

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 508

Introduced by Briese, 41.

Read first time January 22, 2019

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-382, 77-2701.16, 77-2704.10, 77-2704.24, and 77-27,132, Reissue
3 Revised Statutes of Nebraska; to impose sales and use taxes on
4 certain services; to change and eliminate certain sales and use tax
5 exemptions; to provide for the use of certain sales and use tax
6 revenue; to harmonize provisions; to provide an operative date; to
7 repeal the original sections; and to outright repeal sections
8 77-2704.08 and 77-2704.52, Reissue Revised Statutes of Nebraska.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-382, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-382 (1) The department shall prepare a tax expenditure report
4 describing (a) the basic provisions of the Nebraska tax laws, (b) the
5 actual or estimated revenue loss caused by the exemptions, deductions,
6 exclusions, deferrals, credits, and preferential rates in effect on July
7 1 of each year and allowed under Nebraska's tax structure and in the
8 property tax, (c) the actual or estimated revenue loss caused by failure
9 to impose sales and use tax on services purchased for nonbusiness use,
10 and (d) the elements which make up the tax base for state and local
11 income, including income, sales and use, property, and miscellaneous
12 taxes.

13 (2) The department shall review the major tax exemptions for which
14 state general funds are used to reduce the impact of revenue lost due to
15 a tax expenditure. The report shall indicate an estimate of the amount of
16 the reduction in revenue resulting from the operation of all tax
17 expenditures. The report shall list each tax expenditure relating to
18 sales and use tax under the following categories:

19 (a) Agriculture, which shall include a separate listing for the
20 following items: Agricultural machinery; agricultural chemicals; seeds
21 sold to commercial producers; water for irrigation and manufacturing;
22 commercial artificial insemination; mineral oil as dust suppressant;
23 animal grooming; oxygen for use in aquaculture; animal life whose
24 products constitute food for human consumption; and grains;

25 (b) Business across state lines, which shall include a separate
26 listing for the following items: Property shipped out-of-state;
27 fabrication labor for items to be shipped out-of-state; property to be
28 transported out-of-state; property purchased in other states to be used
29 in Nebraska; aircraft delivery to an out-of-state resident or business;
30 state reciprocal agreements for industrial machinery; and property taxed
31 in another state;

1 (c) Common carrier and logistics, which shall include a separate
2 listing for the following items: Railroad rolling stock and repair parts
3 and services; common or contract carriers and repair parts and services;
4 common or contract carrier accessories; and common or contract carrier
5 safety equipment;

6 (d) Consumer goods, which shall include a separate listing for the
7 following items: Motor vehicles and motorboat trade-ins; merchandise
8 trade-ins; certain medical equipment and medicine; newspapers;
9 laundromats; and ~~telefloral deliveries~~; motor vehicle discounts for the
10 disabled; ~~and political campaign fundraisers~~;

11 (e) Energy, which shall include a separate listing for the following
12 items: Motor fuels; energy used in industry; energy used in agriculture;
13 aviation fuel; and minerals, oil, and gas severed from real property;

14 (f) Food, which shall include a separate listing for the following
15 items: Food for home consumption; Supplemental Nutrition Assistance
16 Program; ~~school lunches~~; meals sold by hospitals; ~~meals sold by~~
17 ~~institutions at a flat rate~~; food for the elderly, handicapped, and
18 Supplemental Security Income recipients; and meals sold by churches;

19 (g) General business, which shall include a separate listing for the
20 following items: Component and ingredient parts; manufacturing machinery;
21 containers; film rentals; molds and dies; syndicated programming;
22 intercompany sales; intercompany leases; sale of a business or farm
23 machinery; and transfer of property in a change of business ownership;

24 (h) Lodging and shelter, which shall include a separate listing for
25 the following item: Room rentals by certain institutions;

26 (i) Miscellaneous, which shall include a separate listing for the
27 following items: Cash discounts and coupons; separately stated finance
28 charges; casual sales; ~~lease-to-purchase agreements~~; and separately
29 stated taxes;

30 (j) Nonprofits, governments, and exempt entities, which shall
31 include a separate listing for the following items: Purchases by

1 political subdivisions of the state; purchases by churches and nonprofit
2 colleges and medical facilities; purchasing agents for public real estate
3 construction improvements; contractor as purchasing agent for public
4 agencies; Nebraska lottery; admissions to school events; sales on Native
5 American Indian reservations; school-supporting fundraisers; fine art
6 purchases by a museum; purchases by the Nebraska State Fair Board;
7 purchases by the Nebraska Investment Finance Authority and licensees of
8 the State Racing Commission; purchases by the United States Government;
9 public records; and sales by religious organizations;

10 (k) Recent sales tax expenditures, which shall include a separate
11 listing for each sales tax expenditure created by statute or rule and
12 regulation after July 19, 2012;

13 (l) Services purchased for nonbusiness use, which shall include a
14 separate listing for each such service, including, but not limited to,
15 the following items: Personal ~~Motor vehicle cleaning, maintenance, and~~
16 ~~repair services; cleaning and repair of clothing; cleaning, maintenance,~~
17 ~~and repair of other tangible personal property; maintenance, painting,~~
18 ~~and repair of real property; entertainment admissions; personal care~~
19 ~~services; lawn care, gardening, and landscaping services; pet-related~~
20 ~~services; storage and moving services; household utilities; other~~
21 ~~personal services; taxi, limousine, and other transportation services;~~
22 legal services; accounting services; other professional services; and
23 other real estate services; and

24 (m) Telecommunications, which shall include a separate listing for
25 the following items: Telecommunications access charges; ~~prepaid calling~~
26 ~~arrangements;~~ conference bridging services; and nonvoice data services.

27 (3) It is the intent of the Legislature that nothing in the Tax
28 Expenditure Reporting Act shall cause the valuation or assessment of any
29 property exempt from taxation on the basis of its use exclusively for
30 religious, educational, or charitable purposes.

31 Sec. 2. Section 77-2701.16, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 77-2701.16 (1) Gross receipts means the total amount of the sale or
3 lease or rental price, as the case may be, of the retail sales of
4 retailers.

5 (2) Gross receipts of every person engaged as a public utility
6 specified in this subsection, as a community antenna television service
7 operator, or as a satellite service operator or any person involved in
8 connecting and installing services defined in subdivision (2)(a), (b), or
9 (d) of this section means:

10 (a)(i) In the furnishing of telephone communication service, other
11 than mobile telecommunications service as described in section
12 77-2703.04, the gross income received from furnishing ancillary services,
13 except for conference bridging services, and intrastate
14 telecommunications services, except for value-added, nonvoice data
15 service.

16 (ii) In the furnishing of mobile telecommunications service as
17 described in section 77-2703.04, the gross income received from
18 furnishing mobile telecommunications service that originates and
19 terminates in the same state to a customer with a place of primary use in
20 Nebraska;

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

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

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

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

5 (e) The gross income received from the provision, installation,
6 construction, servicing, or removal of property used in conjunction with
7 the furnishing, installing, or connecting of any public utility services
8 specified in subdivision (2)(a) or (b) of this section or community
9 antenna television service or satellite service specified in subdivision
10 (2)(d) of this section, except when acting as a subcontractor for a
11 public utility, this subdivision does not apply to the gross income
12 received by a contractor electing to be treated as a consumer of building
13 materials under subdivision (2) or (3) of section 77-2701.10 for any such
14 services performed on the customer's side of the utility demarcation
15 point.

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

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

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

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

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

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

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

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

8 (e) The gross income received for services of recreational vehicle
9 parks;

10 (f) The gross income received for labor for repair or maintenance
11 services performed with regard to tangible personal property the sale of
12 which would be subject to sales and use taxes, ~~excluding motor vehicles,~~
13 except as otherwise provided in section 77-2704.26 or 77-2704.50;

14 (g) The gross income received for animal specialty services except
15 (i) veterinary services, (ii) specialty services performed on livestock
16 as defined in section 54-183, and (iii) animal grooming performed by a
17 licensed veterinarian or a licensed veterinary technician in conjunction
18 with medical treatment; ~~and~~

19 (h) The gross income received for detective services; ~~+~~

20 (i) The gross income received for the cleaning of tangible personal
21 property;

22 (j) The gross income received for storage and moving services;

23 (k) The gross income received for investment advice;

24 (l) The gross income received for hair care services;

25 (m) The gross income received for maintenance, painting, and repair
26 services for single-family housing;

27 (n) The gross income received for limousine, taxi, and other
28 transportation services;

29 (o) The gross income received for plumbing services;

30 (p) The gross income received for lawn care, gardening, and
31 landscaping services;

1 (q) The gross income received for parking services;

2 (r) The gross income received for swimming pool cleaning and
3 maintenance services;

4 (s) The gross income received for dating and escort services;

5 (t) The gross income received for instruction in music, dance, golf,
6 and other recreational activities;

7 (u) The gross income received for clothing alteration services;

8 (v) The gross income received for tanning services;

9 (w) The gross income received for telefloral delivery services; and

10 (x) The gross income received for massage services, excluding
11 massage services prescribed by a licensed health care professional.

12 (5) Gross receipts includes the sale of admissions. When an
13 admission to an activity or a membership constituting an admission is
14 combined with the solicitation of a contribution, the portion or the
15 amount charged representing the fair market price of the admission shall
16 be considered a retail sale subject to the tax imposed by section
17 77-2703. The organization conducting the activity shall determine the
18 amount properly attributable to the purchase of the privilege, benefit,
19 or other consideration in advance, and such amount shall be clearly
20 indicated on any ticket, receipt, or other evidence issued in connection
21 with the payment.

22 (6) Gross receipts includes the sale of live plants incorporated
23 into real estate except when such incorporation is incidental to the
24 transfer of an improvement upon real estate or the real estate.

25 (7) Gross receipts includes the sale of any building materials
26 annexed to real estate by a person electing to be taxed as a retailer
27 pursuant to subdivision (1) of section 77-2701.10.

28 (8) Gross receipts includes the sale of and recharge of prepaid
29 calling service and prepaid wireless calling service.

30 (9) Gross receipts includes the retail sale of digital audio works,
31 digital audiovisual works, digital codes, and digital books delivered

1 electronically if the products are taxable when delivered on tangible
2 storage media. A sale includes the transfer of a permanent right of use,
3 the transfer of a right of use that terminates on some condition, and the
4 transfer of a right of use conditioned upon the receipt of continued
5 payments.

6 (10) Gross receipts does not include:

7 (a) The amount of any rebate granted by a motor vehicle or motorboat
8 manufacturer or dealer at the time of sale of the motor vehicle or
9 motorboat, which rebate functions as a discount from the sales price of
10 the motor vehicle or motorboat; or

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

13 Sec. 3. Section 77-2704.10, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 77-2704.10 Sales and use taxes shall not be imposed on the gross
16 receipts from the sale, lease, or rental of and the storage, use, or
17 other consumption in this state of:

18 ~~(1) Prepared food and food and food ingredients served by public or~~
19 ~~private schools, school districts, student organizations, or parent-~~
20 ~~teacher associations pursuant to an agreement with the proper school~~
21 ~~authorities, in an elementary or secondary school or at any institution~~
22 ~~of higher education, public or private, during the regular school day or~~
23 ~~at an approved function of any such school or institution. This exemption~~
24 ~~does not apply to sales by an institution of higher education at any~~
25 ~~facility or function which is open to the general public;~~

26 (1) ~~(2)~~ Prepared food and food and food ingredients sold by a church
27 at a function of such church;

28 (2) ~~(3)~~ Prepared food and food and food ingredients served to
29 patients and inmates of hospitals and other institutions licensed by the
30 state for the care of human beings;

31 ~~(4) Fees and admissions charged for political events by ballot~~

1 ~~question committees, candidate committees, independent committees, and~~
2 ~~political party committees as defined in the Nebraska Political~~
3 ~~Accountability and Disclosure Act;~~

4 ~~(3) (5) Prepared food and food and food ingredients sold to the~~
5 ~~elderly, handicapped, or recipients of Supplemental Security Income by an~~
6 ~~organization that actually accepts electronic benefits transfer under~~
7 ~~regulations issued by the United States Department of Agriculture~~
8 ~~although it is not necessary for the purchaser to use electronic benefits~~
9 ~~transfer to pay for the prepared food and food and food ingredients; and~~

10 ~~(4) (6) Fees and admissions charged by a public or private~~
11 ~~elementary or secondary school and fees and admissions charged by a~~
12 ~~school district, student organization, or parent-teacher association,~~
13 ~~pursuant to an agreement with the proper school authorities, in a public~~
14 ~~or private elementary or secondary school during the regular school day~~
15 ~~or at an approved function of any such school. ÷~~

16 ~~(7) Fees and admissions charged for participants in any activity~~
17 ~~provided by a nonprofit organization that is exempt from income tax under~~
18 ~~section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which~~
19 ~~organization conducts statewide sport events with multiple sports for~~
20 ~~both adults and youth; and~~

21 ~~(8) Fees and admissions charged for participants in any activity~~
22 ~~provided by a nonprofit organization that is exempt from income tax under~~
23 ~~section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which~~
24 ~~organization is affiliated with a national organization, primarily~~
25 ~~dedicated to youth development and healthy living, and offers sports~~
26 ~~instruction and sports leagues or sports events in multiple sports.~~

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

29 77-2704.24 (1) Sales and use taxes shall not be imposed on the gross
30 receipts from the sale, lease, or rental of and the storage, use, or
31 other consumption in this state of food or food ingredients except for

1 prepared food and food sold through vending machines.

2 (2) For purposes of this section:

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

6 (b) Dietary supplement means any product, other than tobacco,
7 intended to supplement the diet that contains one or more of the
8 following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an
9 herb or other botanical, (iv) an amino acid, (v) a dietary substance for
10 use by humans to supplement the diet by increasing the total dietary
11 intake, or (vi) a concentrate, metabolite, constituent, extract, or
12 combination of any ingredients described in subdivisions (2)(b)(i)
13 through (v) of this section; that is intended for ingestion in tablet,
14 capsule, powder, softgel, gelcap, or liquid form or, if not intended for
15 ingestion in such a form, is not presented as conventional food and is
16 not represented for use as a sole item of a meal or of the diet; and that
17 is required to be labeled as a dietary supplement, identifiable by the
18 supplemental facts box found on the label and as required pursuant to 21
19 C.F.R. 101.36, as such regulation existed on January 1, 2003;

20 (c) Food and food ingredients means substances, whether in liquid,
21 concentrated, solid, frozen, dried, or dehydrated form, that are sold for
22 ingestion or chewing by humans and are consumed for their taste or
23 nutritional value. Food and food ingredients does not include alcoholic
24 beverages, dietary supplements, ~~or~~ tobacco, soft drinks, or candy;

25 (d) Food sold through vending machines means food that is dispensed
26 from a machine or other mechanical device that accepts payment;

27 (e)(i) ~~(e)~~ Prepared food means:

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

1 (B) ~~(ii)~~ Two or more food ingredients mixed or combined by the
2 seller for sale as a single item and food sold in a heated state or
3 heated by the seller, except:

4 (I) ~~(A)~~ Food that is only cut, repackaged, or pasteurized by the
5 seller;

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

11 (III) ~~(C)~~ Food sold by a seller whose proper primary North American
12 Industry Classification System classification is manufacturing in sector
13 311, except subsector 3118, bakeries;

14 (IV) ~~(D)~~ Food sold in an unheated state by weight or volume as a
15 single item;

16 (V) ~~(E)~~ Bakery items, including bread, rolls, buns, biscuits,
17 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
18 muffins, bars, cookies, and tortillas; and

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

21 (ii) Prepared food includes food sold by fraternities, sororities,
22 dormitories, boarding houses, retirement communities, and other
23 residential facilities where food is provided by the facility as part of
24 the agreement for occupancy; and

25 (f) Tobacco means cigarettes, cigars, chewing or pipe tobacco, or
26 any other item that contains tobacco.

27 Sec. 5. Section 77-27,132, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 77-27,132 (1) There is hereby created a fund to be designated the
30 Revenue Distribution Fund which shall be set apart and maintained by the
31 Tax Commissioner. Revenue not required to be credited to the General Fund

1 or any other specified fund may be credited to the Revenue Distribution
2 Fund. Credits and refunds of such revenue shall be paid from the Revenue
3 Distribution Fund. The balance of the amount credited, after credits and
4 refunds, shall be allocated as provided by the statutes creating such
5 revenue.

6 (2) The Tax Commissioner shall pay to a depository bank designated
7 by the State Treasurer all amounts collected under the Nebraska Revenue
8 Act of 1967. The Tax Commissioner shall present to the State Treasurer
9 bank receipts showing amounts so deposited in the bank, and of the
10 amounts so deposited the State Treasurer shall:

11 (a) For transactions occurring on or after October 1, 2014, and
12 before October 1, 2022, credit to the Game and Parks Commission Capital
13 Maintenance Fund all of the proceeds of the sales and use taxes imposed
14 pursuant to section 77-2703 on the sale or lease of motorboats as defined
15 in section 37-1204, personal watercraft as defined in section 37-1204.01,
16 all-terrain vehicles as defined in section 60-103, and utility-type
17 vehicles as defined in section 60-135.01;

18 (b) Credit to the Highway Trust Fund all of the proceeds of the
19 sales and use taxes derived from the sale or lease for periods of more
20 than thirty-one days of motor vehicles, trailers, and semitrailers,
21 except that the proceeds equal to any sales tax rate provided for in
22 section 77-2701.02 that is in excess of five percent derived from the
23 sale or lease for periods of more than thirty-one days of motor vehicles,
24 trailers, and semitrailers shall be credited to the Highway Allocation
25 Fund;

26 (c) For transactions occurring on or after July 1, 2013, and before
27 July 1, 2033, of the proceeds of the sales and use taxes derived from
28 transactions other than those listed in subdivisions (2)(a) and (b) of
29 this section from a sales tax rate of one-quarter of one percent, credit
30 monthly eighty-five percent to the State Highway Capital Improvement Fund
31 and fifteen percent to the Highway Allocation Fund; ~~and~~

1 (d) Of the proceeds of the sales and use taxes derived from
2 transactions other than those listed in subdivisions (2)(a) and (b) of
3 this section, credit to the Property Tax Credit Cash Fund the amount
4 certified under section 77-27,237, if any such certification is made;
5 and -

6 (e) Credit to the Property Tax Credit Cash Fund an amount equal to
7 the net increase in state sales and use tax revenue received as a result
8 of the changes made by this legislative bill. Such amount shall be
9 determined annually by the Tax Commissioner.

10 The balance of all amounts collected under the Nebraska Revenue Act
11 of 1967 shall be credited to the General Fund.

12 Sec. 6. This act becomes operative on January 1, 2020.

13 Sec. 7. Original sections 77-382, 77-2701.16, 77-2704.10,
14 77-2704.24, and 77-27,132, Reissue Revised Statutes of Nebraska, are
15 repealed.

16 Sec. 8. The following sections are outright repealed: Sections
17 77-2704.08 and 77-2704.52, Reissue Revised Statutes of Nebraska.