

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 218

Introduced by Lindstrom, 18.

Read first time January 11, 2019

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-105 and 77-2701.16, Reissue Revised Statutes of Nebraska; to
3 redefine the terms tangible personal property and gross receipts as
4 prescribed; to provide an operative date; to repeal the original
5 sections; and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-105, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-105 (1) The term tangible personal property includes all
4 personal property possessing a physical existence, excluding money. The
5 term tangible personal property also includes (a) trade fixtures, which
6 means machinery and equipment, regardless of the degree of attachment to
7 real property, used directly in commercial, manufacturing, or processing
8 activities conducted on real property, regardless of whether the real
9 property is owned or leased, excluding electric generation, transmission,
10 distribution, and street lighting structures or facilities owned by a
11 political subdivision of the state, and (b) all depreciable tangible
12 personal property described in subsection (9) of section 77-202 used in
13 the generation of electricity using wind, solar, biomass, or landfill gas
14 as the fuel source.

15 (2) The term intangible personal property includes all other
16 personal property, including money.

17 Sec. 2. Section 77-2701.16, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 77-2701.16 (1) Gross receipts means the total amount of the sale or
20 lease or rental price, as the case may be, of the retail sales of
21 retailers.

22 (2) Gross receipts of every person engaged as a public utility
23 specified in this subsection, as a community antenna television service
24 operator, or as a satellite service operator or any person involved in
25 connecting and installing services defined in subdivision (2)(a), (b), or
26 (d) of this section means:

27 (a)(i) In the furnishing of telephone communication service, other
28 than mobile telecommunications service as described in section
29 77-2703.04, the gross income received from furnishing ancillary services,
30 except for conference bridging services, and intrastate
31 telecommunications services, except for value-added, nonvoice data

1 service.

2 (ii) In the furnishing of mobile telecommunications service as
3 described in section 77-2703.04, the gross income received from
4 furnishing mobile telecommunications service that originates and
5 terminates in the same state to a customer with a place of primary use in
6 Nebraska;

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

9 (c)(i) In the furnishing of gas, sewer, water, and electricity
10 service, other than electricity service to a customer-generator as
11 defined in section 70-2002, the gross income received from the furnishing
12 of such services upon billings or statements rendered to consumers for
13 such utility services.

14 (ii) In the furnishing of electricity service to a customer-
15 generator as defined in section 70-2002, the net energy use upon billings
16 or statements rendered to customer-generators for such electricity
17 service;

18 (d) In the furnishing of community antenna television service or
19 satellite service, the gross income received from the furnishing of such
20 community antenna television service as regulated under sections 18-2201
21 to 18-2205 or 23-383 to 23-388 or satellite service; and

22 (e) The gross income received from the provision, installation,
23 construction, servicing, or removal of property used in conjunction with
24 the furnishing, installing, or connecting of any public utility services
25 specified in subdivision (2)(a) or (b) of this section or community
26 antenna television service or satellite service specified in subdivision
27 (2)(d) of this section, except when acting as a subcontractor for a
28 public utility, this subdivision does not apply to the gross income
29 received by a contractor electing to be treated as a consumer of building
30 materials under subdivision (2) or (3) of section 77-2701.10 for any such
31 services performed on the customer's side of the utility demarcation

1 point. This subdivision also does not apply to the lease or use of
2 electric generation, transmission, distribution, or street lighting
3 structures or facilities owned by a political subdivision of the state.

4 (3) Gross receipts of every person engaged in selling, leasing, or
5 otherwise providing intellectual or entertainment property means:

6 (a) In the furnishing of computer software, the gross income
7 received, including the charges for coding, punching, or otherwise
8 producing any computer software and the charges for the tapes, disks,
9 punched cards, or other properties furnished by the seller; and

10 (b) In the furnishing of videotapes, movie film, satellite
11 programming, satellite programming service, and satellite television
12 signal descrambling or decoding devices, the gross income received from
13 the license, franchise, or other method establishing the charge.

14 (4) Gross receipts for providing a service means:

15 (a) The gross income received for building cleaning and maintenance,
16 pest control, and security;

17 (b) The gross income received for motor vehicle washing, waxing,
18 towing, and painting;

19 (c) The gross income received for computer software training;

20 (d) The gross income received for installing and applying tangible
21 personal property if the sale of the property is subject to tax. If any
22 or all of the charge for installation is free to the customer and is paid
23 by a third-party service provider to the installer, any tax due on that
24 part of the activation commission, finder's fee, installation charge, or
25 similar payment made by the third-party service provider shall be paid
26 and remitted by the third-party service provider;

27 (e) The gross income received for services of recreational vehicle
28 parks;

29 (f) The gross income received for labor for repair or maintenance
30 services performed with regard to tangible personal property the sale of
31 which would be subject to sales and use taxes, excluding motor vehicles,

1 except as otherwise provided in section 77-2704.26 or 77-2704.50;

2 (g) The gross income received for animal specialty services except

3 (i) veterinary services, (ii) specialty services performed on livestock

4 as defined in section 54-183, and (iii) animal grooming performed by a

5 licensed veterinarian or a licensed veterinary technician in conjunction

6 with medical treatment; and

7 (h) The gross income received for detective services.

8 (5) Gross receipts includes the sale of admissions. When an

9 admission to an activity or a membership constituting an admission is

10 combined with the solicitation of a contribution, the portion or the

11 amount charged representing the fair market price of the admission shall

12 be considered a retail sale subject to the tax imposed by section

13 77-2703. The organization conducting the activity shall determine the

14 amount properly attributable to the purchase of the privilege, benefit,

15 or other consideration in advance, and such amount shall be clearly

16 indicated on any ticket, receipt, or other evidence issued in connection

17 with the payment.

18 (6) Gross receipts includes the sale of live plants incorporated

19 into real estate except when such incorporation is incidental to the

20 transfer of an improvement upon real estate or the real estate.

21 (7) Gross receipts includes the sale of any building materials

22 annexed to real estate by a person electing to be taxed as a retailer

23 pursuant to subdivision (1) of section 77-2701.10.

24 (8) Gross receipts includes the sale of and recharge of prepaid

25 calling service and prepaid wireless calling service.

26 (9) Gross receipts includes the retail sale of digital audio works,

27 digital audiovisual works, digital codes, and digital books delivered

28 electronically if the products are taxable when delivered on tangible

29 storage media. A sale includes the transfer of a permanent right of use,

30 the transfer of a right of use that terminates on some condition, and the

31 transfer of a right of use conditioned upon the receipt of continued

1 payments.

2 (10) Gross receipts does not include:

3 (a) The amount of any rebate granted by a motor vehicle or motorboat
4 manufacturer or dealer at the time of sale of the motor vehicle or
5 motorboat, which rebate functions as a discount from the sales price of
6 the motor vehicle or motorboat; or

7 (b) The price of property or services returned or rejected by
8 customers when the full sales price is refunded either in cash or credit.

9 Sec. 3. This act becomes operative on July 1, 2019.

10 Sec. 4. Original sections 77-105 and 77-2701.16, Reissue Revised
11 Statutes of Nebraska, are repealed.

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