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# Nebraska Sales and Use Tax Regulations

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# SALES AND USE TAX REGULATIONS

## TITLE 316, CHAPTER 1

### REG-1-001 NATURE OF THE SALES TAX

001.01 The sales tax is imposed upon the gross receipts from all sales, leases, rentals, installation, application, repair, or maintenance of tangible personal property, the gross receipts of every person providing or installing utility services, the gross receipts of a retailer of intellectual or entertainment properties, the gross receipts from the sale of admissions, the gross receipts from renting or furnishing accommodations or lodging for periods of less than thirty days, and the gross receipts from the sale or providing of certain enumerated services. (Reg-1-007, Gross Receipts)

001.01A For the purposes of the sales and use tax regulations, the term property shall mean all tangible and intangible property, rights, licenses, and franchises subject to tax under section 77-2703(1) of the Nebraska Revised Statutes.

001.02 This tax is not upon the article sold, but upon the transaction called the sale. The term "sale" includes installment, conditional and credit sales, and includes any transfer of title or possession, segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional sale, or otherwise in any manner or by any means for a consideration.

001.03 The amount of sales tax collected is a trust fund held by the collector that belongs to the state. Any sales tax that is improperly or erroneously collected also belongs to the state and must be remitted.

*(Sections 77-2702.07, 77-2702.14, 77-2702.15, 77-2703(1), and 77-3905(6), R.R.S. 2003. October 1, 2003. )*

### REG-1-002 CONSUMER'S USE TAX

002.01 The sales and use taxes complement each other and together provide a uniform tax upon either the sale, lease, rental, use, storage, distribution, or other consumption of all tangible personal property and on any intangible property or services the gross receipts of which are included in the measure of the sales tax under section 77-2703(1). Use tax is not a duplication of the sales tax. The storage, use, distribution, or other consumption of any item is taxable if the purchase of the item would be taxable if the transaction was completed in this state.

002.02 The consumer's use tax is imposed upon the storage, use, distribution, or other consumption of any tangible personal property and on any intangible property or services the gross receipts of which are included in the measure of the sales tax under section 77-2703(1). The consumer's use tax applies when the sales tax has not been paid. It is presumed that any property or services sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, distribution, or other consumption in this state until the contrary is established. The burden of proving that any property or services delivered in this state is delivered

for a purpose other than storage, use, distribution, or other consumption in this state is on the person who purchases, leases, or rents the property or services.

002.03 Consumer's use tax is paid directly to the Nebraska Department of Revenue by the purchaser. A permit is not necessary or required.

002.04 Consumer's use tax does not apply to the following:

002.04A Transactions upon which the Nebraska sales tax has been paid;

002.04A(1) See requirements for remitting sales tax by holders of direct payment permits in Reg-1-097 or certificates of exemption for direct mail, Reg-1-105.

002.04B Storage, use, or other consumption of property or services exempt from sales tax;

002.04C Transactions where the tax has been properly paid on the sale, purchase, use, or other consumption of property or services in another state at a rate equal to or greater than the rate in Nebraska. (Reg-1-071, Credit for Tax Paid to Another State);

002.04D Transactions where the item purchased has been used for its intended purpose in another state. This exemption does not apply to motor vehicles, motorboats, or airplanes; and

002.04E Transactions where the item was purchased in another state, is stored in Nebraska, and is subsequently taken to and used in another state without any use other than storage in this state.

002.05 Consumer's use tax will apply to the following:

002.05A Purchases for delivery in Nebraska from out-of-state retailers when the applicable sales and use tax has not been paid;

002.05B Retail purchases made in this state when the applicable sales tax has not been paid;

002.05C Purchases at retail from federal government agencies and instrumentalities not required to act as collectors of Nebraska sales or use tax;

002.05D Purchases where an exempt sale certificate was originally given, but the property or service is subsequently put to a taxable use;

002.05E Use of property or services originally purchased tax free for resale purposes but which is later consumed for personal needs or consumed by or within the business;

002.05F Purchases from out-of-state retailers of items exempt in the other state that are used in this state and would be taxable if purchased in this state; or

002.05G Purchases that are manufactured, processed, or fabricated in another state and that are not used

for their intended purposes in the other state after its manufacture, processing, or fabrication.

002.06 If a purchaser who gives a Resale Certificate makes any use of the property other than retention, demonstration, or display while holding such property for sale, lease, or rental in the regular course of business, the use shall be taxable to that purchaser as of the time when the property is first so used. Except for a purchaser of aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of that property to him or her shall be deemed the measure of the use tax and the tax rate to be applied will be the rate in effect at the time of use.

002.07 The amount of consumer's use tax is computed by multiplying the purchase price of the property or service by the applicable rate in effect at the time of use. The rate applicable for consumer's use tax is the same as the rate for sales tax. Purchase price means the total amount of consideration for the property or services received and includes cash, credit, property, and services rendered.

002.08 Those persons holding a sales tax permit shall on the return required thereby, report and pay all consumer's use tax for which they are liable.

002.09 Persons not required to hold a sales tax permit but who are liable for consumer's use tax shall obtain a consumer's use tax return and report and pay the tax directly to the Nebraska Department of Revenue. Unless otherwise required by the Nebraska Department of Revenue, such consumers shall file returns annually if the tax will not exceed nine hundred dollars (\$900.00). If the tax is expected to be between nine hundred dollars (\$900.00) and three thousand dollars (\$3,000.00), the returns shall be filed quarterly. All others shall file monthly.

002.09A Persons who are Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Streamlined Sales Tax Agreement.

002.09B Persons who are registered under the Streamlined Sales Tax Agreement, do not have a legal requirement to register in the state, and are not Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Agreement.

002.10 Returns, properly signed and accompanied by remittance, will be considered timely filed if mailed, postage prepaid, on or before the twenty-fifth day of the month following the close of the reporting period. When the twenty-fifth day falls on a Saturday, Sunday, or an approved holiday, the return will be considered timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A United States Postal Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return.

002.10A The Tax Commissioner will comply with the format for filing methods and payment methods pursuant to the Streamlined Sales Tax Agreement for Model 1, 2, or 3 sellers.

002.11 Remittance must accompany the return and be in the form of a check, draft, money order, or other payment

method as approved by the Tax Commissioner made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps must not be sent as payment. Cash may be used when payment is made in person at an office of the Department of Revenue.

*(Sections 77-2704.30, 77-2704.31, and 77-2706(3), R.R.S. 2003, and sections 77-1702, 77-1784, 77-2701.37, 77-2701.42, 77-2703(2), and 77-2708(1), R.S. Supp., 2008; and Penney Co., Inc. v. Balka, 254 Neb. 521 (1998). February 22, 2009.)*

#### REG-1-003 NON-NEXUS SELLERS

003.01 The responsibility to collect tax does not rest solely on Nebraska-based sellers. Every out-of-state seller, except as set out in this regulation, making retail sales of property or services for delivery in the State of Nebraska or leasing or renting property with delivery to lessees within this state must obtain a permit, collect, and remit Nebraska sales tax.

003.02 The seller is not obligated to collect sales tax when he or she is not engaged in business in this state as defined in Reg-1-004, Permits. Where no obligation to register for collection of the Nebraska tax exists, the seller may make application for a sales tax permit, and in fact is encouraged to make application for such a permit in order that the appropriate use tax might be collected from Nebraska customers. The Nebraska purchaser is required to pay the use tax liability directly to the Department of Revenue when a use tax is due and the retailer does not have a permit in this state to collect, report, and remit collections of use tax.

003.03 The Tax Commissioner may require non-nexus sellers to file the same return as is required from retailers collecting the sales tax or, at the Tax Commissioner's discretion, to file a separate return.

003.03A The Nebraska Department of Revenue encourages retailers in Nebraska who are making sales in other states to become licensed and collect the appropriate tax for the other state.

*(Sections 77-2704.30, 77-2704.31, 77-2705, and 77-2708(1), R.R.S. 2003, and section 77-2703(2), R.S. Supp., 2004. April 12, 2005.)*

#### REG-1-004 PERMITS

004.01 Every person engaging in business as a retailer in Nebraska must obtain a sales tax permit by submitting a Nebraska Tax Application, Form 20, or register through an alternative method as authorized under the Streamlined Sales Tax Agreement.

004.02 Engaging in business in this state means and includes any of the following:

004.02A Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state;

004.02B Having any representatives, agents, salesmen, canvassers, or solicitors operating in this state under the

authority of the retailer or a subsidiary of the retailer for the purposes of selling, delivering, or taking of orders for any property;

004.02C Deriving receipts from the rental or lease of property in this state;

004.02D Soliciting retail sales of 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;

004.02E Soliciting orders from residents of this state for 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;

004.02F 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;

004.02G 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; or

004.02H Doing any of the above as a retailer of services or on behalf of a retailer of services enumerated as taxable in Reg-1-007, Gross Receipts.

004.03 A separate application for each Nebraska retail location is required unless applying through the Streamlined Sales Tax Agreement.

004.04 Out-of-state retailers who are not engaged in business as specified in 004.02, are not required to obtain a permit. However, as a service to their Nebraska customers, those retailers are encouraged to obtain a license which allows them to collect and remit the tax in the same manner as a retailer who is engaged in business in this state. This will preclude the purchasers from having to accrue and remit their consumer's use tax liability directly to the Department of Revenue.

004.05 Upon examination and approval of the application, the Department of Revenue shall issue to the retailer the appropriate sales tax permit for each Nebraska business location. The permit is permanent, not transferrable, and valid only for the retailer in whose name it is issued and for the conduct of business at the place designated. The permit must be conspicuously displayed at the place of business.

004.05A Retailers moving their locations may file a Nebraska change request to change the location address shown on their permits. New permits with the new address will be issued.

004.06 Retailers who temporarily will not be making any sales, may cancel their permits. When sales are resumed, the permits may be reinstated without any charge.

004.07 Upon violation of any of the sales tax statutes or regulations, the Department of Revenue may revoke or suspend the permit or permits of the violator. The procedures for revocation hearings are contained in Practice and Procedure Reg-33-008.

004.07A Following the revocation of a sales tax permit, the Department of Revenue will consider issuance of another permit only if all tax liabilities, including interest and penalties, have been paid in full, and sufficient security has been posted with the Department to ensure future compliance.

004.07A(1) The amount of the security required before the Department will reissue a sales tax permit will be no greater than three times the estimated average amount payable for the seller's reporting period or five times the estimated average amount payable for the reporting period in the case of persons habitually delinquent.

004.08 Anyone whose permit has been previously suspended or revoked shall pay the Department of Revenue, in addition to the required security specified in Reg-004.07A(1), a fee of twenty-five dollars (\$25.00) for the renewal or reissuance of a permit in the event of a first revocation, and fifty dollars (\$50.00) for each successive revocation. A new permit will not be issued to the same person until the Department of Revenue is satisfied that such person will comply with the sales and use tax statutes and regulations.

004.09 Anyone who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor. Upon conviction thereof, such person and each such officer shall be fined an amount not to exceed five hundred dollars (\$500.00) per each day of operation.

*(Sections 77-2701.13 and 77-2713(3), R.R.S. 2003, and sections 77-2703(2), 77-2705, 77-27,131, R.S.Supp., 2008. February 22, 2009)*

#### REG-1-005 RETAILERS AND SELLERS

005.01 Retailer means any seller and wherever either of these terms is used, it is construed to include the other. Retailer includes:

005.01A Any person engaged in the business of selling, leasing, or renting property or services whenever the receipts are subject to sales tax;

005.01B Any person engaged in the business of making sales at auction of tangible personal property for storage, use, or other consumption, or who is collecting the proceeds of an auction (Reg-1-034 Auction and Consignment Sales);

005.01C Any person who leases or rents tangible personal property to another for storage, use, or other consumption, except film rentals when sales tax is charged on the admission, and interchanged railroad

rolling stock (Reg-1-018 Rent or Lease of Tangible Personal Property);

005.01D Any person who is renting or furnishing lodging for periods of less than 30 days, except a facility which is either licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes, or operated by an educational institution established or recognized under Chapter 79 or 85 of the Nebraska Revised Statutes, when rooms are regularly used to house students for a consideration for periods in excess of 30 days (Reg-1-046, Hotels, Lodgings, and Accommodations);

005.01E Any person who is furnishing telephone, mobile telecommunications, telegraph, gas, electricity, sewer, or water service (Reg-1-065, Telecommunications Service, and Reg-1-066, Sewer and Water);

005.01F Any person who is furnishing community or county antenna television service or satellite programming service (Reg-1-081, Community or County Antenna Television Service);

005.01G Any person who is charging admissions, except admissions charged by elementary or secondary schools, public or private, or school districts, student organizations, or parent-teacher associations pursuant to an agreement with proper school authorities, or admissions to fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees that are registered with the Political Accountability and Disclosure Commission or are for candidates for federal office (Reg-1-044, Admissions);

005.01H Any person who is renting or otherwise furnishing tangible personal property under an agreement requiring the periodic cleaning or laundering of such tangible personal property (Reg-1-049, Linen and Clothing Suppliers);

005.01I Any person who is selling or otherwise providing warranties, guarantees, service contracts, or maintenance agreements covering taxable property or services (Reg-1-074, Warranties and Guarantees);

005.01J Any person who is selling or otherwise providing computer software or computer software training, when provided by the retailer that sold the software (Reg-1-088 Computer Software);

005.01K Any contractor who has elected to be treated as a retailer, or any contractor who has failed to make an election (Reg-1-017, Contractors);

005.01L Any person who is selling live plants, other than as a part of the transfer of an improvement to real estate or the real estate (Reg-1-017, Contractors);

005.01M Any person who is the promoter, operator, or organizer of a fair, flea market, craft show, or similar event (Reg-1-033, Transient and Itinerant Sellers.)

005.01M(1) Retailer does not include any person making sales at a fair, flea market, craft show, or

similar event when the licensed promoter, operator, or organizer has arranged to remit the sales tax on behalf of that person for the show.

005.01N Any person providing any of the following:

005.01N(1) Animal specialty services, except for veterinary services and specialty services performed on livestock (Reg-1-102, Animal Specialty Services);

005.01N(2) Building cleaning services (Reg-1-098, Building Cleaning);

005.01N(3) Digital audio works, digital audiovisual works, digital books, and digital codes;

005.01N(4) Installing and applying tangible personal property where the sale of the property is subject to tax (Reg-1-082, Labor Charges);

005.01N(5) Motor vehicle washing, waxing, towing, and painting services (Reg-1-099, Motor Vehicle Services);

005.01N(6) Pest control services (Reg-1-100, Pest Control Services);

005.01N(7) Recreational vehicle park services (Reg-1-103, Recreational Vehicle Park Services);

005.01N(8) Repairing or maintaining tangible personal property, except motor vehicles, where the sale of the property would be subject to tax (Reg-1-082, Labor Charges); and

005.01N(9) Security and detective services (Reg-1-101, Security and Detective Services.)

005.01O Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, or any other property for telephone, telegraph, cable, satellite, or mobile telecommunications services on the customer's or service provider's side of the demarcation point (Reg-1-017, Contractors.)

005.01P Option 2 and Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, or any other property for telephone, telegraph, cable, satellite, or mobile telecommunications services (Reg-1-017, Contractors):

005.01P(1) On the service provider's side of the demarcation point, or

005.01P(2) On the customer's side of the demarcation point when acting as a subcontractor for telephone, telegraph, cable, satellite, or mobile telecommunications service providers.

005.02 A distributor may enter into an agreement with the Department of Revenue to collect tax for representatives working for the distributor. The distributor must collect and remit tax from representatives on the sales price of each item sold at the tax rate imposed at the delivery location of each sale. When the distributor has entered into this agreement, the individual representatives are not required to hold their own sales tax permits.

005.03 A person does not have to be engaged solely in a retail business in order to be liable for collecting, reporting, and remitting the sales and use tax. Manufacturers, producers, or wholesalers are liable for collection of the tax to the extent that they make sales at retail or have gross receipts which are taxable. Sales are sales for resale only if a resale certificate is received from the purchaser. All other sales are presumed to be taxable.

005.04 Model 1 seller means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own retail purchases.

005.05 Model 2 seller means a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax.

005.06 Model 3 seller means a seller that has sales in at least five member states of the Streamlined Sales Tax Agreement, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller.

*(Sections 77-2701.16, 77-2701.21, 77-2701.22, 77-2701.23, 77-2701.31, 77-2701.32, and 77-2705, R.R.S 2009. June 6, 2011.)*

#### REG-1-006 RETAIL SALE OR SALE AT RETAIL

006.01 Retail sale or sale at retail means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

006.01A Gross receipts from sales at retail in this state are taxable except as otherwise provided.

006.01B Retail sale includes the sale or exchange of property or services for property, for money, or for services. Retail sale includes every transaction constituting a sale, whether conditional, installment, credit, or otherwise. In general, retail sale or sale at retail includes all sales of tangible personal property, or of other items the gross receipts of which are taxable. (Reg-1-007, Gross Receipts).

006.02 The test of a sale at retail is whether or not the sale is to a purchaser for use or consumption and not for resale. Services are generally consumed by the purchaser and are only rarely purchased for resale. (See Reg-1-013, Sale for Resale, or Reg-1-023, Ingredient or Component Part).

006.03 The question of who makes the sale is immaterial. The controlling consideration is whether it is a sale to a final consumer or user and not for resale.

006.04 The location of the sale is generally where the purchaser or lessee takes delivery of the property or service.

006.04A The sale occurs in this state even if the buyer intends to take the property or service to another state.

006.04B Freight terms such as FOB shipping point or

FOB destination, or declarations of the parties made after the completion of the transaction are not sufficient to show where the sale occurs.

006.05 If the location where the purchaser takes delivery of the property or service cannot be determined, the sale is taxed at the address for the purchaser according to the retailer's records.

006.06 If the retailer's records do not contain an address for the purchaser, an address obtained during the transaction, including from a payment document, may be used.

006.07 If the location of the sale cannot be determined under any of the above, the sale is taxed at the location from which the property was shipped, from which the digital goods or computer software was first available for transmission by the seller, or from which the service was provided.

006.08 The sale of utilities occurs where the meter is located or the connection is furnished.

006.09 A sale of a maintenance agreement with the covered property occurs where the property is delivered, or where the motor vehicle, trailer, semitrailer, or motorboat is registered.

006.09A A sale of a maintenance agreement separate from the covered property occurs at the location where the property being covered is normally used.

006.10 A sale occurs in another state when the seller is required by the terms of the sale to deliver the property or service to a point outside this state.

006.10A The Department of Revenue will assume that delivery is required when the item is so large or dangerous that it requires special handling, the seller normally provides the special handling, and the seller actually delivers the item in another state.

006.10B Acceptable proof of transportation outside this state is a waybill or bill of lading, an insurance or other receipt issued by the United States Postal Service, or a trip sheet signed by both the seller's delivery agent and the person who received the goods.

006.10C If the property or service is returned to Nebraska after delivery by the seller, it is taxable in Nebraska. The buyer must pay the use tax directly to the Department of Revenue.

006.11 The provisions of this regulation do not apply to motor vehicles, trailers, and semitrailers which are sold, rented, or leased for periods of one year or more; to motorboats which are sold, rented, or leased for periods of one year or more, or to sales of aircraft that do not qualify as transportation equipment as defined in Reg-1-019, Rental or Lease of Vehicles. See also Reg-1-020, Motor Vehicles, Reg-1-067, Aircraft and Related Services, and Reg-1-096, Motorboats, for the rules on these rentals and sales.

*(Section 77-2701.31, R.R.S. 2003, and sections 77-2701.34, 77-2703(1)(g), and 77-2703.01, R.S.Supp., 2008. February 22, 2009)*

## REG-1-007 GROSS RECEIPTS DEFINED

007.01 Gross receipts means the total amount of the sale or lease or rental price of retail sales by retailers, valued in money, whether received in money or otherwise. Gross receipts includes the value of any property, services, commodities, or precious metals, including gold or silver coins, received. Gross receipts include:

007.01A The gross revenue received from the installation of, or from furnishing:

007.01A(1) Mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska,

007.01A(2) , Ancillary services, except for conference bridging services, and

007.01A(3) Intrastate telephone communications services, except for value-added, nonvoice data service. (Reg-1-065, Telecommunications Services);

007.01B The gross revenue received from installing or furnishing intrastate telegraph service, (Reg-1-065, Telecommunications Services);

007.01C The gross revenue received from furnishing gas, electricity, sewer, and water service, (Reg-1-066, Sewer and Water);

007.01D The gross revenue received from installing or furnishing satellite services or community or county antenna television service, (Reg-1-081, Community or County Antenna Television Service);

007.01D(1) If any or all of the charge for installation is free to the customer and is paid by the satellite or community or county antenna television service provider to the installer, the tax must be paid and remitted by the service provider.

007.01E The gross revenue received from admissions, (Reg-1-044, Admissions);

007.01F The gross revenue received from the sale, lease, rental, installation, application, repair, or maintenance of property, including sales through vending machines to users or consumers, and sales for amounts so small that no tax is collected;

007.01G The gross revenue received from providing lodging for any period less than 30 days, (Reg-1-046, Hotels, Lodgings, and Accommodations);

007.01H The gross revenue received from the sale, lease, license, franchise or rental of intellectual or entertainment properties, including computer software, videotapes, and movie film, (Reg-1-045, Motion Picture Film and Videotape and Reg-1-088, Computer Software);

007.01I The gross revenue from charges for delivery or freight or for shipping and handling received by the retailer in conjunction with a taxable sale, (Reg-1-026,

Finance, Carrying, Service, and Interest Charges and Reg-1-079, Delivery Charges);

007.01J The gross revenue received from the sale of maintenance agreements, service contracts, guarantees, or warranties, when the property covered or the services to be provided are taxable (Reg-1-074 Warranties and Guarantees);

007.01K The gross revenue received from computer software training provided by the retailer that sold the software, (Reg-1-088, Computer Software);

007.01L The gross revenue received from providing building cleaning services, (Reg-1-098, Building Cleaning and Maintenance);

007.01M The gross revenue received from providing pest control services, (Reg-1-100, Pest Control Services);

007.01N The gross revenue received from providing security or detective services, (Reg-1-101, Security and Detective Services);

007.01O The gross revenue received from providing recreational vehicle park services, (Reg-1-103, Recreational Vehicle Park Services);

007.01P The gross revenue received from providing motor vehicle washing, waxing, towing, and painting, (Reg-1-099, Motor Vehicle Services);

007.01Q The gross revenue received from bundled transactions when one or more of the products included in the bundle are taxable, (Reg- 1-108, Bundled Transactions);

007.01R The gross revenue received from providing animal specialty services, (Reg-1-102, Animal Specialty Services);

007.01S The gross revenue received from membership fees paid to access the retailer's premises or to receive discounts where the sales made on the premises or to which the discounts apply are subject to tax; and

007.01T The total amount of the sale without deduction for:

007.01T(1) The cost of materials used, labor or service costs, interest paid, losses, or any other expense;

007.01T(2) The cost of transportation of property;

007.01T(3) The amount charged for warranties, guaranties, service contracts, or maintenance agreements;

007.01T(4) Cash rebates or refunds paid by the manufacturer to either the retailer or the purchaser. For rebates on motor vehicles, see Reg-1-020, Motor Vehicles ;

007.01T(5) The amount paid for any occupation taxes, import duties, manufacturer's excise taxes, or property taxes levied against the property;

007.01T(6) The cost of any license, franchise, or lease of computer software or entertainment properties such as videotapes or movie films; and;

007.01T(7) Any charge required to be paid in connection with the purchase, lease, or rental of property subject to tax.

007.02 Gross receipts does not include the following:

007.02A Discounts allowed and taken on sales, (Reg-1-024, Cash Discounts);

007.02B If property is returned by the purchaser, that portion of the sales price refunded to the customer either in cash or credit, (Reg-1-025, Returned Articles);

007.02C Charges for financing, carrying charges, service charges, and interest charges for credit sales, (Reg-1-026, Finance, Carrying, Service, and Interest Charges);

007.02D The value of property accepted as partial consideration on the retail sale of other similar property, (Reg-1-029, Trade-ins or Exchanges);

007.02E The amount collected for the federal luxury excise taxes on consumers; and

007.02F The amount charged for the federal retail tax on heavy trucks, trailers, and tractors.

*(Sections 77-2701.16, 77-2701.27, 77-2701.48, 77-2701.49, 77-2701.50, 77-2701.51, 77-2701.52, 77-2701.53, and 77-2703, R.R.S. 2009. November 6, 2010.)*

#### REG-1-008 RECORDS

008.01 Every retailer is required to keep records in order to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in a similar activity, together with all documents supporting entries in the books of accounts. Schedules and working papers used in the preparation of the tax returns and all resale certificates and exemption certificates must be retained.

008.01A Model 1, 2, and 3 sellers may maintain records in accordance with the Streamlined Sales Tax Agreement.

008.02 The records created at the time of sale may take the form of sales slips, sales invoices, guest checks, tally sheets, itemized lists, or other memoranda. A cash register tape may be acceptable if it preserves sufficient information. Items may be described by a symbol if the symbol is representative of a class of merchandise or services which are always taxable or exempt. If a vendor sells only exempt merchandise in a "Department P", a description of such merchandise as "Department P" is sufficient; provided, the vendor uses such symbol consistently to describe the same merchandise. However, if a vendor sells several types of merchandise, both taxable and exempt, in a single department, his or her records must individually identify the types of merchandise which are exempt.

008.03 A retailer who maintains records where the amount of tax collected is commingled with the receipts from the sale may determine taxable receipts in the following manner:

008.03A The receipts from any sales which are specifically exempt or otherwise excluded from tax are subtracted from total receipts. The remainder represents the receipts from the taxable sales plus the tax collected.

008.03B The remainder is divided by one plus the rate of tax in effect.

008.03C The purpose of this portion of the regulation is to permit the widest possible latitude in the internal record systems of retailers and to avoid requiring certain retailers to compute and remit the tax on a base which already includes the tax.

008.04 Every person storing, using, or otherwise consuming in this state property or services must keep receipts, invoices, and other pertinent records as is necessary to establish the amount of tax for which he or she is liable. Any person having in his or her possession or custody information relating to sales of property or services, the storage, use, or other consumption of which is subject to tax, may be required at any time to submit the names and addresses of the purchasers, the sales price of the property, and the date of the sale.

008.05 The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person to ascertain or verify the accuracy of any return filed, or, if no return is filed by the person, to ascertain and determine the amount required to be paid.

008.06 Records must be retained for a period not less than three years after the return is filed, or while any refund claim or redetermination of a deficiency is pending, unless the Department of Revenue, in writing, authorizes their destruction at an earlier date. However, the Department may issue a deficiency determination within five years after any amount of tax is determined due and payable when a properly completed return has not been filed.

008.07 When records are missing, all gross receipts are presumed to be taxable, or the Department may estimate a person's liability for tax based on what records are available. The person required to keep the records has the burden to show that the gross receipts are not taxable or that the estimate is incorrect.

*(Sections 77-2705(7), 77-2709(5)(c), and 77-2711(3), (4), and (6), R.R.S. 2003. April 12, 2005.)*

#### REG-1-009 ACCOUNTING METHODS

009.01 Gross sales must be reported in accordance with the method of accounting regularly employed in keeping the books of the particular taxpayer. Retailers may use either the cash basis, accrual basis, or any other generally recognized accounting basis which correctly reflects the operation of the business. When a basis of accounting has been adopted for

reporting sales tax, the retailer may not change that basis of accounting without prior permission from the Department of Revenue.

009.02 Retailers maintaining their regular books and records on the cash basis shall make returns on the basis of cash received during the period, provided this basis clearly reflects the operation of the business.

009.03 Retailers maintaining their regular books and records on the accrual basis, or any other basis of accounting recognized under generally accepted accounting principles, shall make returns on that basis and shall report all sales recorded during the period on the corresponding Nebraska and Local Sales and Use Tax Return, Form 10.

009.04 As is explained in Reg-1-016, Changes in Rate of Tax, the basis on which returns are required to be made shall also serve as the basis for determining the rate at which the tax is to be collected by the retailer from the purchaser.

009.05 Retailers maintaining their books and records on the accrual basis, may elect to defer remittance of sales tax not yet collected on credit, conditional, and installment sales. If such election is made, it shall be pursuant to the following conditions:

009.05A The election must be submitted in writing to the Nebraska Department of Revenue prior to the retailer's change in reporting,

009.05B Such election shall become effective the first day of the month following the month the notice of election is received by the Department; provided, such notice is postmarked no later than the 15th day of the month. Elections postmarked after the 15th day of the month shall become effective the first day of the next succeeding month (i.e., election notice postmarked September 10, effective date of election, October 1; election notice postmarked September 17, effective date of election, November 1.)

009.05C The election will be acknowledged by the Department; such acknowledgment is to be maintained with the retailer's records.

009.05D This option is available only to retailers who finance their own sales or discount them to a qualified subsidiary corporation.

009.05D(1) Retailers who accept bank or similar credit cards or who discount their credit sales to a third party, may not defer the sales tax remittance on these sales. However, retailers who both carry their own credit and discount some credit sales to a third party, may defer the sales tax remittance on that portion of credit sales carried by the retailer.

009.05D(2) Retailers who discount their credit sales to a subsidiary corporation may elect to defer the sales tax until the subsidiary receives payment on the account. If the subsidiary corporation does not obtain a Nebraska sales tax permit, the retailer must obtain a surety bond in favor of the State of

Nebraska in an amount not less than two (2) times the amount of sales tax payable on outstanding Nebraska accounts receivable held by the subsidiary as of the end of the prior calendar year. The Nebraska Department of Revenue will provide the necessary information and bond conditions upon written request. Each retailer maintaining a surety bond, shall review the amount of each bond at the close of each calendar year, adjusting same to reflect the minimum bond requirement.

009.05D(3) Failure of the subsidiary to maintain a sales tax permit, or of the retailer to maintain a bond in the required amount shall result in all sales tax not previously remitted on recorded sales becoming due and payable. The tax must be paid by the next required sales tax return filing date.

009.05E Once in effect, this election shall remain in force for a period of not less than one (1) year from the date the election becomes effective.

009.05F Retailers who wish to discontinue remitting under this option and remit sales tax in accordance with paragraph 009.03, are required to notify the Department. Payment of all deferred sales taxes will be remitted on their next required sales tax filing date corresponding to the tax period within which the notice is received by the Department. Should a retailer discontinue business while under this option, all deferred sales taxes must be remitted on its final sales tax return.

009.05G For retailers deferring sales tax remittances, the amount of tax due on a sale is determined by the sales tax rate in effect at the time the sale is recorded.

009.05H Retailers deferring sales tax remittances under this option do not qualify for the bad debt deduction as sales tax is remitted after the receipt of payment. (Reg-1-028, Bad Debts)

*(Section 77-2701.10, 77-2703(1), and 77-2708(1)(b)(iv), R.S.Supp., 2008. February 22, 2009.)*

#### REG-1-010 THE SALES AND USE TAX RETURN

010.01 A retailer must file a return for each reporting period or portion of a reporting period. The return must be filed for every tax reporting period even if there have been no sales.

010.02 The filing frequency is the reporting period assigned by the Nebraska Department of Revenue (Department). Except as provided below, annual returns are required if the retailer's yearly tax liability is less than \$900, quarterly returns are required if the yearly tax liability is \$900 or more and less than \$3,000, and monthly returns are required if the yearly tax liability is \$3,000 or more.

010.02A Sellers who are Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Streamlined Sales Tax Agreement (SSUTA).

010.02B Sellers who are registered under the SSUTA, but do not have a legal requirement to register in the

state, and who are not Model 1, 2, or 3 sellers, may follow the filing frequency guidelines outlined in the SSUTA.

010.02C Retailers who have not obtained a permit or been assigned a filing frequency have a monthly filing frequency.

010.02D The Tax Commissioner has discretion to assign an annual return for seasonal retailers, even if the yearly tax liability exceeds the amounts listed in Reg-1-010.02.

#### 010.03 Retailers must report and account for gross receipts.

010.03A The return includes both a sales tax return and a use tax return. Unless there are amounts, words, statements, numbers, zeros, or figures shown on the appropriate lines of a paper Nebraska and Local Sales and Use Tax Return, Form 10, mailing the form to the Department does not constitute the filing of either or both returns.

010.03A(1) If the retailer files a return, the statute of limitations for issuing a deficiency determination is three years after the last day of the month following the reporting period, or three years after the return was filed, whichever is later. If the retailer fails to file a return, the statute of limitations for issuing a deficiency determination is five years after the last day of the month following the reporting period.

010.03A(2) If the retailer does not enter amounts, words, statements, numbers, zeros, or figures on a paper Nebraska and Local Sales and Use Tax Return, Form 10, the statute of limitations for issuing a deficiency determination for that reporting period is extended beyond three years to five years. This extension of the statute of limitations does not apply to returns that are electronically filed.

010.03A(3) Statements by the retailer that no sales were made or no tax is due, or entries made by the Department to the account of the retailer indicating that no tax is due, do not constitute the filing of either or both returns and does not limit the statute of limitations to three years.

010.03B The return must be filed within 20 days following the end of the reporting period. The retailer is entitled to deduct and withhold a collection fee from the amount of sales tax which otherwise would be due. No fee may be deducted for reporting use tax or tax remitted pursuant to a direct payment permit.

010.03C The Tax Commissioner will accept the format for filing and payment methods allowed pursuant to the SSUTA.

010.03D The Tax Commissioner may require some or all taxpayers to file returns and remit payments electronically.

010.04 Unless otherwise provided in the SSUTA, the Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent.

010.05 Returns that are not filed electronically must be properly signed.

010.06 The return and the remittance are considered timely filed if received, delivered, or mailed, postage prepaid, on or before the 20th day of the month following the close of the reporting period. When the last day falls on a Saturday, Sunday, or an approved holiday, the return is considered timely filed if received, delivered, or mailed, postage prepaid, on the next day which is not a Saturday, Sunday, or an approved holiday.

010.06A A United States Postal Service postmark is conclusive evidence of the date of mailing for the purpose of timely filing a return.

010.06B A private postage meter date or a date stamped by a private delivery service will be considered the date of mailing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

010.06C Failure to file the return or to remit the tax due by the due date will subject the taxpayer to a penalty equal to 10% of the unpaid tax or \$25.00, whichever is greater. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

010.07 Remittance must be in the form of a electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax Commissioner, made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps cannot be sent as payment. Cash may be used when payment is made in person at an office of the Department.

010.08 If any understatement on a return is a result of fraud or an intent to evade the sales or use tax, a penalty of 25% of the amount of the understatement or \$50, whichever is greater, may be assessed.

#### 010.09 Criminal Penalties.

010.09A Any person required to collect, account for, or pay over any sales or use taxes who willfully fails to collect, truthfully account for, or pay over these taxes is guilty of a Class IV felony.

010.09B Any person who willfully attempts in any manner to evade any sales or use taxes is guilty of a Class IV felony.

010.09C Any person who willfully assists in or advises in preparing or filing a false or fraudulent return, is

guilty of a Class IV felony, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to file the return.

*(Neb. Rev. Stat. §§ 77-1784, 77-2705.01, 77-2708(1), 77-2709, 77-2712.05, 77-2713, and 77-27,125, and McDonald's Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993). July 3, 2013.)*

#### REG-1-011 BRACKET SYSTEM FOR ADDING AND COLLECTING SALES TAX

011.01 A bracket system correlating sales price to the appropriate sales or use tax charge may be used by the seller. Copies of the bracket schedule established by the Department of Revenue are available upon request.

011.02 The sales or use tax liability may be computed by multiplying the sales price by the applicable tax rate in effect. All persons using machine or computer billing are authorized by the Department of Revenue to use a straight percentage basis of calculating the tax on such billings. If the calculation of the tax results in a fraction of a cent, the tax liability should be carried to the third decimal place and rounded to the nearest whole cent. If the third decimal place is four or less, round down and if the third decimal place is greater than four, round up.

011.03 Although retail sales may be made on which no tax is collected because of the size of the sale, e.g., a 10-cent sale, the receipts from such sales are included in taxable sales on which the retailer must compute and remit the tax.

011.04 When more than one item is purchased, the tax may be computed on the total amount of the combined taxable purchases or on the individual items. However, when the tax is allowed to be included in the amount of the purchase, the tax is computed on each item separately, rather than on the total of all purchases.

*(Section 77-3,117, R.R.S. 2003, and section 77-2703(1)(d), R.S.Supp., 2004. April 12, 2005.)*

#### REG-1-012 EXEMPTIONS

012.01 Certain sales are exempt. Exempt sales can be divided into four groups. The four groups are sales that are exempt because of:

012.01A The seller (entity-based exemption);

012.01B The item sold (product-based exemption);

012.01C The buyer (entity-based exemption); or

012.01D The buyer's intended use of the item (use-based exemption).

012.02 The following are the sales that are exempt. This listing does not contain an explanation of the exemption. Refer to the regulation referenced at the end of the exemption for definitions, explanations, and limitations.

012.02A Entity-based transactions which are exempt because of the seller include:

012.02A(1) Meals served to students by schools,

student organizations, or parent-teacher associations during the regular school day or at school functions not open to the general public, (Reg-1-092, Educational Institutions);

012.02A(2) Concession sales of food by elementary and secondary schools at events including those open to the public, (Reg-1-092, Educational Institutions);

012.02A(3) Admissions charged by schools, student organizations, or parent-teacher associations during the regular school day or at school functions including those open to the public, (Reg-1-092, Educational Institutions);

012.02A(4) Sales by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by elementary or secondary schools if the proceeds are used to support school activities or the school itself, (Reg-1-092, Educational Institutions);

012.02A(5) Meals sold by churches at church functions, (Reg-1-091, Religious Organizations);

012.02A(6) Meals served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings, (Reg-1-083, Food Service);

012.02A(7) Rooms in a licensed health care facility, (Reg-1-046, Hotels, Lodgings, and Accommodations);

012.02A(8) Occasional sales, (Reg-1-022, Occasional Sales); and

012.02A(9) Admissions charged or meals sold at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees, (Reg-1-090, Nonprofit Organizations).

012.02B Product-based transactions which are exempt because of the item sold include:

012.02B(1) Aircraft fuels;

012.02B(2) Motor vehicle fuels as defined in Chapter 66, article 4, of the Nebraska Revised Statutes;

012.02B(3) Newspapers issued at least fifty-two times a year, (Reg-1-054, Newspapers);

012.02B(4) Prescription medicines, (Reg-1-050, Medicines and Medical Equipment);

012.02B(5) Insulin, (Reg-1-050, Medicines and Medical Equipment);

012.02B(6) Animals ordinarily used as food for human consumption, (Reg-1-062, Animal Life);

012.02B(7) Lodging rented for thirty (30) days or longer, (Reg-1-046, Hotels, Lodgings, and Accommodations);

012.02B(8) Rental of rooms in dormitories operated by an educational institution, (Reg-1-046, Hotels, Lodgings, and Accommodations);

012.02B(9) Laundry and dry cleaning services through the use of coin-operated machines, (Reg-1-048, Laundries and Dry Cleaners);

012.02B(10) A motor vehicle purchased with funds contributed by the Veterans Administration of the United States, (Reg-1-020, Motor Vehicles);

012.02B(11) A motor vehicle purchased with funds contributed by Nebraska Health and Human Services Finance and Support, (Reg-1-020, Motor Vehicles);

012.02B(12) Railroad rolling stock and replacement parts, (Reg-1-068, Railroads);

012.02B(13) Food, but not meals, for human consumption, (Reg-1-087, Food for Human Consumption); and

012.02B(14) Nebraska Lottery tickets.

012.02C Entity-based transactions which are exempt because of the buyer include:

012.02C(1) The United States government and its agencies, (Reg-1-072, United States Government and Federal Corporations);

012.02C(2) Organizations created exclusively for religious purposes, (Reg-1-091, Religious Organizations);

012.02C(3) Nonprofit organizations providing services exclusively to the blind, (Reg-1-090, Nonprofit Organizations);

012.02C(4) Public or private Nebraska educational institutions, (Reg-1-092, Educational Institutions);

012.02C(5) Nonprofit Nebraska licensed hospitals, (Reg-1-090, Nonprofit Organizations);

012.02C(6) Nonprofit Nebraska licensed skilled nursing facilities, (Reg-1-090, Nonprofit Organizations);

012.02C(7) Nonprofit Nebraska licensed intermediate care facilities, nonprofit Nebraska licensed intermediate care facilities for the mentally retarded, and nonprofit Nebraska certified organizations providing community-based services for the developmentally disabled. (Reg-1-090, Nonprofit Organizations);

012.02C(8) Nonprofit Nebraska licensed home health agencies, hospices or hospice services, or respite care services, (Reg-1-090, Nonprofit Organizations);

012.02C(9) Nonprofit Nebraska licensed nursing facilities, (Reg-1-090, Nonprofit Organizations);

012.02C(10) Nonprofit Nebraska licensed health

clinics, when owned or controlled by two or more nonprofit hospitals or which receive federal funds through the U.S. Public Health Service, (Reg-1-090, Nonprofit Organizations);

012.02C(11) Nebraska child caring agencies licensed for the full-time custody and care of children, (Reg-1-090, Nonprofit Organizations);

012.02C(12) Nebraska licensed child placing agencies, (Reg-1-090, Nonprofit Organizations);

012.02C(13) The State of Nebraska, (Reg-1-093, Governmental Units);

012.02C(14) The State Fair Board, (Reg-1-090, Nonprofit Organizations);

012.02C(15) Any Nebraska county, township, city, or village, (Reg-1-093, Governmental Units);

012.02C(16) Any Nebraska elected county fair board, (Reg-1-093, Governmental Units);

012.02C(17) Any Nebraska county or municipal library, (Reg-1-093, Governmental Units);

012.02C(18) Any Nebraska rural or suburban fire protection district, (Reg-1-093, Governmental Units);

012.02C(19) Any Nebraska irrigation district, (Reg-1-093, Governmental Units);

012.02C(20) Any Nebraska reclamation district, (Reg-1-093, Governmental Units);

012.02C(21) The irrigation division of any Nebraska public power and irrigation district, (Reg-1-093, Governmental Units);

012.02C(22) A Native American Indian living on the Indian reservation or a Native American Indian Tribal Council when the sale is within the boundaries of an Indian Reservation;

012.02C(23) Certain foreign diplomats, (Reg-1-072, United States Government and Federal Corporations);

012.02C(24) The American National Red Cross, (Reg-1-072, United States Government and Federal Corporations);

012.02C(25) Any Nebraska natural resource district, (Reg-1-093, Governmental Units);

012.02C(26) Any Nebraska airport authority, (Reg-1-093, Governmental Units);

012.02C(27) Any Nebraska drainage district, (Reg-1-093, Governmental Units);

012.02C(28) Any Nebraska local or regional housing agency, (Reg-1-093, Governmental Units);

012.02C(29) Another state or unit of government in the other state, when the other state grants a reciprocal exemption to Nebraska and Nebraska political subdivisions and the item purchased was

industrial equipment, (Reg-1-093, Governmental Units);

012.02C(30) The Nebraska Investment Finance Authority; and

012.02C(31) The Small Business Development Authority.

012.02D Use-based transactions are exempt because of the purchaser's intended use of the property. The consumer's use tax is due on these items if they are used in a manner other than originally intended. Included in this group are sales of:

012.02D(1) Property purchased to be resold prior to the use of such property, (Reg-1-013, Sale for Resale-Resale Certificate);

012.02D(2) Property which will be incorporated as an ingredient or component part of an item to be sold, (Reg-1-023, Component Parts-Manufacturing, Processing, and Fabrication);

012.02D(3) Fabrication labor on property that will be resold or that is an ingredient or component part of an item to be sold, (Reg-1-023, Component Parts-Manufacturing, Processing, and Fabrication);

012.02D(4) Property delivered outside Nebraska, (Reg-1-006, Retail Sale or Sale at Retail);

012.02D(5) Fabrication labor on materials delivered outside Nebraska by the retailer, (Reg-1-006, Retail Sale or Sale at Retail);

012.02D(6) Feed or water for the care of or consumption by animals ordinarily used as food for human consumption or for human apparel, (Reg-1-063, Feed, Water, Agricultural Chemicals, and Veterinary Medicines for Animal Life);

012.02D(7) Seeds and annual plants for agricultural purposes, (Reg-1-060, Seeds and Plants);

012.02D(8) Diesel fuel as defined in Chapter 66, article 4 and compressed fuel as defined in the Compressed Fuel Tax Act, of the Nebraska Revised Statutes for use in vehicles, (Reg-1-089, Energy Source Utility Exemption);

012.02D(9) Agricultural chemicals to be applied to land or crops, and oxygen for use in aquaculture, (Reg-1-061, Agricultural Chemicals);

012.02D(10) Nonreturnable containers when sold empty for resale with the contents, (Reg-1-043, Containers);

012.02D(11) Returnable containers when sold with the contents, or when returned for refilling, (Reg-1-043, Containers);

012.02D(12) All containers when the contents are exempt, (Reg-1-043, Containers);

012.02D(13) Fuel, including electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, butane, nuclear fuel, oxygen, and coke when

more than 50% is for use in irrigation or farming, (Reg-1-089, Energy Source Utility Exemption);

012.02D(14) Fuel, including electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, butane, nuclear fuel, oxygen, and coke when more than 50% is for use in processing, manufacturing, or refining of products, in the generation of electricity, or by a hospital, (Reg-1-089, Energy Source Utility Exemption);

012.02D(15) Water purchased for irrigation of agricultural lands, (Reg-1-066, Sewer and Water);

012.02D(16) Water for manufacturing purposes, (Reg-1-066, Sewer and Water);

012.02D(17) Motor vehicles, watercraft, or aircraft used as common or contract carriers and replacement parts for such vehicles, (Reg-1-069, Common and Contract Carrier Vehicles);

012.02D(18) Semen or insemination services for ranching, farming, commercial, or industrial uses;

012.02D(19) Items for use in a municipally-owned public transportation system for passengers;

012.02D(20) Items for use with a racetrack by a licensee of the State Racing Commission;

012.02D(21) An airplane, or repairs to an airplane, that will not be located in Nebraska by a nonresident, (Reg-1-067, Aircraft and Related Services);

012.02D(22) Oxygen prescribed for human use, (Reg-1-050, Medicines and Medical Equipment);

012.02D(23) Prosthetic devices when prescribed for human use, (Reg-1-050, Medicines and Medical Equipment);

012.02D(24) Durable medical equipment and medical supplies when prescribed for human use, (Reg-1-050, Medicines and Medical Equipment);

012.02D(25) Mobility enhancing equipment when prescribed for human use, (Reg-1-050, Medicines and Medical Equipment);

012.02D(26) Newspaper advertising supplements delivered directly to and distributed with any newspaper, (Reg-1-054, Newspapers);

012.02D(27) Personal property containing copyrighted material for rebroadcast by a radio or television station to the general public if the purchaser is operating under a certificate from the Federal Communications Commission, (Reg-1-045, Motion Picture Film, Videotape, and Programming);

012.02D(28) Molds, dies, and patterns specifically designed and fabricated to the special order of a customer and used to manufacture a single product that is injection molded from plastic or stamped from metal, and molds and dies and materials

necessary to create such molds and dies for use in manufacturing, (Reg-1-095, Molds, Dies, and Patterns);

012.02D(29) Animal specialty services provided to livestock, (Reg-1-102, Animal Specialty Services);

012.02D(30) Materials for use in the manufacture, installation, construction, repair, or replacement of qualified community-based energy development (C-BED) projects;

012.02D(31) Repair labor on licensable motor vehicles and other items not subject to tax;

012.02D(32) Agricultural machinery and equipment for use in commercial agriculture, (Reg-1-094, Agricultural Machinery and Equipment Refund) ;

012.02D(33) Manufacturing machinery and equipment purchased by a manufacturer for use in manufacturing; and

012.02D(34) Fine art purchased by a museum as defined in section 51-702(6).

012.03 Consumer's use tax does not apply to the following:

012.03A Transactions upon which the Nebraska sales tax has been paid;

012.03B Storage, use, or consumption of items exempt from sales tax;

012.03C Transactions where the taxpayer has properly paid a tax in another state at a rate equal to or greater than the rate in Nebraska, (Reg-1-071, Credit for Tax Paid to Another State);

012.03D Items that were purchased and used in another state before being brought into Nebraska; and

012.03E Removal from inventory of items purchased from a seller not doing business in this state by a contractor for a project in another state, (Reg-1-017, Contractors).

012.04 The seller must keep exempt sale certificates, resale certificates, energy source exemption certificates, or other adequate proof to support exemption on sales described in Reg-1-012.02C and Reg-1-012.02D. The seller must retain the exempt sale certificate or resale certificate to support deductions from gross receipts on the tax return.

*(Sections 77-2704.39, 77-2704.40, 77-2704.41, and 77-2706, R.R.S. 2003, and sections 77-2704.15, 77-2701.47, 77-2703(1)(f), 77-2704.12, 77-2704.22, 77-2704.46, 77-2704.56, 77-2704.57, and 77-2705(7), R.S.Supp., 2008. February 22, 2009.)*

#### REG-1-013 SALE FOR RESALE — RESALE CERTIFICATE

013.01 A sale for resale is a sale of property (services) to any purchaser for the purpose of resale in the normal course of the purchaser's business. The property may be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property.

(Reg-1-023, Component Parts--Manufacturing, Processing, and Fabrication) A sale for resale includes a sale of property to a purchaser for the sole purpose of leasing or renting the property to others, if the lease or rental payments are at a fair market value.

013.01A Fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the necessary facts.

013.01B A sale for resale does not include the sale of property to a purchaser whose subsequent lease or rental of that property is incidental to the lease or rental of real estate.

013.02 The burden of proving that a sale of property is not a sale at retail is on the retailer (seller) unless the retailer accepts a properly completed resale certificate or obtains the relevant data elements showing that the property is purchased for the purpose of reselling, leasing, or renting in the regular course of the purchaser's business or is to be used as an ingredient or component part of other property to be sold, leased, or rented. The resale certificate is a part of the retailer's records and must be retained in the same manner as other sales tax records.

013.03 A properly completed resale certificate received from the purchaser is proof for the retailer that the sale was for resale.

013.03A To be properly completed, a resale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 013.03B(1) through 013.03B(4). A resale certificate received within 120 days after a request for substantiation made by the Department of Revenue (Department) must be both fully completed and accepted in good faith to be properly completed.

013.03B To be fully completed, the resale certificate must include all of the following:

013.03B(1) Identification of both the purchaser and the retailer including the type of business engaged in by the purchaser, and the reason for the exemption;

013.03B(2) The sales tax permit number of the purchaser. If the purchaser is licensed as a retailer in Nebraska or another state which requires a permit, the resale certificate must include the sales tax permit number. If the purchaser has no sales tax permit number, the resale certificate must state the reason the purchaser has no sales tax permit number;

013.03B(3) If a paper resale certificate is used, an authorized signature. In other cases, another form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

013.03B(4) The date of issuance.

013.04 If a purchaser who gives a resale certificate makes

any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, this use removes it from the “sale for resale” exemption category and the use is taxable to the purchaser at the time the property is first used for a purpose other than resale. Except for a purchaser of aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of the property is the measure of the tax base. (See Reg-1-035, Consumption of Untaxed Property)

013.05 The retailer or certified service provider (CSP) holding a properly completed resale certificate is relieved from liability for tax, penalty, and interest. However, retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

013.06 A retailer or CSP who has a recurring business relationship with the purchaser is not required to obtain a separate resale certificate for each sale, but may accept a “blanket” resale certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

013.07 Sales where the retailer is required to make delivery outside of Nebraska need not be supported by resale certificates if the sales are supported by bills of lading, certificates of out-of-state delivery, or other documentation. However, where delivery to the out-of-state purchaser, or an agent of the purchaser, occurs in this state, sales tax must be collected unless the sale is otherwise exempt, in which case the retailer may accept a properly completed resale or exempt sale certificate.

013.08 If a resale certificate or satisfactory evidence of the data elements in support of a claim that a sale is exempt cannot be produced for the Department within the time frames noted below, the retailer making the sale is responsible for the tax on the transaction.

013.08A Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is received or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days after the date of the sale.

013.08B Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is accepted in good faith, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, within 120 days after a request for substantiation made by the Department.

013.08C Retailers or CSPs may only accept a fully completed resale certificate under subsection 013.08B of this section with a good faith belief that the purchase is a valid sale for resale to be relieved from liability. If the resale certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

013.09 Any purchaser, or agent of the purchaser, who issues a resale certificate to the retailer for any purchase taxable under the Nebraska Revenue Act, which is purchased for a use other than resale, lease, or rental in the regular course of the purchaser’s business, is subject to a penalty of \$100 or ten times the tax, whichever is larger, for each instance of presentation and misuse. With regard to a blanket resale certificate, the penalty applies to each purchase made during the period the blanket certificate is in effect.

013.10 Any purchaser, or agent of the purchaser, who fraudulently signs a resale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in section 013.09, be found guilty of a Class IV misdemeanor.

013.11 The Department will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute for this Form 13, the Multistate Tax Commission Uniform Sales and Use Tax Certificate, or a certificate of exemption authorized by the SSUTA.

013.12 Retailers must maintain records of resale transactions. The Department may make and retain copies of any resale certificates.

*(Sections 77-2701.34, 77-2703(1)(f), 77-2706(1), (2), (3), and (4), 77-2706.01, and 77-2711(4), R.R.S. 2009, November 6, 2010.)*

#### REG-1-014 EXEMPT SALE CERTIFICATE

014.01 Certain sales, leases, or rentals, and the storage, use, or other consumption of property (services) are not taxable. Exempt transactions may be divided into four groups. The four groups are transactions that are exempt due to the characteristics of:

- 014.01A The retailer (seller) (entity-based exemption);
- 014.01B The property sold (product-based exemption);
- 014.01C The buyer (entity-based exemption); and
- 014.01D The buyer’s intended use of the item (use-based exemption).

Transactions described in subsections 014.01A and 014.01B do not need to be supported by exempt sale certificates, provided the retailer’s records clearly show the nature of the retailer and the property being sold. A purchaser making a purchase that is exempt because it is an occasional sale is required to obtain an exempt sale certificate or other documentation from the retailer that the sale was exempt.

Transactions described in subsections 014.01C and 014.01D must be supported by exempt sale certificates or other suitable documentation. (See Reg-1-012, Exemptions)

014.02 The burden of proving that any sale of property is not taxable is on the retailer and sufficient records must be kept which reveal the nature of each exempt sale. A retailer must obtain an exempt sale certificate or obtain the relevant data elements from the purchaser in support of the claim that the sale is exempt. The exempt sale certificate is a part of the retailer’s records and must be retained in the same manner

as other sales tax records.

014.03 Exemption numbers in the form of numbered certificates of exemption are issued by the Nebraska Department of Revenue (Department) and must be provided by nonprofit organizations, public schools, and common or contract carriers when making exempt purchases. (See Reg-1-069, Common and Contract Carrier Vehicles, Reg-1-090, Nonprofit Organizations, and Reg-1-092, Educational Institutions)

014.04 The following organizations are not issued numbered certificates of exemption by the Department: The United States government, its agencies, and corporations wholly owned by the United States government; the state, its agencies, and political subdivisions, other than public schools. Purchases by many Nebraska political subdivisions, all other states, and all political subdivisions of other states are taxable except for purchases of industrial machinery and equipment, including repair parts, where the other state grants a reciprocal exemption for Nebraska or its political subdivisions.

014.05 A properly completed exempt sale certificate received from the purchaser is adequate proof for the retailer that the sale was exempt from the sales and use tax.

014.05A To be properly completed, an exempt sale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 014.05B(1) through 014.05B(5). An exempt sale certificate received within 120 days after a request for substantiation made by the Department must be both fully completed and accepted in good faith to be properly completed.

014.05B To be fully completed, the exemption certificate must include all of the following:

014.05B(1) Identification of both purchaser and retailer;

014.05B(2) A statement of the basis for exemption, including the type of activity engaged in by the purchaser ;

014.05B(3) A statement that the certificate is for a single purchase or is a blanket certificate covering future sales;

014.05B(4) If a paper certificate is provided, an authorized signature. In other cases, another form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

014.05B(5) The date of issuance.

014.06 The retailer or certified service provider (CSP) holding a properly completed exempt sale certificate is relieved from liability for tax, penalty, and interest. However, retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

014.07 A retailer or CSP who has a recurring business

relationship with the same purchaser is not required to obtain a separate exempt sale certificate for each sale but may accept a “blanket” certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

014.08 If an exempt sale certificate or satisfactory evidence in support of a claim that a sale is exempt cannot be provided to the Department within the time frames noted below, the retailer making the sale is responsible for the tax on the transaction.

014.08A Retailers or CSPs are relieved from liability for tax if a properly completed exemption certificate is received, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days after the date of the sale.

014.08B Retailers or CSPs are relieved from liability for the tax if a properly completed exemption certificate is accepted in good faith, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption in good faith, within 120 days after a request for substantiation made by the Department.

014.08C Retailers or CSPs may only accept a fully completed exemption certificate under subsection 014.08B of this section with a good faith belief that the purchase is a valid exempt sale to be relieved from liability. If the exemption certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

014.09 Any purchaser, or agent of the purchaser, who issues an exempt sale certificate to the retailer for any purchase which is not exempt from sales and use tax under the Nebraska Revenue Act, is subject to a penalty of \$100 or ten times the tax, whichever is larger, for each instance of presentation and misuse. With regard to a blanket exempt sale certificate, the penalty applies to each purchase made during the period the blanket certificate is in effect.

014.10 Any purchaser, or agent of the purchaser, who fraudulently signs an exempt sale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in section 014.09, be found guilty of a Class IV misdemeanor.

014.11 The Department will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute, a Nebraska Energy Source Exemption Certificate, Form 13E, a Nebraska Certificate of Exemption for Mobility Enhancing Equipment, Form 13ME, or a certificate of exemption authorized by the SSUTA for all sales except sales to the federal government. Sales to the federal government, or an agency or wholly owned corporation of the federal government, may be supported in either of two ways. First, the exemption may be supported by a regular federal certificate of exemption form. An alternative procedure is maintaining purchase documentation clearly identifying the purchaser as the federal

government, or an agency or wholly owned corporation of the federal government. The best documents available are those which show payment was made by a United States Treasury Department warrant. (Reg-1-072, United States Government and Federal Corporations)

014.12 Retailers must maintain records of exempt transactions. The Department may make and retain copies of any exempt sale certificate.

*(Sections 77-2703(1)(f), 77-2705(7) and (8), 77-2706, 77-2711(3)(a) and (4), and 77- 2713(5), R.R.S. 2009, November 6, 2010.)*

#### REG-1-015 COMMON AND CONTRACT CARRIERS (MULTISTATE OPERATIONS) - TAX DEFERRAL

015.01 Any person, firm, or corporation operating as a common or contract carrier engaged in multistate operations, may apply to the Nebraska Department of Revenue for special permission to defer the incidence of the sales and use tax on certain purchases within or without this state, where the item purchased is first stored here for subsequent use in multistate operations, and at the time of purchase, the final location of the use of the item is unknown. The special permission referred to in this regulation is not related to the common and contract carrier exemption referred to in Reg-1-069, Common and Contract Carrier Vehicles.

015.02 Upon receipt of a request for permission to defer taxes, an investigation will be made to determine whether the applicant maintains satisfactory records to show where the purchased property is actually used. Such request must be written and be accompanied by a \$10.00 fee. If a favorable report results from the investigation, the Nebraska Department of Revenue will issue a special permission letter to the respective common or contract carrier. This special permission letter is issued in the form of a certificate of exemption. The common or contract carrier receiving the letter should furnish a copy of the letter to those vendors from whom purchases are made where use is unknown at the time of purchase in order that sales or use tax will be excluded from such purchases. Such letter shall not be used when purchases are made which knowingly have been or will be used or consumed within this state.

015.03 A retailer (seller) repeatedly making the same type of exempt sale to common or contract carriers need not take a separate copy of the special permission letter for each sale but may, at his or her risk, take a blanket certificate covering all future sales. If the Nebraska Department of Revenue determines that any such sale was not exempt, the retailer (seller) shall be liable for the tax, penalty, and interest. If a single special permission letter is taken, identification of the common or contract carrier must appear upon the memoranda created at the time of sale.

015.04 When items that were purchased tax exempt are later used in this state by the common or contract carrier, use tax is due at the applicable rate in effect at the time of use. This liability must be reported on the appropriate return to be filed for the period corresponding to the month of use.

*(Section 77-2706(6), R.R.S. 1943.January 24, 1993.)*

#### REG-1-016 CHANGES IN RATE OF TAX

016.01 The rate at which the sales and use tax is imposed is subject to change or the base may be altered by legislation which extends the tax to transactions previously not taxed. The purpose of this regulation is to set out the manner in which such occurrences will affect the tax on sales and purchases made where pre-existing contracts or obligations are involved so that retailers and consumers alike can take note of possible increases for which they may become liable.

016.02 For sales, leases, or rentals, the sales tax is imposed and shall be collected and remitted by the retailer at the rate in effect at the time the gross receipts are recorded as sales under the accounting method used by the retailer to maintain his or her books and records. A lease or rental agreement which extends through a tax rate change, will recognize the changed tax rate on payments recorded on or after the rate change. (Reg-1-009, Accounting Methods.)

016.02A For the rental or lease of a motor vehicle, the sales tax is imposed at the rate in effect at the time of the delivery of the motor vehicle regardless of changes in the rate during the term of the lease.

016.03 If the use tax is not required to be remitted at the time of purchase, the applicable use tax rate is that rate in effect at the time of use according to the accounting basis used to maintain the taxpayer's books and records.

016.04 The retailer on a cash basis of accounting will collect and report the tax at the rate in effect at the time he or she receives a payment without regard to whether the payment is in satisfaction of an obligation predating a change in the rate. The retailer using an accrual basis of accounting will collect and report the tax at the rate in effect at the time he or she records the sale.

016.05 Persons providing services covering a period starting before, and ending after, the effective date of a rate change will bill tax as follows: (a) for a rate increase, the change will apply to the first billing period starting on or after the effective date of the change; and (b) for a rate decrease, the change will apply to bills rendered on or after the effective date of the change.

016.06 When construction contractors operating under either Option 2 or Option 3 purchase construction materials to be consumed by them, they are obligated to pay the tax on the same basis as other consumers without regard to whether the purchase of such materials is for use in completion of a construction contract executed prior to a change in the rate. However, when a written contract exists for a fixed-price 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 for a refund of the increased sales tax; provided, such refund amount exceeds ten dollars (\$10.00). The contractor must submit a copy of the contract and any other evidence necessary to establish his or her entitlement to the refund.

016.06A In the event that the sales tax rate is decreased

during the term of the fixed-price contract, the contractor shall pay to the Department of Revenue the difference between the decreased tax rate and the tax rate in effect prior to the decrease; provided, the amount of such payment exceeds ten dollars (\$10.00). This procedure results in the contractor's final sales tax liability on fixed-price written contracts, to equal the rate in effect at the time the contract was entered into.

016.07 For fixed-price contracts in which the contractor labor is taxable and which were in progress on October 1, 2007, the date on which such contractor labor became exempt, the taxpayer shall pay to the Department of Revenue the difference between the decreased tax collected and the tax that would have been due on the contractor labor prior to the change; provided, the amount of such payment exceeds ten dollars (\$10.00). Failure to make the required payment constitutes a criminal act.

*(Section 77-2701.03, R.R.S. 2003, and sections 77-2703(1) and (2), 77-2704.32, and 77-2704.33, R.S.Supp., 2008, February 22, 2009.)*

#### REG-1-017 CONTRACTORS

017.01 Gross receipts from construction projects or the repair of real estate or fixtures are generally exempt from sales or use tax, except as otherwise stated in this regulation. In most cases, sales or purchases of building materials are taxable.

017.02 The following definitions will be used for all regulations in Title 316, Chapter 1.

017.02A Annexed means attached to real estate so that: (1) the property becomes real estate,; or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional.

017.02B Building means any free-standing structure enclosed within a roof and exterior walls. It does not have to be enclosed on all sides. It is designed for the housing, shelter, enclosure, and support of individuals, animals, manufacturing, or property of any kind. It must be annexed to the land.

017.02B(1) A building includes manufactured housing that is either set up for occupancy as a dwelling according to local building codes, or that is permanently annexed to real estate. (See Reg-1-018, Rent or Lease of Tangible Personal Property.)

017.02C Building materials mean any property, including fixtures, that will be annexed to the land or an improvement on the land. Building materials do not include tools, supplies, or any items that will not be annexed.

017.02D Contractor means any person who repairs property annexed to, or who annexes property to, real estate, including leased property, by attaching building materials to the annexed property or improvement being built or repaired, or who arranges for annexation of

property.

017.02E Demarcation point means the point at which the wire or cable that is owned and maintained by a telephone or cable company is connected to the inside station wiring owned by and dedicated to the customer's use.

017.02F Fixture means a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item. Examples are central air conditioners, water heaters, garbage disposals, built-in dishwashers, and furnaces.

017.02G Live plants means and includes trees, shrubs, flowers, and sod. Live plants do not include seeds.

017.02H Option 1 contractor means a contractor who has elected to be taxed as a retailer of building materials with a tax-exempt inventory or a contractor who has not made an election. See section 017.05 of this regulation.

017.02I Option 2 contractor means a contractor who has elected to be taxed as the consumer of building materials with a tax-paid inventory. See section 017.06 of this regulation.

017.02J Option 3 contractor means a contractor who has elected to be taxed as the consumer of building materials with a tax-free inventory. See section 017.07 of this regulation.

017.02K Recognized trade professional means any person required to be licensed to practice his or her trade, such as a plumber or electrician.

017.02L Supplies mean items consumed or used during construction that do not become a part of the building or structure.

017.02M Structure means any construction composed of building materials arranged and fitted together in some way and annexed to land, such as a bridge, highway, street light, dam, television tower, fence, sewer, water line, or billboard.

017.03 Contractors may choose how they want to treat building materials for tax purposes. There are three options available to the contractor for the taxation of building materials. The choice of an option is made by the Nebraska Department of Labor's online Contractor/Subcontractor Registration Application located at [www.dol.nebraska.gov](http://www.dol.nebraska.gov). The contractor/subcontractor registration information, including the contractor option elected, is displayed in the Contractor Registration Database. Before performing any construction work in Nebraska, a contractor must be registered in the Contractor Registration Database.

017.03A The option selected applies to all construction contracts. A contractor may not operate under more than one option at the same time.

017.03B If the registration application is not completed or an election is not made, the contractor will be treated as a retailer under Option 1 for sales and use tax

purposes.

017.04 Contractors may change their option using the Department of Labor's website ([www.dol.nebraska.gov](http://www.dol.nebraska.gov)) for contractor/subcontractor registration. The new contractor option applies to all contracts in progress and also to all new contracts.

017.04A Any contractor who changes from a tax-free inventory (Option 1 or Option 3) to a tax-paid inventory (Option 2) must remit use tax to the Department of Revenue (Department) on all building materials in inventory on the date the change is effective. The contractor must also begin paying sales tax on all purchases as of the date the change is effective. Option 1 contractors must also remit use tax on any building materials on which sales or use tax has not already been paid or collected that has been incorporated into an ongoing project.

017.04B Any contractor who changes from a tax-paid inventory (Option 2) to a tax-free inventory (Option 1 or Option 3) will receive a credit for the sales or use tax previously paid on its building materials in inventory at the time the contractor option change becomes effective. To receive the credit, the contractor must submit a signed statement to the Department that details the amount of credit to which it is entitled. The credit will be placed on the contractor's account and can be used as the building materials that were in inventory are annexed and payments become due to the Department. The contractor is not entitled to a refund of any sales or use tax previously paid on the building materials in inventory.

017.05 OPTION 1-To be treated as a retailer with a tax exempt inventory.

017.05A Option 1 contractors are retailers of building materials that become annexed. All Option 1 contractors must have a Nebraska Sales Tax Permit.

017.05B Option 1 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 1 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.05C Buildings and Structures, Construction and Repair.

017.05C(1) Option 1 contractors must collect sales tax from all of their customers, including contractors, on the total amount charged for building materials they annex to real estate or use to repair fixtures or property annexed to real estate, even if they sell a building or structure.

017.05C(2) Option 1 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect

sales tax on these labor charges if the labor charges are separately stated.

017.05C(3) Fabrication, production, or repair labor performed by another person on building materials for an Option 1 contractor are part of the cost of the building materials. The Option 1 contractor must collect sales tax on the total amount charged to the customer for building materials, including these labor charges, which are annexed to real estate by the Option 1 contractor. (Reg-1-082, Labor Charges.)

017.05C(4) Option 1 contractors will not normally collect sales tax on separately stated labor charges of the Option 1 contractor. (Reg-1-082, Labor Charges.)

017.05C(4)(a) Option 1 contractors who charge one amount for both building materials and labor must collect sales tax on the total amount charged.

017.05C(5) Option 1 contractors may purchase all building materials and other property for resale without paying sales tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

017.05C(5)(a) Option 1 contractors must pay sales tax or remit use tax on all charges for building materials annexed by another Option 1 subcontractor.

017.05C(5)(b) Option 1 contractors are not required to remit use tax on building materials annexed in a construction project that is in another state or in a construction project that is outside the United States.

017.05C(5)(c) Option 1 contractors may purchase for resale any fabrication, production, or repair labor performed by another person on building materials that will be annexed to real estate by the Option 1 contractor.

017.05D Property not Annexed.

017.05D(1) Option 1 contractors are retailers of building materials or other property that is not annexed. Option 1 contractors must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.05D(2) Option 1 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.05D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction

contract.

017.05D(3)(a) Option 1 contractors who only install silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.05D(3)(b) Option 1 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.05D(3)(c) Option 1 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing. Option 1 contractors cannot purchase silt fencing tax-exempt for resale.

017.05D(4) Option 1 contractors must collect sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 1 contractor (Reg-1-082, Labor Charges.).

017.05D(5) Option 1 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and must collect sales tax on the total amount charged for these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.05E Telephone, Cable, Satellite Services, and Other Utilities.

017.05E(1) Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunication services on the general distribution system or on the customer's side of the demarcation point must collect sales tax on the total amount charged for the materials and labor regardless of whether the property is annexed or remains tangible personal property.

017.05E(2) If any or all of the charge for installation of tangible personal property is paid to the Option 1 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third-party service provider (Reg-1-081, Community or County Antenna Television Services.)

017.05E(3) Option 1 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.05F Manufacturing Machinery and Equipment.

(Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.05F(1) Option 1 contractors will not collect sales tax on qualifying manufacturing machinery and equipment sold to a manufacturer whether the equipment remains tangible personal property or is annexed if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer. (Reg-1-107, Manufacturing Machinery and Equipment Exemption.)

017.05F(2) Option 1 contractors will not collect sales tax on the installation or repair of qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(3) Option 1 contractors will not collect sales tax on the amount charged for repair or replacement parts or accessories purchased for use in maintaining, repairing, or refurbishing qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(4) Option 1 contractors may purchase qualified manufacturing machinery and equipment for resale by issuing a properly completed Resale or Exempt Sale Certificate, Form 13, to the seller.

017.05G Live Plants.

017.05G(1) Option 1 contractors planting live plants must collect sales tax on the total amount charged for the live plants and on the labor charge for installation of the live plants.

017.05G(2) Option 1 contractors who annex building materials and install live plants, must collect sales tax on the total amount charged, unless the labor charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.05G(3) Option 1 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.05H Exempt Organizations and Exempt Governmental Units.

017.05H(1) Option 1 contractors annexing building materials for exempt organizations or exempt governmental units will not collect tax on the building materials when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.05H(2) Option 1 contractors will not collect sales tax on qualified materials for use in a community-based energy development (C-BED)

project.

#### 017.05I Direct Pay Permits.

017.05I(1) Option 1 contractors who annex building materials for a project owner holding a valid direct pay permit may accept a copy of the direct pay permit and will not collect sales tax on the amount charged directly to the project owner for the building materials.

#### 017.06 OPTION 2-To be treated as a consumer with a tax-paid inventory.

017.06A Option 2 contractors are consumers of building materials that become annexed. Option 2 contractors who make sales described in subsections 017.06D, 017.06E, or 017.06G are retailers and must have a Nebraska Sales Tax Permit.

017.06B Option 2 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 2 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

#### 017.06C Buildings and Structures, Construction and Repair.

017.06C(1) Option 2 contractors will not normally collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.06C(2) Option 2 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.06C(3) Option 2 contractors must pay sales tax on all building materials and other taxable items when purchased or received.

017.06C(3)(a) Option 2 contractors must remit use tax directly to the Department on all building materials and other taxable items on which no sales tax has been paid when the materials or other items are received.

017.06C(3)(b) Option 2 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

017.06C(3)(c) Option 2 contractors must pay sales or remit use tax on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 2 contractor. (Reg-1-082, Labor Charges.)

017.06C(4) Option 2 contractors are not allowed a credit or refund for sales or use taxes paid on building materials subject to sales tax, that are

withdrawn from tax-paid inventory for annexation to real estate in another state.

017.06C(4)(a) Option 2 contractors may receive a credit or refund for use tax paid on building materials that are withdrawn from inventory for annexation to real estate in another state only if the seller of the building materials is not licensed to collect sales tax in this state and is not engaged in business in this state. (Reg-1-004.02 for definition of “engaged in business in this state.”)

017.06C(4)(b) Option 2 contractors may receive a credit or refund of tax paid on building materials used in a construction project that is outside the United States.

#### 017.06D Property not Annexed.

017.06D(1) Option 2 contractors are retailers for any sales of building materials or other property that is not annexed. Option 2 contractors must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.06D(1)(a) When retail sales of tax-paid inventory items are made, the Option 2 contractor must collect sales tax on the full sales price. The tax reported to the Department will be the difference between the Nebraska and local option tax the contractor previously paid on the items and the tax collected from the customer.

017.06D(2) Option 2 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.06D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.06D(3)(a) Option 2 contractors who only installs silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.06D(3)(b) Option 2 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.06D(3)(c) Option 2 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing.

017.06D(4) Option 2 contractors must collect sales tax on the total amount charged for repairing or

fabricating tangible personal property that is not annexed by the Option 2 contractor (Reg-1-082, Labor Charges.)

017.06D(5) Option 2 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and must collect sales tax on the total amount charged for these services. (Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.06D(6) Option 2 contractors may purchase items tax-exempt when these items will be resold without being annexed.

#### 017.06E Telephone, Cable Satellite Services, and Other Utilities.

017.06E(1) Option 2 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunications services must collect sales tax as follows:

017.06E(1)(a) Option 2 contractors must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point (i.e., the general distribution system) whether the property is annexed or remains tangible personal property.

017.02E(1)(b) Option 2 contractors must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

017.02E(1)(c) Except as provided in subsection 017.06E(1)(b), Option 2 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.02E(1)(d) Option 2 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.06E(2) Option 2 contractors must pay sales tax or remit use tax on all of their purchases of wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite services, and mobile telecommunications services.

017.02E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 2 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or

similar payment made by the third-party service provider must be paid to the Department by the third party service provider. (Reg-1-081, Community and County Antenna Television Service.)

#### 017.06F Manufacturing Machinery and Equipment. (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.06F(1) Option 2 contractors must pay sales tax or remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a manufacturer.

017.06F(1)(a) Option 2 contractors cannot purchase these items without paying tax even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.06F(2) Option 2 contractors will not collect sales tax on charges to install, or repair qualified manufacturing machinery and equipment.

#### 017.06G Live Plants.

017.06G(1) Option 2 contractors planting live plants must collect sales tax on the total amount charged for the live plants, and on the labor charge for installation of the live plants.

017.06G(2) Option 2 contractors who annex building materials and install live plants must collect sales tax on the total amount charged, unless the charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.06G(3) Option 2 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

#### 017.06H Exempt Organizations and Exempt Governmental Units.

017.06H(1) Option 2 contractors annexing building materials for exempt organizations or exempt governmental units may purchase building materials without paying the sales or use tax when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.06H(2) Option 2 contractors may purchase qualified materials for use in a community-based energy development (C-BED) project tax exempt.

#### 017.06I Direct Pay Permits.

017.06I(1) Option 2 contractors must pay sales tax or remit use tax on building materials annexed even if they have a copy of the direct pay permit from the project owner.

017.07 OPTION 3-To be treated as a consumer with a tax EXEMPT inventory.

017.07A Option 3 contractors are consumers of building materials that become annexed. Option 3 contractors who make sales described in subsections 017.07D, 017.07E, or 017.07G are retailers and must have a Nebraska Sales Tax Permit.

017.07B Option 3 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 3 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.07C Buildings and Structures, Construction and Repair.

017.07C(1) Option 3 contractors will not normally collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.07C(2) Option 3 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.07C(3) All building materials and other property that will be resold may be purchased for resale purposes without paying tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

017.07C(3)(a) Option 3 contractors must remit use tax directly to the Department on all building materials when the building materials are removed from inventory or when received at the job site.

017.07C(3)(b) Option 3 contractors must remit use tax directly to the Department on all other taxable property on which no sales tax was paid when the property is received.

017.07C(3)(c) Option 3 contractors must remit use tax directly to the Department on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 3 contractor. (Reg-1-082, Labor Charges.)

017.07C(4) Option 3 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

017.07C(5) Option 3 contractors must remit use tax on building materials purchased with a resale certificate that are withdrawn from inventory for annexation to real estate in another state.

017.07C(5)(a) Option 3 contractors are not

required to remit use tax on building materials used in a construction project that is outside the United States.

017.07C(5)(b) Option 3 contractors are not required to remit use tax on building materials withdrawn from inventory for annexation to real estate in another state if the seller of the building materials is not engaged in business in this state and is not licensed to collect sales tax in this state (Reg-1-002, Consumer's Use Tax). (See also Reg-1-004.02 for the definition of "engaged in business in this state.")

017.07D Property not Annexed.

017.07D(1) Option 3 contractors are retailers for any sales of building materials or other property that is not annexed. Option 3 contractors must collect sales tax on the total amount charged.

017.07D(2) Option 3 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.07D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.07D(3)(a) Option 3 contractors hired only to install silt fencing are making retail sales and must collect tax on the total amount charged.

017.07D(3)(b) Option 3 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing and must remit use tax on their cost of the silt fencing materials.

017.07D(3)(c) Option 3 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing. Option 3 contractors cannot purchase silt fencing tax-exempt for resale.

017.07D(4) Option 3 contractors must collect and remit sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 3 contractor.

017.07D(5) Option 3 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and to must collect and remit sales tax on the total amount charged for these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.07D(6) Option 3 contractors will not remit use

tax on items that are resold without being annexed.  
017.07E Telephone, Cable, Satellite Services, and Other Utilities.

017.07E(1) Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunication services providers must collect sales tax as follows:

017.07E(1)(a) Option 3 contractors must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point, (i.e., the general distribution system) whether the property is annexed or remains tangible personal property.

017.07E(1)(b) Option 3 contractors must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

017.07E(2)(c) Except as provided in 017.07E(1)(b), Option 3 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.07E(1)(d) Option 3 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.07E(2) Option 3 contractors must remit use tax on all wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite, services, and mobile telecommunication services.

017.07E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 3 contractor by a third-party service provider, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid to the Department by the third-party service provider (Reg-1-081, Community and County Antenna Television Service.)

017.07F Manufacturing Machinery and Equipment (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.07F(1) Option 3 contractors must remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a manufacturer.

017.07F(1)(a) Option 3 contractors must remit use tax on these items even if they have a Nebraska Resale or Exempt Sale Certificate,

Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.07F(2) Option 3 contractors will not collect sales tax on charges to install, or repair qualified manufacturing machinery and equipment.

017.07G Live Plants.

017.07G(1) Option 3 contractors planting live plants must collect sales tax on the total amount charged for the live plants, and on the labor charge for installation of the live plants.

017.07G(2) Option 3 contractors who annex building materials and install live plants must collect sales tax on the total amount charged unless the charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.07G(3) Option 3 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.07H Exempt Organizations and Exempt Governmental Units.

017.07H(1) Option 3 contractors annexing building materials for exempt organizations or exempt governmental units are not required to remit use tax on building materials when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.07H(2) Option 3 contractors are not required to remit use tax on their cost of qualified materials for use in a community-based energy development (C-BED) project.

017.07I Direct Pay Permits.

017.07I(1) Option 3 contractors must remit use tax on building materials annexed even if they have a copy of the direct payment permit from the project owner.

## 017.08 PROJECTS FOR EXEMPT ORGANIZATIONS AND EXEMPT GOVERNMENTAL UNITS

017.08A Qualified exempt organizations and exempt governmental units are listed in Reg-1-012, Exemptions. The following procedures allow the exempt organizations or exempt governmental units to have construction completed without the payment of tax on building materials which are physically annexed to the building or structure and which subsequently are owned by the exempt governmental unit or exempt organization. The contractor must pay sales tax or remit use tax on its purchases or rentals of tools, supplies, equipment, scaffolding, barricades, and on all purchases of taxable services such as building cleaning, pest control and security services.

017.08A(1) An exempt organization or exempt

governmental unit may furnish building materials. The organization or governmental unit will issue a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, to the retailers of the building materials.

017.08A(2) The exempt organization or exempt governmental unit, as project owner, may be entitled to a refund of tax paid on building materials. The United States government, the state, and educational institutions under the governance of the University of Nebraska Board of Regents, or State College Board of Trustees will not receive any refunds.

017.08A(2)(a) If the exempt organization or exempt governmental unit will not appoint the contractor as a purchasing agent, the Option 2 or Option 3 contractor must pay sales tax or remit use tax on all building materials. The exempt organization or exempt governmental unit may obtain a refund of the tax paid if:

017.08A(2)(b) The Option 2 or Option 3 contractor provides the exempt organization or exempt governmental unit with a certified statement of the tax paid on the building materials by the contractor and all subcontractors, and

017.08A(2)(c) The exempt organization or exempt governmental unit applies for a refund from the Department. The exempt organization or exempt governmental unit may apply for a refund of any sales tax it paid directly on building materials, and any sales or use tax paid or remitted on building materials by Option 2 or 3 contractors as shown on a certified statement from the contractor.

017.08A(3) The exempt organization or exempt governmental unit may appoint the contractor as a purchasing agent. The contractor may then purchase building materials tax-free. The appointment as a purchasing agent for the exempt organization or exempt governmental unit must be made before the building materials are annexed.

017.08A(3)(a) The contractor will delegate to all subcontractors the authorization as purchasing agent.

017.08A(3)(b) The contractor or subcontractors will provide an exempt sale certificate and a copy of the purchasing agent appointment to suppliers when purchasing the building materials to be annexed.

017.08A(3)(c) The appointment must be made using a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or a previously approved substitute form containing the same information.

017.08A(3)(d) The United States government may use its own forms to make the purchasing agent appointment. If the United States government chooses not to issue a purchasing agent appointment, the building materials will be taxable.

017.08A(3)(e) The applicable Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or exempt sale certificate will be kept by the contractor or subcontractor who has been appointed or delegated as purchasing agent.

017.08A(4) When a contractor is operating under Option 1, and is the only contractor involved in the project, that contractor may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, from the exempt organization or exempt governmental unit. The Option 1 contractor will not charge sales tax to the exempt organization or exempt governmental unit.

017.08A(5) When the contractor is operating under either Option 2 or Option 3, the contractor cannot accept an exempt sale certificate from the exempt organization or exempt governmental unit. The exempt organization or exempt governmental unit must appoint the Option 2 or Option 3 contractor as its purchasing agent, buy the materials, or apply for a refund of sales tax that is paid.

017.08B When an organization is required to be licensed, certified, approved, or accredited in order to be an exempt organization, but the organization was not licensed, certified, approved, or accredited at the time of the construction, the organization cannot issue either a purchasing agent appointment or an exemption certificate. When the organization becomes licensed, certified, approved, or accredited upon completion of the project, the exempt organization may apply for a refund of the tax remitted or collected by the contractors.

017.08C Generally, a contractor cannot obtain a refund of any tax remitted or collected on a project for an exempt organization or exempt governmental unit. The refund will normally be paid to the exempt organization or exempt governmental unit. A contractor may only obtain a refund or credit of tax paid on building materials when the contractor was appointed as a purchasing agent before the materials were annexed and the contractor paid tax on the building materials.

#### 017.09 FIXED PRICE CONTRACTS

017.09A A contractor using fixed-price contracts may owe the state additional tax or may receive a refund of tax on building materials used in fixed-price contracts when there is a tax rate change.

017.09A(1) If the tax rate is decreased during the term of the fixed-price contract, the contractor must remit to the Department the difference between the

tax actually paid on building materials and the tax that would have been paid at the tax rate in effect prior to the decrease, provided the amount of such payment exceeds ten dollars.

017.09A(2) If the tax rate is increased during the term of a fixed-price contract, the contractor must pay to the Department the sales or use tax at the increased rate on all materials purchased. The contractor may receive a refund of the amount of the additional sales or use tax paid because of the rate increase, provided the amount of the additional sales or use tax exceeds ten dollars.

017.09A(2)(a) The contractor must submit a copy of the contract and any other appropriate evidence to document the amount of additional sales or use tax paid on the building materials in the project.

017.09A(3) A change in the property taxed or exempted from tax is not a tax rate change for the purposes of this subsection.

017.09A(4) An adoption, repeal, or change in the rate of a local option tax is a tax rate change for purposes of this subsection and may result in a refund, or require the payment of additional tax.

017.09B An owner of a construction project completed using a fixed-price contract may owe the state additional sales or use tax on contractor labor in fixed-price contracts when the taxability of contractor labor changes.

017.09B(1) If the sales or use tax on contractor labor no longer applies to a construction project during the term of the fixed-price contract, the owner of the construction project must pay to the contractor or the Department, the difference between the sales or use tax actually paid on contractor labor and the sales or use tax that would have been paid prior to the change, provided the amount of such payment exceeds ten dollars.

*(Section 48-2117, R.S. Supp. 2009 and sections 77-2701.10, 77-2701.16, 77-2701.34, 77-2701.42, 77-2701.44, , 77-2704.12, 77-2704.15, 77-2704.32, 77-2704.33, 77-2704.44, and 77-2704.55, R.R.S., 2009. June 6, 2011.)*

#### REG-1-018 RENT OR LEASE OF TANGIBLE PERSONAL PROPERTY

018.01 Any person who leases or rents property for storage, use, or other consumption in this state is a retailer. A lease or rental is the transfer of possession or control of property for a fixed or indeterminate term for a consideration. A lease or rental may include future options to purchase or extend the lease or rental agreement.

018.01A Receipts from a lease or rental of property requiring recurring periodic payments are sourced as follows: the first periodic payment is sourced at the location where the property is received by the lessee;

payments subsequent to the first payment are sourced at the primary property location. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

018.01B Receipts from the lease or rental of property not requiring recurring payments are sourced where the property is received by the lessee.

018.02 Retailers who lease or rent property must obtain a permit, and collect and remit the state and applicable local sales tax to the Nebraska Department of Revenue (Department) in the same manner as any other retailer. The sales tax is computed on the total amount for which the property is leased or rented, valued in money whether paid in money or otherwise, without any deduction or exclusion of any cost components such as:

018.02A The cost of the property leased or rented;

018.02B The cost of material used, labor or service costs, interest charged, insurance, losses, or any other expenses;

018.02C The cost of transportation of the property at any time; and

018.02D The amount of any excise or property taxes levied against the property.

018.03 The total amount for which property is leased or rented includes 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. If the lease or rental charge is comprised of a fixed amount plus a variable amount, sales tax applies to the total of these charges.

018.04 If a retailer establishes a separate price schedule for his or her product when the sale includes the use of the seller's equipment by the purchaser, then the difference between the product price with the equipment and the product price without the equipment is a lease or rental subject to the sales and use tax.

018.05 A sale for the sole purpose of that purchaser's leasing or renting the property to another person is a sale for which a resale certificate may properly be issued, except where:

018.05A The lease or rental payments are not at a fair market value;

018.05B The property is used by the purchaser and is also leased or rented to others, in which case both the purchase of the property is taxable and the subsequent lease or rental of the property is also taxable; and

018.05C The property is incidental to the lease or rental of real estate, such as furniture for a furnished apartment.

018.06 A sale to an unrelated person or entity conditioned upon a simultaneous lease back to the original owner is a sale for which a resale certificate may properly be issued.

018.07 The charge for the lease or rental of a cabin trailer, mobile home, or similar property for less than 30 days is taxable. If the lease or rental period is for 30 days or more, it is also a taxable lease or rental of property unless the cabin trailer or mobile home has either been permanently annexed to realty or set up for occupancy as a dwelling for human occupancy according to local building codes. (Reg-1-046, Hotels, Lodgings, and Accommodations)

018.07A A cabin trailer or mobile home has been permanently annexed to the land when a permanent foundation, such as a concrete slab or concrete footings, secures the cabin trailer or mobile home to the site. Blocking and leveling the ground or setting the unit on concrete blocks is not permanent annexation to the land.

018.08 A lease or rental of property from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies is exempt when the lessor has paid the tax on its purchase of the property being leased. A lessor has the same sales and use tax liability on the purchase of property to be leased to the lessee as if the lessee had purchased the property directly.

018.08A This exemption applies to corporations that have at least 50 percent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

018.08B Sole proprietorships are not entities separate and apart from the owners and do not qualify for this exemption.

018.09 A lease or rental will not qualify as an occasional sale.

018.10 Regardless of how a transaction is characterized under generally accepted accounting principles, a lease or rental does not include the following transactions:

018.10A A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

018.10B A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of a nominal option price that does not exceed the greater of \$100.00 or one percent of the total required payments; and

018.10C Providing property, such as equipment, along with an operator where the operator is necessary for the property to perform as designed. For this exclusion, the operator must do more than maintain, inspect, or set up the property. For motor vehicles with an operator, see

#### Reg-1-019, Rental or Lease of Vehicles.

018.11 Leases or rentals of motion picture films, video tapes, digital products, and satellite services to a person who receives the product or service electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service for use where a taxable admission is later charged for showing, are exempt.

018.12 Leases or rentals of lodgings for periods of 30 days or more, are exempt.

018.13 Under Neb. Rev. Stat. section 77-2704.08, when a lessee has an option to purchase the property during the term of the lease or rental, and to apply some or all of the lease or rental payments to the purchase price of the property, the sales price may be reduced by the amount of any lease or rental payments applied to the purchase price if the lessor collected sales tax on the payments.

018.14 The classification of a transaction as a lease or rental is determined by the law in effect at the inception of the lease or rental.

*(Sections 77-2701.16, 77-2701.18, 77-2701.32, 77-2701.34, 77-2701.35, 77-2703.01, 77-2704.08, and 77-2704.28, R.R.S., 2009. November 6, 2010.)*

#### REG-1-019 RENTAL OR LEASE OF VEHICLES

019.01 When the words rental or lease or derivatives thereof are hereafter used, they shall be deemed to be synonymous for the purposes of this regulation. When the word motor vehicle or vehicle is used it shall refer to automobiles, trucks, trailers, semitrailers, and truck tractors as defined in section 60-301 of the Nebraska Revised Statutes which are not classified as transportation equipment.

019.01A Lease or rental shall have the same meaning as in Reg-1-018, but shall also include any agreement covering motor vehicles where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined for federal income tax purposes.

019.02 A rental occurs when the person to whom a motor vehicle is rented exercises control over the vehicle. Control over the vehicle may be exercised by the person renting it even when drivers are furnished when:

019.02A The person has the exclusive use of the vehicle for a period of time; and

019.02B The person has the right to direct the manner of the use of the vehicle, whether exercised or not, for that period.

019.03 All lessors of motor vehicles are retailers. They are required to obtain a permit and must collect and remit the tax on the gross lease receipts, except as provided in 019.07. (For the proper amount of tax to be collected when the tax rate changes see Reg-1-016.02A). A lessor collecting the tax on the lease receipts may purchase and register the vehicles

to be leased without payment of the tax on the purchase price. The lessor is purchasing such vehicles for resale. Before registering leased vehicles tax-free, evidence that the lessor holds a permit to properly collect the tax on the lease receipts must be provided to the Department of Motor Vehicles or the county treasurer, or other designated county official, of the county in which registration will occur.

019.03A Receipts from the rental or lease of a motor vehicle, other than transportation equipment, requiring recurring periodic payments are taxable at the primary property location.

019.03B Receipts from the rental or lease of a motor vehicle not requiring recurring periodic payments are taxed at the location where the vehicle is received by the purchaser.

019.03C Receipts from the rental or lease of transportation equipment are taxable where the seller transfers physical possession or control of the equipment to the buyer.

019.03C(1) Transportation equipment means:

019.03C(1)(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

019.03C(1)(b) Trucks and truck tractors with a gross weight rating of ten thousand and one pounds or greater, or trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certified by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

019.03C(1)(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

019.03C(1)(d) Containers designed for use on and component parts attached or secured on transportation equipment identified in Reg-1-019.03C(1)(a) through Reg-1-019.03C(1)(c).

019.04 The total amount for which the motor vehicle is leased includes any services which are a part of the lease and any amount for which credit is given to the lessee by the lessor. If the lease or rental charge is comprised of a fixed amount plus a variable amount, (e.g., \$15.00 per day plus \$0.15 per mile) sales or use tax applies to the total of these charges.

019.04A The total amount for which a vehicle is leased does not include any amount paid by the lessee to the county treasurer, other designated county official, or the Department of Motor Vehicles for in lieu of property

tax.

019.05 A lease of a motor vehicle from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies is exempt when the lessor has paid the tax on its purchase of the motor vehicle being leased. Such lessor shall have the same sales and use tax liability on the purchase of the motor vehicle to be leased to the lessee as if the lessee had purchased the motor vehicle directly. This subdivision applies to corporations that have at least fifty percent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

019.06 The receipts from the lease of motor vehicles to be engaged as common or contract carrier vehicles by persons holding a numbered certificate of exemption issued by the Department of Revenue are exempt; provided, the lessor is furnished evidence that the lessee holds such certificate or number.

019.07 In lieu of collecting and remitting tax upon the gross receipts, the lessor may elect to pay the tax on the cost of all vehicles, including vehicles presently under lease. The election does not apply to motor vehicles leased for use as common or contract carrier vehicles. If such an election is made, it shall be pursuant to the following conditions:

019.07A Notice shall be filed with the Department of Revenue and such election shall be effective only upon approval;

019.07B The election, when made and approved by the Department of Revenue, shall remain in force and effect for a period of not less than two years; and

019.07C The election shall apply to all vehicles of the lessor leased for periods of one year or more, except for vehicles leased for use as common or contract carrier vehicles. Persons leasing motor vehicles for both periods of less than one year and for periods of one year or more and who have elected to remit the applicable tax on the cost of the motor vehicles at the time of purchase, must segregate the taxable receipts from the nontaxable receipts in their records.

019.08 The election shall be filed on forms prescribed by the Department of Revenue and in addition to general information shall contain a list of all vehicles under existing lease as to term of the lease, model, year, make, and fair market value, as of the date of the election. If some of the vehicles are leased for use as common or contract carrier vehicles, the list must show which vehicles are being used as common or contract carriers, the lessee of each vehicle, and the lessee's Nebraska common or contract carrier exemption number.

019.09 Vehicles under existing lease on the effective date of the election, with at least one year remaining on the existing lease, shall be valued at their fair market value and the state and applicable city sales tax computed on such amounts. The computed tax must be remitted to the Department of Motor

Vehicles or the county treasurer, or other designated county official, of the county in which the vehicles are registered within five (5) days from the receipt of approval of the lessor's option. The lessor must pay the state and applicable city sales tax on the fair market value of any vehicle the first time it is leased for a period of one year or more after the effective date of the option, unless the tax was previously paid at the time of purchase or under this subsection. The lessor must submit proof of payment of the tax to the Nebraska Department of Revenue, Taxpayer Services, P.O. Box 94818, Lincoln, Nebraska 68509.

019.10 The lessor who elects to pay the tax on the cost of such vehicles will purchase and pay the tax in the following manner: The seller shall state on the sales invoice the dollar amount of the tax and furnish the purchaser a certified statement of the transaction on a form provided by the Department of Revenue. The applicable tax will be paid by the purchaser to the Department of Motor Vehicles or the county treasurer, or other designated county official, at the time of application for registration of the motor vehicle for operation on the highways of this state. The Department of Motor Vehicles or the county treasurer, or other designated county official, shall furnish a statement for completion by the purchaser when the purchase was made from an out-of-state dealer. The purchaser will be responsible for establishing the cost (price paid) for such motor vehicle with a copy of the sales invoice or other documents.

019.10A The lessor who made the election and is purchasing a vehicle to be leased for use as a common or contract carrier vehicle, shall purchase such vehicle for resale and will not pay the tax at the time of registration.

019.10B When a vehicle that was purchased for use as a common or contract carrier vehicle is first leased for one year or more to a person who is not a common or contract carrier, the lessor shall pay the tax on the fair market value of the vehicle at the time of the lease.

019.11 A lessor who has been operating under this election for at least two years may make application to the Department of Revenue, to terminate such election. Until such time as an application to terminate has been received and acknowledged by the Department, the retailer shall continue to operate as set out in 019.07 through 019.10. The application to terminate shall be in the form of a written request and, when acknowledged by the Department, will become effective on the first day of the month following the postmark date of the acknowledgment.

019.12 Tax paid on vehicles under existing leases at the time the election is terminated cannot be refunded either to the lessor or lessee. State and applicable local option sales tax will be charged and collected on the gross vehicle lease receipts beginning with the billing issued on or after the first day of the month following the postmark date of the acknowledgment of termination.

*(Sections 77-2701.33 and 77-2701.35, R.R.S. 2003, and sections 77-2701.34, 77-2703(1)(g) and (h), and*

*77-2703.01(8) and (9), R.S.Supp., 2004. April 12, 2005.)*

## REG-1-020 MOTOR VEHICLES

020.01 Motor vehicles as used in this regulation shall mean motor vehicles, trailers, and semitrailers as defined in Section 60-301 of the Nebraska Revised Statutes. Every motor vehicle dealer in Nebraska is required to obtain a sales tax permit for each place of business in this state even though they make no sales other than of motor vehicles. The dealer shall file a tax return reporting gross sales in the same manner as all other retailers.

020.02 The sales and use tax imposed upon the sale of motor vehicles shall be the liability of the purchaser and the tax shall be collected by the county treasurer, or other designated county official, or the Department of Motor Vehicles at the time the purchaser makes application for registration of the motor vehicle for operation upon the highways of this state. If the purchaser retains such motor vehicle in this state and does not register it for operation upon the highways of this state within thirty days of the purchase date, the tax shall be paid immediately to the county treasurer, or other designated county official. If the tax is not paid within thirty days of the purchase date, the county treasurer, or other designated county official, shall collect the tax, interest from the thirtieth day until the date of payment, and a penalty of five dollars (\$5.00).

020.03 The dealer or seller is not authorized to collect the tax on the sale of motor vehicles but shall, at the time of the sale, state on the sales invoice the dollar amount of the tax and furnish the purchaser a Nebraska Sales/Use Tax and Tire Fee Statement for Motor Vehicle and Trailer Sales, Form 6.

020.03A The tax due shall be computed on the difference between the total sales price and the total of any trade-in allowance for another motor vehicle taken by any person and any rebates used to reduce the selling price of the vehicle.

020.03B All information requested by the Nebraska Department of Revenue must be furnished and a copy of each Form 6 must be sent to the Nebraska Department of Revenue by the seller at the time the tax return is filed. Any dealer or seller who fails or refuses to furnish such information or who falsifies any Form 6 may be found guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense.

020.03C Any dealer or seller who willfully prepares a false or fraudulent sales or use tax return or Form 6 may be found guilty of a Class IV felony and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000.00), or be imprisoned not more than five years, or both.

020.03D Any purchaser, or the agent thereof, who completes a Nebraska Sales/Use Tax and Tire Fee Statement for Motor Vehicle and Trailer Sales, Form 6, claiming an exemption for any purchase which is not

exempt from sales and use tax under sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, shall be subject to a penalty of one hundred dollars (\$100.00) or ten times the tax, whichever amount is larger. Any purchaser, or the agent thereof, who fraudulently signs a Form 6 with the intention to avoid payment of the tax may, in addition to the above penalty, be found guilty of a Class IV misdemeanor.

020.03E Any seller who willfully understates the amount upon which the sales tax is due shall be subject to an administrative penalty of one thousand dollars (\$1,000.00).

020.04 County treasurers, or other designated county officials, of all counties in Nebraska and the Department of Motor Vehicles are appointed as sales and use tax collectors for all sales of motor vehicles made outside of this state to purchasers or users of motor vehicles required to be registered in this state. The county treasurer, or other designated county official, shall collect the applicable use tax from the purchaser of a motor vehicle purchased outside of this state at the time application for registration is made. The full use tax on the purchase price shall be collected by the county treasurer, or other designated county official, or the Department of Motor Vehicles if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for registration in this state.

020.05 The purchase of a licensed motor vehicle may be exempt for any of the following reasons:

020.05A If the owner of a motor vehicle is, or was, a nonresident of this state and establishes as a fact that he or she purchased the motor vehicle outside of this state and there registered, titled, and licensed the motor vehicle, and actually used the motor vehicle for the primary purpose for which it was acquired, then the use tax is not required for licensing or registering in this state;

020.05A(1) Licensed for operation on the highways does not include any temporary registration, licensing, or in transit procedure that allows nonresidents to operate the motor vehicle on the highways of the other state, commonwealth, territory, possession, or country for a limited time with the intent to remove the motor vehicle from the other state, commonwealth, territory, possession, or country.

020.05B The motor vehicle is purchased for the purpose of renting or leasing with the rental or lease payment set at a fair market value, and the purchaser holds a sales tax permit so as to remit tax on the lease or rental receipts;

020.05C The motor vehicle is a gift to the applicant or received through inheritance and tax was previously paid by the donor or prior owner;

020.05D The purchase of the motor vehicle is exempt

under paragraphs 012.02C or 012.02D of Reg-1-012, Exemptions;

020.05E The motor vehicle is purchased by a disabled person and the maximum amount allowed by law is contributed by the Veterans Administration of the United States or the Nebraska Health and Human Services Finance and Support. If the contributed amount is less than the maximum amount, only the amount of the contribution is exempt; or

020.05F The motor vehicle is sold pursuant to an occasional sale as set out in Reg-1-022, Occasional Sales.

020.06 If the purchase of a licensed motor vehicle is exempt for any of the reasons in paragraph 020.05, the county treasurer, or other designated county official, or the Department of Motor Vehicles may, after obtaining a properly completed Form 6 accurately identifying the basis for exemption, complete the registration without collecting the tax.

020.07 Motorcycles, or other all-terrain vehicles, that are not equipped for use upon the highway at the time of sale, as required by the Department of Motor Vehicles, are not treated as motor vehicles for sales and use tax purposes. A person engaged in the business of selling these vehicles must collect the sales tax at the time of sale rather than issuing a Form 6.

020.08 A rebate received by the purchaser from a manufacturer after the sale does not reduce the sales and use tax base. The retail price remains at the amount agreed upon at the time of the sale which is the amount upon which the tax must be collected.

020.08A A rebate received from a manufacturer that is used to reduce the selling price of the vehicle reduces the sales and use tax base. A rebate is used to reduce the selling price of the car when it is transferred to the dealer at the time of the sale and is shown on the sales invoice as a price reduction, partial payment, or a down payment.

020.09 Sales and use tax paid upon a vehicle which is subsequently destroyed is not refundable. The tax is imposed upon the sales transaction and the subsequent destruction of the vehicle has no effect on that sales transaction.

020.09A The purchase of a vehicle with the insurance proceeds from another vehicle is taxable. The insurance proceeds cannot be used as a trade-in or other reduction in the sales price.

020.10 If the purchaser receives a settlement under the Nebraska Lemon Law, or under arbitration as an alternative to the Lemon Law, the amount received from the manufacturer or dealer includes all of the sales and use tax that is refundable. No additional refunds will be paid by the Department of Revenue.

*(Sections 60-301, and 77-2703(1)(j) R.S.Supp., 1998, and sections 77-2702.07, 77-2702.09, 77-2702.17, 77-2702.18, 77-2704.12, 77-2704.21, 77-2713, and 77-2708(1)(c), R.R.S.*

1996. November 11, 1998.)

#### REG-1-021 MOTOR VEHICLES USED BY THE MANUFACTURER BEFORE SALE

021.01 Manufacturers of motor vehicles who withdraw such vehicles from inventory or stock for company purposes such as demonstrations, promotional or executive use, prior to the sale thereof, shall be required to pay a tax on such uses.

021.02 The tax shall be computed and paid monthly to the Department of Revenue by the motor vehicle manufacturer as part of his or her regular report of taxes due on the sale or use of taxable property and services.

021.03 The base on which the tax is to be computed shall be determined monthly by multiplying 2 1/2% times the total invoice cost to the distributors or dealers of vehicles of the same make, model, and accessory equipment. The base as so computed shall be multiplied by the tax rate in effect to arrive at the tax required to be paid.

*(Section 77-2703(1)(k), R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-022 OCCASIONAL SALES

022.01 Transactions that qualify as occasional sales are exempt. Occasional sale means a sale, but not a lease or rental, of property that is described in this regulation or a sale by a religious organization described in Reg-1-091, Religious Organizations.

022.02 An occasional sale described in this regulation does not include:

022.02A Any sale that is made, supervised, or aided by an auctioneer or agent or employee of an auctioneer;

022.02B Any sale where the seller did not pay the tax on the item that is being sold. The seller is considered to have paid the tax when:

022.02B(1) the seller purchased the item before June 1, 1967, or the seller was not required to pay the tax on the purchase or subsequent use of the item, or

022.02B(2) the seller obtained the item through a sale or transfer described in paragraph 022.03 and the previous owner paid the tax.

022.02C Any sale of any inventory of property purchased for resale or for lease.

022.02D Any sale of a motor vehicle, new property, or motorboat on or after January 1, 1997, except a sale in section 022.03.

022.03 An occasional sale includes the following transactions. The transactions in sections 022.03A through 022.03A(9) may involve either new or used property, a motor vehicle, or a motorboat.

022.03A In which the property is the subject of an intercompany sale from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies. This subdivision applies to corporations that

have at least fifty per cent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations;

022.03A(1) From one corporation to another corporation pursuant to a reorganization. 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;

022.03A(2) 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 shareholders;

022.03A(3) To a corporation for the purpose of organization of such corporation or the contribution of additional capital to such corporation when the former owners of the property 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;

022.03A(4) To a partnership in the organization of such partnership if the former owners of the property are immediately after the transfer partners in 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;

022.03A(5) From a partnership to the partners when made in kind in the dissolution of such partnership if the portion of the property so distributed to the partners in the partnership is substantially in proportion to the interest in the partnership held by the partners; and

022.03A(6) To a limited liability company in the organization of such limited liability company if the former owners of the property transferred are, immediately after the transfer, members of such limited liability company and the interest in the limited liability company received by each is substantially in proportion to his or her interest in the property prior to the transfer;

022.03A(7) From a limited liability company to the members thereof when made in kind in the dissolution of such limited liability company if the portion of the property so distributed to the members of the limited liability company is substantially in proportion to the interest in the limited liability company held by the members;

022.03A(8) From one limited liability company to another limited liability company pursuant to a reorganization; or

022.03A(9) Any other transaction that qualifies as a tax-free transaction under the Internal Revenue Code of 1986, as amended.

022.04 An occasional sale includes the sale of either new or used business assets, where a person liquidates his or her business in a single transaction in a sale to a single buyer. Such liquidation must be all or substantially all of the property of the trade or business.

022.05 Occasional sale includes a sale of used business or farm machinery or equipment in which property productively used by a seller as a depreciable capital asset for more than one year in his business is sold.

022.06 Occasional sale includes a sale of household goods and personal effects by an individual when such property was originally acquired and used for personal use. All such sales must occur at an individual's residence and may include the property of more than one person.

022.06A Such sales may not be held on more than three days during a calendar year at any residence.

022.06B Such sales may not include property of a type which is similar to that sold by the individual or any member of his household in a trade or business.

022.07 Persons claiming the occasional sale exclusion as applicable to motor vehicles or motorboats shall provide the county treasurer, or other designated county official, at the time of registration of the vehicle or motorboat with evidence the transfer falls within paragraph 022.03. No other sales of motor vehicles or motorboats qualify as occasional sales.

*(Section 77-2702.09, R.R.S.1996. November 11, 1998.)*

#### REG-1-023 COMPONENT PARTS - MANUFACTURING, PROCESSING, AND FABRICATION

023.01 Property that becomes an ingredient or component part of a product manufactured, processed, assembled, or fabricated for sale by the purchaser is exempt. Property that is necessary for production but which does not become an ingredient or component part of the product sold is taxable.

023.02 To qualify as exempt the property must meet all of the following conditions:

023.02A The property must physically or chemically enter into and remain a part of the finished product;

023.02B The property must be an essential ingredient or component of the finished product; and

023.02C The finished product must be a product that was manufactured, processed, or fabricated for sale by the purchaser of the ingredient or component part.

023.03 A resale certificate should be used to purchase property that qualifies for exemption as an ingredient or component part.

023.04 Fabrication labor performed directly on the product being produced for sale can be purchased for resale.

023.05 Not all sales of property or products to manufacturers, processors, or fabricators are exempt. The property or products which are consumed by them in manufacturing or processing, but which do not become an ingredient or component part of the article, substance, or commodity manufactured, processed, or fabricated, are taxable. The manufacturer, processor, or fabricator is the final buyer or ultimate consumer of such property or product, and the sale to the manufacturer, processor, or fabricator is a taxable sale. Similarly, the purchase of equipment and supplies is taxable. They do not enter into the processing of, and do not form a part of the product sold.

023.06 Since most services are not durable, they cannot generally be a component of another service. The services which are necessary for the production of another service are normally consumed by the purchaser of the service, do not become a component of the service sold, and are taxable. However, a service that becomes a component of a service offered for sale by the purchaser is exempt.

023.07 To qualify as exempt as a component of another service, the service must meet all of the following conditions:

023.07A The service purchased must directly enter into and remain a part of the finished service delivered to the customer;

023.07B The service must be substantially the same as, and an essential component of, the finished service; and

023.07C The finished service must be a service that was performed for sale by the purchaser of the component service.

023.08 A resale certificate should be used to purchase a service that qualifies for exemption as a component part.

023.09 Property or products sold to service providers are consumed by them in providing the service, and do not become a component of the service. The service provider is the final buyer or ultimate consumer of such property or product, and the sale to the service provider is a taxable sale. Similarly, the purchase of equipment and supplies used in performing the service is taxable.

*(Sections 77-2702.13, 77-2702.16, 77-2702.19, and 77-2702.23, R.R.S. 2003. October 1, 2003.)*

#### REG-1-024 CASH DISCOUNTS

024.01 Discounts allowed by the retailer to customers are deductible in arriving at the net sales price which is taxable. Such discounts must appear on the invoices, records and accounts of the retailer and be substantiated to the satisfaction of the Department of Revenue. A discount is not a proper deduction from gross receipts when given on the sale of property or services which are exempt from the tax.

024.02 A cash discount is usually offered by the seller as an inducement for payment within a specified time. A volume discount is usually offered as an inducement for larger purchases. These discounts may not be deducted by the

seller until it has been given to the purchaser. Such discounts will be allowed as a deduction on the seller's tax return when there is sufficient evidence in the records of the seller to indicate that such discounts have been given to the purchaser and the sales reported on the tax return are the amount of sales before discounts.

024.03 A cash rebate is not deductible in arriving at the net sales price which is taxable. A cash rebate is usually allowed by a manufacturer subsequent to the actual sales transaction and is contingent upon the claimant submitting proof that the sales transaction has been finalized. As the sales tax is imposed upon the sales transaction (Reg-1-001, Nature of the Sales Tax), a subsequent rebate of a portion of that sales price, does not reduce the original sales price upon which the tax is imposed.

024.04 See Reg-1-020, Motor Vehicles, for rebates on motor vehicles.

*(Sections 77-2702.07 and 77-2702.17, R.S.Supp., 1992, January 24, 1993.)*

#### REG-1-025 RETURNED ARTICLES

025.01 In the event taxable purchases are returned to the retailer by the purchaser or consumer and the sale is entirely rescinded, the retailer or an agent of the retailer certified under the Streamlined Sales Tax Agreement shall refund or give credit to the purchaser the amount of tax previously paid or charged. If only a portion of the purchase price is refunded or credited, the amount of tax to be refunded or credited by the retailer shall be computed based upon the amount of the purchase price to be refunded or credited exclusive of the tax.

025.02 No refund or credit for tax shall be given by the retailer for the return of any merchandise which is exempt from the tax. No refund or credit for tax shall be given by the retailer for goods sold for resale and returned.

025.03 The retailer or an agent certified under the Streamlined Sales Tax Agreement may deduct from gross sales on his or her tax return that portion of the sales price of the property that is refunded or credited to the purchaser; provided, he or she has previously remitted the tax to the Department of Revenue. Any charge for the return of the item, such as a restocking fee, is a portion of the purchase price that is not refunded. The deduction is to be taken on his or her tax return for the period in which the refund was made or credit given.

025.04 See Reg-1-020, Motor Vehicles, for motor vehicles or trailers returned under the Nebraska Lemon Law.

*(Section 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004, April 12, 2005.)*

#### REG-1-026 FINANCE, CARRYING, SERVICE, AND INTEREST CHARGES

026.01 Finance, carrying, service, and interest charges which are separately stated in the sales contract and are solely for the purpose of allowing a delayed payment of the sales price are not taxable; provided, that such charges are not used as

a means of avoiding imposition of the tax upon the actual sales price. The retailer or an agent of the retailer certified under the Streamlined Sales Tax Agreement is required to keep complete and adequate records showing the division of gross receipts between finance, carrying, service, or interest charges and the selling price of property or services.

026.02 Handling, crating, packing, shipping, and service charges for preparing an item for sale or transportation are taxable.

*(Section 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004, April 12, 2005.)*

#### REG-1-027 REPOSSESSIONS

027.01 The sales tax previously remitted by a retailer arising from the sale of property, which is subsequently repossessed, may be allowed as a credit against the retailer's current sales tax liability, but only to the extent of the portion of the purchase price remaining unpaid at the time of repossession. In determining the unpaid amount, all payments and credits to the account must be prorated to the purchase price, tax, finance, carrying, service, and interest charges which were not taxable under Reg-1-026, Finance, Carrying, Service, and Interest Charges. No credit is allowable for expenses incurred by the retailer in attempting to collect the account or repossessing the property.

027.02 Credit for the amount of taxes paid on such unpaid portion of the purchase price of the repossessed property shall be taken on a return filed within a reasonable time after the property has been repossessed. If the retailer remitted the tax on a cash accounting basis or collected the full tax from the purchaser at the time of purchase, a credit is not allowed when the property is repossessed. A credit is allowed only if the sale of the property which has been repossessed was taxable.

027.02A No credit may be taken for the unpaid portion of the purchase price of any motor vehicle or licensable trailer since the tax is collected by the county treasurer, or other designated county official, or Department of Motor Vehicles.

027.02B No credit may be taken by any person other than the retailer who sold the item and remitted the tax. The retailer cannot take a credit when a third-party repossesses the property.

027.03 If the unpaid portion of the purchase price, or any part thereof, is subsequently collected by any means other than by sale of the repossessed property, then a tax, at the rate in effect at the time the receipts are realized under the accounting basis used by the retailer shall be paid on the amount so collected.

027.04 The transaction whereby the property is repossessed is not a sale in itself and there is no tax due on a repossession. When the repossessed property is used other than for demonstration or display to potential purchasers, the reposessor owes a use tax on the property. The amount of the unpaid debt shall be the taxable amount. However, when property which has been repossessed either by the original

retailer, a finance company or other financial institution is resold, the gross receipts from such sales are taxable. The property is not normally an occasional sale since the seller has not paid tax nor productively used the property for one year.

*(Section 77-2708(2)(1)(ii), R.S.Supp., 1993. May 14, 1994.)*

#### REG-1-028 BAD DEBTS

028.01 A retailer may deduct from gross receipts on his or her tax return the amount found worthless for federal income tax purposes and actually deducted or if the reserve method is elected, charged against bad debt reserve; provided, the sales or use tax has been previously remitted to the state by the retailer. The deduction should be taken on the return for the period in which the amount was found worthless and charged off for income tax purposes.

028.02 This regulation does not apply to retailers who remit sales tax on the cash basis or who have elected to remit sales tax in accordance with paragraph 009.05 of Regulation 1-009, Accounting Methods.

028.03 No deduction is allowable for expenses incurred by the retailer in attempting to enforce the collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

028.04 If the amount of an account found to be worthless and charged off for income tax purposes is comprised in part of nontaxable receipts, such as interest, carrying charges, finance charges, service charges and other charges exempt from sales or use tax and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only with respect to the unpaid amount upon which tax has been remitted. In determining the unpaid amount, all payments and credits to the account must be prorated against the various elements comprising the amount the purchaser contracted to pay.

028.05 In support of claims for such credit, retailers must maintain complete and adequate records showing:

028.05A Date of original sale;

028.05B Name and address of purchaser;

028.05C Amount purchaser contracted to pay;

028.05D Amount on which retailer remitted tax;

028.05E All payments or other credits applied to account of purchaser; and

028.05F Evidence that the uncollectible portion of gross receipts on which tax was remitted actually has been legally charged off as a bad debt for income tax purposes.

028.06 If any accounts found worthless and charged off are thereafter in whole or in part collected, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon remitted with the return. Any payments made on a debt previously charged off are applied first proportionally to the taxable price of the

property or service and sales tax thereon, and secondly to the interest, service charges, and any other charges.

*(Section 77-2708(2)(j), R.R.S. 2003. April 12, 2005.)*

#### REG-1-029 TRADE-INS OR EXCHANGES

029.01 When property is sold and part of the selling price is resolved through the purchaser trading in a used item that is similar to the item being sold, the retailer must collect and remit sales tax on the difference between the total selling price and the amount allowed on the trade-in.

029.01A Making payment with an item that is not similar to the item being purchased or is a commodity regularly traded on an open market is a taxable barter and not a trade-in.

029.01B See Reg-1-020, Motor Vehicles, for exchanges of motor vehicles and trailers between individuals.

029.02 If the trade-in allowance exceeds the value at which the property traded in is later carried for inventory purposes, the excess allowance is a form of consideration and is not an allowable cash discount on a subsequent sales tax return.

029.03 Under the foregoing, the full selling price shall be included in "gross sales and services" and the agreed value of the article taken in trade deducted to arrive at "net taxable sales".

029.04 If the property taken in trade is not to be resold in the retailer's regular course of business, he or she must collect and remit the tax on the difference between the total selling price and the amount allowed on the trade-in. In addition, the retailer must pay the use tax on the amount allowed on the trade-in for using the item. (Reg-1-035, Consumption of Untaxed Property.)

*(Sections 77-2702.07, and 77-2702.17, R.S.Supp., 1993. May 14, 1994.)*

#### REG-1-030 LAY-AWAY AND WILL-CALL SALES

030.01 In the case of lay-away or will-call sales (including those in which a deposit is made by the customer), retailers who maintain records on a cash basis must report cash collections on lay-away sales on the return for the period in which the cash is received.

030.02 All other retailers must report lay-away sales on the return for the period in which they are entered as a sale on the retailer's books.

030.03 If the deposit is forfeited by the customer, the seller shall include only the amount of the deposit received in his or her taxable receipts.

*(Section 77-2703(1), R.S.Supp., 1992. January 24, 1993.)*

#### REG-1-031 COIN-OPERATED MACHINES

031.01 General. For the purposes of this regulation, a coin-operated machine shall include all machines where coins or substitutes for coins are inserted to render the machine operable. Owners, other than lessors, of all coin-operated machines are the ultimate consumers of said machines and

are required to pay sales or use tax on the purchase price.

A lessor who purchases coin-operated machines exclusively for the purpose of leasing or renting them shall furnish his or her supplier a Nebraska Resale or Exempt Sale Certificate, Form 13. The lessor shall collect and remit the tax on the gross lease or rental receipts. The receipts from leasing or renting a coin-operated machine are taxable even if the sales by the machine are exempt.

For purposes of imposing the sales tax on receipts from the operation of coin-operated machines, they are placed in one of three general categories: those which vend property, those which are operated for amusement, entertainment, or recreation, and those which provide other services.

031.02 Vending property. When property is sold by means of a vending machine, the person owning the property being sold through the vending machine is the retailer and is responsible for sales tax on the entire gross receipts therefrom regardless of how such receipts are divided.

031.02A The sales tax does not have to be separately stated and collected from the customer on sales of property through vending machines.

031.02B Where the retailer has machines at various locations, only one sales tax permit shall be required. Such retailer shall keep accurate records of the time and place of installation of each machine, the date of removal from any location, the amount of the gross receipts from each vending machine, and the gross receipts from the lease or rental of any vending machine.

031.02C The gross receipts therefrom include the state and applicable local option sales tax. The location of the machine determines the applicable local option sales tax. In determining the amount of sales tax to be remitted on vending machine sales, use the procedures described in 008.03 of Reg-1-008, Records.

031.03 For amusement. Coin-operated amusement machines shall include, but are not necessarily limited to, such devices as:

031.03A Pinball games;

031.03B Shuffleboard;

031.03C Bowling games;

031.03D Radio-ray rifle games;

031.03E Baseball games;

031.03F Football games;

031.03G Racing games;

031.03H Boxing games;

031.03I Coin-operated pool tables;

031.03J Video arcade games; and

031.03K Coin-operated musical devices.

031.04 Every owner or lessee of coin-operated amusement machines is required to be in compliance with the provisions of the Mechanical Amusement Device Tax Act, of the

Nebraska Revised Statutes. Such compliance shall exempt such gross receipts from the sales tax which would or could otherwise apply. If the owner or lessee is not in compliance with the Mechanical Amusement Device Tax Act, the machines may be seized, and the owner will have to remit the sales tax on the receipts from the machines in addition to the other taxes, fines and penalties, (For more information see the Mechanical Amusement Device Regulations). Nothing in this regulation shall be construed as exempting the original purchase or lease receipts, as applicable, of such machines from the tax.

031.05 For other services. These machines do not sell property and are not for amusement but do other things such as provide blood pressures or weight. If the machines also provide fortunes or similar items they are amusement devices.

031.05A See Reg-1-048, Laundries and Dry Cleaners, regarding coin-operated laundry and dry cleaning devices.

031.05B See Reg-1-065, Telephone and Telegraph Communication Services, regarding the receipts from coin-operated telephones.

031.05C See Reg-1-099, Motor Vehicle Services, regarding the receipts from coin-operated car washes.

031.05D The gross receipts of machines for other services are exempt unless the services provided are otherwise taxable.

031.05E When taxable services are provided by a coin-operated machine, 031.02A and 031.02C apply to those machines.

*(Sections 77-2703(1)(c) and 77-3005, R.R.S. 2003. October 1, 2003.)*

#### REG-1-032 LEASED DEPARTMENTS

032.01 Where a retailer has leased certain of the departments in his or her business place to other persons for the purpose of selling property to consumers, each such lessee shall be required to secure a sales tax permit as a retailer. The lessee shall be responsible for the filing of separate tax returns and the payment of the tax due on its sales; provided, the lessee keeps separate books of account and makes his or her own collections on account of the sales.

032.02 If the retailer (lessor) keeps the books for the leased departments and makes collections on account of their sales, the lessor may, as agent for the lessee, make the required separate returns and pay the taxes due. The lessor cannot include the leased department on his or her combined sales tax return. The lessee shall not be relieved of his or her liability in the case the lessor fails to make the proper returns or fails to pay the taxes due.

*(Section 77-2705(3) and (5), R.S.Supp., 1993. May 14, 1994.)*

#### REG-1-033 TRANSIENT AND ITINERANT SELLERS

033.01 The requirement that any person must have a sales

tax permit before he or she may lawfully sell property or services at retail in this state applies to all forms of retail selling, whether through stores, from private residences, at flea markets, fairs, or temporary booths, from trucks and wagons, by house-to-house canvass, by advertising through newspapers or radio and television, or in any other similar manner.

033.02 A distributor selling through mobile salespersons may enter into an agreement with the Department of Revenue to collect tax for salespersons working for the distributor as independent contractors. The distributor must record the retail price of each item sold and the location of each sale. When the distributor has entered into such an agreement, the individual sellers do not need individual sales tax permits.

033.03 The promoter or operator of a trade show, craft show, flea market, or fair is required to be licensed as a retailer. The promoter can agree with persons making sales at the event to remit the tax for those who do not have sales tax permits. If the promoter and the seller make such an agreement, the seller is not required to obtain a sales tax permit.

033.04 Persons who sell at retail from other than a store may be required to post a bond with the Nebraska Department of Revenue as a condition of their obtaining a sales tax permit. The posting of a bond is conditioned upon their full compliance with the provisions of the Nebraska Revenue Act of 1967, as amended, and their accounting to the Department for all monies due thereunder. 033.05 Transient and itinerant sellers who have obtained sales tax permits must have their permits in their possession and must display them upon request.

*(Sections 77-2702.14, 77-2705(3), and 77-2713(1), R.S. Supp., 1992. January 24, 1993.)*

#### REG-1-034 AUCTION AND CONSIGNMENT SALES

034.01 All auction and consignment sales of property are sales at retail and the auctioneer is a retailer who must collect and remit the tax on all sales except as follows:

034.01A If an auctioneer is an agent of a retail seller, then the seller or other agent of the seller is responsible for the collection and remittance of the tax on each transaction;

034.01B If another person acts as clerk for an auction sale and handles the money for the sale, then the clerk is the retailer and is responsible to collect and remit the tax on items sold; or

034.01C If the sale is otherwise exempt because of the nature of the item sold, the nature of the purchaser, or the intended use of the item, such sales are exempt and not taxable. See Reg-1-012, Exemptions.

034.02 All sales made by auctioneers or consignees from an auction house or any other place under the control of an auctioneer or consignee are taxable sales subject only to the exception in item 034.01C of this regulation or the exception for sales by religious organizations in Reg-1-091, Religious Organizations.

*(Sections 77-2702.09, 77-2702.14, and 77-2704.35*

*R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-035 CONSUMPTION OF UNTAXED PROPERTY

035.01 Persons who take property originally purchased tax free with a resale certificate or from inventory (stock) for personal or business use, consumption, or gift, must report and pay a use tax on such property. Such persons must enter on their books the cost of all such property and pay the applicable tax on their purchase price of the property at the rate in effect at the time of use. The cost of those articles taken from stock should be reported on the applicable line of the Nebraska and Local Sales and Use Tax Return .

035.01A Retailers who use property, such as cellular telephones, satellite dishes, or DVRs, as an inducement to obtain signed service contracts for a third party service provider must pay consumer's use tax on the difference between the retailer's cost of the property and any amount received for such property.

035.02 Retailers of aircraft may, in lieu of paying the applicable tax on their purchase price of the aircraft used for personal or business purposes, elect to pay the tax on the gross receipts realized from the use of such aircraft. If such election is made, it shall be pursuant to the conditions set forth in Reg-1-067, Aircraft and Related Services.

035.03 Destruction or other disposition, for which no consideration is received, of property purchased for resale and subsequently determined to be unsalable is not considered to be personal or business consumption and is therefore not taxable.

035.03A However, disposition of such property is taxable if used as a gift or contribution by the owner. The tax is due on the original cost of the property.

035.04 Destruction of property for research and development or testing purposes is taxable.

*(Sections 77-2706(3), and 77-2706.01, R.R.S. 2003, and section 77-2703(2), R.S. Supp., 2005. March 7, 2006.)*

#### REG-1-036 PREMIUMS AND GIFTS

036.01 Donors are regarded as consumers of the items donated and their purchase of the item in Nebraska is taxable. If a gift is delivered in Nebraska to either a donor or donee, the sale is completed in Nebraska and tax must be collected by the Nebraska retailer; however, if the retailer delivers the item to either the donor or donee at a destination outside of this State, no Nebraska sales tax is applicable. For determination of point of delivery, see Reg-1-006, Retail Sale or Sale at Retail.

036.02 The sale of items to be given away for advertising or promotional purposes is taxable. The sale to a donor of items to be given or donated for charitable purposes to an exempt organization is taxable.

036.03 Where the item is purchased for resale and subsequently given away, the purchaser must include in his or her tax return his or her cost of such goods and pay the tax thereon.

036.04 A purchase by an exempt organization for the purpose

of giving the item away, such as a prize in a contest, or raffle, is exempt. The recipient of the item does not have to pay the tax.

036.04A Sales of pickle cards, lottery, and raffle tickets to individual participants are sales of a chance to win and are exempt from the sales or use tax. The sale of the pickle cards or tickets to the organization is taxable, unless the organization is an exempt organization or an exempt governmental unit.

036.04B Sales of Nebraska Lottery tickets to individual participants or to Lottery Game Retailers are exempt.

036.05 The purchase of a gift certificate is exempt. When the donee uses the certificate, in whole or in part, the transaction is taxable the same as if cash were used to make the purchase.

*(Sections 77-2702.13, 77-2704.11, and 77-2706(3), R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-037 TRADING STAMPS AND COUPON REDEMPTION

037.01 When trading stamps are redeemed for merchandise, the transaction is a retail sale and is taxable. The tax is computed on the fair market value of the merchandise transferred in exchange for the stamps. No tax is due when stamps are redeemed for cash rather than for merchandise.

037.02 The purchase of trading stamps by a retailer for distribution to his or her customers is not regarded as the purchase of property and accordingly, no tax applies. The purchase of redemption merchandise is a purchase for resale. The stamp distributor who sells the stamps to the retailer must pay tax on their purchase of the stamps.

037.03 When coupons, certificates, or other documentation are accepted by a retailer as a part of the selling price of any taxable item and such retailer is reimbursed for the amount represented by the coupons, certificates, or other documentation by a third-party, e.g., a manufacturer distributor, or organization, the value of the coupons, certificates, or other documentation cannot be subtracted from the selling price when determining the taxable amount at the time of the sale to the purchaser. (For gift certificates see Reg-1-036, Premiums and Gifts.)

037.04 If the purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount and the retailer receives consideration directly related to the price reduction or discount from a party other than the purchaser, the amount of the price reduction or discount cannot be subtracted from the selling price of the item when determining the taxable amount.

037.04A A preferred customer card that is available to any patron does not constitute membership in such group or organization.

037.05 When coupons are issued and redeemed by the retailer, that is, if they are sponsored by him or her and are not

subject to redemption by a third-party, e.g., a manufacturer or distributor, then the coupons are considered “cash discounts”, and the amount of the coupon may be subtracted from the selling price.

*(Section 77-2701.16, and 77-2701.35, R.S. Supp., 2008. February 22, 2009.)*

#### REG-1-038 FINANCIAL INSTITUTIONS

038.01 The tax applies to the purchase, lease or rental of property or services by financial institutions for its own use or consumption. Financial institutions include national banks as well as state-chartered institutions.

038.02 A financial institution which engages in the sale, lease, or rental of property or services to consumers must register as a retailer, collect, and remit the tax due to the Department of Revenue. Taxable sales by financial institutions include, but are not necessarily limited to, sales of checkbooks, silverware, pictures, savings or piggy banks, and repossessed merchandise. The gross receipts from the lease or rental of property by a financial institution are also taxable. See Reg-1-018, Rent or Lease of Tangible Personal Property, for the taxation of capital or operating leases. Safe-deposit boxes are not considered tangible personal property and accordingly their rental is not taxable.

038.03 Imprinted (personalized) checks sold by banks to customers are taxable. If such checks are furnished the customers at cost, then the bank may either purchase the checks for resale and collect the applicable tax from its customers or pay the tax to its suppliers. If checks are issued to customers for a fixed charge per check which represents a service charge on the accounts (PAYC), such charge is not taxable to the customer, but the bank is the consumer of such checks and must pay tax upon their purchase price.

*(Sections 77-2702.07, 77-2703(2), and 77-2705(3), R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-039 ABSORPTION OF THE TAX PROHIBITED

039.01 The retailer is required to pass on to the consumer or user the full amount of the sales and use tax. The retailer must collect the tax as an item separate and distinct from the selling price. It is a misdemeanor for a retailer, directly or indirectly, to represent to the public that the tax or any part of the tax will be assumed, absorbed, or refunded by the retailer, or that it will not be added to the purchase price, provided that the Tax Commissioner by regulation may permit a retailer to add and collect the tax imposed without separately stating the tax. The regulation containing the authorization to include the tax in the price of a specific type of property or service must be adopted prior to the advertising of the item. See Reg-33-007 for the procedure for requesting such a regulation.

039.02 The provisions of this regulation do not apply to public utilities. (Reg-1-066, Sewer and Water.)

*(Sections 77-2702.07, 77-2703(1)(b) and (c), and 77-2713(5) R.S. Supp., 1992. January 24, 1993.)*

## REG-1-040 ALCOHOLIC LIQUORS CONSUMED ON THE PREMISES

040.01 The sales tax does not have to be separately stated and collected from the customer on sales of beverages and snack foods which are consumed on the premises of the licensed alcoholic liquor retailer. Retailers who do not separately state the sales tax shall determine their taxable receipts in accordance with the procedure set out in paragraph 008.03 of Reg-1-008, Records.

040.01A The tax must be separately stated and collected on the sales of sandwiches, hot foods other than hot beverages, and meals.

040.02 Including the tax in the sales prices does not exempt the retailer from the payment of the applicable tax on the gross receipts from those sales. The retailer is not prohibited from separately stating and collecting the tax if he or she so desires.

*(Section 77-2703(1)(c), R.S. Supp., 1993. May 14, 1994.)*

REG-1-041 Repealed.

REG-1-042 Repealed.

## REG-1-043 CONTAINERS

043.01 Container means the materials used to contain, cover, wrap, or package a product for sale, shipment, or delivery. Containers include boxes, bottles, cans, bags, sacks, and wrapping materials, such as paper, tape, string, and labels. Containers designed for use on transportation equipment are discussed in Regulation 1-069, Common and Contract Carriers.

043.02 Containers are either returnable containers or nonreturnable containers.

043.02A Returnable container means a reusable container that is normally returned to the seller by the buyer of the contents of the container. A returnable container includes any container on which there is a deposit that is refunded to the purchaser of the contents when the container is returned.

043.02B Nonreturnable containers are all containers that are not returnable containers.

043.03 Returnable containers are taxable when sold or rented to the person who will place the contents in the container.

043.03A The collecting or refunding of deposits on returnable containers is exempt.

043.04 Empty nonreturnable containers are exempt if purchased by a person who will fill the container and sell the contents and the container together.

043.04A Empty nonreturnable containers are taxed if purchased by a person who will not sell the contents or will remove the contents from the container before sale.

043.05 Any charge for a container, for wrapping an item, or filling a container, is taxable, except if the contents are sold at the same time and the contents are exempt, the charge is exempt.

043.05A The person charging for the container, for

wrapping, or for filling may purchase the container or the materials used for resale.

*(Sections 77-2704.24 and 77-2704.47, , R.R.S. 2003; and Pepsi Cola Bottling Co. v. Peters, 189 Neb. 271, 202 N.W.2d 582 (1972). April 12, 2005.)*

## REG-1-044 ADMISSIONS

044.01 The term "admission", as used herein, means the right or privilege to have access to or use a place or location where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions, including surcharges, are subject to sales tax. This includes season or subscription tickets for specific occasions or for multiple occasions, either limited or unlimited during a period of time.

044.02 The term "membership", as used herein, means having all the participation rights of belonging to an organization which shall include, but are not necessarily limited to, the voting for officers, the holding of office, and the ability to change the constitution and bylaws. The payment or receipt of membership dues is exempted from the sales and use tax. Membership shall not include any charge that is intended to allow admission to a place or event, or series of events, rather than to confer participation rights.

044.03 The tax may be included in the total admission price. If the tax is included in the total admission price, a statement must appear on the ticket to the effect that the sales tax is included in such price unless the price is separately stated on a sign posted in a conspicuous place where the admissions are sold.

044.04 The amount of tax on admissions is calculated at the rate in effect on the date of the sale at the place where the admission will be granted.

044.04A When a single charge is made to cover admission to more than one attraction under the same management, the tax is computed on the basis of a single charge. If separate charges are made for each attraction, the tax is computed on each charge or on the total of the separate charges.

044.05 No refund or credit of the sales tax is allowed by reason of nonuse of any ticket of admission except where the selling price of the ticket is also refunded.

044.06 Places of amusement, entertainment, or recreation include, but are not limited to, amusement parks, archery ranges, art exhibits, auditoriums, baseball parks, bowling alleys, cabarets, country clubs, dance halls, driving ranges, fairgrounds, fishing ponds, football stadiums, golf courses, gymnasiums, health clubs, miniature golf courses, movie theaters, museums, night clubs, parks, race tracks, racquetball courts, skating rinks, skeet ranges, street fairs, swimming pools, superslides, theaters, trap ranges, toning salons, and zoos.

044.07 An admission does not constitute a rental of the facilities. Consequently, the purchase, lease, or rental of any property by the owner or operator charging the admission is taxable and is not for resale.

044.08 Where a separate charge, in addition to the admission, is made for actual rental of property such as bowling shoes, roller skates, stadium seat cushions, etc., such gross receipts are taxable. The original purchase of such property may be made with a resale certificate where the use is to be solely for renting or leasing purposes.

044.09 Cover charges, minimum charges, charges for reservations, or any similar charges are charges for admissions, and the sales tax must be collected and remitted on the gross receipts.

044.10 The operation of a checkroom is a service, and shall not be considered an admission. The gross receipts from the operation of coat or hat checkrooms should not be included in the gross receipts upon which sales tax is computed.

044.11 Admissions charged by public or private elementary or secondary schools or school districts are exempt. Admissions charged by student organizations or parent-teacher associations in a public or private elementary or secondary school during the regular school day or at an approved function of the school, are exempt.

044.12 The gift of an admission is exempt. The donor must pay tax on any payments made to obtain the admission that was given away.

044.13 When the charge for an admission to an activity conducted by a nonprofit organization is combined with the solicitation of a contribution see Reg-1-090, Nonprofit Organizations, for the proper taxation of the amount charged.

044.14 Charges for admission to political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees, which are either registered with the Political Accountability and Disclosure Commission, or are committees for candidates for federal office, are exempt.

*(Sections 77-2701.32 and 77-2704.10, R.R.S. 2003, and sNeb. Rev. Stat. §§ 77-2701.16, 77-2701.32, 77-2701.34, and 77-2703(1), 77-2704.10, The Governors of the Knights of Ak-Sar-Ben v. Department of Revenue, Doc. 352, Pg. 148 [Lancaster Co. Dist. Ct., Dec. 27, 1984]; and Attorney General's Opinion No. 88 dated 11/17/69. November 17, 2013.)*

#### REG-1-045 MOTION PICTURE FILM, VIDEOTAPE, AND PROGRAMMING

045.01 Except as provided in paragraph 045.02 and 045.03, sales and use tax applies to the gross receipts from the sale or lease of entertainment properties, including videotape, digital goods, motion picture film, satellite programming, and satellite signal descrambling or decoding devices. Gross receipts includes the total amount charged for entertainment property including but not limited to any license, royalty, franchise, broadcast fee, or other method establishing the charge.

045.02 Sales and use tax is not applicable to leases or rentals of entertainment properties to theaters, or other exhibiting enterprises, where the admission to the showing or the

charge to view is taxable.

045.03 Sales and use tax does not apply to the sale, lease, license, rental, or use of property or digital goods containing copyrighted material for rebroadcast by a radio or television station to the general public if the purchaser is operating under a certificate from the Federal Communications Commission.

*(Sections 77-2701.16, 77-2701.34, 77-2701.50, 77-2701.51, 77-2701.52, and 77-2701.53, R.R.S., 2009. June 6, 2011.)*

#### REG-1-046 HOTELS, LODGINGS, AND ACCOMMODATIONS

046.01 The sales tax applies to the receipts from any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished for a consideration except licensed hospitals and nursing homes. The terms "rooms, lodgings, or accommodations" do not include camp sites, ballrooms, banquet rooms, reception rooms, meeting rooms, or other rooms which do not constitute a sleeping facility. Recreational vehicle park services are taxable. (Reg-1-103, Recreational Vehicle Park Services)

046.01A Charges to guests or tenants for cable or satellite television are taxable.

046.01A(1) The hotel, etc., may purchase the cable or satellite service, or separate channels without the payment of tax if the channels or the service is only available for an additional charge.

046.01B Charges to guests or tenants for intrastate telephone service are taxable. The hotel cannot buy telephone service for resale, except when the hotel uses no part of the telephone service.

046.02 Rooms, lodging, or accommodations supplied to the same tenant for a period of thirty (30) continuous days or more and the occasional rental for less than thirty (30) days of dormitories or facilities regularly used to house students in a facility operated by an educational institution established or recognized under Chapter 79 or 85 of the Nebraska Revised Statutes, are exempt from the sales and use tax.

046.03 Hotels, etc., must remit sales tax on the gross receipts from the sale of property or services at retail including the sale of meals. All property or services purchased by hotels, etc., are taxable except food, liquor, and like items that are actually resold. Sales to hotels, etc., of furniture, towels, soap, bedding, or other articles of property are regarded as sales for final use or consumption to which the sales tax applies.

046.04 The term accommodations shall include cabin trailers and mobile homes which have been either set up as a dwelling according to the local building codes or are permanently annexed to real estate.

046.05 Employees of exempt organizations or exempt governmental entities are taxable when they personally pay for accommodations, even if the employee is on travel

orders and will be reimbursed for expenses incurred by the exempt organization or governmental entity.

*(Sections 77-2702.14 and 77-2702.15, R.R.S. 2003, October 1, 2003.)*

#### REG-1-047 BARBER AND BEAUTY SHOPS

047.01 Barber and beauty shop operators are primarily rendering personal services not subject to the sales tax. They are the consumers of the materials used in their business when rendering such personal services and are required to pay the tax on all these purchases.

047.02 When barber and beauty shop operators sell property they are required to register, collect and remit the tax on such sales directly to the Department of Revenue.

047.02A Operators may purchase for resale the items that will be sold.

047.03 Operators will pay the use tax on any of the items purchased for resale that are used in rendering personal services.

047.03A Operators who charge their employees or independent contractors working in their shop for materials will collect sales tax on the amount charged.

*(Sections 77-2702.13, and 77-2703(2), R.S.Supp., 1993, May 14, 1994.)*

#### REG-1-048 LAUNDRIES AND DRY CLEANERS

048.01 All property and services purchased by laundries and dry cleaners for use in furnishing laundry and dry cleaning services are taxable. Services rendered by such persons in returning clothing and other items to their original condition are restoration services and are not taxable.

048.02 The sales tax does not apply to receipts from coin-operated laundry and dry cleaning devices. The sales or use tax applies to all property purchased by coin-operated laundries to be used in the furnishing of laundry services, including machinery, equipment, repair parts, materials, and supplies.

048.03 Electricity and other fuels purchased for a laundry or dry cleaner, or for coin-operated laundry and dry cleaning devices is used in restoration and not in processing and is therefore taxable.

048.04 When laundry and dry cleaner operators go beyond the rendition of restoration services and make sales of clothing, bleach, soap, or other property, and alter, repair, or modify garments, they must become licensed to collect and remit the applicable tax.

*(Sections 77-2702.13, 77-2703(2), and 77-2704.15, R.R.S. 2003. Uniservice v. State, Doc. 402, Pg. 150 (Lancaster Co. Dist. Ct., 1987).October 1, 2003.)*

#### REG-1-049 LINEN AND CLOTHING SUPPLIERS

049.01 The gross receipts realized from rental of or furnishing of tangible personal property, such as coats, caps, aprons, dresses, uniforms, smocks, towels, linens, rugs, and diapers under an agreement which provides for their periodic cleaning or laundering, are taxable.

049.02 Persons providing this service are retailers and shall issue resale certificates to their suppliers for the clothing or other items which are furnished to their customers under these agreements. Materials, equipment, electricity and other fuels, and supplies consumed by the retailer in providing this service, such as bags or other packaging, bleaches, softeners, and detergents, are taxable.

*(Sections 77-2702.14, and 77-2703(1) and (2), R.S.Supp., 1992, January 24, 1993.)*

#### REG-1-050 MEDICINES AND MEDICAL EQUIPMENT

050.01 Home medical supplies, oxygen equipment, prosthetic devices, mobility enhancing equipment, durable medical equipment, and supplies used with the equipment or devices covered under the Nebraska Medical Assistance Program operated by Nebraska Health and Human Services Finance and Support are exempt. The same items are also exempt when prescribed by a practitioner licensed under Chapter 71, article 1, or the Advanced Practice Registered Nurse Act of the Nebraska Revised Statutes for the treatment of a medical condition for a person not receiving benefits under the Nebraska Medical Assistance Program.

050.01A Purchases by physicians and dentists are discussed in Reg-1-051, Physicians and Dentists.

050.01B Purchases by medical facilities that are not exempt are taxed in the same manner as physicians and dentists are taxed. The medical facility must maintain copies of the prescriptions for items transferred without any tax collected.

050.02 Sales of drugs, other than over-the-counter drugs, that have been prescribed in writing by physicians or dentists for human use and are dispensed by a licensed pharmacist are exempt from sales and use tax. Sales of drugs, other than over-the counter drugs, which have been orally prescribed by a physician or a dentist are exempt from the sales and use tax; provided, the prescription is recorded and signed by the licensed pharmacist and filed in the same manner as written prescriptions. Drugs, other than over-the-counter drugs, sold pursuant to the refilling of a prescription from a physician or a dentist are also exempt.

050.02A Drugs not sold in accordance with the above procedures are taxable.

050.02B Over-the-counter drugs that can be purchased without a prescription are taxable even when they are prescribed by a doctor.

050.02C All illegal drugs are taxable.

050.03 Retailers making sales of drugs, other than over-the-counter drugs, durable medical equipment, home medical supplies, prosthetic devices, or mobility enhancing equipment must keep the prescription sales records segregated from other sales records. All original prescriptions must be filed and available for inspection by the Department of Revenue. When a sale is made to refill a prescription, the records of the retailer must show the identification number of the original prescription in order that reference to the original may be made.

050.04 The sale of insulin with or without a prescription is exempt.

050.05 The sale of corrective lenses, either as eyeglasses or contact lenses, with a prescription are exempt. Cleaning devices, cleaning or wetting solutions, and cases are taxable.

050.06 The sale of hearing aids with a prescription by a practitioner licensed under Chapter 71, article 1 or a Hearing Aid Instrument Dispenser and Fitter licensed under Chapter 71, article 47 of the Nebraska Revised Statutes are exempt. The sale of hearing aid batteries is exempt when the retailer maintains a copy of the prescription for the exact batteries purchased.

050.07 The following definitions are to be used as guidelines to determine the exempt status of equipment, supplies, or devices. The Department of Revenue will rely upon determinations of the Nebraska Medical Assistance Program operated by Nebraska Health and Human Services Finance and Support as to whether specific supplies, devices, or equipment are included within the terms used in this exemption.

050.07A Dental prosthetics shall mean any artificial dental or oral device used on or attached to the human body which replaces or corrects a deficient part of the body.

050.07B Durable medical equipment shall mean equipment, including repair and replacement parts, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is not generally useful to a person in the absence of illness or injury, and is appropriate for use in the home.

050.07B(1) Durable medical equipment does not include exercise equipment, recliners, vibrators, hot tubs, or monitoring devices not necessary in the use of other durable medical equipment.

050.07C Home medical supplies shall mean supplies primarily and customarily used to serve a medical purpose that are appropriate for use in the home and are not generally useful to a person in the absence of illness or injury. Home medical supplies do not include items for personal comfort, hygiene, or cosmetic purposes, or any drugs.

050.07D Mobility enhancing equipment means equipment that enables a disabled or handicapped person to enter, exit, or move from one place to another in his or her residence, and equipment installed on a motor vehicle to make the motor vehicle suitable for use by a disabled or handicapped person.

050.07E Oxygen equipment shall mean oxygen cylinders, cylinder transport devices, including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories.

050.07F Drugs means any compounds, substances, or preparations recognized in the U.S. Pharmacopoeia,

U.S. Homeopathic Pharmacopoeia, or National Formulary which are intended for use in the diagnosis, cure, or treatment of disease or intended to affect the structure or function of the body. Drugs do not include grooming and hygiene products such as soap, toiletries, and cosmetics.

050.07G Prosthetic devices shall mean replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. Prosthetic devices include any supplies used with such devices and any repair or replacement parts.

050.07H Appropriate for use in the home means the equipment can be used or operated by a person without specialized training.

050.07I Over-the-counter drug means a drug containing a label as required by 21 C.F.R. 201.66.

050.08 Charges for home medical supplies, oxygen equipment, mobility enhancing equipment, or durable medical equipment that are purchased with a doctor's prescription and are billed under Part B of Medicare, are exempt.

050.09 Charges which are billed under Medicaid and are paid on a State of Nebraska Treasury Warrant, are exempt.

*(Section 77-2704.09, R.S. Supp. 2005. March 7, 2006.)*

#### REG-1-051 PHYSICIANS AND DENTISTS

051.01 Charges for professional services rendered by physicians and dentists are not taxable.

051.02 Physicians and dentists are considered consumers of all property and services which they purchase for use in the practice of their professions.

051.02A Drugs, not including over-the-counter drugs, prosthetic devices, durable medical equipment that is suitable for use by only one patient, and home medical supplies that are consumed in the treatment of a patient which would be exempt under Reg-1-050, Medicines and Medical Equipment, if purchased directly by the patient, are exempt when purchased by the doctor or dentist.

051.02B Supplies that are used in examinations or diagnosis, and test or diagnostic equipment, are taxable when purchased.

051.02C Durable medical equipment may be purchased by the physician or dentist without the payment of tax when the ownership of the equipment will be transferred to the patient. Durable medical equipment that is not transferred to a specific patient is taxable when purchased by the physician or dentist.

051.03 When physicians and dentists separately sell property, they are required to collect the tax on such sales or to maintain records, other than confidential patient records, showing such sales were exempt.

*(Section 77-2704.09, R.R.S. 2003. April 12, 2005.)*

## REG-1-052 FLORISTS

052.01 Charges by a florist to his or her customers for the sale and delivery of flowers, wreaths, or other floral products are taxable when the items sold are delivered by the florist to points within the State of Nebraska, or when the florist receiving the order instructs another florist to make the delivery.

052.01A When the florist receiving the order makes the delivery, the tax shall be collected at the appropriate rate, including local option sales tax, for the delivery location.

052.01B When another florist makes the delivery, the florist receiving the order from the customer will collect the tax at the rate, including local option tax, for the location where the order was taken.

052.02 The sales tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc., and instruct other florists to make the delivery. The sales tax does not apply to separate charges made by the florist for transmitting the instructions.

052.03 The tax does not apply to amounts received by Nebraska florists who make deliveries in this state pursuant to instructions received from other florists.

052.04 Wires, stems, vases, or other property which become a component part of a finished "arrangement" are not taxable when purchased by the florist.

*(Section 77-2704.11, R.S.Supp., 1992. January 24, 1993.)*

## REG-1-053 FUNERAL DIRECTORS AND UNDERTAKERS

053.01 Funeral directors and undertakers are considered to be in the dual capacity of rendering services and selling property. Sales tax attaches to such sales of property and shall apply as set out in this regulation.

053.02 Funeral directors or undertakers are considered to be purchasing for resale such items as caskets, vaults, and clothing, and accordingly should furnish their suppliers of such items with a resale certificate. However, funeral directors or undertakers are considered consumers of embalming fluid, cosmetics, chemicals, office equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles, embalming instruments, grave equipment, stretchers, and baskets. The applicable tax must be collected by the supplier and remitted to the Department of Revenue.

053.02A When a funeral director or undertaker is employed to prepare the remains and place it in a casket for subsequent shipment outside of this state, sales of caskets, clothing, and similar items, are taxable as the delivery has taken place when the remains were placed in the casket.

053.02B When remains are shipped into this state for burial purposes and a vault is purchased from the Nebraska funeral director, sales tax applies on the charge for the vault.

053.03 No sales tax shall be charged on burials for which

payment is made directly to the funeral director or undertaker by the State of Nebraska or any county.

053.04 If separate charges are made for the sale of property and for required services, sales tax shall be collected only on the sale of property. In such cases, tax would not apply to charges such as embalming and care of the remains, use of the hearse, limousine, grave opening, purchase of a lot, remuneration to the minister and musicians, use of the church, or press notices.

053.04A Where the funeral director or undertaker purchases flowers, sales tax must be paid by the funeral director or undertaker to the florist unless the funeral director or undertaker separately charges for the flowers. When the separate charge is made, the charge is taxable and the funeral director or undertaker can purchase the flowers for resale.

053.05 Where funeral directors and undertakers do not segregate the charges for the sale of property from the sale of required services, they shall collect and report the tax based on fifty percent (50%) of the total charges. The sale of outside vaults and clothing are not considered a part of required services and sales tax shall apply with respect to 100% of the total from such sales. Charges for all other nonrequired taxable services are excludable from the tax base prior to computation on the 50% basis. Charges for grave openings, purchases of a lot, payments to the minister and musicians, use of the church, and press notices are examples of charges for nonrequired services.

*(Section 77-2703(1)(k), R.S.Supp., 1993. May 14, 1994.)*

## REG-1-054 NEWSPAPERS

054.01 Sales of newspapers, published at least 52 times a year and containing matters of general interest and reports of current events, are exempt from the sales tax whether sold by subscription or for cash.

054.02 Purchases of preprints such as advertising supplements, newspaper supplements, or similar items, for distribution with newspapers are exempt when delivered directly to the newspaper by the printer or by a common or contract carrier. Any of the preprints that are not actually distributed with a newspaper, or that are not delivered directly to the newspaper, are taxable.

054.03 Publishers of newspapers are exempt from payment of sales tax on their purchases of paper, ink, preprints, and other component parts of newspapers. Purchases which do not become a component part of the finished newspaper, such as presses, photography equipment, office furnishings, and supplies are taxable.

*(Sections 77-2702.13 and 77-2704.07, R.R.S. 2003. October 1, 2003.)*

## REG-1-055 MAGAZINES AND JOURNALS

055.01 Receipts from any sale, whether or not by subscription, for magazines and journals are taxable.

055.02 Journals include professional publications and information service publications that are updated periodically.

055.03 Publishers of magazines and journals are purchasing the property actually incorporated as a component part of the finished product as a “sale for resale”. Purchases by publishers which do not become a component part of the finished magazine or journal, such as presses, photography equipment, office furnishings, and supplies are taxable.

*(Sections 77-2702.13 and 77-2704.22, R.R.S. 2003, October 1, 2003.)*

#### REG-1-056 ADVERTISING AND ADVERTISING AGENCIES

056.01 An advertising agency performs advertising services and develops advertising materials for its clients.

056.02 The taxation of purchases by and sales of an advertising agency depend upon the written agreement between the agency and the client. The client and the agency may agree on two different provisions that affect taxation.

056.02A The client can designate the agency to operate as an agent of the client for purchases.

056.02A(1) If the client does not designate the agency to operate as their agent, the advertising agency must operate as a retailer under paragraph 056.05 of this regulation for that client.

056.02B If the client has agreed the agency is operating as their agent, the client and the agency may also agree the agency owns the materials used in producing and developing the advertising.

056.02B(1) The agreement covers the ownership of materials that are not transferred to the client or delivered to customers or potential customers within one year of the completion of the project.

056.02B(2) All materials that are physically delivered less than one year after the completion of the project to the client, to the client’s customers or potential customers belong to the client regardless of the terms of the agreement.

056.02B(3) If the agency owns the materials under the agreement, the agency must operate under paragraph 056.03 of this regulation for that agreement.

056.02B(4) If the client and agency do not agree that the agency owns the materials, then the client is presumed to own the materials and the agency must operate under paragraph 056.04 of this regulation.

056.02C The agency may have one agreement with a client that covers all of the projects for that client. The agency may also have different agreements with the same client at different times or on different projects, or the agency may have different agreements with different clients.

056.02D When the agency is required to operate under different paragraphs of this regulation, the agency must have different procedures for such things as record keeping, storage or disposition of materials, and licensing of work from other persons.

056.02D(1) If the same procedures are used for all clients regardless of the terms of the agreement, the agreements will be disregarded as being intended to avoid the tax.

056.03 This section of this regulation applies when the client has designated the advertising agency as its agent for sales and use tax purposes, and has agreed in writing that the advertising agency owns the materials.

056.03A The agency must pay tax on labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials.

056.03A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.03A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.03B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.03C An advertising agency must pay tax on all purchases of advertising materials.

056.03C(1) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.03D The agency will not collect tax from its client on charges for projects that result in the advertising services listed below. The agency will pay tax on its purchases as otherwise required in this paragraph.

056.03D(1) Writing original manuscripts and news releases;

056.03D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.03D(3) Providing consultation or market research;

056.03D(4) Compiling statistical or other information; or

056.03D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.03E Advertising materials are transferred to the client if title or possession are transferred to the client or if the materials are delivered to customers or potential customers of the client.

056.03E(1) The agency will not collect tax on the amounts billed to the client for reimbursement of payments by the agency to third-parties for the materials, labor, or talent.

056.03E(2) The agency will collect tax on any amounts billed for work performed by the agency or its employees directly on materials transferred to the client.

056.03F The agency and the client are both responsible for any tax that was not paid on purchases made by the agency as an agent of the client. Only the agency is responsible for the tax on purchases of materials that will be retained by the agency.

056.04 This section of this regulation applies when the client has designated the advertising agency as its agent for tax purposes, but has not agreed in writing that the advertising agency owns all advertising materials that are not transferred. The client is presumed to own the materials for the project, including those in the possession of the advertising agency.

056.04A The agency must pay tax on any labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials.

056.04A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.04A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.04B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.04C The agency must pay tax on all advertising materials that will be transferred to the client, unless the client is an exempt organization.

056.04C(1) If the client is an exempt organization or exempt governmental unit, the advertising agency may give the seller an exempt sale certificate with the name and exemption number of the exempt organization.

056.04C(2) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.04D The agency will not collect tax from its client on charges for projects that result in the advertising services listed below.

056.04D(1) Writing original manuscripts and news releases;

056.04D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.04D(3) Providing consultation or market research;

056.04D(4) Compiling statistical or other information; or

056.04D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.04E All advertising materials are transferred to the client. This includes materials such as mechanicals or paste-ups kept at the agency, materials delivered to the client or materials delivered to customers or potential customers of the client.

056.04E(1) The agency will not collect tax on the amounts billed to the client for reimbursement of payments by the agency to third parties for materials, labor, or talent.

056.04E(2) The agency will collect tax on any amounts billed for work performed by the agency on materials.

056.04F The agency and the client are both responsible for any tax that was not paid on purchases made by the agency as an agent of the client and on all purchases of advertising materials used for the client.

056.05 This section of this regulation applies when the client has not designated the advertising agency as its agent for tax purposes. The agency must operate as a retailer and the agency is presumed to be the owner of all advertising materials not transferred to the client.

056.05A The agency must pay tax on labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials. The agency may purchase from third-parties the labor used directly on the actual final product for resale.

056.05A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.05A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.05B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.05C An advertising agency must pay tax on all purchases of advertising materials, except the agency will not pay tax on advertising materials that will be transferred to the client or to a customer or potential customer of the client. The materials to be transferred can be purchased for resale.

056.05C(1) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.05D The agency will not collect tax on charges for projects that result in the advertising services listed below.

056.05D(1) Writing original manuscripts and news releases;

056.05D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.05D(3) Providing consultation or market research;

056.05D(4) Compiling statistical or other information; or

056.05D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.05E Advertising materials are transferred to the client if they are delivered to the client or if the materials are delivered to customers or potential customers of the client.

056.05E(1) The agency must collect tax from the client on the total amounts billed to the client for advertising materials.

056.05E(2) The agency must collect tax on any amounts billed for work performed by the agency on materials transferred to the client.

056.05E(3) The agency must collect tax from the client on the total amount billed for the project including any commissions, surcharges, or agency fees connected with an advertising project that results in materials transferred to the client.

056.05E(4) When a project results in both the services listed in paragraph 056.05D and the transfer of materials, the service fees and commissions are partially taxed. The division will be based on the comparative charges for the services and the materials.

056.05E(5) If the client is an exempt organization or exempt governmental unit, the advertising agency may accept an exempt sale certificate from the exempt organization. The agency is then not required to collect the tax from the client. The agency must pay tax on all purchases of advertising materials that are not transferred as required in paragraph 056.05A.

056.05F The agency and the client are both responsible for any tax that was not paid on the total amount billed by the agency for advertising materials.

056.06 The type of display determines if charges for outdoor advertising are taxable. Charges for displays that are fixed are exempt. Fixed displays include signs and billboards attached to real estate. Charges for displays that are temporary, portable, or mobile are taxable. These displays include signs and billboards on trailers. Charges for preparing messages for such displays are taxable.

*(Section 77-2702.07, 77-2702.13, 77-2702.15, and 77-2702.17, R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-057 PRINTING AND RELATED INDUSTRIES

057.01 Printing includes all printing, lithography, photolithography, typography, color separation, rotogravure, gravure, silk screen printing, imprinting, laser printing, multilithing, mimeographing, photocopying, die cutting, binding, folding, and similar operations.

057.02 The printer must collect tax on the gross receipts for printing. The gross receipts are taxable whether the printer or the customer provides the materials. Charges for delivery, postage, or shipping paid to a printer or paid directly to the U.S. Postal service or a common carrier on behalf of the printer are taxable.

057.02A Set up charges, type setting and similar charges, and charges for die cutting, embossing, folding, and other binding operations are taxable.

057.02B The gross receipts from the sale of preprints, such as advertising supplements, newspaper inserts, or similar items, are taxable except when sold for distribution with the newspaper and delivered directly to the newspaper by the printer or a common or contract carrier.

057.03 The printer must collect tax on charges for printing aids or for the preparation of printing aids. The tax must be collected whether they are sold to a client or to another printer. Printing aids are those plates or other materials that physically transfer the image to the paper or other materials.

057.04 The printer may accept a resale or exempt sale certificate or a certificate of exemption for direct mail from a customer. When the resale or exempt sale certificate or certificate of exemption for direct mail is accepted, the printer does not have to collect the tax.

057.04A The printer may accept a resale certificate from an advertising agency acting as a retailer;

057.04B The printer may accept an exempt sale certificate from an exempt organization or governmental unit that is exempt;

057.04C The printer may accept a certificate of exemption for direct mail. The purchaser is responsible for the tax associated with the direct mail certificate. A

certificate of exemption for direct mail remains in effect until it is revoked in writing by the purchaser, (See Reg-1-105, Direct Mail); or

057.04D The printer may accept delivery information for direct mail. The printer will collect tax based on the jurisdictions into which the direct mail will be delivered. (See Reg-1-105, Direct Mail.)

057.05 The printer must pay tax on all machinery and equipment and on all tools, supplies, cleaning materials, and other consumables.

057.05A Consumables include printing plates that are not suitable for reuse and printing plate materials used to make printing plates which are not suitable for reuse. Such plates and plate materials are not resold to the printer's customers and therefore, cannot be purchased by the printer tax-free for resale.

057.06 The printer must pay the tax on printing aids it purchases to use. When the printing aids are sold to the customer before they are used, the printer may purchase the printing aids for resale. Unless there is a written agreement to the contrary, the printing aids will be considered sold before use when the printing aids are separately listed and priced on the printer's invoice to the customer.

057.06A When the printing aids are sold to the customer after they are used, the printer must pay tax to his or her supplier and the printer must also collect tax on the sale to the customer.

057.06B The printer must pay tax on materials and artwork that are purchased to make printing aids. These materials and artwork include photographs, drawings, paintings, hand lettering, other artwork, photographic reproductions of such material, pasteups, mechanicals, or camera-ready copy.

057.07 The printer may purchase paper, ink, and bindery materials that will be part of the product sold to the customer for resale. Similar materials that are a part of the product delivered may also be purchased for resale.

057.08 If mats for comic strip drawings, syndicated columns, syndicated photos, or publicity photos are furnished to the publisher, then the columnist, syndicate, or the person who purchases the mat must pay the tax to the person who makes the mat.

057.09 Charges for duplicating by means of a computer, word processor, or memory typewriter are taxable. The taxable amount includes any amount for the original typing of the letter to be duplicated, and any customized information that will be automatically inserted into the letter.

057.10 Charges for individually typing by hand the salutation or inside address or a personalized reference on mechanically duplicated letters are exempt. Charges for addressing for mailing by hand are exempt.

057.11 Sales of signs, show cards, and posters are taxable. Charges for painting signs, show cards, and posters are

taxable whether the materials are furnished by the painter or by the customer.

057.12 Charges for painting or lettering on real property, such as a building or a window, are not taxable. Paint is a building material and is taxed based on the contractor option selected by the painter. (Reg-1-017, Contractors.)

*(Sections 77-2701.12, 77-2701.31, and 77-2701.33, R.R.S. 2003, and section 77-2701.16, 77-2701.32, 77-2701.35, and 77-2703.03, R.S. Supp., 2008. February 22, 2009.)*

#### REG-1-058 PHOTOGRAPHERS AND PHOTOSTATIC MATERIALS

058.01 Sales and use tax applies to sales of photographs and photostatic copies. Taxable transactions include sales of photographs or photostatic copies produced to special order for the customer, and also to charges for the making of photographs or photostatic copies when the materials used are furnished by the customer.

058.01A Tax must be collected on the total selling price without deduction for the cost of the product sold, labor, professional expertise, or any other expenses of the photographer such as travel time, rental of equipment, or salaries or wages paid to assistants or models, whether or not such expenses are itemized on the billing to customers.

058.02 Photofinishers, photographers and photostat producers may purchase for resale property such as mounts, frames, and sensitized paper, which becomes an ingredient or component part of photographs or photostats which are sold. Sales to the photographer, photofinisher, or producer of materials used or consumed in the process of making the photographs or photostatic copies, such as chemicals, trays, films, plates, proof paper, and cameras, which do not become an ingredient or component part of the item sold are taxable.

058.03 Charges for printing pictures or making enlargements from negatives furnished by the customer including charges for developing the negatives are taxable. The tax also applies to charges by a photofinisher for tinting or coloring pictures.

*(Sections 77-2702.07, 77-2702.13, 77-2702.15, and 77-2702.17 R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-059 TIRE RETREADING, RECAPPING AND REPAIRING

059.01 Persons engaged in the retreading, recapping and relugging of tires for customers are deemed to be producing property for sale and the sales tax attaches thereto. The sales tax shall be collected on the full amount charged the customer, which includes both materials and labor, regardless of the manner in which the customer is billed for such charges.

059.02 Where recapped, relugged or retreaded tires are sold to or processed for dealers for resale purposes, such dealers shall collect the tax on the full amount, which includes both materials and labor, when the recaps, relugs or retreads are sold at retail.

059.03 Sales tax is imposed upon the charge made for tire and tube repairing other than tires for motor vehicles, trailers or semitrailers, or agricultural machinery used in commercial agriculture. Sales to the person repairing tires and tubes of articles, equipment and supplies used in performing such repair service are sales for final use or consumption and are taxable to the repairperson at the time of purchase.

*(Section 77-2702(4), (13) and (15), R.R.S. 2003. October 1, 2003.)*

#### REG-1-060 SEEDS AND PLANTS

060.01 Sales of seeds, plants, shrubs, and trees, when sold to persons for growing or improving home lawns, ornamental gardens, parks, boulevards, and golf courses, are taxable.

060.02 Sales of garden seeds, bulbs, and plants, the products of which ordinarily constitute food for human consumption, are taxable, except that:

060.02A Sales of these seeds, bulbs, and plants are exempt if purchased with payments from the Supplemental Nutrition Assistance Program (SNAP), (Reg-1-087, Food And Food Ingredients); or

060.02B Sales of these seeds, bulbs, and plants are exempt if sold for use in commercial agriculture. (Reg-1-087, Food and Food Ingredients).

060.03 Seed legumes, seed grasses, and seed grains that are sold exclusively for use in commercial agriculture are exempt from sales tax. Tax exempt purchases of seed legumes, seed grasses, and seed grains for use in commercial agriculture do not need to be supported by a Nebraska Resale or Exempt Sale Certificate, Form 13, when the seller has other documentation to adequately support the exempt use of the products.

060.04 Commercial agriculture means the business of producing food products or other crops that are either sold or used by the grower. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, and sod farms.

*(Neb. Rev. Stat. §§ 77-2704.46 and 77-2704.54. July 3, 2013.)*

#### REG-1-061 AGRICULTURAL CHEMICALS

061.01 Agricultural chemicals to be applied to land or crops in commercial agriculture are exempt.

061.01A Agricultural chemicals as used in this regulation includes adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents, fertilizers, anhydrous ammonia, minerals, insecticides, fungicides, rodenticides, herbicides, defoliant, soil fumigants, plant growth regulating chemicals, plant desiccants, seed inoculants, and plant hormones.

061.01B Commercial agriculture as used in this regulation is the business of producing food products or other useful and valuable crops. The crops can either be sold or used by the grower. Commercial agriculture includes commercial production in greenhouses,

nurseries, tree farms, and sod farms. Commercial agriculture does not include storage of crops off the farm or in commercial elevators.

061.02 The term fertilizers as used in this regulation shall mean a substance which increases the plant food content of the soil and as a result becomes a part of the products grown or assists in the growth of the plants.

061.03 Oxygen for use in aquaculture is exempt.

061.03A Aquaculture shall mean the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes.

061.04 Sales of agricultural chemicals for use in maintaining home lawns, home gardens, parks, boulevards, golf courses, and other nonagricultural production are taxable.

061.05 Sales of agricultural chemicals labeled by the manufacturer as solely to be applied to land or crops in commercial agriculture do not need to be supported by a Nebraska Resale or Exempt Sale Certificate, Form 13, when the seller has other documentation to support the exempt sale.

*(Section 77-2702.13, R.S.Supp., 1998, and sections 2-3804.01, and 77-2704.41, R.R.S. 1996. November 11, 1998.)*

#### REG-1-062 ANIMAL LIFE

062.01 Sales of any form of animal life, the products of which ordinarily constitute food for human consumption, are exempt from the sales tax. Cattle, sheep, swine, baby chicks, turkey poults, poultry, and bees are examples of exempt forms of animal life. Sales of game birds subject to permit and regulation by the Game and Parks Commission are also exempt from the sales tax.

062.01A Game birds means coots, cranes, curlew, doves, grouse, partridges, pheasants, plovers, prairie chickens, quail, rails, snipes, swans, woodcocks, wild turkeys, and all migratory waterfowl.

062.01B Migratory waterfowl means ducks, geese, brant, or other migratory waterfowl subject to regulation by the Game and Parks Commission.

062.02 Purchases of animal life, the products of which do not ordinarily constitute food for human consumption, such as cats, dogs, zebras, mink, parakeets, penguins, canaries, chinchillas, horses, donkeys, mules, domesticated elk and deer, ostriches, and emus, are examples of taxable forms of animal life. Purchases of these forms of animal life are taxable to the purchaser even when purchased for breeding purposes.

062.03 Certain animal specialty services provided to animal life may be taxable. See Reg-1-102, Animal Specialty Services, regarding the taxation of animal specialty services.

*(Section 77-2704.46, R.R.S. 2009. June 6, 2011.)*

REG-1-063 FEED, WATER, AGRICULTURAL CHEMICALS, AND VETERINARY MEDICINES FOR ANIMAL LIFE

063.01 Feed, agricultural chemicals, veterinary medicines, feed supplements, and water for consumption by, use on, or use 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, are exempt from the sales tax.

063.01A For the purposes of this regulation, animal life is limited to those animals that are included in 063.01.

063.02 Feed and feed supplements includes whole and processed grains or mixtures thereof, silage, hay, and forages or meals made therefrom, mill feeds and commercial feeds, minerals, salt, proteins, fats, fibers, vitamins, bone meal, cod liver oil, limestone, calcium carbonate, grit, and oyster shell. The sale of such items to be used either separately or mixed as a feed or a feed supplement is exempt from the tax whether sold as a premix, concentrate, top dressing, or in raw form.

063.03 Water supplied for the care of animal life shall include water purchased to be applied on such animal life for cooling or cleaning purposes.

063.04 Water is exempt from tax only when any incidental use of the water for other than care of or consumption by animal life is less than ten percent of the water purchased. Each person claiming an exemption for water usage shall provide the seller with an exempt sale certificate.

063.05 Veterinary medicines as used in this regulation includes medicines for the prevention or treatment of disease or injury in animals and includes all drugs, antibiotics, viruses, serums, toxins, antitoxins, or analogous products of natural or synthetic origin. (Reg-1-078, Veterinarians and Veterinary Medicines)

063.06 Agricultural chemicals as used in this regulation includes pesticides, insecticides, fungicides, growth-regulating chemicals, hormones, rodenticides, or any other substance or mixture intended for preventing, destroying, repelling, or mitigating pests of animals or to affect the structure or function of animals. (Reg-1-078, Veterinarians and Veterinary Medicines)

063.07 Sales of feed, feed supplements, veterinary medicines, and agricultural chemicals labeled by the manufacturer as solely for treatment or care of food-producing animals do not require an exempt sale certificate when the seller has other documentation to support the exempt sale.

63.07A Sales of feed, feed supplements, veterinary medicines, and agricultural chemicals that can be used in the treatment or care of both food-producing animals and nonfood-producing animals are taxable unless supported by an exempt sale certificate.

063.08 Sales of feed, feed supplements, veterinary medicines, agricultural chemicals, or water for non-food producing

animals, such as zebras, parakeets, penguins, canaries, donkeys, mules, domesticated elk and deer, ostriches, emus, horses, work animals, and pets, such as cats, dogs, and birds, or breeding stock of these animals are taxable.

*(Sections 77-2702.07 and 77-2704.41, R.R.S. 2003, October 1, 2003.)*

REG-1-064 INTERSTATE COMMERCE

064.01 Delivery into Nebraska. If property or services are purchased from a retailer in another state for use or consumption in the state of Nebraska and delivery is made in this state, such sale is taxable. It is taxable even if the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point outside this state and shipped directly to the purchaser from the point of origin.

064.01A Delivery in this state means that physical possession of the tangible personal property is actually transferred to the buyer within this state, or that the tangible personal property is placed in the mails or given to a common or contract carrier at a point outside this state and directed to the buyer in this state.

064.01B For property or services other than tangible personal property, delivery in this state means, for utilities, the utility service is provided in this state; for maintenance agreements, the property covered is in this state or the place at which the maintenance must be performed is in this state; for satellite programming, the receiver is located in this state; and for admissions, the location to which access is granted is in this state.

064.01C See Reg-1-002, Consumer's Use Tax, concerning the consumer's responsibility to pay the use tax directly to the Department of Revenue.

064.01D Printed material purchased with delivery information provided by the purchaser but without a certificate of exemption for direct mail is taxable on the portion of the direct mail material delivered to Nebraska locations. (See Reg-1-105, Direct Mail.)

064.02 Delivery from Nebraska. When property or services are sold within this state and the seller is required as a condition of the sale to deliver it to a point outside the state, or to deliver it to a common or contract carrier for transportation to a point outside the state, the sales tax does not apply; provided, the property is not returned to a point within this state. However, where property or services are delivered in this state, the sales tax applies, even if the buyer intends to transport the property out of this state.

064.03 Acceptable proof of transportation outside the state will be:

064.03A A waybill or bill of lading made out to the order of the buyer calling for delivery;

064.03B An insurance, registry receipt, or other receipt issued by the United States Postal Service;

064.03C A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the state who received the delivered goods; or

064.03D Direct mail information indicating delivery locations outside Nebraska.

*(Sections 77-2704.11 and 77-2703.03, R.R.S. 2003, and sections 77-2703(2) and 77-2703.02, R.S.Supp., 2004, April 12, 2005.)*

#### REG-1-065 TELECOMMUNICATIONS SERVICES

065.01 Intrastate telephone communication service and telegraph service, mobile telecommunications service, wireless paging service, and wireless radio service are taxable whether furnished by public or private corporations or enterprises. This includes those services which are sold by mutual companies.

065.01A Intrastate telephone communications services which are taxable include mobile telecommunications services, ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added nonvoice data service, wireless paging service, wireless radio service, and the gross receipts from coin-operated telephones, 800 service, and 900 service, when the receipts are for intrastate service.

065.01A(1) Mobile telecommunications services are intrastate if the service originates and terminates in the same state. If the customer has a place of primary use in Nebraska, intrastate telecommunications services are taxable in Nebraska.

065.01B Charges made to hotels, motels, similar lodging accommodations, or any other company by telephone communication service companies for telephone communication service, including telephone communication service that may be rebilled by the telephone communication service company customer to another party, are taxable. (Reg-1-046, Hotels, Lodgings, and Accommodations)

065.01C Sales of telephone directories or directory covers to Nebraska customers by telephone service providers are taxable.

065.01D Gross receipts does not include any surcharges imposed under the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Telecommunications Relay System Act, the Nebraska Telecommunications Universal Service Fund Act, or payments between telephone service providers, as defined in federal law, for division of revenue, settlements, carrier access charges, or provision of telephone communication service.

065.01E Gross receipts includes the sale of a prepaid calling service, but does not include the payments to a telephone service provider attributable to services rendered using a prepaid calling service. A prepaid calling service means the right to exclusively purchase telecommunications service that is paid for in advance

that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and whether delivered wireless or wireline.

065.01F When the purchaser is not using any portion of the purchased telephone communication services, the services may be purchased for resale.

065.02 The tax on intrastate long distance charges is computed on the gross amount of the total charge for long distance, less any interstate telephone and telegram charges. The amount of the tax computed on the intrastate long distance charges must be indicated separately on the billing statement. The federal telecommunications excise tax, the Nebraska 911 service surcharge, the enhanced wireless 911 service surcharge, the Nebraska telecommunications relay system surcharge, and the Nebraska Universal Service Fund surcharge are excluded from gross receipts for purposes of computing the sales tax.

065.02A The tax on intrastate telephone communication service, whether on a flat or measured basis, is computed on the total amount billed by the telephone service provider for this service.

065.02B Telegrams charged to the account of a telephone subscriber and billed by the telephone service provider must include the tax as computed by the telegraph company and must appear on the billing statement in an amount equal to the regular charge for the telegrams plus the sales tax. The tax on these telegrams must be remitted by the telegraph company.

065.02C Intrastate long distance calls provided by a different service provider that are charged to the account of a telephone subscriber and billed by the telephone company must include the tax as computed by the telephone company and must appear on the billing statement in an amount equal to the regular charge for the phone call plus the sales tax. The tax on these telephone calls must be remitted by the telephone company.

065.03 Any company furnishing telephone communication service or telegraph service is required to bill the sales tax to the customer. A retailer of bundled transactions that include any telecommunications services, ancillary services, Internet access, or audio or video programming services may identify in its books and records the sales price of any nontaxable products and collect and remit tax on only the sales price of the taxable products in the bundle. If the price attributable to the nontaxable products is not reasonably identifiable and verifiable, the entire charge for the bundled transaction is taxable. (Reg-1-108, Bundled Transactions)

065.04 Persons engaged in providing telecommunications services are the consumers of materials, supplies, and other items that they use in providing their services and they must pay the sales and use tax on their purchases.

065.05 Charges made by a telephone company to the customer for nonrecurring telecommunications charges, such as installations, set

charges, service upgrades, optional features like call waiting or voice mail, and construction costs constitute gross receipts for telephone communication service and are taxable.

065.06 All interstate long distance charges are exempt from the sales tax, as are gross receipts from coin-operated telephones that are for interstate long distance services.

065.07 Services rendered to the United States government and to federal agencies and instrumentalities, including those federal corporations listed in Reg-1-072, United States Government and Federal Corporations, are exempt. Sales to purchasers listed in Reg-1-012.02C are exempt.

*(Sections 77-2701.16, and 77-2701.48, R.R.S. 2009, November 6, 2010.)*

#### REG-1-066 SEWER AND WATER

066.01 The sales or use tax applies to all retail sales of sewer and water services.

066.02 Sales tax applies to all amounts paid for sewer and water, irrespective of whether there is an actual consumption or not. Thus, there is tax due on all payments whether in the form of a minimum charge, a flat rate, or other billing method.

066.03 The gross receipts from furnishing sewer service are taxable regardless of the nature of the use.

066.04 Rental charges made to the customer for meters, bottles, and related equipment are rentals of property and are taxable.

066.05 Water used for irrigation of agricultural lands, manufacturing purposes, or for the care of or consumption by animal life, the products of which ordinarily constitute food for human consumption or the pelts of which are ordinarily used for human apparel, is not taxable.

066.06 For the purpose of proper administration of the tax on sewer and water services and to insure that the full amount of any applicable tax is collected and remitted, the entire amount of sewer or water service sold or billed through one meter shall be taxable if any portion, other than incidental use, of such service is taxable.

066.07 Incidental use of water shall include uses that are connected with the exempt use, but are not themselves exempt, such as water for employees for drinking, hand washing, or restrooms. Such usage cannot exceed ten percent of the total usage through the meter.

066.08 Amounts received from installation, service connection, move and change charges, and construction are not gross receipts of providers of sewer and water service and are not taxable.

066.08A If there is no tangible personal property installed, annexed, or repaired and the charge is merely for activating a connected service, such charge is not taxable.

066.09 An amount added for failure to make payment within a prescribed period shall be considered as a penalty or

interest to which no tax attaches; provided, the additional charge is separately billed to the customer.

066.10 Services rendered to the United States Government and to federal agencies and instrumentalities, including those federal corporations enumerated in Reg-1-072, United States Government and Federal Corporations, are exempt. Sales to those purchasers enumerated in Reg-1-012.02C are exempt.

066.11 A water or sewer company with a formal classification of usage that reasonably reflects the actual use by the customer, and such usage is for an exempt purpose, does not need to accept an exempt sale certificate from each customer account in the classification. This provision is not to be construed as relieving the consumer of liability for the applicable tax on any such usage.

066.11A Acceptance of a blanket exempt sale certificate by a sewer or water company relieves the company of any further tax liability until such time as the sewer or water company is notified of a change in use.

066.12 Persons furnishing sewer and water services may elect to assume or absorb the applicable sales tax or may elect to pass the tax to the final consumer in the same manner as all other retailers. If the election is made to assume or absorb the tax, the vendor will remit the applicable tax directly to the Department of Revenue based upon the total charges made to the ultimate consumer. The receipts will not be factored to determine the proper amount of tax. All billings to the ultimate consumer shall contain a statement to the effect that no tax is being collected from customers who are exempt or that the tax has been assumed or absorbed by the vendor for taxable customers.

066.13 If the vendor of sewer and water services elects to pass the applicable tax to the final customer, the tax shall be separately stated on all billings; provided, that in lieu of separately stating the tax, the Department of Revenue hereby authorizes the vendor to include a statement on all billings to the effect that the total charge includes sales tax. The total receipts will be factored to determine the proper amount of tax. (Reg-1-008, Records)

066.14 Persons engaged in providing water and sewer service are considered the consumers of materials, supplies, and other property or services used by them in providing their services and must pay tax on their purchases.

066.14A Exempt governmental units providing water service must also pay tax on all purchases of materials, supplies, and other property or services used in providing water service. (See Reg-1-093.04.)

066.14B Exempt governmental units providing sewer service are exempt on all purchases of materials, supplies and other property or services used exclusively in providing sewer service. (See Reg-1-093.04 and Reg-1-093.05.)

066.14C Exempt governmental units providing water service for fire protection are exempt on all purchases

of materials, supplies and other property or services used exclusively in providing water service for fire protection. (See Reg-1-093.04 and Reg-1-093.05.)

066.15 Charges made between sewer and water companies for joint control and use of facilities, duct space, pole or pin space, or other joint use of facilities in connection with furnishing sewer and water services are exempt.

*(Sections 77-2701.31, R.R.S. 2003, and sections 77-2701.16, 77-2701.32, and 77-2703(1)(b), R.S.Supp., 2008. February 22, 2009.)*

#### REG-1-067 AIRCRAFT AND RELATED SERVICES

067.01 Sales of property to and by any airline engaged in the transportation of persons or property as a common or contract carrier are taxable in the same manner as are sales to and by other firms, persons, or corporations except as set out in this regulation.

067.02 Sales of aircraft, and aircraft repair and replacement parts for such aircraft, operated by air carriers authorized and certified by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce are exempt from the sales or use tax.

067.03 Aircraft and repair parts sold for private use or business use other than as a common or contract carrier are taxable.

067.03A A nonresident individual, or other person with a business location outside this state may purchase an aircraft in this state without the payment of tax if the aircraft will not be based or registered in this state and is removed from the state within ten days of its purchase.

067.03B A nonresident individual, or other person with a business location outside this state may purchase repair parts or repair services for an aircraft in this state without the payment of tax if the aircraft will not be based or registered in this state, the parts or services are delivered at an airport, and the airplane is removed from the state within ten days.

067.03C Equipment owned by persons holding an authority described in 067.02, but who operate such equipment primarily as a private carrier does not qualify for the exemption on the purchase of aircraft, repair, and replacement parts. (Reg-1-069, Common and Contract Carrier Vehicles.)

067.04 Charges for flying lessons to obtain a private pilot's license and all dual instruction, banner towing, crop-dusting, patrols, air ambulance, search and rescue, livestock feeding, sky diving and parachuting, and charter services, when the pilot or instructor is the owner of the aircraft or employed by the aircraft owner, are exempt. Except as provided in 067.02, the purchase or use of an aircraft in providing such services is taxable based on the sales price to the purchaser.

067.05 If a customer, rather than the aircraft owner, furnishes the pilot, the use of the airplane is a rental which is taxable.

See Reg-1-018, Rent or Lease of Tangible Personal Property, for sourcing of rentals or leases.

67.06 Retailers engaged in the business of selling aircraft, including retailers in the business of renting aircraft, who take aircraft originally purchased tax free through a resale certificate or from inventory (stock) for personal or business use, consumption, or gift, must report and pay a use tax on such aircraft. Such retailers must enter on their books the cost of all such aircraft and pay the applicable tax on their purchase price of the aircraft. The cost of those aircraft taken from stock is to be reported on the applicable line of the Nebraska and Local Sales and Use Tax Return, Form 10.

067.07 A retailer of aircraft as provided in 067.06 may, in lieu of paying tax on the sales price of the aircraft, elect to pay use tax on the gross receipts realized from the use of such aircraft. Gross receipts shall mean the total amount valued in money, whether received in money or otherwise, realized by retailers from the use of aircraft for any purpose, including but not necessarily limited to, those purposes enumerated in 067.04 above, except the receipts realized from the transportation of persons or property for hire as a common or contract carrier shall not be included in the gross receipts.

067.08 If such an election is made, it shall be pursuant to the following conditions:

067.08A Notice shall be filed with the Department of Revenue and such election shall be effective only upon approval;

067.08B The election, when made and approved by the Department of Revenue, shall remain in force and effect for a period of not less than two years and thereafter until such time as the retailer notifies the Department in writing of its intention to terminate the election and such termination is acknowledged by the Department;

067.08C The election shall apply to all aircraft in inventory;

067.08D When an aircraft is sold, destroyed, or otherwise removed from inventory, the appropriate tax shall be computed without any deduction, credit, or refund of use tax on gross receipts paid pursuant to this election; and

067.08E Retailers making the election must account for the gross receipts realized (as defined in 067.07 ) each time an aircraft is used and report the use tax on the applicable line of the Nebraska and Local Sales and Use Tax Return, Form 10.

067.09 The election shall be requested in writing and, in addition to general information, shall contain a list of all aircraft in inventory by name, model, year, and registration number.

067.10 If an aircraft is brought into Nebraska within one year of purchase and is either regularly based within this state or more than one-half of the aircraft's operating hours are within this state, such aircraft is taxable in this state.

067.10A Operating hours shall not include the operation of the aircraft for purpose of maintenance, repair, or fabrication if the aircraft is subsequently removed from the state upon the completion of the maintenance, repair, or fabrication.

*(Sections 77-2701.32, 77-2704.11, 77-2704.26, 77-2704.30, 77-2704.44, 77-2704.50, and 77-2706.01, R.R.S. 2003, and section 77-2703.01, R.S.Supp., 2004. April 12, 2005.)*

#### REG-1-068 RAILROADS

068.01 The sale of rolling stock to any railroad or any other person, whether a common or contract carrier or otherwise, is exempt. In addition, the sale of repair parts or replacement materials for use on such rolling stock is not taxable.

068.02 See Reg-1-015, Common and Contract Carriers (Multistate Operations) - Tax Deferral for the taxation of items that may be used in another state.

068.03 Sales of other types of property to and by railroads are taxable in the same manner as are sales to and by other firms, persons, or corporations.

068.04 Examples of such taxable purchases by railroads for use in this state include but are not limited to the following:

068.04A Water, sewer, and telephone service at depots;

068.04B Ties, rails, rock, and the like for track maintenance;

068.04C Office furniture and supplies; and

068.04D Motor vehicles not utilized as common carriers.

068.05 Sales of special fuel, as defined in Chapter 66, article 6, used to provide motive power for railroad rolling stock, are exempt from the sales and use tax.

*(Section 77-2704.27, R.S.Supp., 1992, and sections 77-2702.13, 77-2704.05, 77-2704.11, 77-2704.30, and 77-2706(6) R.S.Supp., 1993. May 14, 1994.)*

#### REG-1-069 COMMON AND CONTRACT CARRIERS

069.01 The purchase and use of motor vehicles, watercraft, and aircraft which are used predominantly as common or contract carriers, as well as repair and replacement parts for such equipment, are exempt from sales and use tax.

069.02 In order for a motor vehicle, watercraft, or aircraft to qualify as a common or contract carrier for sales or use tax exemption purposes, the owner of such items must submit an application on forms provided by the Nebraska Department of Revenue. Unless the motor vehicle, watercraft, or aircraft has been so qualified with the Nebraska Department of Revenue, it shall be presumed that such equipment is not a common or contract carrier for purposes of the sales and use tax exemption. This presumption may be overcome by evidence that the equipment is predominantly used as a common or contract carrier.

069.02A Only those motor vehicles, watercraft, or aircraft that are predominantly used for transporting

persons or property for hire may qualify for common or contract carrier status.

069.02A(1) A common carrier is any motor vehicle, watercraft, or aircraft which is predominantly used by its owner to offer to transport the general public and the goods of the general public from place to place for compensation.

069.02A(2) A contract carrier is any motor vehicle, watercraft, or aircraft which is predominantly used by its owner to offer to transport specific persons and the goods of specific persons, on a contractual basis with such persons, from place to place for compensation.

069.02A(3) Predominantly used shall mean the total measure of use of any motor vehicle, aircraft, or watercraft (e.g., miles or hours) used to haul property as a common or contract carrier, divided by the total measure of use of the motor vehicle, aircraft, or watercraft, for all purposes, is greater than 50%. For purposes of determining this percentage, a one (1) year period of operation should be used.

EXAMPLE: Motor Vehicle #106 Odometer reading 1/1 73,146 Odometer reading 12/31 160,409 Common/contract carrier miles from customer billing records 75,919 Total miles (160,409-73,146) 87,263 % common/contract carrier usage (75,919:87,263) 87%

069.02B Any motor vehicle, watercraft, or aircraft which is used predominantly to haul the owner's goods is a private carrier and does not qualify for the exemption.

069.02C The fact that a person may have been granted a certificate of public convenience and necessity or a permit by either the Interstate Commerce Commission or the Public Service Commission does not, in itself, qualify such person's equipment as a common or contract carrier for sales and use tax purposes.

069.03 If, based on the information provided in the application, it is found that a person operates such equipment as a common or contract carrier, a Common or Contract Carrier Certificate of Exemption will be issued. All certificates expire on October 31, 1986, and every three years thereafter. The renewal process is initiated by the Nebraska Department of Revenue. The certificate contains an exemption number assigned by the Nebraska Department of Revenue which must be used when making authorized exempt purchases. A person holding a Common or Contract Carrier Certificate of Exemption is authorized to make exempt purchases under that certificate only as hereinafter set out:

069.03A The purchase or lease of motor vehicles, trailers and/or semitrailers, watercraft, or aircraft engaged predominantly as, or to be used predominantly as, common or contract carriers of persons or property and all accessories included in the purchase price of such vehicles.

069.03B The purchase of repair and maintenance parts which become a physical part of such motor vehicles, trailers and/or semitrailers, watercraft, or aircraft engaged predominantly as common or contract carriers of persons or property.

069.03C Accessories purchased for use with the common or contract carrier vehicle which could have been included in the list price of the vehicle at the time of purchase.

069.03D Containers designed for use on transportation equipment.

069.03D(1) Containers and accessories do not include boxes, pads, and packing materials used by transportation companies.

069.03E Equipment required by a federal or state regulatory agency to be included on a common or contract carrier vehicle operating in or through the State of Nebraska for the health or safety of passengers or cargo.

069.04 An exempt sale certificate shall be completed by the person owning such common or contract carriers and furnished to the supplier when purchasing repair and maintenance parts for the common or contract carrier vehicles.

069.05 Each purchase or lease of a common or contract carrier and repair and replacement parts will be considered individually to determine if, in fact, the purchase or lease of that tangible personal property was for use predominantly as a qualified common or contract carrier or was used as a repair and maintenance part for a qualified common or contract carrier.

069.06 The exemption allowed extends only to those qualified vehicles and does not extend to purchases other than the previously described tangible personal property nor to that tangible personal property when used predominantly for other than common or contract carrier purposes.

EXAMPLE: The holder of a Common or Contract Carrier Certificate of Exemption is required to pay sales or use tax when purchasing office furnishings or when purchasing motor vehicles for use in delivering or picking up tangible personal property owned by that person or for transporting that person's personnel.

069.07 The Nebraska Department of Revenue may examine the books, papers, and records of any person issued a Common or Contract Carrier Certificate of Exemption in order to determine the propriety of purchases made without the payment of Nebraska sales or use tax. The burden of proving that sales or use tax is not due is upon the purchaser.

*(Sections 77-2704.30, 77-2704.50, and 77-2705(7), R.R.S. 2003; and A-1 Metro Movers, Inc. v. Egr, 264 Neb. 291 (2002). April 12, 2005.)*

#### REG-1-070 PRESUMPTION OF TAXABILITY

070.01 All gross receipts are taxable unless they are shown to be tax exempt. The burden of proving that a sale of tangible

personal property or other transaction of a type subject to sales tax is an exempt transaction is upon the retailer (seller), unless he or she requires the purchaser to sign a certificate to the effect that the purchase is by an exempt organization, for an exempt purpose, pursuant to a Direct Payment Permit, or a certificate of exemption for direct mail. See Reg-1-014, Exempt Sale Certificate.

070.01A The Tax Commissioner shall make available a taxability matrix that is in a format pursuant to the Streamlined Sales Tax Agreement.

070.01B Sellers relying on information contained in the taxability matrix are relieved from liability for tax, penalty, or interest resulting from incorrect data in the matrix.

070.01C Purchasers or a purchaser's certified service provider (CSP) relying on erroneous information in the taxability matrix or the rates and boundaries database are relieved from liability for any penalty resulting from a failure to pay the tax, but remain liable for any tax and interest.

070.01D CSPs or Model 2 sellers are allowed 10 days to correct an erroneous classification within approved system software before the CSP or Model 2 seller is held liable for failure to collect the correct amount of tax due.

070.02 For consumer's use tax purposes, it is presumed that any property or service sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state. The burden of proving the contrary is on the purchaser.

070.03 Acceptance of a Resale Certificate, Exempt Sale Certificate, Direct Payment Permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption relieves the retailer (seller) from any further tax liability. The person giving or taking a Resale Certificate, Exempt Sale Certificate, Direct Payment Permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption in bad faith shall be guilty of a misdemeanor.

070.04 When there are two prices for an item that is not normally taxed, and the higher price includes something that would otherwise be taxable, the difference in price is taxable.

*(Sections 77-2705.01, 77-2705.02, 77-2705.03, and 77-2706, R.R.S. 2003, and sections 77-2703(1)(f), 77-2703(2)(e) and (f), , 77-2703.03, and 77-2712.05(7), R.S.Supp., 2008. February 22, 2009.)*

#### REG-1-071 CREDIT FOR TAX PAID TO ANOTHER STATE

071.01 If a person brings property or services into the State of Nebraska for storage, use, or other consumption and has properly paid a sales, use or occupation tax to a foreign state and any of its subdivisions, then a credit is allowed for the payment of that tax. The credit shall be applied first against

the amount of any use tax due this state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

071.02 If the tax paid to the foreign state and its subdivisions is less than the use tax imposed by Nebraska and its subdivisions, then the difference is due. In the event the sales, use or occupation tax properly paid to the foreign state and any subdivision thereof, is equal to or exceeds the use tax imposed by Nebraska and its subdivisions, use tax is not due. Any excess is not refundable nor may it be used as a credit against the use tax due on any other property or service.

071.03 The credit allowed in the preceding paragraphs, is limited to a credit for the amount of foreign state and subdivision tax actually paid, and does not extend to any credits allowed in the other state, any amount that is refundable by the other state, or the incidence of the tax. (i.e. the use tax due in Nebraska may not be extinguished through a tax exemption afforded on the same transaction by a foreign state).

*(Section 77-2704.31, R.S. Supp., 1993. May 14, 1994.)*

#### REG-1-072 UNITED STATES GOVERNMENT AND FEDERAL CORPORATIONS

072.01 Sales to the United States (U.S.) government, its agencies, instrumentalities, and corporations wholly owned by the U.S. government are exempt from sales and use tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the U.S. government for the benefit of the public, are generally taxable.

072.02 Absent an express waiver of intergovernmental immunity by statute, federal corporations that are performing a federal function are instrumentalities of the U.S. and are exempt from sales and use tax. Examples include, but are not limited to:

072.02A Farm Credit Banks, (previously Federal Land Banks) and other national or local operating entities chartered or administered by the Farm Credit System, including Federal Land Credit Associations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, the Federal Farm Mortgage Corporation, Production Credit Associations, and Agricultural Credit Associations;

072.02B The Federal Deposit Insurance Corporation;

072.02C Corporations administered by the U.S. Department of Agriculture to support agriculture, including Commodity Credit Corporations and the Federal Crop Insurance Corporation;

072.02D A Federal Reserve Bank;

072.02E Corporations chartered by the U.S. government to issue, subsidize, or guarantee home loans, including the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Government National Mortgage Association (Ginnie Mae);

072.02F The Student Loan Marketing Association (Sallie Mae);

072.02G A Federal Credit Union;

072.02H The National Railroad Passenger Corporation, and the Amtrak Commuter Services Corporation (Amtrak); and

072.02I The American National Red Cross and all its chartered units.

072.03 Any federal corporation not listed above that claims a sales tax exemption has the burden of proving the exemption to the Nebraska Department of Revenue (Department).

072.04 A federal corporation is presumed to be sales tax exempt if the purchases are ordered on prescribed U.S. government forms and payment is made by issuing U.S. government warrants.

072.05 Sales by agencies and corporations of the U.S. government are taxable, but the obligation to collect and remit the sales tax cannot be imposed on the agency or corporation, unless collection is specifically permitted by federal law.

072.05A If the agency or corporation does not collect the sales tax, the purchaser must remit use tax directly to the Department.

072.05B No sales or use tax is owed for purchases made from commissaries, base exchanges, ships' stores, or voluntary, unincorporated organizations of personnel of any branch of the Armed Forces of the U. S. by any person authorized to make these purchases.

072.06 Certain foreign diplomatic personnel have been granted sales tax exemptions by federal treaty. These diplomatic personnel are issued tax exemption identification cards by the U.S. Department of State or the American Institute in Taiwan that indicate the specific taxes from which the person is exempt, and the monetary or other limits imposed on the use of the exemption. Diplomatic personnel with tax exemption identification cards must pay sales tax on all purchases that are beyond the scope of the tax exemption card or that are beyond the monetary or other limits of the card. Diplomatic personnel without the identification card must pay sales or use tax on all purchases.

*(Neb. Rev. Stat. § 77-2704.02, Department of Employment v. United States, 385 U.S. 355, 17 L Ed 2d 414, 87 S Ct 464 (1966), United States v. District of Columbia, 558 F.Supp.213, 218 (1982), reversed as moot, 709 F.2d 1521, U.S.App.D.C. 295(1983), and 4 U.S.C. § 107. July 3, 2013.)*

#### REG-1-073 DISCONTINUATION OF BUSINESS

073.01 If any person liable for any sales or use tax sells his or her business or stock of goods or quits the business, the purchaser as his or her successor or assignee, shall withhold a sufficient amount of the purchase price to cover the tax liability until a receipt from the Tax Commissioner showing that the liability has been paid or a certificate stating that no amount is due is produced.

073.02 If the purchaser of a business or stock of goods fails to withhold a portion of the purchase price as required, then he or she shall become personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price.

073.03 Either the seller of a business or stock of goods or the purchaser as his or her successor or assignee, may request in writing that the Tax Commissioner issue either a certificate stating that no tax is due, or a notice stating the amount of tax due. This request shall state the purchaser's address and Nebraska identification number and the seller's address and Nebraska identification number and indicate when and where the seller's records are available for audit. The certificate or notice of tax due shall be mailed to the purchaser at his or her address as it appears in the letter requesting such certificate or notice.

073.04 Any person discontinuing business is required to:

073.04A Notify the Department of Revenue;

073.04B Return his or her Sales Tax Permit for cancellation; and

073.04C Preserve all business records pertaining to the sales tax until the Department of Revenue issues the certificate referred to above, or for the period required in Reg-1-008, Records, whichever is longer.

073.05 Any person desiring to engage in the operation of a business as successor to a former owner shall apply for a Sales Tax Permit. Each successor to another retailer, when applying for a Sales Tax Permit, shall inform the Department of Revenue of the name and permit number of the previous owner.

*(Section 77-2707, R.R.S. 1943. January 24, 1993.)*

#### REG-1-074 WARRANTIES AND GUARANTEES

074.01 A charge for the purchase of a warranty, guarantee, service agreement, service contract, or maintenance agreement, is taxable, whenever the item covered or the services to be provided are taxable.

074.01A Neither sales nor use tax applies with respect to property used, or any repair labor or services performed in fulfilling the obligations for repair under such a warranty or guarantee.

074.01B If the maintenance agreement does not provide full coverage, the amount charged for parts used in the repair is taxable and the amount charged for labor in the repair is taxable if repair labor for the covered item is taxable.

074.01C A deductible amount that is due, except for a deductible required under an agreement covering a motor vehicle, is taxable.

074.02 If the item covered must be annexed to real estate in order to function, the charge for the agreement is exempt.

074.02A Sales or use tax applies to parts or other property used in fulfilling the obligations under such a warranty or guarantee regardless of the contractor option elected. (See Reg-1-017, Contractors)

074.02B If the maintenance agreement does not provide full coverage, the amount charged by an Option 2 or Option 3 contractor for either parts or labor is not taxable. The amount charged for parts by an Option 1 contractor, or the total amount charged by an Option 1 contractor if charges for parts and labor are not separated, is taxable.

07401C A deductible amount that is due is not taxable.

074.03 If an agreement covers both taxable and nontaxable items or services, the entire amount charged for the agreement is taxable. Parts, labor, additional charges, and deductibles will be taxed as described above in paragraphs 074.01 or 074.02 depending upon whether a maintenance agreement on the single item currently being serviced would be taxable or exempt.

074.04 Maintenance agreement shall mean any contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is subject to tax, for a stated period of time or interval of use. Maintenance agreement shall include any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement shall include contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

074.04A Maintenance agreement includes any service contract that provides repair labor or building cleaning services.

074.04B Maintenance agreement shall not include any contract or agreement subject to the premium tax under Chapter 77, article 9 of the Nebraska Revised Statutes, from a service contract business operating with a certificate of authority from the Department of Insurance.

*(Sections 77-2701.10 and 77-2701.16, R.R.S. 2003. February 22, 2009.)*

#### REG-1-075 CONFIDENTIAL INFORMATION

075.01 It shall be a misdemeanor for the Tax Commissioner, his or her employees, legal representatives, or agents, any employee of the State Treasurer or the Department of Administrative Services, or any person receiving information from them to divulge or to make known in any manner, the business affairs, operations or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return, copy of a return, or any book containing any abstract or particulars from the return to be seen or examined by any person not connected with the Tax Commissioner. The preceding shall not be construed:

075.01A To prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or grantors, of a certified copy of any return or report.

075.01B To prohibit the publication of statistics.

075.01C To prohibit the inspection by the Attorney General, other legal representative of the State of Nebraska, or county attorney of reports or returns of any taxpayer when:

075.01C(1) such information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county; or

075.01C(2) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced.

075.01D To prohibit the furnishing of information to the Treasury Department of the United States, Postal Inspectors of the United States Postal Service, or to tax officials of other states allowing similar privileges to the Tax Commissioner and the Department of Revenue.

075.01E To prohibit the disclosure to another party to a transaction of information or records concerning the transaction between the taxpayer and the other party.

075.02 Information as to whether or not a taxpayer has a Sales Tax Permit, has been granted an exemption, or which option has been elected by a contractor may be released to any person upon request.

075.03 The Tax Commissioner will comply with the provisions of the Streamlined Sales Tax Agreement for the protection and retention of personally identifiable information of consumers.

*(Section 77-2711, R.S.Supp., 2005. March 7, 2006.)*

#### REG-1-076 JEOPARDY DETERMINATIONS AND ASSESSMENTS

076.01 The Department of Revenue may initiate jeopardy determination and assessment proceedings if it determines that any of the following conditions exist:

076.01A The taxpayer is about to leave the State of Nebraska.

076.01B The taxpayer is about to remove his or her property from the State of Nebraska.

076.01C The taxpayer is about to conceal himself or herself or his or her property.

076.01D The taxpayer is about to do any act which tends to delay, prejudice, or make ineffective any proceedings to collect sales or use tax from preceding or current years, unless jeopardy proceedings are immediately initiated. In any subsequent court proceedings, the finding by the Department of Revenue that one or more of these conditions existed shall be for all purposes prima facie evidence of the taxpayer's intentions.

076.02 The Department of Revenue may declare that the tax period for the taxpayer is terminated, regardless of when the period would normally end; by sending a written notice to the taxpayer; and demanding immediate payment of tax due for the period. If the taxpayer desires to petition the Department of Revenue for a redetermination, he or she must do so in writing within ten (10) days after the service of notice in accordance with Reg-33-004.02B. Failure to file a petition for redetermination within ten (10) days shall cause the determination to become final. In addition, the Department of Revenue need not reconsider the determination unless the taxpayer within the ten-day period provides security, in an amount determined by the Department of Revenue, to insure compliance with the law. If the taxpayer has not been in default in filing returns or in making payments in the past, he or she may furnish security to insure that he or she will file a return and pay the tax at the next regular filing date. If the security is approved by the Department of Revenue, the payment of taxes will not be enforced until the expiration of the usual time period.

076.03 If the taxpayer is outside of this state or leaves this state and ignores all demands for payment, the Department of Revenue may make use of collection agencies or attorneys located outside the state to enforce collection.

076.04 If a taxpayer violates, or attempts to violate the rules and regulations regarding a jeopardy determination and assessment, an additional penalty of 25% of the total of the tax due, the interest owed thereon, and all other penalties resulting therefrom, or fifty dollars (\$50.00), whichever is the greater amount shall be assessed.

*(Section 77-2710, R.R.S. 1943. January 24, 1993.)*

#### REG-1-077 COMBINED SALES TAX RETURNS

077.01 If any retailer conducts business operations and makes sales subject to sales tax at more than one location, the retailer may apply for permission to file a combined sales tax return covering the business operations of two or more locations. The Department of Revenue (Department) will approve the application if: each sales location holds a sales tax permit; the same person or persons own 80% or more of each licensed location; and the books, records, and accounts of these locations are kept at a single address.

077.01A The application for permission to file a combined sales tax return must be submitted on forms provided by the Department and, in addition to other information, must identify the business locations to be included in the combined sales tax return.

077.01B If the application is approved, the identified business locations must be reported on a combined sales tax return until the Department grants permission to change. Business locations may not be added to or deleted from the combined sales tax return without written application and the prior approval of the Department.

077.01C The Tax Commissioner may also permit combined sales tax returns as allowed by the Streamlined Sales and Use Tax Agreement.

077.02 A Combined sales tax return must be filed monthly, reporting the information required by the Department for each business location included on the combined return.

077.02A All information requested on the return must be completed for each business location. Failure to comply will cause the retailer to be subject to penalties.

077.02B The combined return and the information for each business location must be filed electronically. Payments must also be made electronically.

077.03 The collection fee allowed on the combined return will be the aggregate of the collection fees calculated for each individual business location.

077.04 Retailers that do not have the same ownership but operate within a business location cannot be included on a combined sales tax report.

*(Neb. Rev. Stat. §§ 77-1784 and 77-2708(1). July 3, 2013.)*

#### REG-1-078 VETERINARIANS AND VETERINARY MEDICINES

078.01 The following definitions will be used for this regulation.

078.01A Veterinary medicines includes medicines for the prevention or treatment of disease or injury in animals and includes all drugs, antibiotics, viruses, serums, toxins, antitoxins, or analogous products of natural or synthetic origin.

078.01B Agricultural chemicals includes pesticides, insecticides, fungicides, growth-regulating chemicals, hormones, and rodenticides or any other substance or mixture intended for use in preventing, destroying, repelling, mitigating pests of animals, or to affect the structure or function of animals.

078.01C Food-producing animals includes animal life, the products of which ordinarily constitute food for human consumption or the pelts of which are ordinarily used for human apparel. Cattle, sheep, swine, baby chicks, turkey poults, and bees are examples of exempt forms of animal life.

078.01D Non-food producing animals includes animals such as cats, dogs, zebras, parakeets, penguins, canaries, horses, donkeys, mules, domesticated elk and deer, ostriches, and emus.

078.01E Rendering professional services occurs when the veterinarian has established a doctor-patient-client relationship with the client.

078.01F Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine.

078.02 Veterinarians are primarily engaged in the business of rendering professional services to owners of domestic animals through care, medication, and treatment of their animals. Charges for professional services rendered by veterinarians and veterinary clinics are not taxable.

078.03 Veterinarians and veterinary clinics are consumers of all property and services they purchase for use in the

rendition of professional services and they are required to pay sales or use tax on all purchases except for:

078.03A Purchases of veterinary medicines and agricultural chemicals to be used in the treatment or care of food-producing animals

078.03B Purchases of feed and feed supplements to be fed to food-producing animals

078.03C Purchases of veterinary medicines, agricultural chemicals, and other products that are not used to render professional services but are sold at retail; and

078.03D Purchases of animal specialty services for livestock.

078.04 Veterinarians and veterinary clinics who purchase items without tax and use such items in rendering professional services are required to remit use tax on their cost of the item unless the item is otherwise exempt.

078.05 Veterinarians or veterinary clinics that sell veterinary medicines, agricultural chemicals, feed, feed supplements, veterinary supplies, equipment, or other products, or that provide animal specialty services, apart from the rendition of professional services, are required to collect sales tax from their customers unless such sales are otherwise exempt.

078.05A See Reg-1-063, Feed, Water, Agricultural Chemicals, And Veterinary Medicines For Animal Life, for details regarding documentation requirements to support certain exempt sales.

078.05B See Reg-1-102, Animal Specialty Services, for details regarding taxability of such services.

078.05C If the items sold were tax paid when purchased by the veterinarian or veterinary clinic, the tax is collected on the full retail sale price. The veterinarian or veterinary clinic will remit to the state the difference between the tax collected from the customer and the tax previously paid by the veterinarian or veterinary clinic.

078.06 Items used in rendering professional services are not retail sales regardless of how the charges are itemized on the billing invoice.

078.07 The practice of veterinary medicine is not commercial agriculture. Therefore, machinery and equipment purchased by veterinarians and veterinary clinics to be used in their veterinary practice is not exempt under Reg-1-094, Agricultural Machinery And Equipment Refund.

*(Section 54-183, R.S.Supp., 2002, and section 77-2704.41, R.R.S. 2003. October 1, 2003.)*

#### REG-1-079 DELIVERY CHARGES

079.01 Charges for delivery, freight, postage, shipping, handling, crating, packing, or transportation of an item are taxable whenever the item is taxable and the charges are paid to the retailer of the item.

079.02 A single delivery charge for the shipment of exempt property and taxable property should be allocated using a percentage that is:

079.02A Based on the total sales price of the taxable property compared to the total sales prices of all property in the shipment; or

079.02B Based on the total weight of the taxable property compared to the total weight of all the property in the shipment.

079.02C The seller must collect tax on the percentage of the delivery charge allocated to the taxable property but does not have to collect tax on the percentage of the delivery charge allocated to the exempt property.

079.03 Charges for delivery, freight, postage, shipping, or transportation that are paid to a person other than the retailer are exempt.

*(Sections 77-2701.11 and 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004. April 12, 2005.)*

#### REG-1-080 SALES OF LEGAL, MEDICAL, AND COMMERCIAL DOCUMENTS AND RECORDS

080.01 Charges for providing documents are exempt as a governmental service if the law or ordinance requires the furnishing of documents or copies of documents, such as permits or licenses, by a governmental agency, or if the documents are public records.

080.01A Public records mean public records as defined in section 84-712.01.

080.01B Documents which are developed, produced, or acquired and made available for commercial sale to the general public are taxable, unless the price for the document is fixed by state law, rule, or regulation.

080.02 Charges for originals or copies of depositions, bills of exceptions, and transcripts prepared and sold by a court reporter are not taxable. Depositions, bills of exceptions, and transcripts or copies of depositions, bills of exceptions, and transcripts prepared and sold by anyone other than a court reporter are taxable.

080.02A Bill of exceptions means a verbatim record of anything and everything said or done by anyone in the course of trial or any other proceeding; any motion, comment, or statement made by the court in the presence and hearing of a panel of potential jurors or the trial jury; any objection to the court's proposed instructions or to instructions tendered by any party, together with the court's rulings, and in post trial proceeding; amendments to the bill of exceptions, together with the court's rulings; and the index of the bill of exceptions.

080.02B Court reporter means a person who possess the knowledge, skill, and ability to produce a verbatim record of court and other legal proceedings.

080.02C Deposition means a written declaration under oath in accordance with procedures provided by law, made upon notice to the adverse party for the purpose of enabling him or her to attend and cross-examine, or made upon written interrogatories pursuant to section 25-1242 of the Nebraska Revised Statutes.

080.02D Transcript means a writing or record (original or copy) of judicial, legislative, administrative, or other legal proceedings, including, but not limited to: pleadings upon which the case was tried; the judgment, decree, or final order sought to be reversed, vacated, or modified; the lower court's memorandum opinion, if any; and other parts of the record as are necessary and material to the assignments of error.

080.02E Verbatim record means one which accurately reflects the spoken word and nonverbal communication and action.

080.03 Blueprints, abstracts, law briefs, and other similar documents furnished in connection with personal services in a professional capacity are not taxable when furnished as a part of providing personal services.

080.04 If blueprints, abstracts, law briefs, or other similar documents or the information on such documents are sold by a person without providing personal services in a professional capacity, the sales tax must be collected on the sale of the documents.

080.05 Mailing lists and prospect lists provided in the form of labels, magnetic media, or diskette, whether in an electronic or any other format, are taxable.

080.06 Sales of Nebraska Statutes, reports of court cases, advance sheets, brand books, departmental manuals, and other similar publications are taxable.

080.07 Sales of copies of medical records provided to the patient or a person named as the patient's power of attorney for health care are not taxable. A power of attorney for health care, under Neb. Rev. Stat. §§ 30-3401 through 30-3432, authorizes a designated attorney-in-fact to make health care decisions for the principal when the principal is incapable.

080.08 Persons performing professional services are consumers of all materials and supplies used in rendering their professional services and must pay the sales or use tax when purchasing materials and supplies.

*(Section 25-1280, R.R.S., 2004, sections 77-2701.33, 77-2704.58, 77-2704.59, R.R.S. 2009, and ABI v Egr, 264 Neb. 574 (2002). June 6, 2011.)*

#### REG-1-081 COMMUNITY OR COUNTY ANTENNA TELEVISION SERVICE

081.01 Those persons furnishing community or county antenna television service over or through a distribution system of wires, cables, or other conduits, as well as persons furnishing satellite programming, are required to obtain Sales Tax Permits, and collect and remit the sales tax on the gross receipts from the furnishing of such service.

081.02 Gross receipts includes the sale of prepaid satellite programming arrangements.

081.02A Prepaid satellite programming arrangements shall mean the right to purchase satellite service which

is paid for in advance and which enables the receipt of satellite service using an access code or authorization code to activate a satellite receiver.

081.02B Prepaid satellite programming arrangements do not include payments from the seller of the arrangements to a satellite provider for the services rendered using prepaid satellite programming arrangements.

081.03 All billings to the ultimate consumer shall indicate a separate amount for the tax, since the tax may not be absorbed, assumed, or passed to the consumer as being included in the total price.

081.04 Installation, service connection, and move and change charges are taxable receipts, whether paid to the person providing the community or county antenna television service or satellite programming, or to another person.

081.05 Community or county antenna television service operators or retailers of satellite programming are consumers of property used in the provision, installation, construction, operation and servicing of such a system and their purchases of materials for such uses are taxable.

081.06 Community or county antenna television service operators or retailers of satellite programming may purchase for resale tapes, movies, satellite programming, remote controls, and magazines for sale to customers.

*(Sections 77-2701.16, 77-2701.32, and 77-2703(l), R.S. Supp., 2008. February 22, 2009.)*

## REG-1-082 LABOR CHARGES

### 082.01 INTRODUCTION

082.01A Labor charges relating to tangible personal property will generally fall into one of four categories: production, assembly, repair, and installation. Labor on annexed property, fixtures, or real estate is contractor labor and is generally exempt. (See Reg-1-017, Contractors)

### 082.02 TYPES OF LABOR CHARGES

082.02A PRODUCTION LABOR. Production labor is labor used for producing, fabricating, processing, printing, or imprinting tangible personal property for consumers during which the tangible personal property is created, transformed, or reduced to a different state, quality, form, property, or thing. Transformation may occur by hand, machine, art, chemical action, or natural means. The property may be furnished by the person performing the labor; furnished directly by the consumer; or furnished indirectly through the consumer arranging for delivery of the property by a third party.

082.02B ASSEMBLY LABOR. Assembly labor is the labor involved in collecting or gathering together the various parts and placing them in their proper relationship to each other to constitute a piece of machinery, equipment, or other tangible personal property.

082.02C REPAIR LABOR. Repair labor is defined as the labor involved in restoring to essentially its original

form and condition or replacing a used, worn, or damaged item of tangible personal property. Repair labor includes replacing a component or subassembly of an item with a substantially similar component or subassembly. Repair labor does not include making repair parts for another person who is making the repair.

082.02D INSTALLATION LABOR. Installation labor is defined as the labor involved in placing a piece of machinery, equipment, or other tangible personal property that is already assembled in a position where it will reasonably accomplish the purposes for which it was intended.

### 082.03 TAXABILITY OF LABOR CHARGES

082.03A Charges for production and assembly labor are taxable.

082.03B Charges for installation and repair labor are taxable when the item of property being installed, repaired, or replaced is taxable and is not annexed to real property.

082.03C Charges for labor to repair motor vehicles are not taxable.

082.03C(1) Charges for painting of motor vehicles, including labor, are taxable.

082.03C(2) Charges for labor to install accessories or add-ons to motor vehicles are taxable.

082.04 STATEMENT ON SALES INVOICE. Taxable charges for labor performed on tangible personal property are taxable regardless of whether they are separately stated on the same sales invoice or are separately invoiced. Charges for otherwise exempt labor performed on tangible personal property are not taxable; provided, these charges are separately stated on the same sales invoice or are separately invoiced, and such separate statement is not used as a means of avoiding the imposition of the tax upon the actual sales price of the tangible personal property.

*(Sections 77-2701.33, R.R.S. 2003, and sections 77-2701.16, and 77-2701.35, R.S. Supp., 2008. February 22, 2009.)*

## REG-1-083 PREPARED FOOD AND BEVERAGE SERVICE

083.01 Retail sales of prepared food, including sales by caterers and concessionaires, and all sales of prepared food, food, and food ingredients through vending machines are taxable. Retail sales of alcoholic beverages are taxable, whether sold packaged or sold by the drink. (Reg-1-031, Coin-Operated Machines; Reg-1-040, Alcoholic Liquors Consumed on the Premises; and Reg-1-087, Food or Food Ingredients.)

083.02 Prepared food is food generally intended for immediate consumption, and is prepared to a point generally accepted as ready to be eaten without further preparation. Prepared food means:

083.02A Food sold in a heated state or heated by the retailer, including, but not limited to hamburgers, hot

dogs, pizza, egg rolls, baked beans, and nachos with heated cheese sauce;

083.02B Two or more foods or food ingredients mixed or combined by the retailer for sale as a single item and not sold by weight or volume, including, but not limited to, fountain drinks, ice cream cones, sandwiches, and salad bars; or

083.02C Food sold with eating utensils provided by the retailer. Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, cups, napkins, or straws. Plates do not include a container or packaging used to transport the food.

083.02C(1) If 75% or less of the sales of food by the retailer are sales of prepared food described by 083.02A and 083.02B, eating utensils are considered provided by the retailer only if they are given to the purchaser by the retailer.

083.02C(2) If more than 75% of the sales of food by the retailer are sales of prepared food described by 083.02A and 083.02B, eating utensils are considered provided by the retailer if they are available on the premises where the food is sold, regardless of whether or not the purchasers are given the utensils or take them.

083.02C(3) The 75% test is determined in the following manner:

083.02C(3)(a) The numerator is the total sales of prepared food described by 083.02A and 083.02B.

083.02C(3)(b) The denominator is the total sales of food, food ingredients, prepared food, candy, dietary supplements, and soft drinks.

083.02C(3)(c) Exclude sales of alcoholic beverages, tobacco, motor vehicle fuels, and all other non-food sales from both the numerator and the denominator.

083.02C(3)(d) The percentage is calculated using the retailer's most recently completed tax year, or if the retailer has been in operation less than a year, the retailer must make a good faith estimate of the percentage for the first year. The good faith estimate must be reviewed after three months of operation and adjusted, if appropriate. A single percentage should be calculated for all of the retailer's locations in the state.

083.02C(4) Even if more than 75% of the sales of food by the retailer are sales of prepared food, sales of food or food ingredients are not taxable if the transaction is for four or more servings as described in the "Nutrition Facts" box on the labels as required by 21 C.F.R. § 101.9, and the retailer maintains adequate records of each sale. If the transaction is for less than four servings, or the retailer does not

maintain adequate records of these sales, sales tax must be collected on these food sales.

083.02C(5) Examples of food sold with eating utensils include, but are not limited to, pieces of cake or pie served with a fork, bagels served with a knife, and cookies or donuts served on a napkin.

083.03 Prepared food does not include:

083.03A Food sold by a manufacturer whose primary NAICS classification is a food manufacturer (311XX);

083.03B Bakery items such as bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas that are not sold in a heated state or with eating utensils;

083.03C Food that is only cut, repackaged, or pasteurized by the seller, including, but not limited to, luncheon meats, cheeses, meat and cheese trays, and fruit trays;

083.03D Food sold in an unheated state by weight or volume as a single item, including, but not limited to, containers of potato salad, coleslaw or fruit salad, pudding, and popcorn; or

083.03E Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent foodborne illnesses.

083.04 Sales and use tax applies to the gross receipts from preparing or serving prepared food and alcoholic beverages, including, for example charges for food, wages, use of dishes, room service, silverware, glassware, chairs, and tables.

083.04A Single-use, disposable food service items available to customers as a part of the retail sale of prepared food may be purchased for resale. Examples include, but are not limited to paper napkins, place mats, straws, plastic utensils, and paper cups.

083.05 Charges made by a caterer, restaurant or other retailer of prepared food or alcoholic beverages, for furnishing employees, for example, bartenders, servers, or chefs are taxable even if separately stated at the time of billing. Sales and use tax is not applied to charges for announcers, coat check services, ushers, or other persons not connected with preparing or serving of prepared food or alcoholic beverages if the charges for these services are separately stated on the invoice and the type of service is adequately described.

083.06 Sales and use tax applies to sales of prepared food or alcoholic beverages by railroads, airlines, or other transportation companies while operating in Nebraska.

083.06A If transportation companies provide prepared food or alcoholic beverages to passengers without charge, the transportation company's purchases of prepared food or alcoholic beverages are considered retail sales and subject to sales or use tax regardless of where the prepared food or alcoholic beverages are served to passengers.

083.07 If a retailer adds a charge for gratuities or tips to charges for prepared food and alcoholic beverages, these charges are taxable even if all or a portion of the amount is paid by the retailer to his or her employees.

083.07A Discretionary gratuities or tips given by customers are exempt even if charged to the customer's account and not paid directly to the server, waiter, or waitress at the time of sale or service.

083.08 The following sales of prepared food are not taxable:

083.08A Prepared food sold and served by a religious organization at a function of the religious organization;

083.08B Prepared food sold and served to patients, residents, and inmates of hospitals and other institutions licensed by the state for the care of human beings;

083.08C Prepared food sold and served at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees;

083.08D Prepared food sold and served to the elderly, handicapped, or recipients of Supplemental Security Income by organizations that accept payments from the Supplemental Nutrition Assistance Program (SNAP);

083.08E Any purchases made with payments from SNAP; and

083.08F Prepared food sold or served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, or in an elementary or secondary school or any institution of higher education, public or private, during the regular school day or at an approved function of the school or institution. (Reg-1-092, Educational Institutions).

083.08F(1) This exemption does not apply to sales of prepared food by an institution of higher education at a facility or event that is open to the public.

083.09 Fraternities, sororities, dorms, boarding houses, retirement communities, or other residential facilities where members or residents reside at a common location and prepared food is provided by the residential facilities as part of the agreement for occupancy, are not selling prepared food at retail.

083.09A If the residential facility contracts with a caterer, restaurant, or other food service provider to provide prepared food to members or residents of the residential facility, the charge to the residential facility is subject to sales and use tax.

083.09B If prepared food is provided to non-members or non-residents for a charge, or if there is a charge for additional prepared food served to the member or resident, the charge is subject to sales and use tax.

083.10 If a recreational, athletic, or summer camp charges a single price for attendance, these charges are not considered

sales of prepared food and are exempt from sales and use tax.

083.11 Organizations that conduct fund-raising functions where prepared food and alcoholic beverages are served must compute the tax in accordance with Reg-1-090.06. The organizations may purchase prepared food or alcoholic beverages for these functions for resale.

083.12 If an employer pays to have prepared food or alcoholic beverages provided to its employees, the charge is taxable whether the employer pays the entire price, an amount per meal, or a percentage of the price of a meal.

083.12A Management fees or subsidy payments made by an employer to the provider, that are not based on the number served or the amount charged, are not taxable retail sales.

083.12B Any amount paid by an employee for the prepared food is subject to sales tax.

083.13 If a caterer, restaurant, or other food service provider provides prepared food to its employees, no use tax is due on the ingredients used to provide the free meals because food and food ingredients are not taxable. Any amount paid by an employee for the prepared food is subject to sales tax.

083.14 Concession sales are sales of food, prepared food, or alcoholic beverages made during the conduct of an event or recreational activity. Examples of concession sales include sales made at athletic events, concerts, movies, plays, amusement parks, fairs, and golf courses.

083.14A The sales tax does not have to be separately stated and collected from the customer on concession sales of food, prepared food, and alcoholic beverages. Retailers who do not separately state the sales tax will determine their taxable receipts using the procedure set out in Reg-1-008.03. Including the tax in the sales price does not exempt the concession retailer from reporting and remitting the applicable sales tax on the gross receipts from those sales.

083.14B The concession retailer may separately state and collect sales tax if he or she chooses to do so.

083.14C If more than 75% of the sales of the concession retailer are sales of prepared food under 083.02A or 083.02B as calculated under 083.02C(3), and eating utensils, as defined in 083.02C are available on the premises, the concession retailer must collect sales tax on all its sales.

*(Neb. Rev. Stat. §§ 77-2701.16, 77-2703(1)(c), 77-2704.10, 77-2704.24, and 77-2704.25. July 3, 2013.)*

#### REG-1-084 APPLICATION FOR REFUND-AIR OR WATER POLLUTION CONTROL FACILITY

084.01 An air or water pollution control facility shall mean and include any system, treatment works, or appliance used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution caused by industrial or agricultural waste. Industrial or

agricultural waste shall mean any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, including the generation of electricity, trade or business, or from the development, processing, or recovery of any paper or wood which is capable of polluting the air or waters of this state.

084.01A Facilities such as air conditioners, dust collectors, filters, fans, and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions are not air pollution control facilities.

084.02 Before applying for a refund of Nebraska sales and use tax paid, the applicant shall receive a written final findings of the Department of Environmental Quality (DEQ). If DEQ finds that the facility, a portion of a facility, or single location with multiple facilities is designed and operated primarily for control, capture, or removal of industrial or agricultural waste from the air or water and is suitable, reasonably adequate, and meets the intent and purposes of the Environmental Protection Act, DEQ shall notify the owner of the facility in writing of its findings.

084.02A The granting of a permit or approval to operate a facility does not meet the requirements of a written final finding of DEQ for the purposes of the Air and Water Pollution Control Tax Refund Act of the Nebraska Revised Statutes.

084.02B Any finding of DEQ with regard to whether or not a facility or portion of a facility qualifies for the Air and Water Pollution Control Tax Refund Act is not final if it has been appealed or is being reconsidered by DEQ.

084.03 The application for a refund must be filed within three years of the date of payment of the applicable sales and use tax. The necessary forms can be obtained from the Department of Revenue. The application for a refund must be filed separate from any other application, return, or protest and must be accompanied by:

084.03A A copy of the written final findings of DEQ;

084.03B Plans and specifications of such facility including all materials incorporated therein;

084.03C A descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural pollution control and showing where in the facility the equipment is used;

084.03D The proposed operating procedure for the facility; and

084.03E The acquisition cost of the facility for which a refund is claimed.

084.04 The owner of any air or water pollution control facility must obtain such information from the contractor and furnish it in support of his or her application for refund where he or she has not purchased the tangible personal property annexed therein.

084.05 No refund shall be allowed under the Air and Water Pollution Control Tax Refund Act on any facility which is not used primarily for pollution control nor for which a refund is otherwise provided under the terms of the Nebraska Revenue Act of 1967, as amended. DEQ shall determine whether or not industrial or agricultural pollution control exists and the Department of Revenue shall determine the amount of sales and use tax to be refunded. The Department of Revenue may not abridge the authority of DEQ to determine whether or not industrial or agricultural pollution control exists. Any person aggrieved by action taken with respect to the determination of the amount of a refund under the Air and Water Pollution Control Tax Refund Act may appeal from the findings and order of the Tax Commissioner in the manner and form and within the time provided by sections 84-917 to 84-919, of the Nebraska Revised Statutes.

*(Sections 77-27,149 through 77-27,155, R.R.S. 2003. October 1, 2003.)*

REG-1-085 Repealed.

REG-1-086 Repealed.

#### REG-1-087 FOOD OR FOOD INGREDIENTS

087.01 Sales of food or food ingredients are exempt from sales and use tax.

087.01A Food or food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

087.01A(1) Food or food ingredients includes, but is not limited to: cereals, eggs, fruits, meats, vegetables, milk, health foods consumed in place of other foods and not as a vitamin or mineral supplement, flour, cooking oils, sugar, soft drinks, bottled water, ice, candy, and chewing gum.

087.01A(2) Any food products with the "Nutrition Facts" box on their labels as required by 21 C.F.R. § 101.9, are food or food ingredients that are exempt from sales tax under this section.

087.01B Food or food ingredients does not include alcoholic beverages, dietary supplements, or tobacco.

087.01B(1) Dietary supplement means any product, other than tobacco, intended to supplement the diet that is not presented as conventional food and that is required to be labeled as a dietary supplement, identifiable by the "Supplemental Fact Box" found on the label as required by 21 C.F.R. § 101.36.

087.02 Sales of prepared food, including sales by caterers and concessionaires and all sales of food, prepared food, and food ingredients through vending machines are subject to tax (Reg-1-031, Coin-Operated Machines, and Reg-1-083, Prepared Food and Beverage Service).

*(Neb. Rev. Stat. §§ 77-2704.10, 77-2704.24, 77-2704.25, and 77-2704.54. July 3, 2013.)*

## REG-1-088 COMPUTER SOFTWARE

088.01 The gross receipts from furnishing software regardless of the manner in which it is conveyed are taxable.

088.01A The gross receipts from furnishing software includes services provided by a consultant that result in a transfer of software from the consultant to the client.

088.02 Charges for customer training are taxable whenever paid to the retailer of the software. Charges for training that are paid to a person other than the retailer of the software are exempt.

088.03 Charges for consultants who only provide generalized advice and who do not provide any software or modifications to software are exempt.

088.04 Software that alters existing software is considered separate from the existing software and is taxable.

088.05 Charges for agreements which require the seller, without additional charge or at a reduced price, to provide future enhancements, changes, or modifications, are taxable.

088.06 Computer software is a sequence of instructions which directs the computer to process either digital or analog data. Software does not include data such as mailing lists, even when in machine-readable form, or charges for converting data into machine-usable form. For the taxability of lists see Reg-1-080, Documents.

*(Sections 77-2701.39, R.R.S. 2003, and sections 77-2701.16, 77-2701.35, 77-2703(1), and , 77-2703.01, R.S.Supp., 2008, February 22, 2009.)*

## REG-1-089 ENERGY SOURCE UTILITY EXEMPTION

089.01 The sale, purchase, use, or other consumption of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, gasoline, coke, nuclear fuel, butane, and compressed fuel that includes compressed natural gas and liquefied petroleum gas (propane) may be exempt from the sales and use tax.

089.01A If more than 50% of the amount purchased is used or directly consumed in processing, manufacturing, refining, generation of electricity, irrigation or farming, or by any hospital the purchase of the fuels listed above is exempt.

089.02 The following definitions and guidelines are to be applied in determining the percentage of exempt energy consumption:

089.02A Processing or manufacturing is defined as an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Processing includes grain drying and feed grinding in a commercial facility, and the freezing of food products. Processing or manufacturing does not include repairing property, building erection, cold storage of food products, or the preparation of food for immediate consumption.

089.02B Refining is defined as the action or process of removing impurities from crude or impure materials, such as glass, metal, sugar, and petroleum products. Refining includes the extraction of gas and petroleum products.

089.02C Irrigation is defined as the application of water to lands for the raising of agricultural crops.

089.02D Farming is commercial agriculture, which is the business of producing food products, or other useful and valuable crops, or raising animal life. The crops or animal life can either be sold or used by the grower. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, sod farms, and feedlots. Commercial agriculture does not include storage of crops off the farm or in commercial elevators, or animal life in stockyards or sale barns. Energy consumed by on-farm grain storage and processing is considered to be consumed in farming.

089.02E Gas is defined as those gases that are burned for energy or oxygen used in welding or cutting metals.

089.03 When determining the percent of exempt use, energy consumed directly in processing, manufacturing, refining, generation of electricity, irrigation, or farming, as defined in this regulation, is used in a qualified use. Energy consumed in heating, cooling, or lighting that portion of the facility directly used in processing, manufacturing, refining, irrigation, or farming, is considered to be for a qualified use. If the purchaser properly determines that more than 50 percent of the energy charge through a single meter is consumed for a qualified use, the entire billing for that meter is exempt from the sales and use tax. However, if the purchaser determines that 50 percent or less of the energy charge through a single meter is consumed for a qualified use, he or she cannot issue an exempt certificate on that meter billing. The entire charge (qualified and nonqualified use) is taxable.

089.03A For purposes of determining the usage percent, a one-year period of consumption will be required. New customers may project their anticipated consumption.

089.03B The use of separate energy meters is acceptable for establishing exemptions within a single facility; however, the taxability of the entire billing for that meter is dependent upon the total energy usage through that meter.

089.04 Fuels commonly used to propel motor vehicles, such as fuel oil, diesel fuel, tractor fuel, and propane are subject to either diesel or compressed fuel tax or sales tax, depending upon their usage.

089.04A At the time fuel oil, diesel fuel, tractor fuel, or propane is placed in a bulk tank which is designed or equipped to fuel vehicles, fuel oil, diesel fuel, tractor fuel, or propane is taxed or exempted under the diesel or compressed fuel rules.

089.04B Fuel oil, diesel fuel, tractor fuel, or propane which is exempt from the sales tax at the time of purchase

becomes subject to the consumer's use tax only when consumed for purposes other than for irrigation of crops or to propel any vehicle such as a tractor, fork lift, grader, or bulldozer. This fuel may qualify for exemption under paragraph 089.01A.

089.04C All fuel oil, diesel fuel, tractor fuel, or propane placed in a bulk tank which is not designed to fuel motor vehicles, is taxed or exempted under the sales and use tax regulations.

089.05 The procedure for claiming an exemption from sales and use tax except those claims set forth in sections 089.05A and 089.05B must be supported by properly completing the Nebraska Energy Source Exempt Sale Certificate, Form 13E.

089.05A The exempt sale of diesel or compressed fuel placed in a bulk tank designed or equipped to fuel vehicles does not need to be supported by a certificate of exemption when the quantity purchased and the other records maintained support such exempt sale.

089.05B Diesel fuel that is placed into a supply tank connected to stationary equipment used to irrigate crops is exempt from sales and use tax. Such sales do not need to be supported by a certificate of exemption when the quantity purchased and the other records maintained by the seller support such exempt sale.

089.05C Compressed natural gas or liquefied petroleum gas (propane) that is placed into a supply tank connected to stationary equipment used to irrigate crops is taxable unless the purchaser issues to the seller a Nebraska Energy Source Exempt Sale Certificate, Form 13E.

089.05D An electricity or gas services public utility with a formal classification of usage that reasonably reflects the actual use by the customer, and such usage is for an exempt purpose, does not need to accept an exempt sale certificate from each customer account in the classification. This provision is not to be construed as relieving the consumer of liability for the applicable tax on any such usage.

089.05E Persons furnishing electricity and gas services as public utilities may elect to assume or absorb the applicable sales tax or may elect to pass the tax to the final consumer in the same manner as all other retailers. If the vendor elects to assume or absorb the tax, the utility vendor will remit the applicable tax directly to the Department of Revenue based upon the total charges made to the ultimate consumer. All billings to the ultimate consumer shall contain a statement to the effect that no tax is being collected for customers who are exempt or that the tax has been assumed or absorbed by the vendor for taxable customers.

089.05F In the event the vendor of utility services elects to pass the applicable tax to the final customer, the tax shall be separately stated on all billings; provided, that in lieu of separately stating the tax, the Department of Revenue hereby authorizes the vendor to include a

statement on all billings to the effect that the total charge includes sales tax. The gross receipts will be factored to determine the proper amount of tax.

*(Section 77-2704.13, R.R.S. 2003. April 12, 2005.)*

## REG-1-090 NONPROFIT ORGANIZATIONS

090.01 The fact that an organization is nonprofit does not, by itself, entitle the organization to an exemption from payment of sales and use tax on its purchases. Some nonprofit organizations are exempt from payment of the Nebraska sales and use tax on purchases to the extent described in subsections 090.02A through 090.04B of this regulation. Purchases made by these organizations are exempt only after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). Religious organizations are discussed in Reg-1-091, Religious Organizations; and educational institutions are discussed in Reg-1-092, Educational Institutions. All other nonprofit organizations are not exempt and must pay sales or use tax. The following nonprofit organizations are exempt from paying sales and use taxes to the extent indicated.

090.02 A nonprofit organization operating any of the following facilities that are licensed under the Health Care Facility Licensure Act is only exempt on purchases for use at the facility, or portion of the facility, covered by the license and on purchases for use outside the facility that are necessary to fulfill the nonprofit organization's requirements to hold or maintain its license. Any purchases by the nonprofit organization for use at facilities not included in the license, or for any other activities are not exempt from the Nebraska sales and use tax.

090.02A A hospital.

090.02B A health clinic, when one 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 federal funds through the United States Public Health Service.

090.02C A skilled nursing facility.

090.02D An intermediate care facility defined in Neb. Rev. Stat. § 71-420, and a intermediate care facility for the mentally retarded defined in Neb. Rev. Stat. § 71-421.

090.02E A nursing facility.

090.02F An assisted-living facility.

090.02G Beginning October 1, 2012, a mental health center.

090.03 A nonprofit organization operating any of the following activities or facilities that are licensed or certified by the Nebraska Department of Health and Human Services, is only exempt on purchases for use in the activity or at the facility, or portion of the facility, covered by the license or certification and on purchases for use outside the activity or facility that are necessary to fulfill the nonprofit

organization's requirements to hold or maintain its license or certification. Any purchases by the nonprofit organization for use at the activities or facilities not included in the license or certification, or for any other activities, are not exempt from the Nebraska sales and use tax.

090.03A A licensed child placing or child placement agency.

090.03B A licensed child-caring agency, providing 24-hour daily care, supervision, custody, or control of children, in lieu of care or supervision normally exercised by parents in their own home, that is licensed under Neb. Rev. Stat. §§ 71-1901 to 71-1906.01.

090.03B(1) A licensed child-caring agency does not include an organization providing day care, early childhood programs, or periodic care as defined in Neb. Rev. Stat. § 71-1910.

090.03C An organization providing community-based services for the developmentally disabled that is certified under the Health Care Facility Licensure Act.

090.03D An organization operating a home health agency, hospice, or hospice or respite care service licensed under the Health Care Facility Licensure Act.

090.04 The following nonprofit organizations are exempt from sales and use tax on all purchases:

090.04A A nonprofit organization providing services exclusively to the blind; and

090.04B The State Fair Board.

090.05 The nonprofit organization seeking exemption from payment of sales and use tax must submit a Nebraska Exemption Application for Sales and Use Tax, Form 4, accompanied by the necessary supporting documentation. Exemptions are granted to nonprofit organizations listed under Reg-1-090.02 through Reg-1-090.04B, based on the factual documentation that is presented. In those instances where licensure or certification is a requirement, the Department will contact the state agency responsible for issuing the license to confirm that the license or certification was issued. Nonprofit organizations approved for exemption from payment of sales or use tax are issued a Nebraska Exempt Organization Certificate of Exemption. This certificate assigns the nonprofit organization an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

090.06 The nonprofit organization must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

090.07 Only the nonprofit organization that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the nonprofit organization without payment of sales or use tax. Affiliated or subsidiary organizations cannot make tax

exempt purchases using an exempt nonprofit organization's exemption certificate, even if they are operating in support of or under the guidance of the exempt organization. The affiliated or subsidiary organization must apply for its own exemption certificate. The affiliated or subsidiary organization may or may not qualify for its own exemption certificate.

090.07A The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt nonprofit organization. For these purchases to be tax exempt, the person must donate the funds to the nonprofit organization, and the nonprofit organization must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to an exempt nonprofit organization, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

090.07B An exempt nonprofit organization engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit organization does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit organization may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

090.07C When a nonprofit organization is engaging in a construction or repair project, it must be licensed or certified to be exempt from sales and use tax. But, if it was not licensed or certified at the time of the purchase, the nonprofit organization must pay sales tax or remit use tax, and cannot issue either a Purchasing Agent Appointment, Form 17, or a Resale or Exempt Sale Certificate, Form 13, to any contractor relating to purchases of building materials for construction or repair performed before licensing or certification. When the nonprofit organization becomes licensed or certified upon completion of the project, it may apply for a refund of the sales tax paid or collected, or the use tax remitted by any contractor on building materials necessary to open the facility and qualify for the license or certification.

090.07D A nonprofit organization required to be licensed or certified to be exempt from sales and use tax, but that is not licensed or certified at the time of the purchase, cannot make tax exempt purchases. When the nonprofit organization becomes licensed or certified upon completion of the project, it may apply for a refund of the sales or use tax paid on the equipment, furnishings, or supplies necessary to open the facility and qualify for the license or certification.

090.07E When a nonprofit organization is required to be licensed or certified to be exempt from sales and use tax, the organization may only make tax exempt purchases during the time that any required license or certification is valid.

090.08 A nonprofit organization is required to collect sales tax on sales of property made by the organization, unless the sale is otherwise exempt. Even an organization exempt from paying sales and use tax under this regulation, is required to collect sales tax on its taxable sales of property and services to the general public or to the members of the organization. Examples include: prepared food, (Reg-1-083, Food Service); copies of records, (Reg-1-080, Documents); and admissions, (Reg-1-044, Admissions).

090.08A Nonprofit organizations making sales of property or services subject to sales tax must apply for a Nebraska Sales Tax Permit using a Nebraska Tax Application, Form 20, and collect sales tax on the gross receipts from these sales.

090.08B Any nonprofit organization may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. This certificate, or an approved substitute form, must be issued in accordance with Reg-1-013, Sale for Resale-Resale Certificate.

090.09 When a nonprofit organization charges for a fund-raising event that includes either prepared food or an admission for entertainment, recreation, or amusement, and the charge is combined with the solicitation of a contribution, the portion of the amount charged that represents the fair market value of the taxable prepared food or admission received is a retail sale and the nonprofit organization must collect and remit sales tax on that portion.

090.09A The nonprofit organization must determine the fair market value in advance and clearly indicate that amount on any ticket, receipt, or other evidence issued in connection with the payment and report and remit sales tax on that amount.

090.09B If there is no fair market value determined by the nonprofit organization, and there is more than one ticket price, and all purchasers receive substantially the same benefits, the lowest ticket price is presumed to be the fair market value of all tickets sold.

090.09C If there is no fair market value determined by the nonprofit organization, and fair market value cannot be determined under Reg-1-090.09B, the total charge is taxable.

090.10 Charges by committees registered with the Nebraska Accountability and Disclosure Commission, or committees for candidates for federal office, for admission to or for prepared food served at political fund-raising events are exempt from sales or use tax.

090.10A All other sales of property by committees, other than committees for candidates for federal office, are taxable.

090.10B Committees mean ballot question committees, candidate committees, independent committees, and political party committees.

090.11 Purchases by employees or members of the nonprofit organization using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the nonprofit organization, and even if the organization will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

*(Neb. Rev. Stat. §§ 77-2701.33, 77-2704.10 and 77-2704.12. July 3, 2013.)*

#### REG-1-091 RELIGIOUS ORGANIZATIONS

091.01 Nonprofit organizations created exclusively for religious purposes are exempt from payment of the Nebraska sales or use tax after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). This certificate assigns the organization an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

091.02 The nonprofit religious organization must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

091.02A Only the nonprofit religious organization that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the nonprofit religious organization without payment of sales or use tax. Affiliated or subsidiary organizations, for example, separately organized day care centers, youth groups, or vacation bible schools, cannot make tax exempt purchases using an exempt nonprofit religious organization's exemption certificate, even if they are operating in support of or under the guidance of the exempt organization. The affiliated or subsidiary organization must apply for its own exemption certificate. The affiliated or subsidiary organization may or may not qualify for its own exemption certificate.

091.02B The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt nonprofit religious organization. For these purchases to be tax exempt, the person must donate the funds to the nonprofit religious organization, and the nonprofit religious organization must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to an exempt nonprofit religious organization, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

091.02C An exempt nonprofit religious organization engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing

the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit religious organization does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit religious organization may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

091.03 A nonprofit organization that meets the following criteria will be considered as created exclusively for religious purposes. The specific tenets of a particular religion will not be compared or considered by the Department when reviewing an application for tax exempt status.

091.03A The nonprofit organization must affirmatively establish its right to exemption by demonstrating that it is organized and is being operated exclusively for religious purposes. A mere restatement of the applicant's corporate charter or a statement of its proposed activities will not suffice.

091.03B The nonprofit organization's net earnings cannot be used for private gain or benefit unless the use fulfills a religious or charitable purpose. Upon dissolution, all assets and accumulated earnings must be distributed to an organization exempt under the Internal Revenue Code, § 501(c).

091.03C Exempt status will be granted by the Department only if the applicant's operation and activities are described in sufficient detail to require a conclusion that the nonprofit organization has met the requirements.

091.04 Each application will be examined by the Department to determine if the primary or dominant purpose for which the nonprofit organization has been created is religious, and if that purpose is being carried out in the operations of the organization.

091.05 In reviewing applications from nonprofit organizations seeking an exemption certificate as a religious organization, the Department may examine certain criteria, including, but not limited to, those listed in Reg-1-091.05A through 091.05N. No single criterion is controlling when making a determination of tax exempt status. These criteria include:

091.05A A distinct legal existence;

091.05B A recognized creed and form of worship;

091.05C A definite and distinct ecclesiastical government;

091.05D A formal code of doctrine and discipline;

091.05E A distinct religious history;

091.05F A membership not associated with any other religious organization or denomination;

091.05G A complete organization of ministers ministering to its congregations;

091.05H Ministers selected after completing prescribed courses of study;

091.05I A literature of its own;

091.05J Established places of worship;

091.05K Regular congregations;

091.05L Regular religious services;

091.05M Schools for the religious instruction of the young; and

091.05N Schools for the preparation of its ministers.

091.06 If the Department determines that the applicant is a nonprofit religious organization, it may have other purposes which are incidental when compared to its predominantly religious purposes or goals. In these instances, the applicant may not satisfy all of the criteria set out above.

091.07 A nonprofit religious organization is required to collect sales tax on sales of property by the nonprofit religious organization unless the sale is otherwise exempt. A nonprofit religious organization may make the following sales exempt from sales tax.

091.07A A nonprofit religious organization may sell prepared food at a function of the nonprofit religious organization without collecting sales tax. The activity is a function of the nonprofit religious organization if it is primarily for the members of the organization.

091.07B A nonprofit religious organization may have one annual sale event that is not taxed.

091.07B(1) The sale must be at an activity of the nonprofit religious organization, but it does not have to take place at a location owned by the nonprofit religious organization.

091.07B(2) The sale may last up to three consecutive days.

091.07B(3) The nonprofit religious organization may have the assistance of an auctioneer at this sale without having to collect sales tax on the property or services sold.

091.07B(4) The nonprofit religious organization may sell anything it owns at its sale, except a motor vehicle, trailer, or semi-trailer. The property or services sold may be made especially for the sale, purchased for the sale, or donated to the nonprofit religious organization for the sale.

091.08 Any nonprofit religious organization may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. (Reg-1-013, Sale for Resale-Resale Certificate). This certificate, or an approved substitute form, must be issued in accordance with Reg-1-014, Exempt Sale Certificate.

091.09 Purchases by employees or members of the nonprofit religious organization using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the nonprofit religious organization, and even if the

organization will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

*(Neb. Rev. Stat. §§ 77-2701.24, 77-2703, 77-2704.10, 77-2704.12, and 77-2706. July 3, 2013.)*

#### REG-1-092 EDUCATIONAL INSTITUTIONS

092.01 The following educational institutions are exempt from payment of the Nebraska sales and use tax after the institution has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department):

092.01A A Nebraska public elementary or secondary school, or school district;

092.01B A nonprofit Nebraska private elementary or secondary educational institution established under Chapter 79, article 16;

092.01C A Nebraska community college, established under Chapter 85, Article 15;

092.01D A Nebraska educational service unit, established under the Educational Service Units Act, Chapter 79, Article 12;

092.01E A Nebraska learning community established under Chapter 79, Article 21;

092.01F The Nebraska Center for the Education of Children who are Blind or Visually Impaired, established by Neb. Rev. Stat. § 79-11,109;

092.01G The Nebraska State College System, established under Chapter 85, Article 3;

092.01H The University of Nebraska System, established under Chapter 85, Article 1;

092.01I A nonprofit, private, regionally or nationally accredited college or university with its primary campus located in Nebraska that is authorized under the Postsecondary Institution Act, Chapter 85, Article 24; and

092.01J A conference or other organization, if all the members of the conference or organization are exempt from payment of the Nebraska sales and use tax.

092.02 Schools and other educational institutions not listed in Reg-1-092.01 are not exempt, and must pay sales tax or remit use tax on their taxable purchases. These include, but are not limited to:

092.02A Home schools, other Rule 12 and Rule 13 schools, and all other educational institutions not subject to state approval or accreditation; and

092.02B Schools, colleges, or universities located in another state.

092.03 The educational institution seeking exemption from payment of sales and use tax must submit a Nebraska Exemption Application for Sales and Use Tax, Form 4, accompanied by the necessary supporting documentation. In instances where approval or accreditation is a requirement

for an educational institution, the Nebraska Department of Education may be contacted to confirm the approval or accreditation. Educational institutions approved for exemption from payment of sales and use tax are issued a Nebraska Exempt Organization Certificate of Exemption. This certificate assigns the educational institution an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

092.04 The educational institution must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

092.05 Only the educational institution that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the educational institution without payment of sales or use tax. Affiliated or subsidiary organizations, including student organizations or parent-teacher-student organizations, cannot make tax exempt purchases using an exempt educational institution's certificate of exemption, even if they are operating in support of or under the guidance of the educational institution.

092.05A The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt educational institution. For these purchases to be tax exempt, the person must donate the funds to the educational institution, and the educational institution must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to an exempt educational institution, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

092.05B An exempt educational institution engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit educational institution does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit educational institution may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

092.05C When a private, nonprofit, postsecondary educational institution is engaging in a construction or repair project, it must be regionally or nationally accredited with its primary campus physically located in Nebraska to be exempt from sales and use tax. But, if it was not accredited or located in Nebraska at the time of the purchase, the private, nonprofit, postsecondary educational institution must pay sales tax or remit use tax, and cannot issue either a Purchasing Agent

Appointment, Form 17, or a Resale or Exempt Sale Certificate, Form 13, to any contractor relating to purchases of building materials for construction or repair performed before approval or accreditation. When the private, nonprofit, postsecondary educational institution becomes accredited and located in Nebraska upon completion of the project, it may apply for a refund of the sales tax paid or collected, or the use tax remitted by any contractor on building materials necessary to open the facility and qualify for the approval or accreditation.

092.05D A private, nonprofit, postsecondary educational institution required to be accredited and with its primary campus physically located in Nebraska to be exempt from sales and use tax, but that is not accredited or located in Nebraska at the time of the purchase, cannot make tax exempt purchases. When the educational institution becomes accredited and located in Nebraska upon completion of the project, it may apply for a refund of the sales or use tax paid on the equipment, furnishings, or supplies necessary to open the facility and qualify for the license or certification.

092.05E When a private, nonprofit, postsecondary educational institution is required to be accredited to be exempt from sales and use tax, the educational institution may only make tax exempt purchases during the time that any required accreditation is valid.

092.06 An educational institution is required to collect sales tax on sales of property made by the educational institution except for:

092.06A Admissions charged by elementary or secondary schools;

092.06B Admissions charged by school districts, student organizations, or parent-teacher associations to an event or activity held in an elementary or secondary school during the regular school day, or at an approved function of the school;

092.06C Prepared food, soft drinks, and candy, served during the regular school day or at school functions, sold by;

092.06C(1) An elementary or secondary school or school district;

092.06C(2) A student organization or parent-teacher association of an elementary or secondary school; or

092.06C(3) An institution of higher education, public or private, but only if the sale is made at a facility or event that is not open to the public.

092.06D Concession sales of prepared food, soft drinks, and candy by elementary and secondary schools at events including those open to the public;

092.06E Sales by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by elementary or

secondary schools, if the proceeds are used to support school activities or the school itself; or

092.06F Occasional rental of rooms or accommodations regularly used to house students in dormitories or facilities operated by an educational institution established under Chapter 79 or 85 of the Nebraska Revised Statutes.

092.06G For purposes of the exemptions in subsections 092.06A through 092.06F:

092.06G(1) Schools include both public and private elementary and secondary schools; and

092.06G(2) Schools and school districts include organizations of schools and school districts, acting on behalf of its members in carrying out school events, activities, or functions.

092.07 An educational institution making sales of property or services subject to sales tax must apply for a Nebraska Sales Tax Permit using a Nebraska Tax Application, Form 20 and collect sales tax on the gross receipts from these sales.

092.08 Any educational institution may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. This certificate, or an approved substitute form, must be issued in accordance with Reg-1-013, Sale for Resale-Resale Certificate.

092.09 Purchases by employees of the educational institution, or members of parent-booster clubs, parent-teacher associations, or parent-student-teacher associations, using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the educational institution, and even if the educational institution will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

*(Neb. Rev. Stat. §§ 77-2704.10, 77-2704.12, 77-2704.15, 77-2704.24 and 77-2704.25. July 3, 2013.)*

#### REG-1-093 GOVERNMENTAL UNITS

093.01 Governmental units are only exempt from sales and use tax if they are specifically listed in subsections 093.04 through 093.06 of this regulation. Public educational institutions are discussed in Reg-1-092, Educational Institutions.

093.02 Governmental units are not required to have exemption numbers.

093.03 The United States (U.S.) government, its agencies, instrumentalities, and corporations wholly owned by the U.S. government are exempt from sales and use tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the U.S. government for the benefit of the public, are generally taxable. (See Reg-1-072, United States Government and Federal Corporations, for organizations considered a part of the U.S. government.)

093.04 The following governmental units in Nebraska are exempt from sales and use tax:

- 093.04A The State of Nebraska;
- 093.04B A municipality, including a municipal library;
- 093.04C A county or township, including a county or township library;
- 093.04D A natural resource district;
- 093.04E A joint entity or agency formed to fulfill the purposes of the Integrated Solid Waste Management Act;
- 093.04F A city, county, or joint airport authority;
- 093.04G An elected county fair board;
- 093.04H A rural or suburban fire protection district;
- 093.04I A drainage district;
- 093.04J A local or regional housing agency, except for purchases for any commercial operation that does not exclusively benefit the residents of the affordable housing project; and
- 093.04K Wyuka Cemetery.

093.05 A Nebraska irrigation or reclamation district, including one that is part of a Nebraska public power and irrigation district, is exempt from sales and use tax, including any departments or portion of the district that sells electricity, gas, heat, or water.

093.06 A nonprofit corporation formed by an exempt governmental unit listed in sections 093.04 or 093.05 for the sole purpose of issuing tax-exempt bonds to finance one or more projects for the exempt governmental unit is exempt from sales and use tax for building materials, equipment, or other property purchased for the project or projects with the proceeds from the tax-exempt bonds to the same extent the exempt governmental unit would be exempt, if all of the following conditions are satisfied:

- 093.06A The nonprofit corporation is essentially public in nature;
- 093.06B The exempt governmental unit holds a beneficial interest in the nonprofit corporation;
- 093.06C The nonprofit corporation has or will issue bonds on behalf of the exempt governmental unit to finance a project or projects where the interest paid on the bonds is exempt from federal income tax under 26 U.S.C. § 103;
- 093.06D The project or projects will be the subject of a lease-purchase agreement, financing lease, or other instrument which provides for the transfer of full legal title to the property to the governmental unit when all amounts due under the lease or other instrument are paid and the indebtedness is retired; and
- 093.06E If a construction project has a total estimated cost greater than \$50,000 or 0.6% of the total actual value of real and personal property of the exempt governmental

unit for the previous fiscal year, whichever is greater, the construction project must have been approved by a majority of the voters of the exempt governmental unit at a primary, general, or special election.

093.07 All governmental units not listed in sections 093.04 through 093.06 must pay sales tax or remit use tax on taxable purchases. Governmental units that are not exempt from sales and use tax include, but are not limited to:

- 093.07A A railroad transportation safety district;
- 093.07B A rural water district;
- 093.07C A sanitary and improvement district;
- 093.07D Another state and any unit of government in another state except that another state, and any unit of government in another state, is tax exempt for purchases of industrial equipment in this state, including parts for repairs, if the other state grants a similar reciprocal exemption to Nebraska and its units of government; and
- 093.07E A county weed district board.

093.08 Organizations which are not governmental units, but which assist in performing governmental functions are not exempt from sales or use tax. These organizations include, but are not limited to:

- 093.08A A volunteer fire department;
- 093.08B A county agricultural society or county historical society;
- 093.08C A corporation created under the Nebraska Nonprofit Corporation Act of the Nebraska Revised Statutes;
- 093.08D An institution chartered or created under federal authority, but not directly operated and controlled by the U.S. government; and
- 093.08E An organization using funds or grants from governmental units.

093.09 An organization established under the Nebraska Interlocal Cooperation Act entirely by exempt governmental units may make purchases for its use exempt from sales and use tax after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). If any of the members are not exempt, then the organization is not exempt for any of its purchases.

093.10 The exempt governmental unit must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

093.11 An exempt governmental unit engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. Except for the State of Nebraska, if the exempt governmental unit does not issue

the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt governmental unit may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

093.12 A governmental unit is required to collect sales tax on sales of property by the governmental unit, unless the sale is otherwise exempt.

092.13 Sales by agencies and corporations of the U.S. government are addressed in Reg-1-072.05.

093.14 Any governmental unit may purchase property tax exempt for resale if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. (Reg-1-013, Sale for Resale-Resale Certificate.) This certificate, or an approved substitute form, must be issued in accordance with Reg-1-014, Exempt Sale Certificate.

093.15 Purchases by employees of the governmental unit using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the governmental unit, and even if the governmental unit will be reimbursing the employees for expenses incurred, including purchases of prepared food and lodging.

093.16 The exemptions granted to any governmental unit listed in 093.04 through 093.06 do not apply to purchases for use in the business of furnishing gas, water, electricity, or heat. The governmental unit will pay sales tax or remit use tax the same as any privately-owned utility company. (Reg-1-066, Sewer and Water, and Reg-1-089, Energy Source Utility Exemption.)

093.16A When property is shared by a taxable department and by an exempt department, (for example, a piece of equipment that is sometimes used by the water department and sometimes used by the sewer department), sales or use tax is due on the portion of the total amount paid that reflects the use by the taxable department.

093.16A(1) The governmental unit may allocate the amount paid for the property between the exempt department and the taxable department by any method that reasonably reflects the use of the property by each department, and pay sales tax or remit use tax on the portion of the sales price that reflects the allocation to the taxable department.

093.16A(2) If a taxable department and tax exempt department divide the cost of the property, the portion of the sales price paid or reimbursed by each department is presumed to reflect the use by each department.

093.16B If a taxable department and an exempt department make simultaneous and continuous use of property, like duct space, pole space, or meters, 100% of the sales price of the property is taxable. Any charges made between departments for simultaneous and continuous use of property are exempt from sales tax.

093.16C For purposes of this section, “department” means a portion of a governmental unit listed in 093.04 through 094.06 that is responsible for a specific function of the governmental unit whether or not that portion has separate accounting, management, or property.

*(Neb. Rev. Stat. §§ 2-953.01, 77-2704.15, 77-2704.16, 77-2704.17, and 77-2704.20, and 4 U.S.C. section 107 and 29 U.S.C section 103. July 3, 2013.)*

## REG-1-094 AGRICULTURAL MACHINERY AND EQUIPMENT

094.01 For the purposes of this regulation, the following definitions will be used.

094.01A Agricultural machinery and equipment shall mean tangible personal property that is used directly in the cultivating or harvesting of a crop, the raising or caring for animal life, or the collecting or processing of an agricultural product on the farm or ranch.

094.01A(1) Agricultural machinery and equipment does not include office equipment, registered or unregistered motor vehicles, well-drilling equipment, handling or processing equipment for agricultural products not on a farm or ranch, or any building or fixture.

094.01B Commercial agriculture is the business of producing food products, or other useful and valuable crops, or raising animal life. The crops or animal life can either be sold or used by the grower to produce other products for sale. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, sod farms, and feedlots. Commercial agriculture does not include storage of products off the farm or in commercial elevators, or animal life in stockyards or sale barns.

094.01C Depreciable agricultural machinery and equipment means agricultural machinery and equipment that has a determinable life of longer than one year.

094.01D Purchase is a transfer of title or possession for a consideration. The purchase may occur by sale, conditional sale, sale at auction, or a lease or rental for thirty days or more.

094.02 The purchase of depreciable agricultural machinery and equipment is exempt from the Nebraska and local option sales and use tax if the agricultural machinery and equipment purchased meets all of the following criteria. If any of the criteria are not met, the purchaser is not entitled to an exemption:

094.02A The item purchased is agricultural machinery and equipment;

094.02B It is used in commercial agriculture; and

094.02C The purchaser properly completes a Nebraska Resale or Exempt Sale Certificate, Form 13, Section B.

094.03 Sales of repair and replacement parts for agricultural machinery and equipment used in commercial agriculture are

taxable. Charges for labor to repair agricultural machinery and equipment are not taxable provided the charges are separately itemized on the billing invoice.

094.03A The tax paid on purchases of depreciable repair and replacement parts is eligible for a refund, including the tax paid on the related repair or maintenance labor charges.

094.04 Charges for labor to repair a building, structure, or fixture used in commercial agriculture are taxable.

094.05 Personal property tax must be paid on qualified agricultural machinery and equipment and depreciable repair parts, even if sales tax is paid on the item.

*(Sections 77-2708, and 77-2708.01, R.R.S. 2003. July 16, 2005.)*

#### REG-1-095 MOLDS, DIES, AND PATTERNS

095.01 Sales of molds or dies to a manufacturer for use in manufacturing are exempt from tax.

095.01A The materials necessary to create the mold or die used in manufacturing and any chemicals, solutions, or catalysts utilized in the mold or die process are all included in the exemption.

095.02 Sales of molds, dies, and patterns that do not qualify as manufacturing machinery and equipment are exempt from tax only when all of the following conditions are met:

095.02A The mold, die, or pattern is designed and fabricated to the special order of a customer;

095.02B The mold, die, or pattern is built specifically for the manufacture of a single product; and

095.02C The mold, die, or pattern is used to produce a product which is either injection molded from plastic or stamped from metal.

095.03 A mold or pattern is a form containing a negative impression into which a softened or fluid material is injected to achieve a predetermined shape.

095.04 A die is a tool mounted on a press and consists of a pair, or a combination of pairs, of mating members which shape or cut metal.

095.05 Injection molding is a process whereby a metered quantity of a heated and plasticized material is injected under pressure into a mold and allowed to solidify. The manufacturing processes of rotational molding, extrusion, compression molding, or blow molding do not qualify as injection molding.

095.06 Metal stamping is the process in which metal is shaped by pressing a die or series of dies against the metal. The process can include operations which blank, punch, bend, iron, redress, emboss, flange, trim, or otherwise shape the metal.

095.07 The exemption for molds, dies, and patterns does not include the machinery or equipment to which the molds, dies, or patterns are connected or attached. The exemption does not apply to the purchase of raw materials or individual

parts which will be fabricated into a mold, die, or pattern where the fabricator is considered the final consumer of the mold, die, or pattern.

095.08 The exemption applies to charges for modifications made to a qualifying mold, die, or pattern or to any repair or replacement parts of a qualifying mold, die or pattern.

*(Section 77-2704.40, R.R.S. 2003. February 22, 2009.)*

#### REG-1-096 MOTORBOATS

096.01 Motorboat as used in this regulation shall mean any watercraft included under Section 37-1204 of the Nebraska Revised Statutes. Every motorboat dealer in Nebraska is required to obtain a sales tax permit for each place of business in this state even though they make no sales other than sales of motorboats. The dealer shall file a tax return reporting gross sales in the same manner as all other retailers.

096.01A Motorboats means any watercraft propelled by a permanently or temporarily attached motor and shall include, among others, open or closed bow outboards, inboards, inboard/outboard boats, personal watercraft (jet skis, wave runners), air boats, cabin cruisers, houseboats, pontoons, canoes, jon boats, sail boats, and rowboats.

096.01B If a trailer is sold with a motorboat, the dealer must separately state the selling price of the trailer on the purchaser's invoice and furnish the purchaser with a Nebraska Sales/Use Tax and Tire Fee Statement for Motor Vehicles and Trailer Sales, Form 6, for the trailer.

096.02 The sales and use tax imposed upon the sale of a motorboat shall be the liability of the purchaser and the tax shall be collected by the county treasurer or other designated county official at the time the purchaser makes application for registration of the motorboat for operation in this state. If the purchaser retains such motorboat in this state and does not register it for operation within thirty days of the purchase date, the tax shall be paid immediately to the county treasurer or other county official. If the tax is not paid within thirty days of the purchase date, the county treasurer or other designated official shall collect the tax, interest from the thirtieth day until the date of payment, and a penalty of five dollars (\$5.00).

096.03 The dealer or seller is not authorized to collect the tax on the sale of motorboats but shall, at the time of the sale, state on the sales invoice the dollar amount of the tax and furnish the purchaser a Nebraska Sales and Use Tax Statement for Motorboat Sales, Form 6MB.

096.03A The tax due shall be computed on the difference between the total sales price and the total of any trade-in allowance for another motorboat taken by any person and any rebates used to reduce the selling price of the motorboat.

096.03A(1) The selling price of a motorboat includes charges for the boat, motor, destination fees, import custom fees, document processing fee, and warranty transfers. The selling price also

includes charges for accessories, and service and maintenance agreements unless such charges are separately invoiced. When these charges are separately invoiced the dealer or seller collects and remits sales tax on these charges.

096.03B All information requested by the Nebraska Department of Revenue must be furnished and a copy of each Form 6MB must be sent to the Nebraska Department of Revenue by the seller at the time the sales and use tax return is filed. Any dealer or seller who fails or refuses to furnish such information may be found guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense.

096.03C Any dealer or seller who willfully prepares a false or fraudulent sales or use tax return or Form 6MB may be found guilty of a Class IV felony and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000.00), or be imprisoned not more than five years, or both.

096.03D Any purchaser, or agent thereof, who completes Nebraska Sales and Use Tax Statement for Motorboat Sales, Form 6MB, claiming an exemption for any purchase which is not exempt from sales and use tax under sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, shall be subject to a penalty of one hundred dollars (\$100.00) or ten times the tax, whichever amount is larger. Any purchaser, or agent thereof, who fraudulently signs a Form 6MB with the intention to avoid payment of the tax may, in addition to the above penalty, be found guilty of a class IV misdemeanor.

096.03E Any seller who willfully understates the amount upon which the sales tax is due shall be subject to an administrative penalty of one thousand dollars (\$1,000.00).

096.04 County treasurers or other designated county officials are appointed as sales and use tax collectors for all sales of motorboats made outside of this state to purchasers and users of motorboats required to be registered in this state. The county treasurer, or other designated county official, shall collect the applicable use tax from the purchaser of a motorboat purchased outside of this state at the time application for registration is made. The full use tax on the purchase price shall be collected by the county treasurer or other designated county official if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for registration in this state.

096.05 The purchase of a licensed motorboat may be exempt for any of the following reasons:

096.05A If the owner of a motorboat is, or was, a nonresident of this state and establishes as a fact that he or she purchased the motorboat outside of this state

and there registered and titled the motorboat, then the use tax is not required for licensing or registering in this state;

096.05B The motorboat is purchased for the purpose of renting or leasing with the rental or lease payment set at a fair market value, and the purchaser holds a sales tax permit so as to remit tax on the lease or rental receipts;

096.05C The motorboat is a gift to the applicant or received through inheritance and tax was previously paid by the donor or prior owner;

096.05D The purchase of the motorboat is exempt under paragraphs 012.02C or 012.02D of Reg-1-012, Exemptions;

096.05E The motorboat is sold pursuant to an occasional sale as set out in Reg-1-022, Occasional Sales.

096.06 If the purchase of a licensed motorboat is exempt for any of the reasons in paragraph 096.05, the county treasurer or other designated county official may, after obtaining a properly completed Form 6MB accurately identifying the basis of exemption, complete the registration without collecting the tax.

096.07 The lessor of a motorboat must collect tax on the gross receipts from rental or lease of a motorboat which is registered for operation within this state and which is rented or leased for periods of one year or more or which is delivered by the lessor within this state and is rented or leased for a period of less than one year.

096.08 A rebate received by the purchaser from a manufacturer after the sale does not reduce the sales and use tax base. The retail price remains at the amount agreed upon at the time of the sale which is the amount upon which the tax must be collected.

096.08A A rebate received from a manufacturer that is used to reduce the selling price of the motorboat reduces the sales and use tax base. A rebate is used to reduce the selling price of the motorboat when it is transferred to the dealer at the time of the sale and is shown on the sales invoice as a price reduction, partial payment, or a down payment.

*(Sections 77-2701.24, and 77-2701.35, R.R.S. 2003, and sections 77-2701.16, 77-2703(1)(j), and 77-2703.01, R.S.Supp., 2004. July 16, 2005.)*

#### REG-1-097 DIRECT PAYMENT PERMIT

097.01 Companies issued a direct payment permit are authorized to pay the proper Nebraska and local option tax on certain purchases directly to the Nebraska Department of Revenue in lieu of paying the sales tax to the seller.

097.02 Application for a direct payment permit can be made by completing a Nebraska Application for Direct Payment Authorization, Form 20DP, and paying the nonrefundable \$10.00 application fee. Upon approval of the application, a direct payment permit will be issued.

097.03 In order to qualify for a direct payment permit, the applicant must meet the following conditions:

097.03A The company must have annual taxable purchases in Nebraska of personal property and services totaling at least three million dollars in order to qualify for a direct payment permit. Taxable purchases excludes those purchases for which a resale certificate could be used.

097.03B The company must demonstrate that its system of accruing tax on purchases is adequate for accruing tax on all taxable purchases.

097.03C The company must agree to accrue and pay all sales and use taxes to the Nebraska Department of Revenue on or before the 25th day of the month following the date of purchase, lease, or rental.

097.03D The holder of a direct payment permit is not entitled to any collection fee on those taxes due on taxable purchases purchased under the direct payment permit.

097.03E The holder of a direct payment permit cannot use the permit in connection with the following transactions:

- 097.03E(1) Cash purchases;
- 097.03E(2) Purchases of motor vehicles and motorboats;
- 097.03E(3) Purchases of lodging and related services;
- 097.03E(4) Purchases of food or beverages;
- 097.03E(5) Purchases of admissions; and
- 097.03E(6) Purchases for resale.

097.03F The company accepts responsibility for use by any other company to which the direct payment permit has been delegated.

097.04 The holder of a direct payment permit must furnish a copy of the direct payment permit to each seller from whom the holder purchased taxable personal property and services on which an exemption is claimed.

097.04A The holder of a direct payment permit must furnish a copy of the direct payment permit to each seller at least once every three years.

097.04B The holder of a direct payment permit must keep a current list of all sellers from whom purchases are made under the direct payment permit, and, upon request of the Tax Commissioner, must submit such list for examination.

097.04C If the permit is revoked or relinquished, the holder of the permit must notify all sellers given copies of the permit that the permit is no longer valid.

097.05 The receipt of a direct payment permit from the purchaser relieves the seller from the obligation to collect tax on taxable sales. A copy of the direct payment permit must be maintained in the records of the seller.

097.05A The holder of a direct payment permit may use the permit to make tax-free purchases of computer software, digital goods, or services that will

be concurrently available for use in more than one jurisdiction.

097.05B The holder of a direct payment permit may also use the permit to make tax-free purchases of direct mail as defined in Reg-1-105. Tax will be remitted based on the requirements of Reg-1-105. A certificate of exemption for direct mail will not be required for such purchases.

097.06 The tax that is remitted by a company issued a direct payment permit is a sales tax. The company issued a direct payment permit cannot claim an exemption under Reg-1-02.04E on items purchased from any Nebraska licensed seller or from any seller engaged in business in Nebraska.

097.06A Items purchased under the special permission letter of exemption for certain common carriers as provided in Reg-1-015 and delivered in Nebraska are not subject to sales and use tax when shipped outside Nebraska even though the same company has been granted the authority to operate under the provisions of the direct payment permit program for sales and use tax purposes.

097.07 The direct payment permit can be delegated to another company in which the holder of the permit has at least an 80% ownership.

097.08 The Tax Commissioner may revoke a direct payment permit any time the holder of the permit no longer qualifies for the issuance of a permit, fails to comply with the conditions under which the permit was granted, or for any other reason constituting the misuse of the permit.

*(Sections 77-2705.01, 77-2705.02, and 77-2705.03, R.R.S. 2003, and sections 77-2703(1)(f), and 77-2705, R.S.Supp., 2008. February 22, 2009.)*

#### REG-1-098 BUILDING CLEANING AND MAINTENANCE

098.01 Gross receipts from building cleaning and maintenance services are taxable.

098.02 Building cleaning and maintenance services include both interior and exterior cleaning of commercial and residential buildings, homes, apartments, outbuildings, and agricultural buildings.

098.03 Building cleaning and maintenance services include:

098.03A Cleaning and maintenance of tangible personal property located in a building, and fixtures or any property annexed to real estate that is attached to, is a part of, or is enclosed in, a building; and

098.03B Cleaning and maintenance services performed after fires, floods, or other natural disasters.

098.04 Building cleaning and maintenance services do not include:

098.04A Repairs to fixtures or property annexed to real estate; (See Reg-1-017 for the taxation of repairs to fixtures or annexed property.)

098.04B Cleaning of annexed property that is not attached to, a part of, or enclosed in, a building.

098.05 Service contracts that provide for building cleaning or maintenance service are taxable. (Reg-1-074, Warranties and Guarantees.)

098.06 Charges to property owners by property management companies that include building cleaning and maintenance services as a part of their management services are not taxable. Any additional charges to the property owner for building cleaning and maintenance services are taxable. Property management companies are the consumers of building cleaning and maintenance services they purchase for buildings they manage.

098.07 A building cleaning and maintenance service provider must pay sales or use tax on all purchases of materials, equipment, and supplies, including trash can liners, paper products, soap, and waxes, used to provide his or her cleaning and maintenance services.

098.08 Buildings and fixtures are defined in Reg-1-017, Contractors.

*(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)*

#### REG-1-099 MOTOR VEHICLE SERVICES

099.01 Gross receipts from certain services performed on motor vehicles are subject to tax. The taxable services include motor vehicle towing, motor vehicle washing and waxing, motor vehicle painting, and the installation of accessories or equipment on motor vehicles.

099.02 Motor vehicles as used in this regulation shall mean automobiles, trucks, trailers, semitrailers, and truck tractors as defined in Section 60-301 of the Nebraska Revised Statutes.

099.03 Motor vehicle towing.

099.03A Motor vehicle towing includes, but is not limited to, towing or transporting a vehicle from one location to another location, recovering a vehicle from a ditch, or uprighting an overturned vehicle.

099.03A(1) Charges for towing of common carrier vehicles are taxable.

099.03B Motor vehicle towing does not include the towing of other property or vehicles that are not defined as motor vehicles, or the delivery of inventory motor vehicles to a licensed motor vehicle dealer.

099.03C The charge for motor vehicle towing is taxable if the motor vehicle is delivered in Nebraska. The charge for towing a motor vehicle picked up in another state and delivered in Nebraska is taxable in this state. The charge for towing a motor vehicle picked up in Nebraska and delivered in another state is not taxable in this state.

099.04 Motor vehicle washing and waxing.

099.04A Motor vehicle washing and waxing includes washing or cleaning, waxing, polishing, or detailing the interior or the exterior of a motor vehicle.

099.04A(1) Charges for washing or waxing of common carrier vehicles are taxable.

099.04A(2) Charges for washing or waxing of inventory motor vehicles of licensed motor vehicle dealers are taxable.

099.04B For the proper calculation of the tax from coin-operated wash facilities see Reg-1-031, Coin-operated Machines.

099.04C Any person providing motor vehicle washing and waxing services must pay sales or use tax on all purchases of materials, equipment, and supplies, including towels, soaps, and waxes, used to provide his or her services.

099.05 Motor vehicle painting.

099.05A Motor vehicle painting includes, but is not limited to, refinishing, sealing, or applying rust protection or clear coat to motor vehicles.

099.05A(1) Motor vehicle painting also includes the labor and services necessary to prepare the vehicle, or parts of the vehicle, for painting or to clean the vehicle after painting.

099.05A(2) Motor vehicle painting does not include the replacement of parts or any repairs to a motor vehicle other than the repair of the finish or coatings on the vehicle.

099.05B Any person providing motor vehicle painting services must pay sales or use tax on all purchases of materials, equipment, and supplies, including sandpaper, compounds, tape, and cleaners, used to provide his or her services.

099.06 Installation of accessories or equipment.

099.06A The charges for the installation of accessories or equipment on a motor vehicle are taxable.

099.06A(1) The installation of accessories or equipment on a motor vehicle includes, but is not limited to, adding a radio or CD player, running boards, trailer hitches, bed liners, window tinting, or a moon roof.

099.06B The installation of accessories or equipment does not include the replacement of a nonfunctioning part or component of the motor vehicle with a comparable part or component.

099.06C For the taxability of installation of equipment for transporting medically disabled persons, such as wheelchair lifts see Reg-1-050, Medicines and Medical Equipment.

099.07 Any person providing services on motor vehicles must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide his or her services.

*(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)*

## REG-1-100 PEST CONTROL SERVICES

100.01 Gross receipts from pest control services are taxable.

100.02 Pest control services are those services intended to inspect for, detect, eliminate, neutralize, or control pests.

100.03 For the purposes of this regulation, pests include animals that infest buildings, plants, lawns, and any other property. Pests include, but are not limited to:

100.03A Spiders, mites, ticks, ants, wasps, and other insects;

100.03B Termites and other wood infesting organisms;

100.03C Rodents, snakes, birds, or other animals; and

100.03D Grubs and worms.

100.04 Charges by lawn service providers who apply pest control chemicals are taxable. A single application containing both pest control chemicals and other chemicals is taxable.

100.05 A pest control service provider must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide his or her services.

100.06 Service contracts for pest control services are taxable. (Reg-1-074, Warranties and Guarantees)

100.07 Charges for applying agricultural chemicals to land, crops, or animals in commercial agriculture are not taxable. (Reg-1-061, Agricultural Chemicals, and Reg-1-63, Feed and Water for Animal Life)

*(Section 77-2702.07, R.R.S. 2003, October 1, 2003.)*

## REG-1-101 SECURITY AND DETECTIVE SERVICES

101.01 Gross receipts from providing security and detective services are taxable. 101.02 Security services include those services to protect property from theft, vandalism, or destruction or to protect individuals from harm including physical attack or harassment. Security services include, but are not limited to:

101.02A Body guard, security patrol, or armored car services;

101.02B Planning for or consulting on security services;

101.02C Training in security measures or training persons or animals to provide security services; and

101.02D Monitoring and maintenance of security or surveillance systems, including installing, testing, cleaning, adjustment, or repair of the equipment. (See Reg-1-017, Contractors, for taxation of annexation or repair of property annexed to real estate.)

101.03 Detective services are those services provided by licensed detectives or licensed detective agencies in the business of investigating to obtain information for others. Detective services include, but are not limited to:

101.03A Background, employment, or criminal investigations;

101.03B Surveillance;

101.03C Obtaining evidence, or recovery of lost or stolen property; and

101.03D Polygraph or voice stress examinations.

101.04 Security or detective services provided by an employee to his or her employer are not taxable.

101.05 Security and detective services provided by the state or a political subdivision of the state in a governmental capacity are not taxable even if a charge is made.

101.05A Security or detective services provided by off-duty police officers are taxable unless the payment is made by a political subdivision.

101.06 A security or detective service provider must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide his or her services.

*(Section 77-2702.07, R.R.S. 2003, October 1, 2003.)*

## REG-1-102 ANIMAL SPECIALTY SERVICES

102.01 Gross receipts from animal specialty services are subject to tax, except for animal specialty services provided to livestock. Animal specialty services provided to 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, are taxable unless these animals are also livestock as defined in this regulation.

102.01A Livestock means domesticated cattle, horses, mules, donkeys, sheep, and swine. All other animals are not considered livestock for the purposes of this regulation.

102.02 Animal specialty services include, but are not limited to:

102.02A Boarding or caring for an animal;

102.02B Grooming;

102.02C Training, exercising, or handling;

102.02D Animal waste removal;

102.02E Breeding or insemination services;

102.02F Identification implants; or

102.02G Cremation, burial, or disposal services.

102.03 Animal specialty services do not include:

102.03A Professional services, including hospitalization, by a veterinarian as defined in Reg-1-078, Veterinarians;

102.03B Animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment;

102.03C Breeding or insemination services for use in ranching, farming, commercial, or industrial uses;

102.03D Impound fees set by local ordinance or amounts collected by animal control agencies for violations of local ordinances.

102.04 An animal specialty provider must pay sales or use tax on all purchases of materials, equipment, and supplies,

including shampoos, flea and tick treatments, and food, used to provide his or her services.

*(Section 77-2701.16, R.R.S. 2009. June 6, 2011.)*

#### REG-1-103 RECREATIONAL VEHICLE PARK SERVICES

103.01 Gross receipts from recreational vehicle park services are subject to tax. The sales tax will continue to apply even if the service is provided for more than thirty (30) days.

103.01A Recreational vehicles include motor homes, trailers, pickup campers, and any other vehicle used to live in or for camping.

103.02 Recreational vehicle park services are those services provided by parks, campgrounds, mobile home parks, or other places offering facilities for recreational vehicles. Recreational vehicle park services include, but are not limited to:

103.02A Pads or sites for recreational vehicles;

103.02A(1) The charge for the use of a pad or site suitable for use by a recreational vehicle is taxable even if it is used by tent campers or by persons not using hook-ups or other amenities.

103.02B Utility hook-ups and dump stations; and

103.02C Showers or other amenities.

103.03 Recreational vehicle park services do not include:

103.03A Sites or areas restricted to tents;

103.03B Storage spaces for recreational vehicles where occupancy is not permitted;

103.03C Coin-operated laundry facilities. (Reg-1-048, Laundries and Dry Cleaners.)

103.04 Recreational vehicle park service providers must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide their services.

*(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)*

#### REG-1-105 DIRECT MAIL

105.01 Direct mail means printed material delivered or distributed by U.S. mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

105.02 Sales of direct mail material are exempt from tax when the purchaser furnishes the seller with a certificate of exemption for direct mail.

105.02A The purchaser issuing the certificate of exemption for direct mail is responsible for remitting sales tax on material delivered to locations within Nebraska. The tax is due on the Nebraska portion on or

before the 25th day of the month following the close of the reporting period.

105.02B A certificate of exemption for direct mail remains in effect until it is revoked, in writing, by the purchaser.

105.03 In lieu of a certificate of exemption for direct mail, purchasers of direct mail material may furnish the seller with delivery information showing the jurisdictions to which the direct mail is delivered. The seller will collect tax on the gross receipts from the sale of direct mail material delivered to locations within Nebraska.

105.04 A properly completed certificate of exemption for direct mail received from the purchaser is conclusive proof for the seller that the sale is exempt.

105.05 The Nebraska Department of Revenue will recognize only the Streamlined Sales Tax Program (SSTP) certificate of exemption for direct mail or a previously approved substitute for this certificate. To be properly completed the certificate of exemption for direct mail must include all of the following:

105.05A Identification of both purchaser and retailer (seller) including type of business engaged in by purchaser;

105.05B Consumer's use tax or sales tax permit number of purchaser. If the purchaser has no permit number, state the reason;

105.05C Authorized signature or other form of authorization as required by the Streamlined Sales Tax Agreement; and

105.05D Date of issuance.

105.06 Any purchaser, or the agent thereof, who gives a certificate of exemption for direct mail or delivery instructions to the retailer (seller) covering purchases which are not for delivery to a mass audience, shall be subject to a penalty of one hundred dollars (\$100.00) or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. The penalty shall apply to each purchase made during the period the certificate is in effect.

105.07 Any purchaser, or the agent thereof, who fraudulently signs a certificate for exemption for direct mail or delivery instructions with intent to avoid payment of the tax may, in addition to the penalty set out in paragraph 105.07, be found guilty of a Class IV misdemeanor.

105.08 The Nebraska Department of Revenue may make and retain copies of any certificates of exemption for direct mail or any delivery instructions received from the purchaser.

*(Sections 77-2701.12, 77-2703.03, and 77-2713(5), R.R.S. 2003. April 12, 2005.)*

#### REG-1-107 MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

107.01 The sale, lease, or rental of manufacturing machinery and equipment to a manufacturer for use in manufacturing is exempt from tax.

107.02 Manufacturer means a person who is primarily engaged in the business of manufacturing. Persons are primarily engaged in the business of manufacturing if more of their total annual revenues are derived from the sales of products they manufacture and sell as tangible personal property, or from production labor as defined in Reg-1-082.02A performed on products sold as tangible personal property by other manufacturers than from any other commercial activity.

107.02A A manufacturer does not include any person who derives more of its total annual revenues from selling annexed property, selling services, selling intangible property, making retail sales, generating electricity, producing or transmitting information, programming, or data, providing food or drink service, purifying or transporting water, mining or quarrying, or engaging in any other business than from the business of manufacturing.

107.02B Sales of products or materials that are annexed to real estate, either by the seller or a subcontractor of the seller, are not sales of tangible personal property.

107.02C Total annual revenues means revenues from all of the activities, locations, divisions, departments, or operations of the person, both within and outside this state, and includes sales of annexed property, tangible personal property, services, or intangibles. Total annual revenues are measured over a period of 12 consecutive months, including the month in which the manufacturing machinery and equipment is placed in service.

107.03 Manufacturing means an action, or series of actions, performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing requires a physical change to the tangible personal property and does not include an increase in the value of a product without a physical change. Manufacturing does not include:

- 107.03A Generation or transmission of electricity;
- 107.03B Growing or caring for crops or animal life;
- 107.03C Mining, quarrying, and any other activity performed in severing raw materials or other property from the ground;
- 107.03D Preparation of food for immediate consumption;
- 107.03E Production or transmission of data;
- 107.03F Production or transmission of information;
- 107.03G Production or transmission of programming, including computer software;
- 107.03H Purification or transportation of water;
- 107.03I Retail operations; or
- 107.03J Sorting, cleaning, or repackaging of property, or breaking bulk quantities of property into smaller units or packages.

107.04 Manufacturing machinery and equipment used in manufacturing includes:

107.04A Chemicals, solutions, or catalysts when utilized in a mold or die process;

107.04B Computers, software, and related peripheral equipment used to guide, control, operate, or measure the manufacturing process;

107.04C Machinery and equipment used by a manufacturer to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if the produced items are consumed during the manufacturing process, but does not include the chemical catalysts and solutions themselves (See subsection 1-107.05B);

107.04D Machinery and equipment used to maintain the integrity of the product or to maintain the unique environmental conditions necessary for either the product or the manufacturing machinery and equipment. Heating, ventilating, and cooling the workplace to make conditions suitable for employees is not maintaining unique environmental conditions;

107.04E Machinery and equipment used to produce, fabricate, assemble, process, finish, refine, or package tangible personal property for sale;

107.04E(1) Machinery and equipment includes items attached to manufacturing machinery and equipment, which facilitate its operations or functions, such as drill bits or sanding belts.

107.04F Machinery and equipment used to transport, convey, handle, or store the raw materials or components used in manufacturing, or the products produced by the manufacturer for sale. This includes forklifts and other motorized vehicles used within the manufacturing facility, but does not include any containers used to transport the manufactured products to customers. (See Reg-1-107.05D);

107.04G Materials and parts purchased by a manufacturer to construct its own machinery and equipment, or its own molds and dies used in its manufacturing process;

107.04H Molds and dies used to determine the physical characteristics of the finished product or its packaging material;

107.04I Testing equipment used to measure the quality of the finished product. This includes machinery and equipment used during the manufacturing process to measure the quality of the item being manufactured, but does not include any equipment used in research and development to improve existing products or develop new products; and

107.04J Tools powered by sources other than human effort, such as electricity, battery, or compressed air.

107.05 Manufacturing machinery and equipment does NOT include:

107.05A Building materials purchased by a manufacturer to attach, anchor, house, enclose, or supply external power to machinery and equipment used in its manufacturing process;

107.05B Chemicals, solutions, and catalysts, except those utilized in a mold or die process, whether or not such items are essential to the manufacturing process;

107.05C Computers, software, and related peripheral equipment which are not used in guiding, controlling, operating, or measuring the manufacturing process;

107.05D Containers used to transport the manufactured product to customers including, but not limited to, pallets, tanks for welding gases, and bottles. Containers will be taxed or exempted pursuant to the provisions of Reg-1-043, Containers;

107.05E Hand tools. Hand tools means only those tools that are held in the hand and are powered solely by human effort;

107.05F Machinery and equipment used in research and development;

107.05G Office equipment;

107.05H Supplies and other items consumed by a manufacturer whether or not such items are essential to the manufacturing process, such as solvents or cutting oils; and

107.05I Vehicles required to be registered for operation on the roads and highways of this state and items attached to the vehicles.

107.06 Person means any individual, firm, partnership, limited liability company, joint venture, association, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or other group or combination acting as a unit.

107.07 When machinery and equipment is used for both manufacturing and for other purposes, the manufacturing use must be more than 50 percent of the total use to qualify for the exemption specified in this regulation. When a manufacturer claims an exemption for manufacturing machinery and equipment, it must maintain records clearly showing that it used the machinery and equipment more than 50 percent of the time in its manufacturing process.

107.08 Option 2 or Option 3 contractors who purchase and annex manufacturing machinery and equipment for a manufacturer must pay sales or use tax on their cost of the manufacturing machinery and equipment or the parts and components of the manufacturing machinery and equipment. Option 2 and Option 3 contractors may not accept an exemption certificate from a manufacturer for annexed manufacturing machinery and equipment.

107.09 Repair or replacement parts or accessories purchased by a manufacturer and used in maintaining, repairing, or refurbishing manufacturing machinery and equipment are exempt from tax.

107.09A Persons who do not qualify as a manufacturer in any year must pay tax on all purchases of repair parts and repair labor for the manufacturing machinery and equipment made during that year, even if the manufacturing machinery and equipment was exempt when it was purchased.

107.09B Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to repair annexed manufacturing machinery and equipment.

107.10 Purchases by a manufacturer of installation, repair, or maintenance services performed on exempt manufacturing machinery and equipment are exempt from tax.

107.11 Purchases by a manufacturer of warranties, guarantees, or maintenance agreements covering exempt manufacturing machinery and equipment are exempt from tax.

107.11A Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to fulfill their obligations under these agreements.

107.12 A retailer may make a tax-free sale of manufacturing machinery and equipment and any property or service identified in Reg-1-107.04 when the manufacturer issues the retailer either a properly completed Nebraska exemption certificate or another exemption form approved by the Department of Revenue under Reg-1-014, Exempt Sale Certificate.

107.12A An Option 1 contractor may accept an exemption certificate from a manufacturer and not collect tax on annexed manufacturing machinery and equipment.

*(Sections 77-2701.46, 77-2701.47, and 77-2704.22 R.R.S. 2009. June 6, 2011.)*

#### REG-1-108 BUNDLED TRANSACTIONS

108.01 Receipts from the sale of bundled transactions are taxable when one or more of the products included in the bundle are taxable.

108.02 Bundled transaction means the retail sale of two or more distinct and identifiable products which are sold for one, nonitemized price.

108.02A Bundled transactions do not include sales involving real property or services to real property.

108.02B The following items are not considered distinct and identifiable products for purposes of determining if a bundled transaction exists:

108.02B(1) Containers, boxes, sacks, bags, labels, tags, and other packaging that accompanies the sale of the product;

108.02B(2) Products provided free-of-charge with the required purchase of another product; and

108.02B(3) Components of the Sales Price definition found in Reg-1-007.01S.

108.02C The term “one nonitemized price” does not include transactions where:

108.02C(1) The sales price varies with the purchaser’s selection of products; or

108.02C(2) The sales price is separately identified by product on binding sales documents or other sales-related documents such as invoices, bills of sale, receipts, contracts, service agreements, and price lists made available to the purchaser in either paper or electronic form.

108.03 A transaction which otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

108.03A The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, is provided exclusively in connection with the service, and the true object or main product of the transaction is the service, or

108.03B The retail sale of services where one service is provided that is essential to the use or receipt of a second service the first service is provided exclusively in connection with the second service, and the true object or main product of the transaction is the second service, or

108.03C A transaction that includes taxable products and nontaxable products and the seller’s cost or sales price of the taxable products is de minimis.

108.03C(1) De minimis means the taxable product is 10% or less of the total seller’s cost or sales price.

108.03C(2) Sellers must use the full term of a service contract to determine if the taxable products are de minimis.

108.04 The determination as to whether a product is the true object or main product of a transaction will involve factors such as the business of the seller and the purchaser’s object in engaging in the transaction.

108.05 Bundled transaction does not include the retail sale of food and food ingredients, drugs, over-the-counter drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or home medical supplies which are sold for one nonitemized price with taxable property where the seller’s cost or sales price of the exempt items is more than 50% of the seller’s total cost or sales price of the bundle.

108.06 A seller of bundled transactions which include any telecommunications services, ancillary services, internet access, or audio or video programming services may identify in its books and records the sales price of any nontaxable products and collect and remit tax on only the sales price of the taxable products in the bundle. If the price attributable to the nontaxable products is not reasonably identifiable and verifiable, the entire charge for the bundled transaction is taxable.

*(Sections 77-2703 and 77-2701.48, R.S. Supp. 2008, February 22, 2009.)*

## REG-1-109 COMMUNITY-BASED ENERGY DEVELOPMENT (C-BED) PROJECTS

109.01 Sales of qualified materials for use in the manufacture, installation, construction, repair, or replacement of qualified community-based energy development (C-BED) projects are exempt from sales and use tax provided the purchaser files the appropriate documentation as required under this regulation.

109.02 The following definitions will be used for this regulation.

109.02A C-BED project means a new wind energy project:

109.02A(1) That meets the eligible ownership structure and other requirements as set forth in Neb. Rev. Stat. § 77-2704.57 and §§ 70-1901 to 70-1909, and in this regulation;

109.02A(2) Which is supported by a resolution adopted by the county or counties in which the C-BED project is to be located or by the tribal council for a C-BED project located within the boundaries of an Indian Reservation located in Nebraska; and

109.02A(3) Where at least 33% of the gross power purchase agreement payments over the life of the power purchase agreement must flow to the qualified owners or local community. Equity partners, if any, may receive the remaining payments.

109.02B C-BED project developer means both the person arranging and organizing the C-BED project, and any person who is operationally responsible for the C-BED project.

109.02C Debt financing payments mean principal, interest, and other typical financing costs paid by the C-BED project developer to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments do not include the repayment of principal at the time of a refinancing.

109.02D Electric supplier means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail.

109.02E Electric utility means an electric supplier that:

109.02E(1) Owns more than 100 miles of 115 kilovolt or larger transmission lines in Nebraska;

109.02E(2) Owns more than 200 megawatts of electric generating facilities; and

109.02E(3) Has the obligation to directly serve more than 200 megawatts of wholesale or retail electric load in Nebraska.

109.02F Eligible ownership structure means:

109.02F(1) For a C-BED project that consists of more than two wind turbines:

109.02F(1)(a) The C-BED project must be developed by one or more qualified owners and may also include equity partners;

109.02F(1)(b) No single individual qualified owner may own, directly or indirectly, more than 15% of the C-BED project; and

109.02F(1)(c) No single electric supplier may own, directly or indirectly, more than 15% of the C-BED project, and the combined ownership of all electric suppliers cannot exceed 25% of the C-BED project.

109.02F(2) For a C-BED project that consists of one or two wind turbines:

109.02F(2)(a) The C-BED project must be developed by one or more qualified owners and may also include equity partners; and

109.02F(2)(b) No single electric supplier may own, directly or indirectly, more than 15% of the C-BED project, and the combined ownership of all electric suppliers cannot exceed 25% of the C-BED project.

109.02G Equity partner means a person who is not a qualified owner and who has received an ownership interest in exchange for an investment in the C-BED project.

109.02H Gross power purchase agreement payments mean the total amount of payments received from the purchaser of the power during the life of the agreement. For power purchase agreements entered into after August 29, 2009 and on or before December 31, 2011, if the qualified owners have a combined total of at least 33% of the equity ownership in the C-BED project, gross power purchase agreement payments will be reduced by the debt financing payments. For the purposes of determining eligibility of the project, an estimate of the payments and their recipients will be used.

109.02I New wind energy project means the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, that is used to convert wind energy to electrical energy, or for the transmission of this electricity to the purchaser.

109.02J Payments to the local community mean payments that are made to local residents, property owners, or governments.

109.02J(1) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a wind turbine is located, wind energy easement payments, real and personal property tax receipts from the C-BED project, and loan payments received or processed by a local financial institution that is actually financing construction of the project.

109.02J(2) Payments to the local community do not include construction costs, purchases of qualified or nonqualified property prior to the initial delivery of power payments or deposits received or processed by local financial institutions, and loan payments received or processed by a local financial institution on behalf of a non-local financial institution that is actually financing construction of the project.

109.02K Qualified property means any property used to manufacture, install, construct, repair, or replace a device used in a C-BED project such as a wind charger, windmill, or wind turbine including the substation, power lines connecting these devices together and power lines connecting the project to the electrical grid system, and property used to construct the pads that support the wind chargers, windmills, wind turbines, windmill towers, and substations.

109.02K(1) Nonqualified property means all property other than qualified property.

109.02K(2) Nonqualified property includes, but is not limited to: motor vehicles; maintenance equipment and tools; communication systems (i.e., meteorological towers and data recorders-computer systems that are not an integral part of the wind turbine); information centers and related security systems (i.e., cameras and recorders); erosion control systems (i.e., landscaping, grass seed, sod, and irrigation systems); office and maintenance buildings; computer equipment that is not an integral part of the wind turbine; office equipment; signage of any kind; furnishings; roads; bridges; gates; fencing; site lighting; and any materials for the electrical grid system. The purchase and use of property that is not qualified property is taxable.

109.02L Qualified owner means a person or organization with an equity ownership stake in the project who is:

109.02L(1) A Nebraska resident;

109.02L(2) A limited liability company that is organized under the Limited Liability Company Act and which has only Nebraska residents as members.

109.02L(3) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

109.02L(4) An electric supplier; or

109.02L(5) A tribal council of a federally recognized American Indian Tribe with a reservation located in Nebraska.

109.03 To receive the sales and use tax exemption, the C-BED project developer must submit a Community-Based Energy Development Project Application and the following supporting documentation to the Nebraska Department of Revenue (Department):

- 109.03A The organization of the C-BED project;
- 109.03B The proposed distribution structure of the payments made under the power purchase agreement;
- 109.03C A copy of the power purchase agreement;
- 109.03D The C-BED project financial pro forma; articles of incorporation; operating agreements;
- 109.03E A copy of the resolution in support adopted by the county board or tribal council where the project is located; and
- 109.03F Written documentation demonstrating that a written offer to become a qualified owner has been made to each owner on whose property a turbine will be located to the extent feasible.

109.04 If the Department approves the C-BED Project Application, the Department will subsequently issue a Certificate of Exemption that may be used by the project developer and contractors to purchase qualified property tax-free.

109.04A To purchase qualified property tax-free, the C-BED project developer and any contractors must complete and issue to each vendor a Nebraska Resale or Exempt Sale Certificate, Form 13, and attach a copy of the Certificate of Exemption. The basis for the exemption must be entered on the Form 13.

109.04B A C-BED project developer or contractor may claim and receive a refund of any sales or use tax paid for purchases of qualified property made after the Department has received the application for the Certificate of Exemption, and before the Department has issued the Certificate of Exemption if the project met all the requirements of a C-BED project at the time of the purchase.

109.05 The Department may examine the actual payments to qualified owners and the local community and the distribution of the power purchase agreement payments to determine if the projected distributions were met. If the power purchase agreement payments to qualified owners and the local community do not meet the requirements of this regulation or Neb. Rev. Stat. § 77-2704.57, the Department may recover the amount of the sales or use tax that should have been paid on property used at the project from the C-BED project developer, at any time up to and including three years after the end of the power purchase agreement.

109.05A The amount due under this section includes the sales and use taxes that would have been paid if no Certificate of Exemption had been granted, and interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the date the tax was due until the date the sales and use tax is paid.

109.05B At any time prior to the end of the power purchase agreement, the C-BED project developer may voluntarily surrender the Certificate of Exemption granted by the Tax Commissioner and pay the

Department the amount of sales and use tax that should have been paid, plus interest.

109.06 To meet the requirements of the exemption, at least 33% of the gross power purchase agreement payments must be distributed to the qualified owners or the local community. Only payments made after the receipt of the first power purchase agreement payments will be considered when determining the percentage received by the qualified owners or the local community. Distribution of a tax attribute, a noncash benefit, loan proceeds, or some other payment that does not come out of the power purchase agreement payments will not be considered.

109.06A Payments to the local community are those payments that are defined above as payments to the local community in section 109.02J of this regulation.

109.06B For power purchase agreements entered into after August 29, 2009 and on or before December 31, 2011, if the qualified owners have a combined total of at least 33% of the equity ownership in the C-BED project, the gross power purchase agreement payments will be reduced by the debt financing payments.

109.06C To prevent the same payment from being counted both as a distribution to the owner and as a local payment or debt financing payment, the distributions to the qualified owners for any purpose will be considered prior to all expenses other than expenses that are considered to be local payments, or any debt financing that reduces the gross power purchase agreement payments. Any expenses that are allocated to the owners must be allocated in the same proportion as the distributions of the power purchase agreement payments for the same year.

109.06D In determining if debt financing may be excluded under section 1-109.06B, the percentage of ownership that is considered is the percentage of ownership for the same year that the debt financing payment is to be excluded.

109.07 Changes in Ownership Structure. If there is any change in the ownership structure after the application is submitted or approved, including a change of an equity partner, a new application must be submitted to the Department. If the new ownership structure does not meet the statutory requirements and the new application is not approved by the Department, all purchases of qualifying property after the effective date of the change in ownership structure are taxable.

109.07A A C-BED project developer must notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in the ownership structure which makes the project no longer eligible as a C-BED project.

109.07B The Tax Commissioner must notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in the ownership structure which makes the project no longer eligible as a C-BED project.

109.07C Acquisition of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the sales and use tax exemption for all purchases of qualifying property made after the date of the acquisition by the electric utility, and may require payment of any sales and use taxes not previously paid if the payments to the qualified owners and the local community no longer meet the required criteria for the period the agreement was in effect.

109.08 Changes in the Power Purchase Agreement. The C-BED project developer must notify the Tax Commissioner of any changes in the power purchase agreement or of the termination of the agreement. If the power purchase agreement is amended, a new application must be submitted. If the distribution of the gross power purchase agreement payments no longer meets the statutory requirements and the new application is not approved by the Department, the Department may recover the amount of the sales or use tax that should have been paid on materials used at the project from the C-BED project developer, at any time up to and including three years after the end of the power purchase agreement, and interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the date the tax was due until the date the sales or use tax is paid.

109.09 Changes in Documents Supporting the Application. The C-BED project developer must notify the Tax Commissioner of any changes in any of the other documents supporting the application during the life of the power purchase agreement. The Tax Commissioner will determine if a new application must be submitted based on the changes made.

*(Sections 70-1001.01, 70-1901 to 70-1909 and 77-2704.57, R.R.S. 2009. June 6, 2011.)*

#### REG-1-110 CLAIMS FOR REFUND OF SALES OR USE TAX

110.01 Any person who has overpaid any sales or use tax may file a claim for a refund of the amount of tax overpaid. A claim for refund of sales or use tax (claim) must be filed

with the Nebraska Department of Revenue (Department) in accordance with Reg-33-002.01A.

110.01A The Department will not accept a claim if the amount claimed is less than \$2.

110.01B If the claimant desires a hearing, a request for hearing must be made when the claim is filed or prior to the Tax Commissioner taking action on the claim. A claim is not presumed to be a request for a hearing.

110.01C Only the person who made the overpayment, or the person's attorney-in-fact, executor, personal representative, or administrator, may file a claim.

110.01D A claim must be filed within the time specified in Reg-33-002.01B.

110.02 The Tax Commissioner must allow or disallow a claim within 180 days after it has been filed.

110.02A A request for a hearing waives the 180-day period. The claimant and the Tax Commissioner may also mutually agree to extend the 180-day period.

110.02B If a hearing has not been requested, and the Tax Commissioner has not acted on the claim within 180 days or the period agreed to by the claimant and the Tax Commissioner, whichever is later, the claim is deemed to have been allowed.

110.02C Within 30 days after disallowing any claim in whole or in part, the Tax Commissioner will notify the claimant of the action taken in the same manner as a notice of deficiency determination.

110.03 The amount of overpayment may be credited or offset against any sales, use, income, or any other tax, and any fees, interest, or penalties then due and payable to the state from the claimant. Any remaining balance may be refunded to the claimant or its successor. Refunds of sales and use tax may be paid electronically.

110.04 Interest will not be allowed on claims if the tax was originally paid voluntarily.

*(Neb. Rev. Stat. §§ 77-1784, 77-2708, 77-27,194.01, 77-4108.01, 77-5729, and 77-5804. July 3, 2013.)*

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## LOCAL SALES AND USE TAX REGULATIONS TITLE 316, CHAPTER 9

### REG-9-001 GENERAL PROVISIONS AND DEFINITIONS

001.01 **General Authorization.** Cities and counties in Nebraska are authorized to levy a local sales tax under the Local Option Revenue Act (applicable to cities) or Neb. Rev. Stat. §§ 13-319 to 13-326 (applicable to counties).

001.02 **Definitions.** For purposes of Title 316, Chapter 9 of these regulations:

001.02A The definition of retail sale and all other definitions provided in the Nebraska Revenue Act and Title 316 NAC Chapter 1, apply to all local sales and use taxes, unless inconsistent with the provisions of the Local Option Revenue Act or Neb. Rev. Stat. §§ 13-319 to 13-326.

001.02B Certified means attested to and signed by a person with authority to testify as to the accuracy of the materials provided, like the city or county clerk, county election commissioner, mayor, or chairperson of the city council or county board.

001.02C City means any incorporated municipality.

001.02D Department means the Nebraska Department of Revenue.

001.02E Local sales tax and local sales and use tax both mean a tax adopted by a city under the Local Option Revenue Act or a tax adopted by a county under Neb. Rev. Stat. §§ 13-319 to 13-326.

001.03 **Local Sales Tax Base.** The same transactions that are subject to taxation by the State of Nebraska under the provisions of the Nebraska Revenue Act are subject to taxation under the Local Option Revenue Act, and Neb. Rev. Stat. §§ 13-319 through 13-326 except;

001.03A The local sales and use tax does not apply to charges for direct-to-home satellite programming that is transmitted or broadcast by satellite directly to the subscriber's premises even though the state sales and use tax applies to charges for direct-to-home satellite programming. For purposes of this section, premises means any residential, business, or commercial location.

001.03A(1) Retailers must collect and remit the local sales and use tax on all direct-to-home equipment (for example, dishes, receivers, and decoders) that is sold or leased to subscribers.

001.03A(2) Retailers who charge for equipment and direct-to-home programming and who do not separately state the charges on the sales invoice or contract, or do not separately invoice the charges, are required to collect and remit the local sales and use tax on the total charge.

001.04 Sourcing. For purposes of determining whether a taxable sale or rental occurs within or outside a city or county

with a local sales tax, the sourcing rules of the Nebraska Revenue Act and Title 316 NAC Chapter 1 apply.

*(Neb. Rev. Stat. §§ 13-319, 13-324, 77-2712.05, 77-27,142, 77-27,143, 77-27,144, and 77 27,147, and Public Law 104-104, Title VI, s. 652. November 17, 2013.)*

REG-9-002 AUTHORIZATION FOR CITIES – UP TO 1½%.

002.01 **Permissible Rates of Tax.** Any city may authorize and impose a local sales and use tax at the rate of ½%, 1%, or 1½% on retail sales sourced within the boundaries of the city. The local sales and use tax must be approved by a majority of the votes cast in a regular election held within the city and adopted by ordinance.

002.02 **Vote at an Election Required.** The election required for approval of a local sales and use tax may be held as part of any city, county, or state general, primary, or special election held within the city.

002.02A The question authorizing adoption of a local sales and use tax must include the following language: “Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax?”

002.02B The question authorizing adoption of a local sales and use tax may be initiated either by a majority vote of the governing body or upon petition by qualified electors to the governing body. Notice of the question must be given by publication, as required by Neb. Rev. Stat. § 77-27,142.03.

002.02C If the majority of voters do not approve the imposition of a local sales and use tax, then the question cannot be submitted to the voters again for at least 23 months.

002.03 **Ordinance Required.** If the question is approved by a majority of the votes cast at the election, the city imposing the sales and use tax must adopt an ordinance in accordance with its municipal and statutory authority. If the ordinance states an operative date, the operative date must be the first day of a calendar quarter.

002.04 **Notification to the Department Required.** When the governing body of a city adopts a local sales and use tax:

002.04A The city must furnish the Department a certified copy of the ordinance imposing the tax, and a certified map of the city clearly showing its boundaries; and

002.04B The county election commissioner must furnish the Department a certified copy of the election results to the question submitted to the electors and a certified statement that the question of imposing the tax for the city has not failed in the previous 23 months.

002.04C For purposes of this regulation, the certified materials may be furnished by mail or by electronic means.

002.05 **When Operative.** The implementation of the sales and use tax cannot begin until the first day of the calendar quarter that is at least 120 days following receipt by the Department of the certified materials. The certified materials must be provided in the timelines provided in Reg-9-006, Cities and Counties – Timelines for Submitting Certified Materials to the Department.

002.06 **Termination.** For ordinances containing a termination date, the termination date must be the first day of a calendar quarter.

002.06A The city must furnish a certified statement to the Tax Commissioner at least 120 days and no more than 180 days prior to the termination date stating that the termination date in the ordinance is still valid.

002.06B If the certified statement is not furnished within this time, the tax will remain in effect, and the Department will continue to collect the tax until the first day of the calendar quarter that is at least 120 days after receipt of the certified statement, notwithstanding the termination date stated in the ordinance.

*(Neb. Rev. Stat. §§ 77-27,142, 77-27,142.01, 77-27,142.02, 77-27,142.03, 77-27,142.04, 77-27,142.05, 77-27,143, and 77-27,144. November 17, 2013.)*

#### REG-9-003 AUTHORIZATION FOR CITIES - IN EXCESS OF 1½%

003.01 **Permissible Rates of Additional Tax, Restrictions on Proceeds.** Any city, except a metropolitan class city, may authorize and impose a local sales and use tax at a rate of 1¾% or 2% on retail sales sourced within the boundaries of the city, after approval by at least 70% of the governing body of the city and a majority of the votes cast in a city, county, or state general or primary election held within the city, but only if the sales and use tax is levied in accordance with the following conditions.

003.01A The city must be a party to an agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act with a political subdivision within the city or the county in which the city is located, which creates a separate administrative entity and which relates to a public infrastructure project. This separate administrative entity cannot have been in existence for more than one year before the question of the increased local sales and use tax was submitted to the voters.

003.01A(1) If the city is a city of the primary class, the proceeds from the rate greater than 1½% must be used for public infrastructure projects or voter approved public infrastructure projects related to an economic development program, except that up to 15% of the proceeds may be used for non-public infrastructure projects that are part of the agreement

executed under the Interlocal Cooperation Act or Joint Public Agency Act.

003.01A(2) For any other city, the proceeds from the rate greater than 1½% must be used for public infrastructure projects or voter-approved public infrastructure projects related to an economic development program.

003.01B Any rate greater than 1½% must terminate no later than ten years after its effective date except that:

003.01B(1) If the proceeds from the rate greater than 1½% are pledged for payment of principal and interest on bonds issued for public infrastructure projects, the rate greater than 1½% will terminate with the retirement of the bonds;

003.01B(2) If proceeds equal to at least ⅛%, but less than ⅜%, of the rate greater than 1½% are imposed for the purpose of funding an agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act for public or non-public infrastructure projects, there is no termination date for ¼% of the amount; or

003.01B(3) If proceeds equal to at least ⅜% of the rate greater than 1½% are imposed for the purpose of funding an agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act for public or non-public infrastructure projects, there is no termination date for any of the increase.

003.02 **Vote at an Election Required.** The election required for approval of a local sales and use tax greater than 1½% may be held as part of any city, county, or state general or primary election held within the city.

003.02A The question authorizing adoption of a local sales and use tax must include the following language: “Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax?” The question must also include, but is not limited to:

003.02A(1) A list of reductions or limitations for any other taxes, if any;

003.02A(2) A description of the infrastructure projects to be funded from the sales and use tax proceeds in excess of 1½%;

003.02A(3) The length of time the proceeds in excess of 1½% will be imposed, or, if bonds will be issued for which the sales and use tax proceeds in excess of 1½% will be pledged, a statement that the revenue in excess of 1½% will be collected until repayment of the bonds; and

003.02A(4) The percentage of the proceeds in excess of 1½% that will be used for the purposes of an agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act, the

purpose of the agreement, and the name of all other political subdivisions which are parties to the agreement.

003.02B Notice of the question must be given by publication, as required by Neb. Rev. Stat. § 77-27,142.03.

003.02C If a majority of voters do not approve the imposition of a local sales and use tax, then the question cannot be submitted to the voters again for at least 23 months.

003.03 **Ordinance Required.** If the question is approved by a majority of the votes cast at the election, the city imposing the sales and use tax must adopt an ordinance in accordance with its municipal and statutory authority. If the ordinance states an operative date, the operative date must be the first day of a calendar quarter.

003.04 Notification to the Department Required. When the governing body of a city adopts a local sales and use tax in excess of 1½%:

003.04A The city must furnish the Department a certified copy of the ordinance imposing the tax, and a certified map of the city clearly showing its boundaries;

003.04B The county election commissioner must furnish the Department a certified copy of the election results to the question submitted to the electors, and a certified statement that the question of imposing the tax for the city has not failed in the previous 23 months.

003.04C For purposes of this regulation, the certified materials may be furnished by mail or by electronic means.

003.05 **When Operative.** The implementation of the sales and use tax cannot begin until the first day of the calendar quarter that is at least 120 days following receipt by the Department of the certified materials. The certified materials must be provided in the timelines provided in Reg-9-006, Cities and Counties – Timelines for Submitting Certified Materials to the Department.

003.06 **Termination.** For ordinances containing a termination date, the termination date must be the first day of a calendar quarter. If the proceeds from the rate greater than 1½% are pledged for payment of principal and interest on bonds issued for public infrastructure projects, the rate greater than 1½% will terminate on the first day of a calendar quarter after the repayment of the bonds.

003.06A The city must furnish a certified statement to the Department at least 120 days and no more than 180 days prior to the termination date stating that the termination date in the ordinance is still valid.

003.06B If the certified statement is not furnished within this time, the tax will remain in effect, and the Department will continue to collect the tax until the first day of the calendar quarter that is at least 120 days after receipt of the certified statement, notwithstanding the termination date stated in the ordinance.

(Neb. Rev. Stat. §§ 77-27,142, 77-27,142.01, 77-27,142.02, 77-27,142.03, 77-27,142.04, 77-27,142.05, 77-27,143, and 77-27,144. November 17, 2013.)

## REG-9-004 AUTHORIZATION FOR COUNTIES

004.01 **Permissible Rates of Tax, Restrictions on Proceeds.** A county may authorize and impose a local sales and use tax at a rate of ½%, 1%, or 1½ % by resolution of the county board after the tax has been approved by a majority of votes cast in a county or state general, primary, or special election held within the county.

004.01A Any county sales and use tax applies to retail sales sourced within the boundaries of the county, except that a county sales and use tax does not apply within the boundaries of any incorporated city which has a local sales and use tax pursuant to Neb. Rev. Stat. § 77-27,142, even if:

004.01A(1) The rate imposed by the city is lower than the rate imposed by the county;

004.01A(2) The city adopted its local sales and use tax after the adoption of the county sales and use tax; or

004.01A(3) The city changed its boundaries.

004.01B Any sales and use tax imposed pursuant to this section must be used to finance public services provided by a public safety commission or to provide the county share of funds required under an agreement executed under the Interlocal Cooperation Act or Joint Public Agency Act.

004.01C Adoption of a local sales and use tax by a city, or annexation by a city with a local sales and use tax which occurs after the adoption of a local sales and use tax by a county, will reduce the area of the county subject to the existing county sales tax as of the effective date for local sales tax changes as provided in Reg-9-002.05, Reg-9-003.05, and Reg-9-007.02.

004.02 **Vote at an Election Required.** The election required for approval of a county sales and use tax may be held as part of any county or state general, primary, or special election held within the county.

004.02A The question authorizing adoption of a local sales and use tax must include the following language: “Shall the county impose a sales and use tax upon the same transactions within the county, other than in municipalities which impose a local option sales tax, on which the State of Nebraska is authorized to impose a tax to finance public safety services?”

004.02B The question authorizing adoption of a local sales and use tax must be initiated by vote of the governing body. Notice of the question must be given by publication, as required by Neb. Rev. Stat. § 13-323.

004.03 **Resolution Required.** If the question is approved by a majority of the votes cast at the election, the county must adopt a resolution imposing the sales and use tax in

accordance with its statutory authority. If the resolution states an operative date, the operative date must be the first day of a calendar quarter.

**004.04 Notification to the Department Required.** When the governing body of a county adopts a local sales and use tax:

004.04A The county must furnish the Department a certified copy of the resolution imposing the tax; and

004.04B The county election commissioner must furnish the Department a certified copy of the election results to the question submitted to the electors.

004.04C For purposes of this regulation, the certified materials may be furnished by mail or by electronic means.

**004.05 When Operative.** The implementation of the sales and use tax cannot begin until the first day of the calendar quarter that is at least 120 days following receipt by the Department of the certified materials. The certified materials must be provided in the timelines provided in Reg 9 006, Cities and Counties – Timelines for Submitting Certified Materials to the Department.

**004.06 Termination.** For resolutions containing a termination date, the termination date must be the first day of a calendar quarter.

004.06A The county must furnish a certified statement to the Department at least 120 days and no more than 180 days prior to the termination date stating that the termination date in the resolution is still valid.

004.06B If the certified statement is not furnished within this time, the tax will remain in effect, and the Department will continue to collect the tax until the first day of the calendar quarter which is at least 120 days after receipt of the certified statement, notwithstanding the termination date stated in the resolution.

*(Neb. Rev. Stat. §§ 13-319, 13-320, 13-322, 13,323, 13-324, and 13-326. November 17, 2013.)*

**REG-9-005 CITIES AND COUNTIES – CHANGE OF RATE**

**005.01** If any city or county changes the rate of its local sales and use tax, the city or county must furnish the Department a certified copy of the ordinance or resolution which changed the rate of tax, and the county election commissioner must provide a certified copy of the election results to the question submitted to the electors in the time frames provided in Reg-9-006, Cities and Counties – Timelines for Submitting Certified Materials to the Department.

**005.02** If the ordinance or resolution changing the rate of a local sales and use tax states an operative date, the operative date must be the first day of a calendar quarter.

**005.03** The local rate change is operative the first day of the calendar quarter that is at least 120 days following receipt by the Department of the certified materials.

**005.04** For ordinances or resolutions containing a termination date, the termination date must be the first day of a calendar quarter.

005.04A The city or county must furnish a certified statement to the Department at least 120 days and no more than 180 days prior to the termination date stating that the termination date in the ordinance or resolution is still valid.

005.04B If the certified statement is not furnished within this time, the tax will remain in effect, and the Department will continue to collect the tax until the first day of the calendar quarter which is at least 120 days after receipt of the certified statement notwithstanding the termination date stated in the ordinance or resolution.

*(Neb. Rev. Stat. §§ 13-324, 77-2712.05, and 77-27,143. November 17, 2013.)*

**REG-9-006 CITIES AND COUNTIES - TIMELINES FOR SUBMITTING CERTIFIED MATERIALS TO THE DEPARTMENT**

**006.01** If a city or county receives voter approval and adopts a local sales and use tax, terminates a local sales and use tax, or changes the rate of a local sales and use tax, the timelines for providing the certified materials required by this regulation are as follows:

To be Operative	Certified Materials Must be Furnished After	But No Later than
January 1	June 3	September 3
April 1	September 3	December 2
April 1 (of a leap year)	September 3	December 3
July 1	December 2	March 3
July 1 (of a leap year)	December 3	March 3
October 1	March 3	June 3

**006.02** If the “But No Later Than” date falls on a Saturday, Sunday or holiday, the certified materials must be furnished no later than the Friday before the date in column 3.

*(Neb. Rev. Stat. §§ 13-324, and 77-27,143, and McDonald’s Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993). November 17, 2013.)*

**REG-9-007 CITIES - CHANGE OR ALTERATION OF CITY BOUNDARIES**

**007.01** If any city in which a local sales and use tax has been imposed changes or alters its boundaries in any manner, the city must furnish the Department a certified copy of the ordinance making the changes by mail or by electronic means.

007.01A The ordinance must state the effective date as determined by the statutory authority applicable to the particular class of city, even though the area affected may become subject to or removed from the local sales taxes on a later date as specified in Reg-9-007.02.

007.01B The ordinance must also be accompanied by a certified map of the city clearly showing the area added

or detached and a list of all licensed retailers within the annexed or detached area.

007.02 For local sales and use tax purposes, the area affected is considered annexed to or detached from the city on the first day of a calendar quarter following the latest of:

007.02A One hundred and twenty days following receipt of the ordinance, map, and the list of all retailers by the Department,

007.02B Sixty days after the Department provided notice to the retailers, or

007.02C The effective date of the ordinance.

*(Neb. Rev. Stat. §§ 77-2712.05, and 77-27,143, and McDonald's Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993). November 17, 2013.)*

#### REG-9-008 CITIES – CERTIFIED REPRESENTATIVE AUTHORIZED TO EXAMINE CONFIDENTIAL SALES TAX RETURNS AND RETURN INFORMATION

008.01 **Authority to Examine Returns.** Upon written request, the Department will provide a city employee certified under this regulation, who represents the city that has adopted a local sales and use tax, confidential sales tax returns and sales tax return information regarding taxpayers that possess a sales tax permit and the amounts remitted by these permitholders at locations within the boundaries of the requesting city.

008.01A Each city seeking information must certify to the Department one of its employees who is authorized by the city to make the request and review the documents.

008.01B A municipality must execute a Municipal Request for Sales Tax Return Information and Inspection Memorandum of Understanding (MOU) prior to inspecting documents. The MOU determines the conditions of a municipality's right to inspect confidential sales tax returns and return information and the Department's responsibilities in providing this information.

008.01C Any written request must provide the Department with no less than ten business days to gather and prepare the sales tax returns and sales tax return information requested.

008.01D The returns and return information cannot be viewed outside the premises of the Department.

008.02 **Confidentiality Protected.** City employees certified under this regulation cannot disclose to any person any information obtained pursuant to a review by that city employee under this regulation. A certified city employee is subject to all confidentiality requirements of the Department after he or she is no longer certified or is no longer employed by the certifying city.

008.02A The designated municipal employee must complete confidentiality training required by the Department and sign a Confidential Tax Information

Agreement before submitting a request to inspect confidential sales tax returns and sales tax return information.

008.02B Any person who violates the provisions of this section is guilty of a Class I misdemeanor.

008.02C The Department is not liable for an impermissible disclosure by a city or any agent or employee of the city for any information obtained pursuant to a review under this regulation.

*(Neb. Rev. Stat. §§ 77-2711 and 77-27,144. –November 17, 2013.)*

#### REG-9-011 DUTIES OF THE DEPARTMENT TO ADMINISTER LOCAL SALES AND USE TAXES

011.01 **Collection Concurrent with State Sales and Use Taxes.** The Department must collect the local sales and use tax imposed by any city or county concurrently with the state sales and use tax and in the same manner as the state sales and use tax is collected.

011.02 **City Local Sales and Use Tax Distribution.** Any city sales and use tax imposed under Reg-9-002 or Reg-9-003 will be collected and administered by the Department and remitted to the city, less any refunds made and 3% of the remainder, which is deposited in the Municipal Equalization Fund.

011.03 **County Local Sales and Use Tax Distribution.** Any county sales and use tax imposed under Reg-9-004 will be collected and administered by the Department, and remitted to the county, less any refunds made and 3% of the remainder as an administrative fee. The administrative fee is deposited in the State General Fund.

011.04 **Notice to Retailers.** The Department must provide 60 days' notice to affected retailers of any adoption or termination of a local sales and use tax, a change in rate, or a change in city boundaries. The Department may provide notice to retailers using the website of the Department or by other electronic means.

011.04A Companies that publish a printed catalog that contains the local sales tax rates for each city or county are held harmless for any liability resulting from a change in local sales and use tax rates on purchases from the catalog when the purchaser computes the sales or use tax at the previous rate until the start of the quarter that is at least 120 days after the Department's notice of the change.

011.05 **Rates and Boundaries Database.** The Department will provide and maintain a database that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions in accordance with the provisions of the Streamlined Sales and Use Tax Agreement.

011.05A The Department will provide and maintain a database that describes the boundary changes and effective date of any change for every city and county that imposes a local sales and use tax.

011.05B Retailers, or a retailer's certified service provider, as defined in Neb. Rev. Stat. § 77-2701.09, will be held harmless for any liability resulting from the use of either database provided by the Department.

011.05C Purchasers relying on information contained in either database provided by the Department are relieved from liability for any penalty resulting from incorrect data in the databases.

*(Neb. Rev. Stat. §§ 13-319, 13-324, 77-2712.05, 77-27,142, 77-27,143, 77-27,144, and 77 27,147. November 17, 2013.)*

#### REG-9-012 DUTIES OF RETAILERS – COLLECTING, REPORTING, AND REMITTING LOCAL SALES AND USE TAXES

**012.01 Collection and Remittance Governed by Revenue Act.** Retailers operating or delivering property within the boundaries of a city or county that has imposed a local sales and use tax must collect, report, and remit the local sales and use tax along with the sales tax imposed by the Nebraska Revenue Act consistent with the Nebraska Revenue Act and Title 316 NAC Chapter 1.

**012.02 Calculating the Amount of Tax.** A bracket system correlating sales price to the appropriate state and local sales or use tax may be used by the retailer. The sales or use tax liability may also be computed by multiplying the sales price by the applicable tax rate. (Reg-1-011, Bracket System for Adding and Collecting Sales Tax)

**012.03 Permits and Certificates of Exemption.** Any permits and certificates of exemption which are authorized or required under the Nebraska Revenue Act, for state sales and use tax exemption purposes, satisfy the requirements of the Local Option Revenue Act and Neb. Rev. Stat. §§ 13-319 through 13-326. (Reg-1-013, Sale for Resale – Resale Certificate and Reg 1 014, Exempt Sale Certificate)

**012.04 Returns.** Retailers must file a return for each reporting period or portion of a reporting period. The return must be filed for every tax reporting period even if there have been no sales. The reporting frequency, due date, signature, and form requirements are as provided in Reg 1 010, The Sales and Use Tax Return.

**012.05 Remittances.** Remittance must be in the form of electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax

Commissioner, made payable to the Nebraska Department of Revenue.

**012.06 Itinerant Salespersons.** Where a distributor or home office reports sales tax for itinerant salespersons, and the sales are made for delivery in a city or county which imposes a local sales tax, it is the obligation of the distributor or home office to remit the local sales tax along with the state sales tax.

**012.07 Records.** Every retailer is required to keep records in order to determine the amount of sales and use tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessperson engaged in a similar activity, together with all documents supporting entries in the books of accounts. Schedules and working papers used in the preparation of the tax returns and all resale certificates and exemption certificates must be retained. (Reg-1-008, Records)

012.07A Records must be retained for a period not less than three years after the return is filed, or while any refund claim or redetermination of a deficiency is pending, unless the Department authorizes their destruction in writing at an earlier date. However, the Department may issue a deficiency determination within five years after any amount of tax is determined due and payable when a properly completed return has not been filed.

012.07B Retailers may use either the cash basis, accrual basis, or any other generally recognized accounting basis, which correctly reflects the operation of the business. When a basis of accounting has been adopted for reporting sales tax, the retailer may not change that basis of accounting without prior permission from the Department. (Reg-1-009, Accounting Methods)

**012.08 Pre-existing Contracts.** When a local sales and use tax is enacted or the rate is changed, the provisions of Reg-1-016, Changes in Rate of Tax, will determine the impact of these changes on pre-existing contracts or obligations.

**012.09 Penalties.** Failure to comply with the requirements of this regulation could result in the assessment of penalties as provided in Reg-1-010, The Sales and Use Tax Return.

*(Neb. Rev. Stat. §§ 13-324, 77-2705, 77-2708, 77-2709, and 77-27,147. November 17, 2013.)*