemeanor. The division may suspend or cancel  
18 the license of any producer, refiner, importer, distributor,  
19 wholesaler, or supplier who fails to pay the fee imposed by  
20 subsection (1) of this section in the same manner as licenses are  
21 suspended or canceled pursuant to section 66-720.

22 (3) The division may adopt and promulgate rules and  
23 regulations necessary to carry out this section.

24 (4) The division shall deduct and withhold from the  
25 petroleum release remedial action fee collected pursuant to this

1 section an amount sufficient to reimburse the direct costs of  
2 collecting and administering the petroleum release remedial action  
3 fee. Such costs shall not exceed ~~twenty-eight~~ one hundred fifty  
4 thousand dollars for each fiscal year. The ~~twenty-eight~~ one hundred  
5 fifty thousand dollars shall be prorated, based on the number  
6 of months the fee is collected, whenever the fee is collected  
7 for only a portion of a year. The amount deducted and withheld  
8 for costs shall be deposited in the Petroleum Release Remedial  
9 Action Collection Fund which is hereby created. The Petroleum  
10 Release Remedial Action Collection Fund shall be appropriated  
11 to the Department of Revenue. Any money in the fund available  
12 for investment shall be invested by the state investment officer  
13 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
14 State Funds Investment Act.

15 (5) The division shall collect the fee imposed by  
16 subsection (1) of this section.

17 Sec. 2. Section 77-1783.01, Revised Statutes Cumulative  
18 Supplement, 2008, is amended to read:

19 77-1783.01 (1) Any officer or employee with the duty  
20 to collect, account for, or pay over any taxes imposed upon a  
21 corporation or with the authority to decide whether the corporation  
22 will pay taxes imposed upon a corporation shall be personally  
23 liable for the payment of such taxes in the event of willful  
24 failure on his or her part to have a corporation perform such act.  
25 Such taxes shall be collected in the same manner as provided under

1 the Uniform State Tax Lien Registration and Enforcement Act.

2 (2) Within sixty days after the day on which the notice  
3 and demand are made for the payment of such taxes, any officer or  
4 employee seeking to challenge the Tax Commissioner's determination  
5 as to his or her personal liability for the corporation's unpaid  
6 taxes may petition for a redetermination. The petition may include  
7 a request for the redetermination of the personal liability of  
8 the corporate officer or employee, the redetermination of the  
9 amount of the corporation's unpaid taxes, or both. If a petition  
10 for redetermination is not filed within the sixty-day period, the  
11 determination becomes final at the expiration of the period.

12 (3) If the requirements prescribed in subsection (2)  
13 of this section are satisfied, the Tax Commissioner shall abate  
14 collection proceedings and shall grant the officer or employee an  
15 oral hearing and give him or her ten days' notice of the time  
16 and place of such hearing. The Tax Commissioner may continue the  
17 hearing from time to time as necessary.

18 (4) Any notice required under this section shall be  
19 served personally or by mail in the manner provided in section  
20 77-27,135.

21 (5) If the Tax Commissioner determines that further delay  
22 in the collection of such taxes from the officer or employee will  
23 jeopardize future collection proceedings, nothing in this section  
24 shall prevent the immediate collection of such taxes.

25 (6) No notice or demand for payment may be issued against

1 any officer or employee with the duty to collect, account for, or  
2 pay over any taxes imposed upon a corporation or with the authority  
3 to decide whether the corporation will pay taxes imposed upon a  
4 corporation more than three years after the final determination of  
5 the corporation's liability.

6 ~~(6)~~ (7) For purposes of this section:

7 (a) Corporation shall mean any corporation and any other  
8 entity that is taxed as a corporation under the Internal Revenue  
9 Code;

10 (b) Taxes shall mean all taxes and additions to taxes  
11 including interest and penalties imposed under the revenue laws of  
12 this state which are administered by the Tax Commissioner; and

13 (c) Willful failure shall mean that failure which was the  
14 result of an intentional, conscious, and voluntary action.

15 Sec. 3. Section 77-1784, Revised Statutes Cumulative  
16 Supplement, 2008, is amended to read:

17 77-1784 (1) The Tax Commissioner may accept electronic  
18 filing of applications, returns, and any other document required to  
19 be filed with the Tax Commissioner.

20 (2) The Tax Commissioner may use electronic fund  
21 transfers to collect any taxes, fees, or other amounts required  
22 to be paid to or collected by the Tax Commissioner or to pay any  
23 refunds of such amounts.

24 (3) The Tax Commissioner may adopt rules and regulations  
25 to establish the criteria for acceptability of filing documents

1 and making payments electronically. The criteria may include  
2 requirements for electronic signatures, the type of tax for  
3 which electronic filings or payments will be accepted, the method  
4 of transfer, or minimum amounts which may be transferred. The  
5 Tax Commissioner may refuse to accept any electronic filings or  
6 payments that do not meet the criteria established.

7 (4) For payments due after January 1, 2006, the Tax  
8 Commissioner may require the use of electronic fund transfers for  
9 any taxes, fees, or amounts required to be paid to or collected by  
10 the Tax Commissioner for any taxpayer who made payments exceeding  
11 twenty thousand dollars for a tax program in the prior year for  
12 that tax program. The requirement to make electronic fund transfers  
13 may be phased in as deemed necessary by the Tax Commissioner.  
14 Notice of the requirement to make electronic fund transfers shall  
15 be provided at least three months prior to the date the first  
16 electronic payment is required to be made.

17 (5) Any person who fails to make a required payment by  
18 electronic fund transfer shall be subject to a penalty of one  
19 hundred dollars for each required payment that was not made by  
20 electronic fund transfer. The penalty provided by this section  
21 shall be in addition to all other penalties and applies even if  
22 payment by some other method is timely made. The Tax Commissioner  
23 may waive the penalty provided in this section upon a showing of  
24 good cause.

25 (6) The use of electronic filing of documents and

1 electronic fund transfers shall not change the rights of any  
2 party from the rights such party would have if a different method  
3 of filing or payment were used. Until criteria for electronic  
4 signatures are adopted under subsection (3) of this section, the  
5 document produced during the electronic filing of a taxpayer's  
6 information with the state shall be prima facie evidence for all  
7 purposes that the taxpayer's signature accompanied the taxpayer's  
8 information in the electronic transmission.

9 (7) For tax returns due on or after January 1, 2010,  
10 the Tax Commissioner may require any person that aids, procures,  
11 advises, or assists in the preparation of and files any tax return  
12 on behalf of any taxpayer for profit to file an electronic return  
13 if the person filed twenty-five or more tax returns in the prior  
14 calendar year. The requirement to require electronic filing may be  
15 phased in as deemed necessary by the Tax Commissioner.

16 Any person that files a tax return on behalf of a  
17 taxpayer must disclose in writing to the taxpayer that the return  
18 will be filed in an electronic format and in accordance with rules  
19 and regulations prescribed by the Tax Commissioner.

20 (8) Any person who fails to file an electronic return  
21 as required under subsection (7) of this section shall be subject  
22 to a penalty of one hundred dollars for each return that was not  
23 properly filed in addition to other penalties provided by law. The  
24 Tax Commissioner may waive the penalty provided in this section  
25 upon a showing of good cause.

1           Sec. 4. Section 77-2701.03, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2701.03 (1) The sales tax rate may only be changed  
4 effective at the beginning of a calendar quarter.

5           (2) Any sales tax exemption or repeal of any sales tax  
6 exemption shall only be effective at the beginning of a calendar  
7 quarter.

8           (3) Any change in sales tax rate or base dealing with a  
9 service covering a period of time starting before and ending after  
10 the effective date of the change shall be effective as follows: (a)  
11 For a rate increase or base expansion, the change shall apply to  
12 the first billing period commencing on or after the effective date;  
13 and (b) for a rate decrease or base contraction, the change shall  
14 apply to bills rendered on or after the effective date.

15           (4) A seller shall be relieved of liability for failing  
16 to collect tax at the new effective rate if the state fails to  
17 provide a period of at least thirty days between enactment of the  
18 statute providing for a rate change and the effective date of such  
19 rate change, the seller collected tax at the immediately preceding  
20 effective rate, and the seller's failure to collect at the newly  
21 effective rate does not extend beyond thirty days after the date of  
22 enactment of the new rate.

23           (5) Subsection (4) of this section shall not apply if the  
24 seller fraudulently failed to collect at the new rate or solicits  
25 purchasers based on the immediately preceding effective rate.

1           Sec. 5. Section 77-2701.16, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           77-2701.16 (1) Gross receipts means the total amount of  
4 the sale or lease or rental price, as the case may be, of the  
5 retail sales of retailers.

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

11           (a)(i) In the furnishing of telephone communication  
12 service, other than mobile telecommunications service as  
13 described in section 77-2703.04, the gross income received  
14 from furnishing ~~local exchange telephone service and intrastate~~  
15 ~~message toll telephone service;~~ ancillary services and intrastate  
16 telecommunications services, except for conference bridging  
17 services and value-added, nonvoice data service; and

18           (ii) In the furnishing of mobile telecommunications  
19 service as described in section 77-2703.04, the gross income  
20 received from furnishing mobile telecommunications service that  
21 originates and terminates in the same state to a customer with a  
22 place of primary use in Nebraska;

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

1           (c) In the furnishing of gas, electricity, sewer, and  
2 water service, the gross income received from the furnishing of  
3 such services upon billings or statements rendered to consumers for  
4 such utility services;

5           (d) In the furnishing of community antenna television  
6 service or satellite service, the gross income received from  
7 the furnishing of such community antenna television service as  
8 regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or  
9 satellite service; and

10           (e) The gross income received from the provision,  
11 installation, construction, servicing, or removal of property used  
12 in conjunction with the furnishing, installing, or connecting of  
13 any public utility services specified in subdivision (2)(a) or  
14 (b) of this section or community antenna television service or  
15 satellite service specified in subdivision (2)(d) of this section,  
16 except when acting as a subcontractor for a public utility,  
17 this subdivision does not apply to the gross income received by  
18 a contractor electing to be treated as a consumer of building  
19 materials under subdivision (2) or (3) of section 77-2701.10 for  
20 any such services performed on the customer's side of the utility  
21 demarcation point.

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

25           (a) In the furnishing of computer software, the gross

1 income received, including the charges for coding, punching, or  
2 otherwise producing any computer software and the charges for the  
3 tapes, disks, punched cards, or other properties furnished by the  
4 seller; and

5 (b) In the furnishing of videotapes, movie film,  
6 satellite programming, satellite programming service, and satellite  
7 television signal descrambling or decoding devices, the gross  
8 income received from the license, franchise, or other method  
9 establishing the charge.

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

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

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

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

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

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

3           (f) The gross income received for labor for repair or  
4 maintenance services performed with regard to tangible personal  
5 property the sale of which would be subject to sales and use taxes,  
6 excluding motor vehicles, except as otherwise provided in section  
7 77-2704.26 or 77-2704.50;

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

11           (h) The gross income received for detective services.

12           (5) Gross receipts includes the sale of admissions which  
13 means the right or privilege to have access to or to use a place  
14 or location. An admission includes a membership that allows access  
15 to or use of a place or location, but which membership does not  
16 include the right to hold office, vote, or change the policies of  
17 the organization. When an admission to an activity or a membership  
18 constituting an admission pursuant to this subsection is combined  
19 with the solicitation of a contribution, the portion or the amount  
20 charged representing the fair market price of the admission shall  
21 be considered a retail sale subject to the tax imposed by section  
22 77-2703. The organization conducting the activity shall determine  
23 the amount properly attributable to the purchase of the privilege,  
24 benefit, or other consideration in advance, and such amount shall  
25 be clearly indicated on any ticket, receipt, or other evidence

1 issued in connection with the payment.

2 (6) Gross receipts includes the sale of live plants  
3 incorporated into real estate except when such incorporation is  
4 incidental to the transfer of an improvement upon real estate or  
5 the real estate.

6 (7) Gross receipts includes the sale of any building  
7 materials annexed to real estate by a person electing to be taxed  
8 as a retailer pursuant to subdivision (1) of section 77-2701.10.

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

24 (9) Gross receipts includes the retail sale of digital  
25 audio works, digital audiovisual works, digital codes, and digital

1 books delivered electronically if the products are taxable when  
2 delivered on tangible storage media. A sale includes the transfer  
3 of a permanent right of use, the transfer of a right of use that  
4 terminates on some condition, and the transfer of a right of use  
5 conditioned upon the receipt of continued payments.

6 (10) Gross receipts does not include:

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

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

14 Sec. 6. Section 77-2701.24, Revised Statutes Cumulative  
15 Supplement, 2008, is amended to read:

16 77-2701.24 Occasional sale means:

17 (1) A sale, but not a lease or rental, of property which  
18 is the subject of any intercompany sale or transfer involving  
19 any parent, subsidiary, or brother-sister company relationship  
20 under section 77-2704.28 and which was either originally acquired  
21 prior to June 1, 1967, or, if acquired thereafter, the seller or  
22 transferor directly or indirectly has previously paid a sales or  
23 use tax thereon, including:

24 (a) From one corporation to another corporation  
25 pursuant to a reorganization. For purposes of this subdivision,

1 reorganization means a statutory merger or consolidation or the  
2 acquisition by a corporation of substantially all of the properties  
3 of another corporation when the consideration is solely all or a  
4 part of the voting stock of the acquiring corporation or of its  
5 parent or subsidiary corporation;

6 (b) In connection with the winding up, dissolution, or  
7 liquidation of a corporation only when there is a distribution of  
8 the property of such corporation to the shareholders in kind if  
9 the portion of the property so distributed to the shareholder is  
10 substantially in proportion to the share of stock or securities  
11 held by the shareholder;

12 (c) To a corporation for the purpose of organization of  
13 such corporation or the contribution of additional capital to such  
14 corporation when the former owners of the property transferred  
15 are immediately after the transfer in control of the corporation  
16 and the stock or securities received by each is substantially in  
17 proportion to his or her interest in the property prior to the  
18 transfer;

19 (d) To a partnership in the organization of such  
20 partnership if the former owners of the property transferred  
21 are immediately after the transfer members of such partnership and  
22 the interest in the partnership received by each is substantially  
23 in proportion to his or her interest in the property prior to the  
24 transfer;

25 (e) From a partnership to the members thereof when made

1 in kind in the dissolution of such partnership if the portion of  
2 the property so distributed to the members of the partnership is  
3 substantially in proportion to the interest in the partnership held  
4 by the members;

5 (f) To a limited liability company in the organization of  
6 such limited liability company if the former owners of the property  
7 transferred are immediately after the transfer members of such  
8 limited liability company and the interest in the limited liability  
9 company received by each is substantially in proportion to his or  
10 her interest in the property prior to the transfer;

11 (g) From a limited liability company to the members  
12 thereof when made in kind in the dissolution of such limited  
13 liability company if the portion of the property so distributed to  
14 the members of the limited liability company is substantially in  
15 proportion to the interest in the limited liability company held by  
16 the members;

17 (h) From one limited liability company to another limited  
18 liability company pursuant to a reorganization; or

19 (i) Any transaction between two persons that qualifies as  
20 a tax-free transaction under the Internal Revenue Code;

21 (2) A sale of household goods, personal effects, and  
22 services if each of the following conditions is met and if any  
23 one condition is not met then the entire gross receipts shall be  
24 subject to the tax imposed by section 77-2703:

25 (a) Such sales are by an individual at his or her

1 residence or if more than one individual's property is involved  
2 such sales are by one of the individuals involved at the residence  
3 of one of the individuals or such sales are by an individual on an  
4 online auction site;

5 (b) Such sales do not occur at any residence or on an  
6 online auction site for more than three days during a calendar  
7 year;

8 (c) Such individual or individuals or any member of any  
9 of their households does not conduct or engage in a trade or  
10 business in which similar items are sold or services provided;

11 (d) Such property sold was originally acquired for and  
12 used for personal use or the service provided may be performed at  
13 any individual residence without specialized equipment or supplies;  
14 and

15 (e) Such property is not otherwise excepted from the  
16 definition of occasional sale;

17 (3) Commencing with any transaction occurring on or after  
18 October 1, 1985, any sale of business or farm machinery and  
19 equipment if each of the following conditions is met and if any one  
20 condition is not met the entire gross receipts shall be subject to  
21 the tax imposed by section 77-2703:

22 (a) Such machinery or equipment was used by the seller or  
23 seller's predecessor in a sale described in subdivision (1) of this  
24 section as a depreciable capital asset in connection with the farm  
25 or business for a period of at least one year;

1           (b) Such property was originally acquired prior to June  
2 1, 1967, or if acquired thereafter, the seller or seller's  
3 predecessor in a sale described in subdivision (1) of this section  
4 directly or indirectly has previously paid a sales or use tax  
5 thereon; and

6           (c) Such property is not otherwise excepted from the  
7 definition of occasional sale;

8           (4) Commencing October 1, 1985, a sale by an organization  
9 created exclusively for religious purposes or an agent of the  
10 organization for such sale if each of the following conditions is  
11 met and if any one condition is not met then the entire gross  
12 receipts shall be subject to the tax imposed by section 77-2703:

13           (a) All sales occur during an activity conducted by such  
14 organization or, if more than one organization is involved, by one  
15 of the organizations owning property being sold;

16           (b) The organization only sells property it owns or  
17 provides the service during one such activity in a calendar year;  
18 and

19           (c) The activity does not last longer than three  
20 consecutive days; and

21           (5) Any sale that is made in connection with the sale  
22 to a single buyer of all or substantially all of a trade or  
23 business if the seller or seller's predecessor in a sale described  
24 in subdivision (1) of this section directly or indirectly has  
25 previously paid a sales or use tax thereon. This subdivision shall

1 apply to any transaction occurring on or after October 1, 1985.

2 Commencing October 1, 1985, occasional sale does not  
3 include any sale directly by or any sale which is supervised or  
4 aided by an auctioneer or an agent or employee of an auctioneer.

5 Except for a sale listed in subdivision (1) of this  
6 section, an occasional sale does not mean any sale of motor  
7 vehicles, semitrailers, or trailers as defined in the Motor Vehicle  
8 Registration Act or any sale of a motorboat as defined in section  
9 37-1204.

10 Sec. 7. Section 77-2703.04, Revised Statutes Cumulative  
11 Supplement, 2008, is amended to read:

12 77-2703.04 (1) Except for the telecommunications  
13 service defined in subsection (3) of this section, the sale of  
14 telecommunications service sold on a call-by-call basis shall be  
15 sourced to (a) each level of taxing jurisdiction where the call  
16 originates and terminates in that jurisdiction or (b) each level of  
17 taxing jurisdiction where the call either originates or terminates  
18 and in which the service address is also located.

19 (2) Except for the telecommunications service defined  
20 in subsection (3) of this section and ancillary services, a  
21 sale of telecommunications service sold on a basis other than a  
22 call-by-call basis is sourced to the customer's place of primary  
23 use.

24 (3)(a) For mobile telecommunications service and  
25 ancillary services provided and billed to a customer by a home

1 service provider:

2 (i) Notwithstanding any other provision of law or any  
3 local ordinance or resolution, such mobile telecommunications  
4 service is deemed to be provided by the customer's home service  
5 provider;

6 (ii) All taxable charges for such mobile  
7 telecommunications service and ancillary services shall be subject  
8 to tax by the state or other taxing jurisdiction in this state  
9 whose territorial limits encompass the customer's place of primary  
10 use regardless of where the mobile telecommunications service  
11 originates, terminates, or passes through; and

12 (iii) No taxes, charges, or fees may be imposed on a  
13 customer with a place of primary use outside this state.

14 (b) In accordance with the federal Mobile  
15 Telecommunications Sourcing Act, as such act existed on July 20,  
16 2002, the Tax Commissioner may, but is not required to:

17 (i) Provide or contract for a tax assignment data base  
18 based upon standards identified in 4 U.S.C. 119, as such section  
19 existed on July 20, 2002, with the following conditions:

20 (A) If such data base is provided, a home service  
21 provider shall be held harmless for any tax that otherwise would  
22 result from any errors or omissions attributable to reliance on  
23 such data base; or

24 (B) If such data base is not provided, a home service  
25 provider may rely on an enhanced zip code for identifying the

1 proper taxing jurisdictions and shall be held harmless for any  
2 tax that otherwise would result from any errors or omissions  
3 attributable to reliance on such enhanced zip code if the home  
4 service provider identified the taxing jurisdiction through the  
5 exercise of due diligence and complied with any procedures that may  
6 be adopted by the Tax Commissioner. Any such procedure shall be in  
7 accordance with 4 U.S.C. 120, as such section existed on July 20,  
8 2002; and

9 (ii) Adopt procedures for correcting errors in the  
10 assignment of primary use that are consistent with 4 U.S.C.  
11 121, as such section existed on July 20, 2002.

12 (c) If charges for mobile telecommunications service that  
13 are not subject to tax are aggregated with and not separately  
14 stated on the bill from charges that are subject to tax, the total  
15 charge to the customer shall be subject to tax unless the home  
16 service provider can reasonably separate charges not subject to tax  
17 using the records of the home service provider that are kept in the  
18 regular course of business.

19 (d) For purposes of this subsection:

20 (i) Customer means an individual, business, organization,  
21 or other person contracting to receive mobile telecommunications  
22 service from a home service provider. Customer does not include a  
23 reseller of mobile telecommunications service or a serving carrier  
24 under an arrangement to serve the customer outside the home service  
25 provider's service area;

1           (ii) Home service provider means a telecommunications  
2 company as defined in section 86-322 that has contracted with a  
3 customer to provide mobile telecommunications service;

4           (iii) Mobile telecommunications service means a wireless  
5 communication service carried on between mobile stations or  
6 receivers and land stations, and by mobile stations communicating  
7 among themselves, and includes (A) both one-way and two-way  
8 wireless communication services, (B) a mobile service which  
9 provides a regularly interacting group of base, mobile, portable,  
10 and associated control and relay stations, whether on an  
11 individual, cooperative, or multiple basis for private one-way or  
12 two-way land mobile radio communications by eligible users over  
13 designated areas of operation, and (C) any personal communication  
14 service;

15           (iv) Place of primary use means the street address  
16 representative of where the customer's use of mobile  
17 telecommunications service primarily occurs. The place of  
18 primary use shall be the residential street address or the primary  
19 business street address of the customer and shall be within the  
20 service area of the home service provider; and

21           (v) Tax means the sales taxes levied under sections  
22 13-319, 77-2703, and 77-27,142, the surcharges levied under the  
23 Enhanced Wireless 911 Services Act, the Nebraska Telecommunications  
24 Universal Service Fund Act, and the Telecommunications Relay System  
25 Act, and any other tax levied against the customer based on the

1 amount charged to the customer. Tax does not mean an income tax,  
2 property tax, franchise tax, or any other tax levied on the home  
3 service provider that is not based on the amount charged to the  
4 customer.

5 (4) A sale of post-paid calling service is sourced to  
6 the origination point of the telecommunications signal as first  
7 identified by either (a) the seller's telecommunications system, or  
8 (b) information received by the seller from its service provider,  
9 where the system used to transport such signals is not that of the  
10 seller.

11 (5) A sale of prepaid calling service is sourced in  
12 accordance with section 77-2703.01, except that in the case of  
13 a sale of mobile telecommunications service that is a prepaid  
14 telecommunications service, the rule provided in section 77-2703.01  
15 shall include as an option the location associated with the mobile  
16 telephone number.

17 (6) A sale of a private communication service is sourced  
18 as follows:

19 (a) Service for a separate charge related to a customer  
20 channel termination point is sourced to each level of jurisdiction  
21 in which such customer channel termination point is located;

22 (b) Service where all customer termination points are  
23 located entirely within one jurisdiction or levels of jurisdiction  
24 is sourced in such jurisdiction in which the customer channel  
25 termination points are located;

1           (c) Service for segments of a channel between two  
2 customer channel termination points located in different  
3 jurisdictions and which segments of channel are separately charged  
4 is sourced fifty percent in each level of jurisdiction in which the  
5 customer channel termination points are located; and

6           (d) Service for segments of a channel located in more  
7 than one jurisdiction or levels of jurisdiction and which segments  
8 are not separately billed is sourced in each jurisdiction based  
9 on the percentage determined by dividing the number of customer  
10 channel termination points in such jurisdiction by the total number  
11 of customer channel termination points.

12           (7) For purposes of this section:

13           (a) 800 service means a telecommunications service that  
14 allows a caller to dial a toll-free number without incurring a  
15 charge for the call. The service is typically marketed under  
16 the name 800, 855, 866, 877, and 888 toll-free calling, and  
17 any subsequent numbers designated by the Federal Communications  
18 Commission;

19           (b) 900 service means an inbound toll telecommunications  
20 service purchased by a subscriber that allows the subscriber's  
21 customers to call in to the subscriber's prerecorded announcement  
22 or live service. 900 service does not include the charge  
23 for collection services provided by the seller of the  
24 telecommunications services to the subscriber or service or product  
25 sold by the subscriber to the subscriber's customer. The service is

1 typically marketed under the name 900 service, and any subsequent  
2 numbers designated by the Federal Communications Commission;

3 (c) Air-to-ground radiotelephone service means a radio  
4 telecommunication service, as that term is defined in 47 C.F.R.  
5 22.99, as such regulation existed on January 1, 2007, in which  
6 common carriers are authorized to offer and provide radio  
7 telecommunications service for hire to subscribers in aircraft;

8 (d) Ancillary services means services that are associated  
9 with or incidental to the provision of telecommunications services,  
10 including, but not limited to, detailed telecommunications  
11 billings, directory assistance, vertical service, and voice mail  
12 services;

13 (e) Call-by-call basis means any method of charging  
14 for telecommunications service where the price is measured by  
15 individual calls;

16 (f) Coin-operated telephone service means a  
17 telecommunications service paid for by inserting money into a  
18 telephone accepting direct deposits of money to operate;

19 (g) Communications channel means a physical or virtual  
20 path of communications over which signals are transmitted between  
21 or among customer channel termination points;

22 (h) Conference bridging service means an ancillary  
23 service that links two or more participants of an audio or  
24 video conference call and may include the provision of a  
25 telephone number. Conference bridging service does not include the

1 telecommunications services used to reach the conference bridge;

2 (i) Customer means the person or entity that contracts  
3 with the seller of telecommunications service. If the end user  
4 of telecommunications service is not the contracting party, the  
5 end user of the telecommunications service is the customer of the  
6 telecommunications service, but this sentence only applies for the  
7 purpose of sourcing sales of telecommunications service under this  
8 section. Customer does not include a reseller of telecommunications  
9 service or for mobile telecommunications service of a serving  
10 carrier under an agreement to serve the customer outside the home  
11 service provider's licensed service area;

12 (j) Customer channel termination point means the location  
13 where the customer either inputs or receives the communications;

14 (k) Detailed telecommunications billing service means an  
15 ancillary service of separately stating information pertaining to  
16 individual calls on a customer's billing statement;

17 (l) Directory assistance means an ancillary service of  
18 providing telephone number information and address information;

19 (m) End user means the person who utilizes the  
20 telecommunications service. In the case of an entity, end user  
21 means the individual who utilizes the service on behalf of the  
22 entity;

23 (n) Fixed wireless service means a telecommunications  
24 service that provides radio communication between fixed points;

25 (o) International means a telecommunications service that

1 originates or terminates in the United States and terminates or  
2 originates outside the United States, respectively. United States  
3 includes the District of Columbia or a United States territory or  
4 possession;

5 (p) Interstate means a telecommunications service that  
6 originates in one state of the United States, or a territory or  
7 possession of the United States, and terminates in a different  
8 state, territory, or possession of the United States;

9 (q) Intrastate means a telecommunications service that  
10 originates in one state of the United States, or a territory or  
11 possession of the United States, and terminates in the same state,  
12 territory, or possession of the United States;

13 (r) Mobile wireless service means a telecommunications  
14 service that is transmitted, conveyed, or routed regardless of the  
15 technology used, whereby the origination and termination points of  
16 the transmission, conveyance, or routing are not fixed, including,  
17 by way of example only, telecommunications services that are  
18 provided by a commercial mobile radio service provider;

19 (s) Paging service means a telecommunications service  
20 that provides transmission of coded radio signals for the purpose  
21 of activating specific pagers. Such transmission may include  
22 messages and sounds;

23 (t) Pay telephone services means a telecommunications  
24 service provided through pay telephones;

25 (u) Post-paid calling service means the

1 telecommunications service obtained by making a payment on a  
2 call-by-call basis either through the use of a credit card or  
3 payment mechanism, such as a bank card, travel card, credit card,  
4 or debit card, or by a charge made to a telephone number which  
5 is not associated with the origination or termination of the  
6 telecommunications service. A post-paid calling service includes  
7 a telecommunications service, except a prepaid wireless calling  
8 service, that would be a prepaid calling service except it is not  
9 exclusively a telecommunications service;

10 (v) Prepaid calling service means the right to access  
11 exclusively telecommunications service, which is paid for in  
12 advance and which enables the origination of calls using an access  
13 number or authorization code, whether manually or electronically  
14 dialed, and that is sold in predetermined units or dollars of which  
15 the number declines with use in a known amount;

16 (w) Prepaid wireless calling service means a  
17 telecommunications service that provides the right to utilize  
18 mobile wireless service as well as other nontelecommunications  
19 services, including the download of digital products delivered  
20 electronically, content, and ancillary services, which must be paid  
21 for in advance, that is sold in predetermined units of dollars or  
22 which the number declines with use in a known amount;

23 (x) Private communication service means a  
24 telecommunications service that entitles the customer to exclusive  
25 or priority use of a communications channel or group of channels

1 between or among termination points, regardless of the manner  
2 in which such channel or channels are connected, and includes  
3 switching capacity, extension lines, stations, and any other  
4 associated services that are provided in connection with the use of  
5 such channel or channels;

6 (y) Residential telecommunications service means a  
7 telecommunications service or ancillary services provided to an  
8 individual for personal use at a residential address, including  
9 an individual dwelling unit such as an apartment. In the case of  
10 institutions where individuals reside, such as schools or nursing  
11 homes, telecommunications service is considered residential if it  
12 is provided to and paid for by an individual resident rather than  
13 the institution;

14 (z) Service address means the location of the  
15 telecommunications equipment to which a customer's call is charged  
16 and from which the call originates or terminates, regardless of  
17 where the call is billed or paid. If this location is not known,  
18 service address means the origination point of the signal of the  
19 telecommunications service first identified either by the seller's  
20 telecommunications system, or in information received by the seller  
21 from its service provider, where the system used to transport such  
22 signals is not that of the seller. If both locations are not known,  
23 the service address means the location of the customer's place of  
24 primary use;

25 (aa) Telecommunications service means the electronic

1 transmission, conveyance, or routing of voice, data, audio, video,  
2 or any other information or signals to a point, or between or among  
3 points. Telecommunications service includes such transmission,  
4 conveyance, or routing in which computer processing applications  
5 are used to act on the form, code, or protocol of the content for  
6 purposes of transmission, conveyance, or routing without regard to  
7 whether such service is referred to as voice over Internet protocol  
8 services or is classified by the Federal Communications Commission  
9 as enhanced or value-added. Telecommunications service does not  
10 include:

11 (i) Data processing and information services that allow  
12 data to be generated, acquired, stored, processed, or retrieved and  
13 delivered by an electronic transmission to a purchaser when such  
14 purchaser's primary purpose for the underlying transaction is the  
15 processed data or information;

16 (ii) Installation or maintenance of wiring or equipment  
17 on a customer's premises;

18 (iii) Tangible personal property;

19 (iv) Advertising, including, but not limited to,  
20 directory advertising;

21 (v) Billing and collection services provided to third  
22 parties;

23 (vi) Internet access service;

24 (vii) Radio and television audio and video programming  
25 services, regardless of the medium, including the furnishing of

1 transmission, conveyance, and routing of such services by the  
2 programming service provider. Radio and television audio and video  
3 programming services shall include, but not be limited to, cable  
4 service as defined in 47 U.S.C. 522, as such section existed on  
5 January 1, 2007, and audio and video programming services delivered  
6 by providers of commercial mobile radio service as defined in 47  
7 C.F.R. 20.3, as such regulation existed on January 1, 2007;

8 (viii) Ancillary services; or

9 (ix) Digital products delivered electronically,  
10 including, but not limited to, software, music, video, reading  
11 materials, or ring tones;

12 (bb) Value-added, non-voice data service means a service  
13 that otherwise meets the definition of telecommunications services  
14 in which computer processing applications are used to act on  
15 the form, content, code, or protocol of the information or data  
16 primarily for a purpose other than transmission, conveyance, or  
17 routing;

18 (cc) Vertical service means an ancillary service that is  
19 offered in connection with one or more telecommunications services,  
20 which offers advanced calling features that allow customers to  
21 identify callers and to manage multiple calls and call connections,  
22 including conference bridging services; and

23 (dd) Voice mail service means an ancillary service that  
24 enables the customer to store, send, or receive recorded messages.  
25 Voice mail service does not include any vertical services that the

1 customer may be required to have in order to utilize the voice mail  
2 service.

3 Sec. 8. Section 77-2704.09, Revised Statutes Cumulative  
4 Supplement, 2008, is amended to read:

5 77-2704.09 (1) Sales and use taxes shall not be imposed  
6 on the gross receipts from the sale, lease, or rental of and  
7 the storage, use, or other consumption in this state of (a)  
8 insulin, (b) mobility enhancing equipment and drugs, not including  
9 over-the-counter drugs, when sold for a patient's use under a  
10 prescription, and (c) the following when sold for a patient's  
11 use under a prescription and which are of the type eligible for  
12 coverage under the medical assistance program established pursuant  
13 to the Medical Assistance Act: Durable medical equipment; home  
14 medical supplies; prosthetic devices; oxygen; and oxygen equipment.  
15 ~~÷ and mobility enhancing equipment.~~

16 (2) For purposes of this section:

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

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

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

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

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

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

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

22 (e) Over-the-counter drug means a drug that contains a  
23 label that identifies the product as a drug as required by 21  
24 C.F.R. 201.66, as such regulation existed on January 1, 2003.  
25 The over-the-counter drug label includes a drug facts panel or

1 a statement of the active ingredients with a list of those  
2 ingredients contained in the compound, substance, or preparation;

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

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

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

19 Sec. 9. Section 77-2704.12, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21 77-2704.12 (1) Sales and use taxes shall not be imposed  
22 on the gross receipts from the sale, lease, or rental of  
23 and the storage, use, or other consumption in this state of  
24 purchases by (a) any nonprofit organization created exclusively  
25 for religious purposes, (b) any nonprofit organization providing

1 services exclusively to the blind, (c) any nonprofit private  
 2 educational institution established under sections 79-1601 to  
 3 79-1607, or (d) any nonprofit private college or university  
 4 established under sections 85-1101 to 85-1111, or ~~(e) any nonprofit~~  
 5 ~~(i) hospital, (ii) health clinic when two or more hospitals or~~  
 6 ~~the parent corporations of the hospitals own or control the health~~  
 7 ~~clinic for the purpose of reducing the cost of health services or~~  
 8 ~~when the health clinic receives federal funds through the United~~  
 9 ~~States Public Health Service for the purpose of serving populations~~  
 10 ~~that are medically underserved, (iii) skilled nursing facility,~~  
 11 ~~(iv) intermediate care facility, (v) assisted-living facility, (vi)~~  
 12 ~~intermediate care facility for the mentally retarded, (vii) nursing~~  
 13 ~~facility, (viii) home health agency, (ix) hospice or hospice~~  
 14 ~~service, or (x) respite care service licensed under the Health Care~~  
 15 ~~Facility Licensure Act, (f)~~

16 (2) Sales and use taxes shall not be imposed on the  
 17 gross receipts from the sale, lease, or rental of and the storage,  
 18 use, or other consumption in this state of purchases by (a)  
 19 any nonprofit licensed child-caring agency, ~~(g)~~ (b) any nonprofit  
 20 licensed child placement agency, ~~or (h)~~ and (c) any nonprofit  
 21 organization certified by the Department of Health and Human  
 22 Services to provide community-based services for persons with  
 23 developmental disabilities. The exemptions in this subsection are  
 24 limited to purchases made for use in the exempt health care  
 25 activities or services that are licensed or certified by the

1 Department of Health and Human Services.

2 (3) Sales and use taxes shall not be imposed on the gross  
3 receipts from the sale, lease, or rental of and the storage, use,  
4 or other consumption in this state of purchases by any nonprofit  
5 licensed (a) hospital, (b) health clinic when two or more hospitals  
6 or the parent corporations of the hospitals own or control the  
7 health clinic for the purpose of reducing the cost of health  
8 services or when the health clinic receives federal funds through  
9 the United States Public Health Service for the purpose of serving  
10 populations that are medically underserved, (c) nursing facility,  
11 (d) skilled nursing facility, (e) assisted-living facility, (f)  
12 intermediate care facility, (g) intermediate care facility for the  
13 mentally retarded, (h) home health agency, (i) hospice or hospice  
14 service, or (j) respite care service. The exemptions in this  
15 subsection are limited to purchases made for use at the facility or  
16 the portion of a facility that is licensed under the Health Care  
17 Facility Licensure Act or use in the exempt health care activities  
18 or services licensed under the act.

19 ~~(2)~~ (4) Any organization listed in subsection (1), (2),  
20 or (3) of this section shall apply for an exemption on forms  
21 provided by the Tax Commissioner. The application shall be approved  
22 and a numbered certificate of exemption received by the applicant  
23 organization in order to be exempt from the sales and use tax.

24 ~~(3)~~ (5) The appointment of purchasing agents shall  
25 be recognized for the purpose of altering the status of the

1 construction contractor as the ultimate consumer of building  
2 materials which are physically annexed to the structure and  
3 which subsequently belong to the owner of the organization or  
4 institution. The appointment of purchasing agents shall be in  
5 writing and occur prior to having any building materials annexed  
6 to real estate in the construction, improvement, or repair. The  
7 contractor who has been appointed as a purchasing agent may apply  
8 for a refund of or use as a credit against a future use tax  
9 liability the tax paid on inventory items annexed to real estate  
10 in the construction, improvement, or repair of a project for a  
11 licensed not-for-profit institution.

12 ~~(4)~~ (6) Any organization listed in subsection (1),  
13 (2), or (3) of this section which enters into a contract of  
14 construction, improvement, or repair upon property annexed to real  
15 estate without first issuing a purchasing agent authorization to a  
16 contractor or repairperson prior to the building materials being  
17 annexed to real estate in the project may apply to the Tax  
18 Commissioner for a refund of any sales and use tax paid by the  
19 contractor or repairperson on the building materials physically  
20 annexed to real estate in the construction, improvement, or repair.

21 ~~(5)~~ (7) Any person purchasing, storing, using, or  
22 otherwise consuming building materials in the performance of any  
23 construction, improvement, or repair by or for any institution  
24 enumerated in subsection (1), (2), or (3) of this section which  
25 is licensed upon completion although not licensed at the time of

1 construction or improvement, which building materials are annexed  
2 to real estate and which subsequently belong to the owner of the  
3 institution, shall pay any applicable sales or use tax thereon.  
4 Upon becoming licensed and receiving a numbered certificate of  
5 exemption, the institution organized not for profit shall be  
6 entitled to a refund of the amount of taxes so paid in the  
7 performance of such construction, improvement, or repair and shall  
8 submit whatever evidence is required by the Tax Commissioner  
9 sufficient to establish the total sales and use tax paid upon  
10 the building materials physically annexed to real estate in the  
11 construction, improvement, or repair.

12           Sec. 10. Section 77-2704.52, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           77-2704.52 Sales and use taxes shall not be imposed on  
15 the gross receipts from the sale, lease, or rental of and the  
16 storage, use, or other consumption in this state of services  
17 rendered using a prepaid telephone calling arrangement. calling  
18 service and prepaid wireless calling service.

19           Sec. 11. Section 77-2711, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21           77-2711 (1)(a) The Tax Commissioner shall enforce  
22 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and  
23 enforce rules and regulations relating to the administration and  
24 enforcement of such sections.

25           (b) The Tax Commissioner may prescribe the extent to

1 which any ruling or regulation shall be applied without retroactive  
2 effect.

3 (2) The Tax Commissioner may employ accountants,  
4 auditors, investigators, assistants, and clerks necessary for the  
5 efficient administration of the Nebraska Revenue Act of 1967 and  
6 may delegate authority to his or her representatives to conduct  
7 hearings, prescribe regulations, or perform any other duties  
8 imposed by such act.

9 (3)(a) Every seller, every retailer, and every person  
10 storing, using, or otherwise consuming in this state property  
11 purchased from a retailer shall keep such records, receipts,  
12 invoices, and other pertinent papers in such form as the Tax  
13 Commissioner may reasonably require.

14 (b) Every such seller, retailer, or person shall keep  
15 such records for not less than three years from the making of such  
16 records unless the Tax Commissioner in writing sooner authorized  
17 their destruction.

18 (4) The Tax Commissioner or any person authorized in  
19 writing by him or her may examine the books, papers, records, and  
20 equipment of any person selling property and any person liable for  
21 the use tax and may investigate the character of the business of  
22 the person in order to verify the accuracy of any return made or,  
23 if no return is made by the person, to ascertain and determine  
24 the amount required to be paid. In the examination of any person  
25 selling property or of any person liable for the use tax, an

1 inquiry shall be made as to the accuracy of the reporting of city  
2 sales and use taxes for which the person is liable under the Local  
3 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and  
4 the accuracy of the allocation made between the various counties,  
5 cities, villages, and municipal counties of the tax due. The Tax  
6 Commissioner may make or cause to be made copies of resale or  
7 exemption certificates and may pay a reasonable amount to the  
8 person having custody of the records for providing such copies.

9 (5) The taxpayer shall have the right to keep or store  
10 his or her records at a point outside this state and shall make his  
11 or her records available to the Tax Commissioner at all times.

12 (6) In administration of the use tax, the Tax  
13 Commissioner may require the filing of reports by any person or  
14 class of persons having in his, her, or their possession or custody  
15 information relating to sales of property, the storage, use, or  
16 other consumption of which is subject to the tax. The report shall  
17 be filed when the Tax Commissioner requires and shall set forth the  
18 names and addresses of purchasers of the property, the sales price  
19 of the property, the date of sale, and such other information as  
20 the Tax Commissioner may require.

21 (7) It shall be a Class I misdemeanor for the Tax  
22 Commissioner or any official or employee of the Tax Commissioner,  
23 the State Treasurer, or the Department of Administrative Services  
24 to make known in any manner whatever the business affairs,  
25 operations, or information obtained by an investigation of records

1 and activities of any retailer or any other person visited  
2 or examined in the discharge of official duty or the amount  
3 or source of income, profits, losses, expenditures, or any  
4 particular thereof, set forth or disclosed in any return, or  
5 to permit any return or copy thereof, or any book containing  
6 any abstract or particulars thereof to be seen or examined by  
7 any person not connected with the Tax Commissioner. Nothing in  
8 this section shall be construed to prohibit (a) the delivery to  
9 a taxpayer, his or her duly authorized representative, or his  
10 or her successors, receivers, trustees, executors, administrators,  
11 assignees, or guarantors, if directly interested, of a certified  
12 copy of any return or report in connection with his or her tax,  
13 (b) the publication of statistics so classified as to prevent  
14 the identification of particular reports or returns and the items  
15 thereof, (c) the inspection by the Attorney General, other legal  
16 representative of the state, or county attorney of the reports  
17 or returns of any taxpayer when either (i) information on the  
18 reports or returns is considered by the Attorney General to be  
19 relevant to any action or proceeding instituted by the taxpayer  
20 or against whom an action or proceeding is being considered or  
21 has been commenced by any state agency or the county or (ii) the  
22 taxpayer has instituted an action to review the tax based thereon  
23 or an action or proceeding against the taxpayer for collection of  
24 tax or failure to comply with the Nebraska Revenue Act of 1967 is  
25 being considered or has been commenced, (d) the furnishing of any

1 information to the United States Government or to states allowing  
2 similar privileges to the Tax Commissioner, (e) the disclosure of  
3 information and records to a collection agency contracting with the  
4 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)  
5 the disclosure to another party to a transaction of information  
6 and records concerning the transaction between the taxpayer and  
7 the other party, or (g) the disclosure of information pursuant to  
8 section 77-27,195 or 77-5731.

9           (8) Notwithstanding the provisions of subsection (7) of  
10 this section, the Tax Commissioner may permit the Postal Inspector  
11 of the United States Postal Service or his or her delegates to  
12 inspect the reports or returns of any person filed pursuant to the  
13 Nebraska Revenue Act of 1967 when information on the reports or  
14 returns is relevant to any action or proceeding instituted or being  
15 considered by the United States Postal Service against such person  
16 for the fraudulent use of the mails to carry and deliver false and  
17 fraudulent tax returns to the Tax Commissioner with the intent to  
18 defraud the State of Nebraska or to evade the payment of Nebraska  
19 state taxes.

20           (9) Notwithstanding the provisions of subsection (7) of  
21 this section, the Tax Commissioner may permit other tax officials  
22 of this state to inspect the tax returns, reports, and applications  
23 filed under sections 77-2701.04 to 77-2713, but such inspection  
24 shall be permitted only for purposes of enforcing a tax law and  
25 only to the extent and under the conditions prescribed by the rules

1 and regulations of the Tax Commissioner.

2 (10) Notwithstanding the provisions of subsection (7)  
3 of this section, the Tax Commissioner may, upon request, provide  
4 the county board of any county which has exercised the authority  
5 granted by section 81-1254 with a list of the names and addresses  
6 of the hotels located within the county for which lodging sales tax  
7 returns have been filed or for which lodging sales taxes have been  
8 remitted for the county's County Visitors Promotion Fund under the  
9 Nebraska Visitors Development Act.

10 The information provided by the Tax Commissioner shall  
11 indicate only the names and addresses of the hotels located within  
12 the requesting county for which lodging sales tax returns have been  
13 filed for a specified period and the fact that lodging sales taxes  
14 remitted by or on behalf of the hotel have constituted a portion of  
15 the total sum remitted by the state to the county for a specified  
16 period under the provisions of the Nebraska Visitors Development  
17 Act. No additional information shall be revealed.

18 (11)(a) Notwithstanding the provisions of subsection (7)  
19 of this section, the Tax Commissioner shall, upon written request  
20 by the Auditor of Public Accounts or the Legislative Performance  
21 Audit Committee, make tax returns and tax return information open  
22 to inspection by or disclosure to Auditor of Public Accounts or  
23 Legislative Performance Audit Section employees for the purpose of  
24 and to the extent necessary in making an audit of the Department  
25 of Revenue pursuant to section 50-1205 or 84-304. Confidential

1 tax returns and tax return information shall be audited only upon  
2 the premises of the Department of Revenue. All audit workpapers  
3 pertaining to the audit of the Department of Revenue shall be  
4 stored in a secure place in the Department of Revenue.

5 (b) No employee of the Auditor of Public Accounts or  
6 Legislative Performance Audit Section shall disclose to any person,  
7 other than another Auditor of Public Accounts or Legislative  
8 Performance Audit Section employee whose official duties require  
9 such disclosure or as provided in subsections (2) and (3) of  
10 section 50-1213, any return or return information described in the  
11 Nebraska Revenue Act of 1967 in a form which can be associated  
12 with or otherwise identify, directly or indirectly, a particular  
13 taxpayer.

14 (c) Any person who violates the provisions of this  
15 subsection shall be guilty of a Class I misdemeanor. For purposes  
16 of this subsection, employee includes a former Auditor of Public  
17 Accounts or Legislative Performance Audit Section employee.

18 (12) For purposes of this subsection and subsection (11)  
19 of this section:

20 (a) Disclosure means the making known to any person in  
21 any manner a tax return or return information;

22 (b) Return information means:

23 (i) A taxpayer's identification number and (A) the  
24 nature, source, or amount of his or her income, payments, receipts,  
25 deductions, exemptions, credits, assets, liabilities, net worth,

1 tax liability, tax withheld, deficiencies, overassessments, or tax  
2 payments, whether the taxpayer's return was, is being, or will be  
3 examined or subject to other investigation or processing or (B) any  
4 other data received by, recorded by, prepared by, furnished to, or  
5 collected by the Tax Commissioner with respect to a return or the  
6 determination of the existence or possible existence of liability  
7 or the amount of liability of any person for any tax, penalty,  
8 interest, fine, forfeiture, or other imposition or offense; and

9 (ii) Any part of any written determination or any  
10 background file document relating to such written determination;  
11 and

12 (c) Tax return or return means any tax or information  
13 return or claim for refund required by, provided for, or permitted  
14 under sections 77-2701 to 77-2713 which is filed with the Tax  
15 Commissioner by, on behalf of, or with respect to any person  
16 and any amendment or supplement thereto, including supporting  
17 schedules, attachments, or lists which are supplemental to or part  
18 of the filed return.

19 (13) Notwithstanding the provisions of subsection (7) of  
20 this section, the Tax Commissioner shall, upon request, provide  
21 any municipality which has adopted the local option sales tax  
22 under the Local Option Revenue Act with a list of the names and  
23 addresses of the retailers which have collected the local option  
24 sales tax for the municipality. The request may be made annually  
25 and shall be submitted to the Tax Commissioner on or before June

1 30 of each year. The information provided by the Tax Commissioner  
2 shall indicate only the names and addresses of the retailers.  
3 ~~No additional information shall be revealed.~~ The Tax Commissioner  
4 may provide additional information to a municipality so long as  
5 the information does not include any data detailing the specific  
6 revenue, expenses, or operations of any particular business.

7 (14) In all proceedings under the Nebraska Revenue Act  
8 of 1967, the Tax Commissioner may act for and on behalf of the  
9 people of the State of Nebraska. The Tax Commissioner in his or her  
10 discretion may waive all or part of any penalties provided by the  
11 provisions of such act or interest on delinquent taxes specified in  
12 section 45-104.02, as such rate may from time to time be adjusted.

13 (15)(a) The purpose of this subsection is to set forth  
14 the state's policy for the protection of the confidentiality  
15 rights of all participants in the system operated pursuant to  
16 the streamlined sales and use tax agreement and of the privacy  
17 interests of consumers who deal with model 1 sellers.

18 (b) For purposes of this subsection:

19 (i) Anonymous data means information that does not  
20 identify a person;

21 (ii) Confidential taxpayer information means all  
22 information that is protected under a member state's laws,  
23 regulations, and privileges; and

24 (iii) Personally identifiable information means  
25 information that identifies a person.

1           (c) The state agrees that a fundamental precept for model  
2 1 sellers is to preserve the privacy of consumers by protecting  
3 their anonymity. With very limited exceptions, a certified service  
4 provider shall perform its tax calculation, remittance, and  
5 reporting functions without retaining the personally identifiable  
6 information of consumers.

7           (d) The governing board of the member states in the  
8 streamlined sales and use tax agreement may certify a certified  
9 service provider only if that certified service provider certifies  
10 that:

11           (i) Its system has been designed and tested to ensure  
12 that the fundamental precept of anonymity is respected;

13           (ii) Personally identifiable information is only used and  
14 retained to the extent necessary for the administration of model 1  
15 with respect to exempt purchasers;

16           (iii) It provides consumers clear and conspicuous  
17 notice of its information practices, including what information  
18 it collects, how it collects the information, how it uses the  
19 information, how long, if at all, it retains the information, and  
20 whether it discloses the information to member states. Such notice  
21 shall be satisfied by a written privacy policy statement accessible  
22 by the public on the web site of the certified service provider;

23           (iv) Its collection, use, and retention of personally  
24 identifiable information is limited to that required by the member  
25 states to ensure the validity of exemptions from taxation that are

1 claimed by reason of a consumer's status or the intended use of the  
2 goods or services purchased; and

3 (v) It provides adequate technical, physical, and  
4 administrative safeguards so as to protect personally identifiable  
5 information from unauthorized access and disclosure.

6 (e) The state shall provide public notification to  
7 consumers, including exempt purchasers, of the state's practices  
8 relating to the collection, use, and retention of personally  
9 identifiable information.

10 (f) When any personally identifiable information that  
11 has been collected and retained is no longer required for the  
12 purposes set forth in subdivision (15)(d)(iv) of this section, such  
13 information shall no longer be retained by the member states.

14 (g) When personally identifiable information regarding an  
15 individual is retained by or on behalf of the state, it shall  
16 provide reasonable access by such individual to his or her own  
17 information in the state's possession and a right to correct any  
18 inaccurately recorded information.

19 (h) If anyone other than a member state, or a person  
20 authorized by that state's law or the agreement, seeks to discover  
21 personally identifiable information, the state from whom the  
22 information is sought should make a reasonable and timely effort to  
23 notify the individual of such request.

24 (i) This privacy policy is subject to enforcement by the  
25 Attorney General.

1           (j) All other laws and regulations regarding the  
2 collection, use, and maintenance of confidential taxpayer  
3 information remain fully applicable and binding. Without  
4 limitation, this subsection does not enlarge or limit the state's  
5 authority to:

6           (i) Conduct audits or other reviews as provided under the  
7 agreement and state law;

8           (ii) Provide records pursuant to the federal Freedom of  
9 Information Act, disclosure laws with governmental agencies, or  
10 other regulations;

11           (iii) Prevent, consistent with state law, disclosure of  
12 confidential taxpayer information;

13           (iv) Prevent, consistent with federal law, disclosure or  
14 misuse of federal return information obtained under a disclosure  
15 agreement with the Internal Revenue Service; and

16           (v) Collect, disclose, disseminate, or otherwise use  
17 anonymous data for governmental purposes.

18           Sec. 12. Section 77-2712.05, Revised Statutes Cumulative  
19 Supplement, 2008, is amended to read:

20           77-2712.05 By agreeing to the terms of the streamlined  
21 sales and use tax agreement, this state agrees to abide by the  
22 following requirements:

23           (1) Uniform state rate. The state shall comply with  
24 restrictions to achieve over time more uniform state rates through  
25 the following:

1 (a) Limiting the number of state rates;

2 (b) Limiting the application of maximums on the amount of  
3 state tax that is due on a transaction; and

4 (c) Limiting the application of thresholds on the  
5 application of state tax;

6 (2) Uniform standards. The state hereby establishes  
7 uniform standards for the following:

8 (a) Sourcing of transactions to taxing jurisdictions as  
9 provided in sections 77-2703.01 to 77-2703.04;

10 (b) Administration of exempt sales as set out by the  
11 agreement and using procedures as determined by the governing  
12 board;

13 (c) Allowances a seller can take for bad debts as  
14 provided in section 77-2708; and

15 (d) Sales and use tax returns and remittances. To comply  
16 with the agreement, the Tax Commissioner shall:

17 (i) Require only one remittance for each return except  
18 as provided in this subdivision. If any additional remittance is  
19 required, it may only be required from retailers that collect more  
20 than thirty thousand dollars in sales and use taxes in the state  
21 during the preceding calendar year as provided in this subdivision.  
22 The amount of any additional remittance may be determined through  
23 a calculation method rather than actual collections. Any additional  
24 remittance shall not require the filing of an additional return;

25 (ii) Require, at his or her discretion, all remittances

1 from sellers under models 1, 2, and 3 to be remitted  
2 electronically;

3 (iii) Allow for electronic payments by both automated  
4 clearinghouse credit and debit;

5 (iv) Provide an alternative method for making same day  
6 payments if an electronic funds transfer fails;

7 (v) Provide that if a due date falls on a legal banking  
8 holiday, the taxes are due to that state on the next succeeding  
9 business day; and

10 (vi) Require that any data that accompanies a remittance  
11 be formatted using uniform tax type and payment type codes approved  
12 by the governing board of the member states to the streamlined  
13 sales and use tax agreement;

14 (3) Uniform definitions. (a) The state shall utilize the  
15 uniform definitions of sales and use tax terms as provided in the  
16 agreement. The definitions enable Nebraska to preserve its ability  
17 to make taxability and exemption choices not inconsistent with the  
18 uniform definitions.

19 (b) The state may enact a product-based exemption without  
20 restriction if the agreement does not have a definition for the  
21 product or for a term that includes the product. If the agreement  
22 has a definition for the product or for a term that includes  
23 the product, the state may exempt all items included within the  
24 definition but shall not exempt only part of the items included  
25 within the definition unless the agreement sets out the exemption

1 for part of the items as an acceptable variation.

2 (c) The state may enact an entity-based or a use-based  
3 exemption without restriction if the agreement does not have a  
4 definition for the product whose use or purchase by a specific  
5 entity is exempt or for a term that includes the product. If the  
6 agreement has a definition for the product whose use or specific  
7 purchase is exempt, states may enact an entity-based or a use-based  
8 exemption that applies to that product as long as the exemption  
9 utilizes the agreement definition of the product. If the agreement  
10 does not have a definition for the product whose use or specific  
11 purchase is exempt but has a definition for a term that includes  
12 the product, states may enact an entity-based or a use-based  
13 exemption for the product without restriction.

14 (d) For purposes of complying with the requirements in  
15 this section, the inclusion of a product within the definition of  
16 tangible personal property is disregarded;

17 (4) Central registration. The state shall participate in  
18 an electronic central registration system that allows a seller to  
19 register to collect and remit sales and use taxes for all member  
20 states. Under the system:

21 (a) A retailer registering under the agreement is  
22 registered in this state;

23 (b) The state agrees not to require the payment of any  
24 registration fees or other charges for a retailer to register in  
25 the state if the retailer has no legal requirement to register;

1           (c) A written signature from the retailer is not  
2 required;

3           (d) An agent may register a retailer under uniform  
4 procedures adopted by the member states pursuant to the agreement;

5           (e) A retailer may cancel its registration under the  
6 system at any time under uniform procedures adopted by the  
7 governing board. Cancellation does not relieve the retailer of its  
8 liability for remitting to the proper states any taxes collected;

9           (f) When registering, the retailer that is registered  
10 under the agreement may select one of the following methods of  
11 remittances or other method allowed by state law to remit the taxes  
12 collected:

13           (i) Model 1, wherein a seller selects a certified service  
14 provider as an agent to perform all the seller's sales or use tax  
15 functions, other than the seller's obligation to remit tax on its  
16 own purchases;

17           (ii) Model 2, wherein a seller selects a certified  
18 automated system to use which calculates the amount of tax due on a  
19 transaction; and

20           (iii) Model 3, wherein a seller utilizes its own  
21 proprietary automated sales tax system that has been certified  
22 as a certified automated system; and

23           (g) Sellers who register within twelve months after this  
24 state's first approval of a certified service provider are relieved  
25 from liability, including the local option tax, for tax not

1 collected or paid if the seller was not registered between October  
2 1, 2004, and September 30, 2005. Such relief from liability shall  
3 be in accordance with the terms of the agreement;

4 (5) No nexus attribution. The state agrees that  
5 registration with the central registration system and the  
6 collection of sales and use taxes in the state will not be used as  
7 a factor in determining whether the seller has nexus with the state  
8 for any tax at any time;

9 (6) Local sales and use taxes. The agreement requires  
10 the reduction of the burdens of complying with local sales and use  
11 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,  
12 77-27,142, 77-27,143, and 77-27,144 that require the following:

13 (a) No variation between the state and local tax bases;

14 (b) Statewide administration of all sales and use taxes  
15 levied by local jurisdictions within the state so that sellers  
16 collecting and remitting these taxes will not have to register or  
17 file returns with, remit funds to, or be subject to independent  
18 audits from local taxing jurisdictions;

19 (c) Limitations on the frequency of changes in the local  
20 sales and use tax rates and setting effective dates for the  
21 application of local jurisdictional boundary changes to local sales  
22 and use taxes; and

23 (d) Uniform notice of changes in local sales and use  
24 tax rates and of changes in the boundaries of local taxing  
25 jurisdictions;

1           (7) Complete a taxability matrix approved by the  
2 governing board. (a) Notice of changes in the taxability of the  
3 products or services listed will be provided as required by the  
4 governing board.

5           (b) The entries in the matrix shall be provided and  
6 maintained in a data base that is in a downloadable format approved  
7 by the governing board.

8           (c) Sellers, model 2 sellers, and certified service  
9 providers are relieved from liability, including the local option  
10 tax, for having charged and collected the incorrect amount of sales  
11 or use tax resulting from the seller or certified service provider  
12 relying on erroneous data provided by the member state in the  
13 taxability matrix or for relying on product-based classifications  
14 that have been reviewed and approved by the state. The state shall  
15 notify the certified service provider or model 2 seller if an item  
16 or transaction is incorrectly classified as to its taxability.

17           (d) Purchasers are relieved from liability for penalty  
18 for having failed to pay the correct amount of tax resulting from  
19 the purchaser's reliance on erroneous data provided by the member  
20 state in the taxability matrix or rates and boundaries data bases  
21 or for relying on product-based classifications that have been  
22 reviewed and approved by the state;

23           (8) Monetary allowances. The state agrees to allow any  
24 monetary allowances that are to be provided by the states to  
25 sellers or certified service providers in exchange for collecting

1 sales and use taxes as provided in Article VI of the agreement;

2 (9) State compliance. The agreement requires the state to  
3 certify compliance with the terms of the agreement prior to joining  
4 and to maintain compliance, under the laws of the member state,  
5 with all provisions of the agreement while a member;

6 (10) Consumer privacy. The state hereby adopts a uniform  
7 policy for certified service providers that protects the privacy of  
8 consumers and maintains the confidentiality of tax information as  
9 provided in section 77-2711; and

10 (11) Advisory councils. The state agrees to  
11 the recognition of an advisory council of private-sector  
12 representatives and an advisory council of member and nonmember  
13 state representatives to consult with in the administration of the  
14 agreement.

15 Sec. 13. Section 77-2780, Revised Statutes Cumulative  
16 Supplement, 2008, is amended to read:

17 77-2780 The action of the Tax Commissioner on the  
18 taxpayer's protest shall be final upon the expiration of ~~sixty~~  
19 thirty days after the date when the Tax Commissioner mails notice  
20 of his or her action to the taxpayer unless within this period the  
21 taxpayer seeks review of the Tax Commissioner's determination as  
22 provided in the Nebraska Revenue Act of 1967.

23 Sec. 14. This section and sections 1, 15, and 18 of this  
24 act become operative on July 1, 2009. Sections 3 and 16 of this act  
25 become operative on January 1, 2010. The other sections of this act

1 become operative on October 1, 2009.

2           Sec. 15. Original section 66-1521, Revised Statutes  
3 Cumulative Supplement, 2008, is repealed.

4           Sec. 16. Original section 77-1784, Revised Statutes  
5 Cumulative Supplement, 2008, is repealed.

6           Sec. 17. Original sections 77-2701.03 and 77-2704.52,  
7 Reissue Revised Statutes of Nebraska, and sections 77-1783.01,  
8 77-2701.16, 77-2701.24, 77-2703.04, 77-2704.09, 77-2704.12,  
9 77-2711, 77-2712.05, and 77-2780, Revised Statutes Cumulative  
10 Supplement, 2008, are repealed.

11           Sec. 18. Since an emergency exists, this act takes effect  
12 when passed and approved according to law.