

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1311

Introduced by Meyer, 41.

Read first time January 17, 2024

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-382 and 77-2701.16, Revised Statutes Cumulative Supplement, 2022;
3 to eliminate certain sales and use tax exemptions; to impose sales
4 and use taxes on certain services; to harmonize provisions; to
5 provide an operative date; to repeal the original sections; and to
6 declare an emergency.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-382, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Sec. 2. Section 77-2701.16, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

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

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

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

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

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

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

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

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

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

16 (i) The gross income received by a political subdivision of the
17 state, an electric cooperative, or an electric membership association for
18 the lease or use of, or by a contractor for the construction of or
19 services provided on, electric generation, transmission, distribution, or
20 street lighting structures or facilities owned by a political subdivision
21 of the state, an electric cooperative, or an electric membership
22 association; or

23 (ii) The gross income received for the lease or use of towers or
24 other structures primarily used in conjunction with the furnishing of (A)
25 Internet access services, (B) agricultural global positioning system
26 locating services, or (C) over-the-air radio and television broadcasting
27 licensed by the Federal Communications Commission, including antennas and
28 studio transmitter link systems. For purposes of this subdivision, studio
29 transmitter link system means a system which serves as a conduit to
30 deliver audio from its origin in a studio to a broadcast transmitter.

31 (3) Gross receipts of every person engaged in selling, leasing, or

1 otherwise providing intellectual or entertainment property means:

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

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

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

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

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

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

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

23 (e) The gross income received for services of recreational vehicle
24 parks;

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

29 (g) The gross income received for animal specialty services,
30 including ~~except~~ (i) veterinary services, (ii) specialty services
31 performed on livestock as defined in section 54-183, and (iii) animal

1 grooming performed by a licensed veterinarian or a licensed veterinary
2 technician in conjunction with medical treatment; ~~and~~

3 (h) The gross income received for detective services; ~~and~~

4 (i) The gross income received for storage services; and

5 (j) The gross income received for moving services.

6 (5) Gross receipts includes the sale of admissions. When an
7 admission to an activity or a membership constituting an admission is
8 combined with the solicitation of a contribution, the portion or the
9 amount charged representing the fair market price of the admission shall
10 be considered a retail sale subject to the tax imposed by section
11 77-2703. The organization conducting the activity shall determine the
12 amount properly attributable to the purchase of the privilege, benefit,
13 or other consideration in advance, and such amount shall be clearly
14 indicated on any ticket, receipt, or other evidence issued in connection
15 with the payment.

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

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

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

24 (9) Gross receipts includes the retail sale of digital audio works,
25 digital audiovisual works, digital codes, and digital books delivered
26 electronically if the products are taxable when delivered on tangible
27 storage media. A sale includes the transfer of a permanent right of use,
28 the transfer of a right of use that terminates on some condition, and the
29 transfer of a right of use conditioned upon the receipt of continued
30 payments.

31 (10) Gross receipts includes any receipts from sales of tangible

1 personal property made over a multivendor marketplace platform that acts
2 as the intermediary by facilitating sales between a seller and the
3 purchaser and that, either directly or indirectly through agreements or
4 arrangements with third parties, collects payment from the purchaser and
5 transmits payment to the seller.

6 (11) Gross receipts does not include:

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

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

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

14 Sec. 4. Original sections 77-382 and 77-2701.16, Revised Statutes
15 Cumulative Supplement, 2022, are repealed.

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