

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1248

Introduced by Kauth, 31.

Read first time January 16, 2024

Committee:

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-2704.09 and 77-2704.24, Reissue Revised Statutes of Nebraska; to
- 3 eliminate certain sales and use tax exemptions; to provide an
- 4 operative date; to repeal the original sections; and to declare an
- 5 emergency.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2704.09, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 77-2704.09 (1) Sales and use taxes shall not be imposed on the gross
4 receipts from the sale, lease, or rental of and the storage, use, or
5 other consumption in this state of (a) insulin, (b) mobility enhancing
6 equipment and drugs, not including over-the-counter drugs, when sold for
7 a patient's use under a prescription, and (c) the following when sold for
8 a patient's use under a prescription and which are of the type eligible
9 for coverage under the medical assistance program established pursuant to
10 the Medical Assistance Act: Durable medical equipment; home medical
11 supplies; prosthetic devices; oxygen; and oxygen equipment.

12 (2) For purposes of this section:

13 (a)(i) ~~(a)~~ Drug means a compound, substance, preparation, and
14 component of a compound, substance, or preparation, other than food and
15 food ingredients, dietary supplements, or alcoholic beverages:

16 (A) ~~(i)~~ Recognized in the official United States Pharmacopoeia,
17 official Homeopathic Pharmacopoeia of the United States, or official
18 National Formulary, and any supplement to any of them;

19 (B) ~~(ii)~~ Intended for use in the diagnosis, cure, mitigation,
20 treatment, or prevention of disease; or

21 (C) ~~(iii)~~ Intended to affect the structure or any function of the
22 body. ÷

23 (ii) Drug does not include a product made from hemp as defined in
24 section 2-503;

25 (b) Durable medical equipment means equipment which can withstand
26 repeated use, is primarily and customarily used to serve a medical
27 purpose, generally is not useful to a person in the absence of illness or
28 injury, is appropriate for use in the home, and is not worn in or on the
29 body. Durable medical equipment includes repair and replacement parts for
30 such equipment;

31 (c) Home medical supplies means supplies primarily and customarily

1 used to serve a medical purpose which are appropriate for use in the home
2 and are generally not useful to a person in the absence of illness or
3 injury;

4 (d) Mobility enhancing equipment means equipment which is primarily
5 and customarily used to provide or increase the ability to move from one
6 place to another, which is not generally used by persons with normal
7 mobility, and which is appropriate for use either in a home or a motor
8 vehicle. Mobility enhancing equipment includes repair and replacement
9 parts for such equipment. Mobility enhancing equipment does not include
10 any motor vehicle or equipment on a motor vehicle normally provided by a
11 motor vehicle manufacturer;

12 (e) Over-the-counter drug means a drug that contains a label that
13 identifies the product as a drug as required by 21 C.F.R. 201.66, as such
14 regulation existed on January 1, 2003. The over-the-counter drug label
15 includes a drug facts panel or a statement of the active ingredients with
16 a list of those ingredients contained in the compound, substance, or
17 preparation;

18 (f) Oxygen equipment means oxygen cylinders, cylinder transport
19 devices including sheaths and carts, cylinder studs and support devices,
20 regulators, flowmeters, tank wrenches, oxygen concentrators, liquid
21 oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing,
22 nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and
23 accessories;

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

28 (h) Prosthetic devices means a replacement, corrective, or
29 supportive device worn on or in the body to artificially replace a
30 missing portion of the body, prevent or correct physical deformity or
31 malfunction, or support a weak or deformed portion of the body, and

1 includes any supplies used with such device and repair and replacement
2 parts.

3 Sec. 2. Section 77-2704.24, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 77-2704.24 (1) Sales and use taxes shall not be imposed on the gross
6 receipts from the sale, lease, or rental of and the storage, use, or
7 other consumption in this state of food or food ingredients except for
8 prepared food and food sold through vending machines.

9 (2) For purposes of this section:

10 (a) Alcoholic beverages means beverages that are suitable for human
11 consumption and contain one-half of one percent or more of alcohol by
12 volume;

13 (b) Candy means a preparation of sugar, honey, or other natural or
14 artificial sweeteners in combination with chocolate, fruits, nuts, or
15 other ingredients or flavorings in the form of bars, drops, or pieces.
16 Candy shall not include any preparation containing flour and shall
17 require no refrigeration;

18 (c) ~~(b)~~ Dietary supplement means any product, other than tobacco,
19 intended to supplement the diet that contains one or more of the
20 following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an
21 herb or other botanical, (iv) an amino acid, (v) a dietary substance for
22 use by humans to supplement the diet by increasing the total dietary
23 intake, or (vi) a concentrate, metabolite, constituent, extract, or
24 combination of any ingredients described in subdivisions ~~(2)(c)(i)~~ ~~(2)(b)~~
25 ~~(i)~~ through (v) of this section; that is intended for ingestion in
26 tablet, capsule, powder, softgel, gelcap, or liquid form or, if not
27 intended for ingestion in such a form, is not presented as conventional
28 food and is not represented for use as a sole item of a meal or of the
29 diet; and that is required to be labeled as a dietary supplement,
30 identifiable by the supplemental facts box found on the label and as
31 required pursuant to 21 C.F.R. 101.36, as such regulation existed on

1 January 1, 2003;

2 (d) ~~(e)~~ Food and food ingredients means substances, whether in
3 liquid, concentrated, solid, frozen, dried, or dehydrated form, that are
4 sold for ingestion or chewing by humans and are consumed for their taste
5 or nutritional value. Food and food ingredients does not include
6 alcoholic beverages, dietary supplements, ~~or~~ tobacco, candy, or soft
7 drinks;

8 (e) ~~(d)~~ Food sold through vending machines means food that is
9 dispensed from a machine or other mechanical device that accepts payment;

10 (f) ~~(e)~~ Prepared food means:

11 (i) Food sold with eating utensils provided by the seller, including
12 plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate
13 does not include a container or packaging used to transport the food; or

14 (ii) Two or more food ingredients mixed or combined by the seller
15 for sale as a single item and food sold in a heated state or heated by
16 the seller, except:

17 (A) Food that is only cut, repackaged, or pasteurized by the seller;

18 (B) Eggs, fish, meat, poultry, and foods containing these raw animal
19 foods requiring cooking by the consumer as recommended by the federal
20 Food and Drug Administration in chapter 3, part 401.11 of its Food Code,
21 as it existed on January 1, 2003, so as to prevent food borne illnesses;

22 (C) Food sold by a seller whose proper primary North American
23 Industry Classification System classification is manufacturing in sector
24 311, except subsector 3118, bakeries;

25 (D) Food sold in an unheated state by weight or volume as a single
26 item;

27 (E) Bakery items, including bread, rolls, buns, biscuits, bagels,
28 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
29 muffins, bars, cookies, and tortillas; and

30 (F) Food that ordinarily requires additional cooking to finish the
31 product to its desired final condition; ~~and~~

1 (g) Soft drinks means nonalcoholic beverages that contain natural or
2 artificial sweeteners. Soft drinks do not include beverages that contain
3 milk or milk products, soy, rice or similar milk substitutes, or greater
4 than fifty percent of vegetable or fruit juice by volume; and

5 (h) (f) Tobacco means cigarettes, cigars, chewing or pipe tobacco,
6 or any other item that contains tobacco.

7 Sec. 3. This act becomes operative on July 1, 2024.

8 Sec. 4. Original sections 77-2704.09 and 77-2704.24, Reissue
9 Revised Statutes of Nebraska, are repealed.

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