

LEGISLATIVE BILL 300

Approved by the Governor March 4, 1991

Introduced by Hall, 7; Hefner, 19; Peterson, 21;
Haberman, 44

AN ACT relating to revenue and taxation; to amend sections 77-2702, 77-2704, and 77-2716.01, Reissue Revised Statutes of Nebraska, 1943; to exempt certain rebates by motor vehicle manufacturers and dealers from taxation; to correct subdivision numbering and lettering; to change provisions relating to personal income tax exemptions as prescribed; to provide an operative date; and to repeal the original sections.

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 purposes 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 or her 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 repairperson shall mean any person who performs any repair services or any improvement upon real estate, including leased property, and who, as a necessary and incidental part of performing such services, incorporates tangible personal property belonging to him or her into the property being so repaired or improved. Contractor or repairperson shall not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer shall be considered to be the consumer of such tangible personal property furnished by him or her and incorporated into the property being so repaired or improved for all the purposes of the Nebraska Revenue Act of 1967. The contractor or repairperson:

(a) Shall be permitted to make an election

that he or she will be taxed as a retailer in which case he or she shall not be considered the final consumer of tangible personal property incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate;

(b) Shall be permitted to make an election that he or she will be taxed as the consumer of tangible personal property incorporated into real estate, will pay the sales tax or remit the use tax at the time of purchase, and will maintain a tax-paid inventory; or

(c) Shall be permitted to make an election that he or she will be taxed as the consumer of tangible personal property incorporated into real estate and may issue a resale certificate when purchasing tangible personal property that will be incorporated into real estate. Such person shall then remit the appropriate use tax on any materials when withdrawn from inventory for incorporation into real estate at the rate in effect at the time and place of the withdrawal from inventory.

The provisions of this subdivision (3) shall not excuse any person from the obligation to collect sales tax on retail sales of tangible personal property not incorporated into real estate or from the obligation to pay the sales tax or remit the use tax on tools and other materials consumed that are not incorporated into real estate.

The Department of Revenue shall not prescribe any requirements of Nebraska sales revenue, percentage or otherwise, restricting any person's election. Any change in an election shall require prior approval by the Tax Commissioner.

Any change in the election provided for in this subdivision shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all tangible personal property in inventory which may be incorporated into real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on tangible personal property in inventory at the time the tangible personal property is sold. The credit shall be applied against

the tax collected on sales of such tangible personal property.

Any contractor or repairperson who has not completed and filed an election as required in this subdivision within three months after beginning to operate as a contractor or repairperson shall be considered a retailer for all periods until an election has been made;

(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 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 rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased tangible personal property for some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the 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 or her 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;

(iv) The amount of any excise or property tax levied against the tangible personal property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(v) The amount charged for warranties, guarantees, or maintenance agreements.

(b) Gross receipts of every person engaged as a public utility specified in subdivision (4)(b) of this section or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (4)(b)(i), (ii), or (iv) of this section 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. Gross receipts shall not mean the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service;

(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, manufacturing purposes, and the care of animal life, the products of which ordinarily constitute food for human consumption, 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 sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of tangible personal property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (4)(b)(i) or (ii) of this section or community antenna television service specified in subdivision (4)(b)(iv) of this section. Gross receipts shall not mean gross income received from telephone directory advertising. ↴

(c) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property shall mean:

(i) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller. Gross receipts shall not mean the amount charged for training customers in the use of computer software if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the computer software; and

(ii) In the furnishing of videotapes, movie film, satellite programming, satellite programming

service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967, ~~and~~

(d) Gross receipts shall not include any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) The amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle.

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

~~(iv)~~ (iv) Except as provided in subdivision (4)(b) of this section, the amount charged for labor or services rendered in installing or applying the tangible personal property sold if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

~~(v)~~ (v) 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 if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

~~(vi)~~ (vi) 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

~~(vii)~~ (vii) The value of a motor vehicle taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle. ~~and~~

~~(viii)~~ (e) 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 or her, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. ~~and~~

~~(ix)~~ (f) 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 the Nebraska Revenue Act of 1967 if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration;

(5) In this state or within the state shall mean within the exterior limits of the State of Nebraska and shall include 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 which is the subject of any intercompany sale involving any parent, subsidiary, or brother-sister company relationship under subsection (5) of section 77-2704 and which 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, including:

(i) From one corporation to another corporation pursuant to a reorganization. For purposes of 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 or her 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 or her 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;

(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 section 77-2703:

(i) Such sales are by an individual at his or her 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;

(c) Commencing October 1, 1985, any sale of business or farm machinery and equipment if each of the following conditions is met and if any one condition is not met the entire gross receipts shall be subject to the tax imposed by section 77-2703:

(i) Such machinery and equipment was transferred without the aid or supervision of any third party. For purposes of this section, third party shall include anyone other than the owner and the buyer. The release of a lien held by a third party shall not constitute aid;

(ii) Such machinery or equipment was used by the seller as a depreciable capital asset in connection with the farm or business for a period of at least one year;

(iii) Such property was 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; and

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

(d) Commencing October 1, 1985, a sale of tangible personal property by an organization created exclusively for religious purposes or an agent of the

organization for such sale 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 section 77-2703:

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

(ii) The organization only sells property it owns during one such activity in a calendar year; and

(iii) The activity does not last longer than three consecutive days. ;

(e) Commencing October 1, 1985, occasional sale shall not include any sale of tangible personal property directly by or any sale which is supervised or aided by an auctioneer or an agent or employee of an auctioneer. ; and

(f) Except for a sale listed in subdivision (6)(a) of this section, an occasional sale shall not mean any sale of motor vehicles, trailers, and semitrailers as defined in section 60-301;

(7) Person shall mean 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. Person shall also mean 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, 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, with rent or lease payments set at a fair market value 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 shall include any services which are a part of the lease or rental and any amount for which credit is given to the lessee 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) A sale of tangible personal property to an advertising agency which purchases the tangible personal property as an agent for a disclosed or undisclosed principal. The advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly;

(c) 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 delivery person's selling price of the tangible personal property in his or her gross receipts;

(d) The sale of admissions which shall mean the right or privilege to have access to or to use a place or location. When an admission to an activity is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. Admissions shall not include fees 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;

(e) A sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate; and

(f) A sale of any tangible personal property incorporated into real estate by a person electing to be taxed as a retailer pursuant to subdivision (3)(a) of this section except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate;

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

(a) Tangible The sale of 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) The sale of:

(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall include, but not be 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 or water which is supplied for consumption by animal life or which is otherwise used in caring for 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 include, but not be 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; or

(iv) Agricultural chemicals for use in agriculture and applied to land or crops. Agricultural chemicals shall not mean chemicals applied to harvested grains stored in commercial elevators;

(c) The sale of:

(i) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(ii) Containers ~~containers~~ when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(iii) Returnable ~~returnable~~ containers when

sold with contents in connection with a retail sale of the contents or when resold for refilling.

The term returnable containers shall mean containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) ~~Tangible~~ The sale of 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~~ The sale of 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 when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state;

(f) The purchase in this state or the purchase without this state, with title passing in this state, of materials and replacement parts used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers of persons or property or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers of persons or property. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that their certificate will expire and be null and void as of such date; or

(g) ~~Railroad~~ The sale of railroad rolling stock whether purchased by a railroad or by any other person;

(12)(a) Retailer shall mean:

(a)(i) Any 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. Retailer shall mean, in the case of sales at auction of tangible personal property when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer, the person collecting the proceeds of the auction, other than the owner of the tangible personal property, together with his or her principal, if any, and retailer shall not include the auctioneer in such case;

(ii) Any person who leases or rents to another tangible personal property for storage, use, or other consumption except film rentals when an admission tax is charged under the Nebraska Revenue Act of 1967 and railroad rolling stock interchanged pursuant to the provisions of the Interstate Commerce Act;

(iii) Any 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 or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days, and such a person 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;

(iv) Any 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;

(v) Any person renting or otherwise furnishing tangible personal property under an agreement requiring the periodic cleaning or laundering of such tangible personal property; and

(vi) Every person who has elected to be considered a retailer pursuant to subdivision (3)(a) of this section, and

(b) When the Tax Commissioner determines that it is necessary for the efficient administration of the Nebraska Revenue Act of 1967 to regard any salespersons, 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 or her discretion, treat such agent as the vendor jointly responsible with his or her principal, distributor, supervisor, or employer for the purposes of the Nebraska Revenue Act of 1967;

(13) Sale shall mean 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, of tangible personal property for a consideration. Sale shall include, but not be limited to:

(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 or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days;

(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 or her 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 contractor or repairperson electing to be taxed as a retailer under subdivision (3)(a) of this section, to a contractor or repairperson being taxed as the consumer of tangible personal property and electing a tax-free inventory under subdivision (3)(c) of this section, or to a purchaser for the sole purpose of that purchaser renting or leasing such tangible personal property to another person, with rent or lease payments set at a fair market value, or film rentals for use in a place where an admission is charged that is subject to taxation under the Nebraska Revenue Act of 1967 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;

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

(iv) The cost of computer software contained on the tangible personal property; or

(v) The cost of any license, franchise, or lease for the use of computer software or entertainment properties such as videotapes or movie films, ~~and~~

(b) Sales price shall not mean any of the following:

(i) Cash discounts allowed and taken on sales;

(ii) The amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle.

(iii) The amount refunded for tangible personal property returned by customers when all or part of the amount charged therefor is refunded either in cash or credit;

~~***~~ (iv) The amount charged for labor or services rendered in installing and applying the

property sold if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property;

~~(iv)~~ (v) 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 if 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)~~ (vi) 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)~~ (vii) The value of a motor vehicle taken by any person in trade as all or part of the consideration for a sale of another motor vehicle; or

~~(vii)~~ (viii) The amount charged for labor or services rendered in incorporating tangible personal property into real estate;

(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. Except for a transaction that is subject to sales tax under the Nebraska Revenue Act of 1967, 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, including tangible personal

property which is used to convey computer software;

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

(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 use shall 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 shall include the incorporation of tangible personal property or the withdrawal of tangible personal property from inventory, which inventory is subject to sales tax under the Nebraska Revenue Act of 1967 or would be subject to the sales tax under the act except for an election under subdivision (3) of this section, for incorporation 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; and

(21) Engaged in business in this state shall mean any of the following:

(a) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse, storage place, or other place of business in this state;

(b) Having any representative, agent, salesperson, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property;

(c) Deriving rentals from a lease of tangible personal property in this state by any retailer;

(d) Soliciting retail sales of tangible personal property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

(e) Soliciting orders from residents of this state for tangible personal property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the

location in this state of authorized installation, servicing, or repair facilities;

(f) Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state; or

(g) Maintaining or having a franchisee or licensee operating under the retailer's trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967.

Sec. 2. That section 77-2704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the following:

(a) Tangible personal property, the gross receipts from the sale, lease, or rental of which or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state;

(b)(i) Aircraft fuel as defined under Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed, or exempted under Chapter 66, article 4, special fuels as defined, taxed, or exempted for use on the highways under Chapter 66, article 6, and special fuels used to provide motive power for railroad rolling stock;

(c) Tangible personal property used for the performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1)(g) of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week if such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property, except that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and

dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin, prosthetic devices, and oxygen and any equipment which concentrates oxygen for a patient's use sold under a doctor's prescription for aid in human respiration;

(g)(i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is shipped to a point outside this state, when the contract of sale is expressly or impliedly contingent upon delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. Such exemption shall include the amount charged for fabrication of tangible personal property furnished by the customer which is fabricated in this state and then shipped by the retailer performing the fabrication to a point outside of this state. This shall also include the gross receipts from sales of tangible personal property to a common or contract carrier shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i)(i) Purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under Chapter 79, article 17, any private college or university established under Chapter 85, article 11, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives funds under the Urban Health Initiative Program or the Rural Health Initiative Program of the United States Public Health Service, skilled nursing facility, or intermediate care facility licensed under sections 71-2017 to 71-2029 and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

(ii) Any organization listed in subdivision (i)(i) of this subsection shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(iii) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any tangible personal property incorporated into the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items incorporated into the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(iv)(A) Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any institution enumerated in subdivision (i)(i) of this subsection which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon.

(B) Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the tangible personal property physically incorporated into the construction, improvement, or repair;

(j) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining of tangible personal property, in irrigation, farming, or the generation of electricity, or by any hospital;

(k) The use of coin-operated machines used for laundering and cleaning;

(l)(i) Purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(ii) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items incorporated into the construction, improvement, or repair of a project for the state or a governmental unit;

(m) The entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the United States Department of Veterans Affairs or the Department of Social Services for a disabled person. If the amount contributed is

less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed;

(n) The sale and purchase, by subscription, of any magazine or journal that is issued at average intervals not exceeding once each month;

(o) Sales and purchases of semen for use in ranching, farming, commercial, or industrial uses;

(p) Purchases made by the State Board of Agriculture;

(q) Any organization listed in subdivision (i) of this subsection or any governmental unit listed in subdivision (1) of this subsection, except the state, which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to purchasing tangible personal property to be incorporated into the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the tangible personal property physically incorporated into the construction, improvement, or repair;

(r) Food or food products for human consumption which are eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to regulations in effect on October 1, 1983, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. As used in this subdivision, food does not include meals prepared for immediate consumption on or off the premises of the retailer and does not include foods sold through vending machines;

(s) (r) Tangible personal property, except meals for human consumption, sold by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by an elementary or secondary school, public or private, if the proceeds from such sale are used to support school activities or the school itself; and

(t) (s) An aircraft delivered in this state to an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and it will not remain in this state more than ten days.

Any organization listed in subdivision (i) of this subsection or any governmental unit listed in subdivision (1) of this subsection, except the state, which enters into a contract of construction,

improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to purchasing tangible personal property to be incorporated into the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the tangible personal property physically incorporated into the construction, improvement, or repair.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in the Nebraska Revenue Act of 1967 shall not apply to:

(a) The use in this state of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

(4) If any person who causes tangible personal property to be brought into this state has already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by section 77-2703 and the rate by which the previous tax on the sale or use was computed.

If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the

sales and use tax imposed by the Nebraska Revenue Act of 1967. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

(6) There is exempted from the computation of the amount of sales and use taxes imposed by the Nebraska Revenue Act of 1967 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

(7) When a written contract exists for a construction, alteration, or improvement project outside the United States or its territories or possessions, a contractor may apply for a refund of the sales and use tax paid to the State of Nebraska on tangible personal property actually incorporated into the project outside of the United States or its territories or possessions.

(8) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply to the Department of Revenue for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the materials incorporated into the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars.

Sec. 3. That section 77-2716.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2716.01. (1) Every individual shall be allowed to subtract from federal adjusted gross income an amount for personal exemptions. For tax year 1987, the amount allowed to be subtracted shall be one thousand one hundred dollars multiplied by the number of exemptions allowed on the federal return. For tax year 1988, the amount allowed to be subtracted shall be one thousand one hundred thirty dollars multiplied by the

number of exemptions allowed on the federal return. For tax year 1989, the amount allowed to be subtracted shall be one thousand one hundred eighty dollars multiplied by the number of exemptions allowed on the federal return. For tax year 1990 and each tax year thereafter, the amount to be subtracted shall be the amount of the exemption for tax year 1989 adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. If any amount to be subtracted is not a multiple of ten dollars, the amount shall be rounded to the next lowest multiple of ten dollars. The amount shall then be multiplied by the number of exemptions allowed on the federal return.

(2) Every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction equal to the federal standard deduction for the filing status used on the federal return.

(3) Every individual who itemized deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the standard deduction allowed in subsection (2) of this section or all of his or her federal itemized deductions, except for the amount deducted on the federal return for state or local income taxes paid.

Sec. 4. This act shall become operative on October 1, 1991.

Sec. 5. That original sections 77-2702, 77-2704, and 77-2716.01, Reissue Revised Statutes of Nebraska, 1943, are repealed.