

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 361**

Introduced by Kolowski, 31.

Read first time January 13, 2017

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-2701 and 77-2701.04, Revised Statutes Cumulative Supplement,  
3 2016; to exempt sales of clothing and footwear from sales and use  
4 taxes as prescribed; to harmonize provisions; to provide an  
5 operative date; to repeal the original sections; and to declare an  
6 emergency.

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

1 Section 1. Section 77-2701, Revised Statutes Cumulative Supplement,  
2 2016, is amended to read:

3 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,235, 77-27,236, and  
4 77-27,238 and section 3 of this act shall be known and may be cited as  
5 the Nebraska Revenue Act of 1967.

6 Sec. 2. Section 77-2701.04, Revised Statutes Cumulative Supplement,  
7 2016, is amended to read:

8 77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and  
9 section 3 of this act, unless the context otherwise requires, the  
10 definitions found in sections 77-2701.05 to 77-2701.55 shall be used.

11 Sec. 3. (1) Sales and use taxes shall not be imposed on the gross  
12 receipts from the sale, use, or other consumption in this state of the  
13 following items of tangible personal property, if sold between 12:01 a.m.  
14 on the first Friday of August and 11:59 p.m. the following Saturday:

15 (a) Clothing with a sales price of one hundred dollars or less per  
16 item; and

17 (b) Footwear with a sales price of one hundred fifty dollars or less  
18 per item.

19 (3) The exemption provided by this section does not apply to the  
20 following:

21 (a) Clothing accessories or equipment;

22 (b) Protective equipment;

23 (c) Sport or recreational equipment;

24 (d) Any item for use in a trade or business;

25 (e) The sale of any item in a theme park, entertainment complex,  
26 public lodging establishment, or airport; or

27 (f) The lease or rental of any item.

28 (4) Each retailer making exempt sales under this section shall  
29 report the amount of such sales to the Tax Commissioner on the retailer's  
30 sales and use tax returns.

31 (5) The exemption provided in this section shall be subject to the

1 following provisions:

2 (a) A sale of eligible property under a layaway sale qualifies for  
3 exemption if:

4 (i) Final payment on a layaway order is made by, and the property is  
5 given to, the purchaser during the exemption period; or

6 (ii) The purchaser selects the property and the retailer accepts the  
7 order for the item during the exemption period, for immediate delivery  
8 upon full payment, even if delivery is made after the exemption period;

9 (b) If a discount by the seller reduces the sales price of the  
10 eligible property, then the discounted sales price determines whether the  
11 sales price is within the price threshold. A coupon that reduces the  
12 sales price is treated as a discount if the seller is not reimbursed for  
13 the coupon amount by a third party. If a discount applies to the total  
14 amount paid by a purchaser, rather than to the sales price of a  
15 particular item, and the purchaser has purchased both eligible property  
16 and taxable property, the seller should allocate the discount based on  
17 the total sales price of the taxable property compared to the total sales  
18 price of all property sold in that same transaction;

19 (c) Articles that are normally sold as a single unit shall continue  
20 to be sold in that manner. Such articles cannot be priced separately and  
21 sold as individual items in order to obtain the exemption. For example,  
22 with respect to footwear, each shoe of a pair of shoes cannot be sold  
23 separately so that the sales price of each shoe is within a sales tax  
24 holiday price threshold;

25 (d) Eligible property that customers purchase during the exemption  
26 period with use of a rain check shall qualify for the exemption,  
27 regardless of when the rain check was issued. Issuance of a rain check  
28 during the exemption period shall not qualify eligible property for the  
29 exemption if the property is purchased after the exemption period;

30 (e) The procedure for an exchange regarding a sales tax holiday is  
31 as follows:

1       (i) If a customer purchases an item of eligible property during the  
2 exemption period, but later exchanges the item for a similar eligible  
3 item, even if a different size or different color or other feature, no  
4 additional tax is due, even if the exchange is made after the exemption  
5 period;

6       (ii) If a customer purchases an item of eligible property during the  
7 exemption period but, after the exemption period has ended, the customer  
8 returns the item and receives credit on the purchase of a different item,  
9 the appropriate sales tax is due on the sale of the newly purchased item;  
10 and

11       (iii) If a customer purchases an item of eligible property before  
12 the exemption period, but during the exemption period the customer  
13 returns the item and receives credit on the purchase of a different item  
14 of eligible property, no sales tax is due on the sale of the new item if  
15 the new item is purchased during the exemption period;

16       (f) Delivery charges, including shipping, handling, and service  
17 charges, are part of the sales price of eligible property. For the  
18 purpose of determining the price threshold, if all the property in a  
19 shipment qualifies as eligible property and the sales price for each item  
20 in the shipment is within the price threshold, then the seller does not  
21 have to allocate the delivery, handling, or service charge to determine  
22 if the price threshold is exceeded. The shipment shall be considered a  
23 sale of eligible products. If the shipment includes eligible property and  
24 taxable property, including an eligible item with a sales price in excess  
25 of the price threshold, the seller should allocate the delivery charge by  
26 using:

27       (i) A percentage based on the total sales prices of the taxable  
28 property compared to the total sales prices of all property in the  
29 shipment; or

30       (ii) A percentage based on the total weight of the taxable property  
31 compared to the total weight of all property in the shipment. The seller

1 shall tax the percentage of the delivery charge allocated to the taxable  
2 property, but does not have to tax the percentage allocated to the  
3 eligible property;

4 (g) For the purpose of this section, eligible property qualifies for  
5 exemption if:

6 (i) The item is both delivered to and paid for by the customer  
7 during the exemption period; or

8 (ii) The customer orders and pays for the item and the seller  
9 accepts the order during the exemption period for immediate shipment,  
10 even if delivery is made after the exemption period. The seller accepts  
11 an order when the seller has taken action to fill the order for immediate  
12 shipment. Actions to fill an order include placement of an "in date"  
13 stamp on a mail order or assignment of an "order number" to a telephone  
14 order. An order is for immediate shipment when the customer does not  
15 request delayed shipment. An order is for immediate shipment  
16 notwithstanding that the shipment may be delayed because of a backlog of  
17 orders or because stock is currently unavailable to or on back order by  
18 the seller;

19 (h) For the sixty-day period immediately after the exemption period,  
20 when a customer returns an item that would qualify for the exemption, no  
21 credit for or refund of sales tax shall be given unless the customer  
22 provides a receipt or invoice that shows tax was paid or the seller has  
23 sufficient documentation to show that tax was paid on the specific item.  
24 The sixty-day period is set solely for the purpose of designating a time  
25 period during which the customer shall provide documentation that shows  
26 that sales tax was paid on returned merchandise. The sixty-day period is  
27 not intended to change a seller's policy on the time period during which  
28 the seller will accept returns; and

29 (i) The time zone of the seller's location determines the time of  
30 the exemption period when the purchaser is located in one time zone and  
31 the seller is located in another.

1           Sec. 4. This act becomes operative on July 1, 2017.

2           Sec. 5. Original sections 77-2701 and 77-2701.04, Revised Statutes  
3 Cumulative Supplement, 2016, are repealed.

4           Sec. 6. Since an emergency exists, this act takes effect when  
5 passed and approved according to law.