

AMENDMENTS TO LB 1017

(Amendments to AM3292)

1 1. Insert the following new sections:

2 "Section 1. Section 49-801.01, Revised Statutes
3 Supplement, 2003, is amended to read:

4 49-801.01. Except as provided by Article VIII, section
5 1B, of the Constitution of Nebraska and in sections 77-2701.01,
6 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108,
7 77-5509, 77-5515, 77-5527 to 77-5529, and 77-5539, any reference to
8 the Internal Revenue Code refers to the Internal Revenue Code of
9 1986 as it exists on ~~February 21, 2003~~ the operative date of this
10 section.

11 Sec. 11. Section 77-2703.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-2703.01. (1) The determination of whether a sale or
14 use of property or the provision of services is in this state, in a
15 municipality that has adopted a tax under the Local Option Revenue
16 Act, or in a county that has adopted a tax under section 13-319
17 shall be governed by the sourcing rules in sections 77-2703.01 to
18 77-2703.04.

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

22 (3) When the property or service is not received by the
23 purchaser at a business location of the retailer, the sale is

1 sourced to the location where receipt by the purchaser or the
2 purchaser's donee, designated as such by the purchaser, occurs,
3 including the location indicated by instructions for delivery to
4 the purchaser or donee, known to the retailer.

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

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

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

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

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

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

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

22 (8) The lease or rental of motor vehicles, trailers,
23 semitrailers, or aircraft that do not qualify as transportation
24 equipment under subsection (9) of this section shall be sourced as
25 follows:

26 (a) For a lease or rental that requires recurring
27 periodic payments, each periodic payment is sourced to the primary

1 property location. The primary property location shall be as
2 indicated by an address for the property provided by the lessee
3 that is available to the lessor from its records maintained in the
4 ordinary course of business when use of this address does not
5 constitute bad faith. This location shall not be altered by
6 intermittent use at different locations; and

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

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

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

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

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

1 commerce;

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

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

10 (10) ~~The provision of services shall be sourced to this~~
11 ~~state for services provided to real estate if the real estate is~~
12 ~~located in this state, for services provided to personal property~~
13 ~~or animals if the personal property or animal is located in this~~
14 ~~state and the service is rendered for use in this state, for~~
15 ~~detective services under subdivision (10)(i) of section 77-2701.16,~~
16 ~~in the case of a customer who is an individual, if the individual~~
17 ~~is residing in this state, or in the case of a business customer,~~
18 ~~if the principal place of the business is located in this state,~~
19 ~~and for computer software training under subdivision (10)(c) of~~
20 ~~section 77-2701.16 if the training is performed at a location that~~
21 ~~is within this state for a customer located within this state.~~

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

1 subject to tax under subdivision (10)(i) of section 77-2701.16,
2 making first use of a service shall be deemed to be at the
3 individual's residence, in the case of a customer who is an
4 individual, or at the principal place of business, in the case of a
5 business customer.

6 ~~(12)~~ (11) The sales, not including lease or rental, of
7 motor vehicles, trailers, and semitrailers as defined in section
8 60-301 shall be sourced to the place of registration of the motor
9 vehicle, trailer, or semitrailer for operation upon the highways of
10 this state.

11 ~~(13)~~ (12) The sale or lease for one year or more of
12 motorboats shall be sourced to the place of registration of the
13 motorboat. The lease of motorboats for less than one year shall be
14 sourced to the point of delivery.

15 Sec. 12. Section 77-2703.02, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-2703.02. (1) Notwithstanding section 77-2703.01, a
18 business purchaser that is not a holder of a direct payment permit
19 that knows at the time of its purchase of a digital good, computer
20 software delivered electronically, or a service that the digital
21 good, computer software, or service will be concurrently available
22 for use in more than one jurisdiction shall deliver to the retailer
23 in conjunction with its purchase a multiple points of use exemption
24 form disclosing this fact.

25 (2) Upon receipt of the exemption form, the retailer is
26 relieved of all obligation to collect, pay, or remit the applicable
27 tax and the purchaser shall be obligated to collect, pay, or remit

1 the applicable tax on a direct-pay basis.

2 (3) A purchaser delivering the exemption form may use any
3 reasonable, but consistent and uniform, method of apportionment
4 that is supported by the purchaser's business records as they exist
5 at the time of the consummation of the sale.

6 (4) The exemption form will remain in effect for all
7 future sales by the seller to the purchaser except as to the
8 subsequent sale's specific apportionment that is governed by the
9 principle of subsection (3) of this section and the facts existing
10 at the time of the sale until it is revoked in writing.

11 (5) A holder of a direct payment permit shall not be
12 required to deliver an exemption form to the seller. A direct
13 payment permitholder shall follow the provisions of subsection (3)
14 of this section in apportioning the tax due on a digital good,
15 computer software delivered electronically, or a service that will
16 be concurrently available for use in more than one jurisdiction.

17 Sec. 16. Section 77-2704.33, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2704.33. (1) When a written contract exists for a
20 fixed price for a construction, reconstruction, alteration, or
21 improvement project and the sales tax rate is increased during the
22 term of that fixed-price contract, the contractor may apply for a
23 refund of the increased sales tax amount if such refund amount
24 exceeds ten dollars. The contractor shall be refunded such
25 increased amount if the contractor certifies that the contract was
26 entered into prior to the increase in the tax and that the
27 increased tax for which the refund is requested was paid on the

1 building materials annexed to real estate in the project. The
2 contractor shall agree to submit a copy of the contract or other
3 evidence necessary to prove the validity of the application to the
4 satisfaction of the Tax Commissioner. In the event that the sales
5 tax rate is decreased during the term of that fixed-price contract,
6 the contractor shall pay to the Department of Revenue the decreased
7 sales tax amount if the amount of such payment exceeds ten dollars.
8 Failure by a contractor to pay the decreased sales tax amount as
9 provided in this subsection shall be a Class I misdemeanor if the
10 amount is three hundred dollars or more and a Class IIIA
11 misdemeanor in all other cases.

12 (2) When a written contract exists for a fixed price for
13 a construction, reconstruction, alteration, or improvement project
14 and the ~~annexation or repair labor~~ construction services became
15 subject to the sales and use tax during the term of that
16 fixed-price contract, the taxpayer may apply for a refund of the
17 increased sales tax amount if such refund amount exceeds ten
18 dollars. The taxpayer shall be refunded such increased amount if
19 the taxpayer certifies that the contract was entered into prior to
20 the increase in the tax and that the increased tax for which the
21 refund is requested was paid on the ~~labor applied to materials~~
22 ~~annexed to real estate in the project~~ construction services. The
23 taxpayer shall agree to submit a copy of the contract or other
24 evidence necessary to prove the validity of the application to the
25 satisfaction of the Tax Commissioner. In the event that ~~annexation~~
26 ~~or repair labor is~~ construction services are removed from the sales
27 and use tax base during the term of a fixed-price contract, the

1 taxpayer shall pay to the Department of Revenue the decreased sales
2 tax amount if the amount of such payment exceeds ten dollars.
3 Failure by a taxpayer to pay the decreased sales tax amount as
4 provided in this subsection shall be a Class I misdemeanor if the
5 amount is three hundred dollars or more and a Class IIIA
6 misdemeanor in all other cases.

7 Sec. 17. Section 77-2704.36, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-2704.36. Sales and use tax shall not be imposed on
10 the gross receipts from the sale, lease, or rental of depreciable
11 agricultural machinery and equipment purchased, leased, or rented
12 on or after January 1, 1993, for use in commercial agriculture.

13 Sec. 18. Section 77-2704.49, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 77-2704.49. Sales ~~and use taxes~~ tax shall not be imposed
16 on the gross receipts from the sale, lease, or rental of and the
17 storage, use, or other consumption in this state of property or
18 services the sale, purchase, or use of which has been taxed to that
19 taxpayer in another state, territory, or possession of the United
20 States when such other state, territory, or possession grants a
21 reciprocal exclusion or an exemption to similar transactions in
22 this state.

23 Sec. 20. Section 77-2712.05, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 77-2712.05. By agreeing to the terms of the streamlined
26 sales and use tax agreement, this state agrees to abide by the
27 following requirements:

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

4 (a) Limiting the number of state rates;

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

7 (c) Limiting the application of thresholds on the
8 application of state tax;

9 (2) Uniform standards. The state hereby establishes
10 uniform standards for the following:

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

13 (b) Administration of exempt sales as set out by the
14 agreement and using procedures as determined by the governing
15 board;

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

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

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

1 (ii) Require, at his or her discretion, all remittances
2 from sellers under models 1, 2, and 3 to be remitted
3 electronically;

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

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

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

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

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

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

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

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

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

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

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

25 (c) A written signature from the retailer is not
26 required;

27 (d) An agent may register a retailer under uniform

1 procedures adopted by the member states pursuant to the agreement;

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

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

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

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

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

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

26 (6) Local sales and use taxes. The agreement requires
27 the reduction of the burdens of complying with local sales and use

1 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,
2 77-27,142, 77-27,143, and 77-27,144 that require the following:

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

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

9 (c) Limitations on the frequency of changes in the local
10 sales and use tax rates and setting effective dates for the
11 application of local jurisdictional boundary changes to local sales
12 and use taxes; and

13 (d) Uniform notice of changes in local sales and use tax
14 rates and of changes in the boundaries of local taxing
15 jurisdictions;

16 (7) Complete a taxability matrix approved by the
17 governing board. (a) Notice of changes in the taxability of the
18 products or services listed will be provided as required by the
19 governing board.

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

23 (c) Sellers and certified service providers are relieved
24 from liability, including the local option tax, for having charged
25 and collected the incorrect amount of sales or use tax resulting
26 from the seller or certified service provider relying on erroneous
27 data provided by the member state in the taxability matrix.

1 (8) Monetary allowances. The state agrees to allow any
2 monetary allowances that are to be provided by the states to
3 sellers or certified service providers in exchange for collecting
4 sales and use taxes as provided in Article VI of the agreement;

5 ~~(8)~~ (9) State compliance. The agreement requires the
6 state to certify compliance with the terms of the agreement prior
7 to joining and to maintain compliance, under the laws of the member
8 state, with all provisions of the agreement while a member;

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

13 ~~(10)~~ (11) Advisory councils. The state agrees to the
14 appointment of an advisory council of private-sector
15 representatives and an advisory council of nonmember state
16 representatives to consult with in the administration of the
17 agreement.

18 Sec. 22. Section 77-3101, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-3101. As used in sections 77-3101 to 77-3112, unless
21 the context otherwise requires:

22 (1) Contractor shall include individuals, firms,
23 partnerships, limited liability companies, corporations, or other
24 associations of persons engaged in the business of the
25 construction, alteration, repairing, dismantling, or demolition of
26 buildings, roads, bridges, viaducts, sewers, water and gas mains,
27 streets, disposal plants, water filters, tanks and towers,

1 airports, dams, levees and canals, water wells, pipelines,
2 transmission and power lines, and every other type of structure,
3 project, development, or improvement coming within the definition
4 of real property and personal property, including such
5 construction, repairing, or alteration of such property to be held
6 either for sale or rental. Contractor shall also include any
7 subcontractor engaged in the business of such activities and any
8 person who is providing or arranging for labor for such activities,
9 either as an employee or as an independent contractor, for any
10 contractor or person; ~~and further including all subcontractors,~~
11 and

12 (2) Nonresident contractor shall mean a contractor who
13 neither is domiciled in nor maintains a permanent place of business
14 in this state or who, being so domiciled or maintaining such
15 permanent place of residence, spends in the aggregate less than six
16 months of the year in this state.

17 Sec. 24. Original section 77-3101, Reissue Revised
18 Statutes of Nebraska, and section 49-801.01, Revised Statutes
19 Supplement, 2003, are repealed."

20 2. On page 2, lines 20 and 26; page 3, line 1; page 4,
21 line 2; page 14, line 26; page 28, line 14; and page 30, line 19,
22 strike "property", show as stricken, and insert "building
23 materials".

24 3. On page 15, line 18, after "property" insert "or
25 building materials".

26 4. On page 18, line 26, strike ", in good faith," and
27 show as stricken.

- 1 5. On page 19, line 5, strike ", taken in good faith,"
2 and show as stricken.
- 3 6. On page 28, line 15, strike "is", show as stricken,
4 and insert "are"; in line 16 strike "belongs", show as stricken,
5 and insert "belong"; and in line 27 strike the new matter and
6 reinstate the stricken matter.
- 7 7. On page 30, line 20, strike "is", show as stricken,
8 and insert "are"; and in line 21 strike "belongs", show as
9 stricken, and insert "belong".
- 10 8. On page 31, lines 5 and 6, strike the new matter and
11 reinstate the stricken matter.
- 12 9. On page 38, line 10, strike "This" and insert
13 "Sections 1, 22 to 24, and 26 of this act become operative on their
14 effective date. The other sections of this" and strike "becomes"
15 and insert "become"; and strike line 13 and insert "77-2703.01,
16 77-2703.02, 77-2704.12, 77-2704.15, 77-2704.32, 77-2704.33,
17 77-2704.36, 77-2704.49, 77-2704.55, 77-2712.05, and 77-27,188.01,".
- 18 10. Renumber the remaining sections and correct internal
19 references accordingly.