

LEGISLATIVE BILL 820

Approved by the Governor April 13, 1974

Introduced by Duis, 39

AN ACT to amend sections 77-2702 and 77-2703, Reissue Revised Statutes of Nebraska, 1943, and sections 77-27,149, 77-27,150, 77-27,151, and 77-27,155, Revised Statutes Supplement, 1972, relating to revenue and taxation; to redefine terms; to provide a time for determination of the tax rate; to broaden the Water Pollution Control Tax Refund Act to include air pollution; to extend the duties of the Department of Health and the Department of Environmental Control; to provide severability; to repeal the original sections, and also Legislative Bill 640, Eighty-third Legislature, Second Session, 1974; and to declare an emergency.

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

Section 1. That section 77-2702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2702. For the purpose of sections 77-2702 to 77-2713, unless the context otherwise requires:

(1) Business shall mean any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect;

(2) Tax Commissioner shall mean the Tax Commissioner of the State of Nebraska;

(3) Contractor or repairman shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such tangible personal property furnished by him and incorporated into the property being so repaired or improved, for all the purposes of sections 77-2701 to 77-27,135;

(4) (a) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case

may be, of the retail sales of the retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(i) The cost of tangible personal property sold. In accordance with such rules and regulations as the Tax Commissioner may prescribe, a deduction may be taken if the retailer has purchased tangible personal property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the tangible personal property, and has resold the property prior to making any use of the tangible personal property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the tangible personal property;

(ii) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(iii) The cost of transportation of the tangible personal property prior to its sale to the purchaser; or

(iv) The amount of any excise or property tax levied against the tangible personal property, except as otherwise provided in sections 77-2701 to 77-27,135.

(k) Gross receipts of every person engaged as a public utility or as a community antenna television service operator shall mean:

(i) In the furnishing of telephone communication service, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service;

(ii) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(iii) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands and manufacturing purposes, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(iv) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service

as regulated under the provisions of sections 18-2201 to 18-2205;

Gross receipts shall not mean gross income received from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of any such public utility services or community antenna television service, or from telephone directory advertising:

(c) Gross receipts does not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) Sales price of tangible personal property returned by customers when the full sales price is refunded either in cash or credit;

(iii) The amount charged for labor or services rendered in installing or applying the tangible personal property sold; Provided, that said amount is separately stated, and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(iv) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal property under contracts providing for deferred payments of the purchase price; Provided, that such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(v) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature;

(vi) Charges for transportation of tangible personal property after sale;

(vii) For purposes of the sales or use tax, if the retailer establishes to the satisfaction of the Tax Commissioner, and has been given prior approval by the Tax Commissioner, that the sales or use tax has been added to the total amount of the sale price and has not been absorbed by him, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed; or

(viii) Receipts from conditional sale contracts, installment sale contracts, rentals and leases executed



in writing prior to June 1, 1967, and with delivery of the tangible personal property prior to June 1, 1967, are not subject to the tax imposed by sections 77-2701 to 77-27,135; Provided, such conditional sale contracts, installment sale contracts, rentals or leases are for a fixed price and are not subject to negotiation or alteration;

(5) In this state or within the state shall mean within the exterior limits of the State of Nebraska, and includes all the territory within these limits owned by or ceded to the United States of America;

(6) Occasional sale shall mean:

(a) A sale of tangible personal property by a person who is not engaged in the business of selling such property except motor vehicles as defined in section 60-301;--occasional sale shall include a sale--whereby--a person liquidates his business in a single--transaction; and shall include, but not be limited to, a sale whereby a person liquidates his business in a single transaction or scraps or sells as salvage in a single transaction or series of transactions any such property previously productively used by such seller as a depreciable capital asset in his trade, business, utility, or agriculture for more than one year and such property was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon, or is the subject of any intercompany sale involving any parent, subsidiary, or brother-sister company relationship under subsection (5) of section 77-2704, and such property was either originally acquired prior to June 1, 1967, or, if acquired thereafter, the seller directly or indirectly has previously paid a sales or use tax thereon; Provided, that occasional sale shall include the sale of motor vehicles, when the seller has previously paid the tax, as follows:

(i) From one corporation to another corporation pursuant to a reorganization. As used in this subdivision, reorganization shall mean a statutory merger or consolidation or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

(ii) In connection with the winding up, dissolution, or liquidation of a corporation only when there is a distribution of the property of such corporation to the shareholders in kind if the portion of

the property so distributed to the shareholder is substantially in proportion to the share of stock or securities held by the shareholder;

(iii) To a corporation for the purpose of organization of such corporation when the former owners of the property transferred are immediately after the transfer in control of the corporation, and the stock or securities received by each is substantially in proportion to his interest in the property prior to the transfer;

(iv) To a partnership in the organization of such partnership if the former owners of the property transferred are immediately after the transfer members of such partnership and the interest in the partnership, received by each, is substantially in proportion to his interest in the property prior to the transfer; or

(v) From a partnership to the members thereof when made in kind in the dissolution of such partnership if the portion of the property so distributed to the members of the partnership is substantially in proportion to the interest in the partnership held by the members; and

(b) A sale of tangible personal property consisting of household goods and personal effects if each of the following conditions is met and if any one condition is not met then the entire gross receipts shall be subject to the tax imposed by the provisions of section 77-2703:

(i) Such sales are by an individual at his residence or if more than one individual's property is involved such sales are by one of the individuals involved at the residence of one of the individuals;

(ii) Such sales do not occur at any residence for more than three days during a calendar year;

(iii) Such individual or individuals or any member of any of their households do not conduct or engage in a trade or business in which similar items are sold;

(iv) Such property sold was originally acquired for and used for personal use; and

(v) Such property is not otherwise excepted from the definition of occasional sale;

(7) Person shall mean and include any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall also include the United States or any agency thereof, this state or any agency hereof, or any city, county, district, or other political subdivision of this state, or agency thereof;

(8) Purchase shall mean any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration, including, but not limited to, a transfer of the possession of tangible personal property in which the seller retains the title as security for the payment of the price, and a transfer, for a consideration, of tangible personal property which has been produced, fabricated, or printed to the special order of the customer;

(9) Rental price or lease price shall mean the total amount for which tangible personal property is rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of (a) the cost of the tangible personal property rented or leased, (b) the cost of material used, labor or service cost, interest charged, losses, or any other expenses, or (c) the cost of transportation of tangible personal property at any time. The total amount for which tangible personal property is rented or leased includes any services which are a part of the lease or rental and any amount for which credit is given to the lessee or rentee by the lessor or renter;

(10) Retail sale or sale at retail shall mean:

(a) A sale for any purpose other than for resale in the regular course of business of tangible personal property;

(b) The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a customer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery in such cases shall include the retail selling price of the tangible personal property in his gross receipts; and



(c) The sale of admissions which shall mean the right or privilege to have access to or use a place or location, except admissions charged by (i) elementary or secondary schools, public or private, or (ii) school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school, public or private, during the regular school day or at an approved function of any such school;

(11) Retail sale or sale at retail shall not include the sale of:

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

(b) (i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall be defined in part, but not limited to, live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or by any person engaged in the business of bartering, buying or selling live poultry or livestock on the hoof;

(ii) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel; feed shall mean and include, but is not limited to, all grains, minerals, salts, proteins, fats, fibers, vitamins, grit, and antibiotics commonly used as feed or feed supplements;

(iii) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products; and seed legumes, seed grasses and seed grains when sold to be used exclusively for agricultural purposes; and

(iv) Agricultural chemicals to be applied to land or crops the products of which are to be used as food for human consumption or sold in the regular course of business;

(c) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by sections 77-2701 to 77-27,135; and returnable containers when sold

with the contents in connection with a retail sale of the contents or when resold for refilling. The term returnable containers means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) Tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale;

(e) Tangible personal property the sale, purchase or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States of America; Provided, that such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state; or

(f) The purchase in this state or the purchase without this state, with title passing in this state, of materials and replacement parts, when used as, or when used directly in the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, railroad rolling stock or aircraft to be used as common or contract carriers of persons or property;

(12) Retailer shall mean:

(a) (i) Every seller engaged in the business of making sales of tangible personal property for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption;

(ii) Every person who leases or rents to another tangible personal property for storage, use or other consumption, except film rentals where an admission tax is charged under sections 77-2701 to 77-27,135 and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;

(iii) Every person engaged in the business of renting or furnishing for periods of less than thirty days any room or rooms, lodgings, or accommodations, in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings, or accommodations are regularly furnished for a



consideration, shall be and constitute a retail merchant in respect thereto and the gross income received therefrom shall constitute gross income of a retail merchant received from transactions constituting selling at retail; and

(iv) Every person engaged as a public utility in furnishing telephone, telegraph, gas, electricity, sewer, and water service, and every person engaged in furnishing community antenna television service as defined in subdivision (4) (b) of this section; and

(b) When the Tax Commissioner determines that it is necessary for the efficient administration of sections 77-2701 to 77-27,135 to regard any salesmen, representatives, peddlers, canvassers or auctioneers and persons conducting auction sales as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, auctioneers or employers, the Tax Commissioner may, at his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor, or employer for the purposes of sections 77-2701 to 77-27,135;

(13) Sale shall mean and include any transfer of title or possession or segregation in contemplation of transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. Sale shall include:

(a) The producing, fabricating, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others;

(c) The furnishing, preparing, or serving for a consideration of food, meals, or drinks;

(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer; and

(f) The renting or furnishing for periods of less than thirty days of any room or rooms, lodgings, or accommodations in any hotel, motel, inn, tourist camp, tourist cabin, or any other place, except a facility licensed under the provisions of Chapter 71, article 20, in which rooms, lodgings or accommodations are regularly furnished for a consideration;

(14) Sale for resale shall mean a sale of tangible personal property to any purchaser who is purchasing such tangible personal property for the purpose of reselling it in the normal course of his business, either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other tangible personal property. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing such tangible personal property to another person, but not if incidental to the renting or leasing of real estate;

(15) (a) Sales price shall mean the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of:

(i) The cost of the tangible personal property sold;

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

(iii) The cost of transportation of the tangible personal property prior to its sale or purchase. The total amount for which tangible personal property is sold includes any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;

(b) Sales price does not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit;

(iii) The amount charged for labor or services rendered in installing and applying the property sold; Provided, that such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(iv) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal property under contracts providing for deferred payments of the purchase price; Provided, that such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

(v) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature; or

(vi) Charges for transportation of tangible personal property after sale.

(16) Seller shall include every person engaged in the business of selling, leasing, or renting tangible personal property of a kind the gross receipts from the retail sale, lease, or rental of which are required to be included in the measure of the sales tax;

(17) Storage shall include any retention in this state for any purposes except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer, other than tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail. Neither storage nor use as defined in this subdivision shall include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;

(18) Tangible personal property shall mean personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses;



(19) Taxpayer shall mean any person subject to a tax imposed by sections 77-2702 to 77-2713; and

(20) Use shall mean the exercise of any right or power over tangible personal property incident to the ownership or possession of that tangible personal property, except that it does not include the sale of that tangible personal property in the regular course of business or the exercise of any right or power over tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed or fabricated for ultimate sale at retail. Use specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such.

Sec. 2. That section 77-2703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2703. (1) There is hereby imposed a tax of two per cent upon the gross receipts from all sales of tangible personal property sold at retail in this state, the gross receipts of every person engaged as a public utility or as a community antenna television service operator, and the gross receipts from the sale of admissions in this state until January 1, 1970, and on and after such date the rate shall be that which is set by the State Board of Equalization and Assessment as provided in section 77-2715.01. When there is a sale, as defined in subdivision (13) of section 77-2702, after March 26, 1974, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his books and records.

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

(b) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or

that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility;

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

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax, and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations prescribing a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the provisions of sections 77-2701 to 77-27,135. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items and shall provide that no tax be collected on sales below a sum of fifteen cents; Provided, that the Tax Commissioner may authorize computation and collection of the tax uniformly on a straight percentage basis in lieu of brackets in situations involving machine or computer billing;

(e) The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the taxes imposed in sections 77-2701 to 77-27,135 or for any other purpose in connection with such taxes is prohibited;

(f) For the purpose of the proper administration of the provisions of sections 77-2701 to 77-27,135 and to prevent evasion of the retail sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes, in good faith, from the purchaser a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it or takes, in good faith, an exemption certificate pursuant to subsection (7) of section 77-2705. Receipt of a resale certificate or exemption certificate, taken in good faith, shall be conclusive proof for the seller that the sale was made for resale or was exempt;

(g) Whenever any retailer shall make delivery of any tangible personal property in this state on or after June 1, 1967, it shall be conclusively presumed that such property was sold at retail on or after June 1, 1967, unless the delivery thereof is made pursuant to a contract executed in writing for a fixed price before June 1, 1967, with at least twenty-five per cent of the total price paid prior to June 1, 1967, and such delivery is made prior to August 31, 1967;

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

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

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

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of thirty days or more. If the lessor rents or leases other vehicles for periods of less than thirty days, such lessor shall maintain his books and records and his accounting procedure as the Tax Commissioner shall prescribe; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision;

(i) If a sales or use tax has been paid on the purchase, storage, use or other consumption of tangible personal property used in the performance of a construction contract, which contract is with the project owner, is for a fixed price and has been executed prior



to June 1, 1967, and which tangible personal property is incorporated into the project and transferred to the owner of the structure constructed upon the completion of the contract, the person having paid such sales or use tax shall be entitled to a refund of the amount of taxes so paid. The Tax Commissioner shall by rule and regulation provide the manner and means of applying for such refund and shall require the furnishing of such proof as may reasonably be required to establish the fact that such property was used in the completion of a contract as defined in this subdivision and that any sales or use tax has in fact been paid on such tangible personal property:

(j) The tax imposed by the provisions of this section on the sales of motor vehicles, trailers, and semitrailers as defined in section 60-301 shall be the liability of the purchaser and the tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motor vehicle, trailer, or semitrailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, trailer, or semitrailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed hereunder, and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner shall prescribe, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement or who willfully falsifies any such statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, trailer or semitrailer in this state and does not register it for operation on the highways of this state within twenty days of the purchase thereof, the tax imposed by the provisions of this section shall immediately thereafter be paid by the purchaser to the county treasurer. The county treasurer shall report and remit the tax so collected to the Tax Commissioner at such times as the Tax Commissioner may require by rule and regulation. The county treasurer shall deduct and withhold for the use of the county general fund the

collection fee permitted to be deducted by any retailer collecting the sales tax; Provided, this collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax; and

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

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

(a) Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the use tax. His liability is not extinguished until the use tax has been paid to this state, except that a receipt from a retailer maintaining a place of business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he may prescribe, to collect the sales tax and who is, for the purposes of sections 77-2701 to 77-27,135 relating to the sales tax, regarded as a retailer maintaining a place of business in this state, given to the purchaser pursuant to subdivision (b) of this subsection is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

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

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he may deem necessary to be use

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

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. Such collectors of the use tax shall deduct and withhold from the amount of taxes collected three per cent thereof as reimbursement for the cost of collecting the tax, but such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the provisions of sections 77-2701 to 77-27,135 and to prevent evasion of the use tax, it shall be presumed that tangible personal property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this state by the purchaser after June 1, 1967, was purchased from a retailer on or after that date for storage, use or other consumption in this state.

Sec. 3. That section 77-27,149, Revised Statutes Supplement, 1972, be amended to read as follows:

77-27,149. As used in sections 77-27,149 to 77-27,155 unless the context otherwise requires:

(1) Facility shall mean any system, equipment or apparatus, or disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery



or installation constructed, used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution caused by industrial or agricultural waste, including the generation of electricity; Provided, that facilities such as air conditioners, dust collectors, filters, fans, and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions shall not be deemed air pollution control facilities for purposes of this subdivision;

(2) Industrial or agricultural waste shall mean any liquid, gaseous or solid waste substance resulting from any process of industry, manufacture, trade or business, including the generation of electricity, or from the development, processing or recovery of any paper or wood which is capable of polluting the air or waters of this state;

(3) Treatment works shall mean any plant, pumping station, incinerator, air pollution abatement equipment or installation, or other works or reservoir used primarily for the purpose of abating, treating, stabilizing, isolating or holding industrial or agricultural waste; and

(4) Disposal system shall mean any system used primarily for disposing of or isolating industrial or agricultural waste and shall include pipe lines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting air-borne or water-borne industrial or agricultural waste to a point of disposal, treatment or isolation except that which is necessary to the manufacture of products.

Sec. 4. That section 77-27,150, Revised Statutes Supplement, 1972, be amended to read as follows:

77-27,150. (1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated or to be incorporated therein; (b) a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the

facility; and (d) the acquisition cost of the facility for which exemption is claimed.

(2) Before issuing the refund for Nebraska sales and use taxes paid by an applicant, the Tax Commissioner shall seek approval of the Department of Health and the Department of Environmental Control. The Tax Commissioner shall offer an applicant a hearing upon request of such applicant.

Sec. 5. That section 77-27,151, Revised Statutes Supplement, 1972, be amended to read as follows:

77-27,151. If the Department of Health and the Department of Environmental Control find that a facility is designed and operated primarily for control, capture, ~~abatement~~, or removal of industrial or agricultural waste from ~~air or~~ water and is suitable, reasonably adequate, and meets the intent and purposes of the Environmental Protection Act ~~it~~ they shall so notify the Tax Commissioner who shall issue the refund. The Department of Health and the Department of Environmental Control shall also notify the Tax Commissioner of the extent of commercial or productive value derived from any materials captured or recovered by the facility.

Sec. 6. That section 77-27,155, Revised Statutes Supplement, 1972, be amended to read as follows:

77-27,155. Sections 77-27,149 to 77-27,155 shall be known as the Air and Water Pollution Control Tax Refund Act.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 8. That original sections 77-2702 and 77-2703, Reissue Revised Statutes of Nebraska, 1943, and sections 77-27,149, 77-27,150, 77-27,151, and 77-27,155, Revised Statutes Supplement, 1972, and also Legislative Bill 640, Eighty-third Legislature, Second Session, 1974, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.