

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 252

Introduced by Cornett, 45; Fischer, 43; Hadley, 37; Larson, 40;
Smith, 14.

Read first time January 11, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2703, Reissue Revised Statutes of Nebraska; to exempt
3 admissions to indoor tanning services from sales and use
4 taxes; to provide an operative date; to repeal the
5 original section; and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2703, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-2703 (1) There is hereby imposed a tax at the rate
4 provided in section 77-2701.02 upon the gross receipts from all sales
5 of tangible personal property sold at retail in this state; the gross
6 receipts of every person engaged as a public utility, as a community
7 antenna television service operator, or as a satellite service
8 operator, any person involved in the connecting and installing of the
9 services defined in subdivision (2)(a), (b), (d), or (e) of section
10 77-2701.16, or every person engaged as a retailer of intellectual or
11 entertainment properties referred to in subsection (3) of section
12 77-2701.16; the gross receipts from the sale of admissions in this
13 state, except gross receipts from the sale of admissions to indoor
14 tanning services; the gross receipts from the sale of warranties,
15 guarantees, service agreements, or maintenance agreements when the
16 items covered are subject to tax under this section; beginning
17 January 1, 2008, the gross receipts from the sale of bundled
18 transactions when one or more of the products included in the bundle
19 are taxable; the gross receipts from the provision of services
20 defined in subsection (4) of section 77-2701.16; and the gross
21 receipts from the sale of products delivered electronically as
22 described in subsection (9) of section 77-2701.16. Except as provided
23 in section 77-2701.03, when there is a sale, the tax shall be imposed
24 at the rate in effect at the time the gross receipts are realized
25 under the accounting basis used by the retailer to maintain his or

1 her books and records.

2 (a) The tax imposed by this section shall be collected by
3 the retailer from the consumer. It shall constitute a part of the
4 purchase price and until collected shall be a debt from the consumer
5 to the retailer and shall be recoverable at law in the same manner as
6 other debts. The tax required to be collected by the retailer from
7 the consumer constitutes a debt owed by the retailer to this state.

8 (b) It is unlawful for any retailer to advertise, hold
9 out, or state to the public or to any customer, directly or
10 indirectly, that the tax or part thereof will be assumed or absorbed
11 by the retailer, that it will not be added to the selling, renting,
12 or leasing price of the property sold, rented, or leased, or that, if
13 added, it or any part thereof will be refunded. The provisions of
14 this subdivision shall not apply to a public utility.

15 (c) The tax required to be collected by the retailer from
16 the purchaser, unless otherwise provided by statute or by rule and
17 regulation of the Tax Commissioner, shall be displayed separately
18 from the list price, the price advertised in the premises, the marked
19 price, or other price on the sales check or other proof of sales,
20 rentals, or leases.

21 (d) For the purpose of more efficiently securing the
22 payment, collection, and accounting for the sales tax and for the
23 convenience of the retailer in collecting the sales tax, it shall be
24 the duty of the Tax Commissioner to provide a schedule or schedules
25 of the amounts to be collected from the consumer or user to

1 effectuate the computation and collection of the tax imposed by the
2 Nebraska Revenue Act of 1967. Such schedule or schedules shall
3 provide that the tax shall be collected from the consumer or user
4 uniformly on sales according to brackets based on sales prices of the
5 item or items. Retailers may compute the tax due on any transaction
6 on an item or an invoice basis. The rounding rule provided in section
7 77-3,117 applies.

8 (e) The use of tokens or stamps for the purpose of
9 collecting or enforcing the collection of the taxes imposed in the
10 Nebraska Revenue Act of 1967 or for any other purpose in connection
11 with such taxes is prohibited.

12 (f) For the purpose of the proper administration of the
13 provisions of the Nebraska Revenue Act of 1967 and to prevent evasion
14 of the retail sales tax, it shall be presumed that all gross receipts
15 are subject to the tax until the contrary is established. The burden
16 of proving that a sale of property is not a sale at retail is upon
17 the person who makes the sale unless he or she takes from the
18 purchaser (i) a resale certificate to the effect that the property is
19 purchased for the purpose of reselling, leasing, or renting it, (ii)
20 an exemption certificate pursuant to subsection (7) of section
21 77-2705, or (iii) a direct payment permit pursuant to sections
22 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption
23 certificate, or direct payment permit shall be conclusive proof for
24 the seller that the sale was made for resale or was exempt or that
25 the tax will be paid directly to the state.

1 (g) In the rental or lease of automobiles, trucks,
2 trailers, semitrailers, and truck-tractors as defined in the Motor
3 Vehicle Registration Act, the tax shall be collected by the lessor on
4 the rental or lease price at the tax rate in effect on the date the
5 automobile, truck, trailer, semitrailer, or truck-tractor is
6 delivered to the lessee, except as otherwise provided within this
7 section.

8 (h) In the rental or lease of automobiles, trucks,
9 trailers, semitrailers, and truck-tractors as defined in the act, for
10 periods of one year or more, the lessor may elect not to collect and
11 remit the sales tax on the gross receipts and instead pay a sales tax
12 on the cost of such vehicle. If such election is made, it shall be
13 made pursuant to the following conditions:

14 (i) Notice of the desire to make such election shall be
15 filed with the Tax Commissioner and shall not become effective until
16 the Tax Commissioner is satisfied that the taxpayer has complied with
17 all conditions of this subsection and all rules and regulations of
18 the Tax Commissioner;

19 (ii) Such election when made shall continue in force and
20 effect for a period of not less than two years and thereafter until
21 such time as the lessor elects to terminate the election;

22 (iii) When such election is made, it shall apply to all
23 vehicles of the lessor rented or leased for periods of one year or
24 more except vehicles to be leased to common or contract carriers who
25 provide to the lessor a valid common or contract carrier exemption

1 certificate. If the lessor rents or leases other vehicles for periods
2 of less than one year, such lessor shall maintain his or her books
3 and records and his or her accounting procedure as the Tax
4 Commissioner prescribes; and

5 (iv) The Tax Commissioner by rule and regulation shall
6 prescribe the contents and form of the notice of election, a
7 procedure for the determination of the tax base of vehicles which are
8 under an existing lease at the time such election becomes effective,
9 the method and manner for terminating such election, and such other
10 rules and regulations as may be necessary for the proper
11 administration of this subdivision.

12 (i) The tax imposed by this section on the sales of motor
13 vehicles, semitrailers, and trailers as defined in sections 60-339,
14 60-348, and 60-354 shall be the liability of the purchaser and, with
15 the exception of motor vehicles, semitrailers, and trailers
16 registered pursuant to section 60-3,198, the tax shall be collected
17 by the county treasurer or designated county official as provided in
18 the Motor Vehicle Registration Act at the time the purchaser makes
19 application for the registration of the motor vehicle, semitrailer,
20 or trailer for operation upon the highways of this state. The tax
21 imposed by this section on motor vehicles, semitrailers, and trailers
22 registered pursuant to section 60-3,198 shall be collected by the
23 Department of Motor Vehicles at the time the purchaser makes
24 application for the registration of the motor vehicle, semitrailer,
25 or trailer for operation upon the highways of this state. At the time

1 of the sale of any motor vehicle, semitrailer, or trailer, the seller
2 shall (i) state on the sales invoice the dollar amount of the tax
3 imposed under this section and (ii) furnish to the purchaser a
4 certified statement of the transaction, in such form as the Tax
5 Commissioner prescribes, setting forth as a minimum the total sales
6 price, the allowance for any trade-in, and the difference between the
7 two. The sales tax due shall be computed on the difference between
8 the total sales price and the allowance for any trade-in as disclosed
9 by such certified statement. Any seller who willfully understates the
10 amount upon which the sales tax is due shall be subject to a penalty
11 of one thousand dollars. A copy of such certified statement shall
12 also be furnished to the Tax Commissioner. Any seller who fails or
13 refuses to furnish such certified statement shall be guilty of a
14 misdemeanor and shall, upon conviction thereof, be punished by a fine
15 of not less than twenty-five dollars nor more than one hundred
16 dollars. If the seller fails to state on the sales invoice the dollar
17 amount of the tax due, the purchaser shall have the right and
18 authority to rescind any agreement for purchase and to declare the
19 purchase null and void. If the purchaser retains such motor vehicle,
20 semitrailer, or trailer in this state and does not register it for
21 operation on the highways of this state within thirty days of the
22 purchase thereof, the tax imposed by this section shall immediately
23 thereafter be paid by the purchaser to the county treasurer, the
24 designated county official, or the Department of Motor Vehicles. If
25 the tax is not paid on or before the thirtieth day after its

1 purchase, the county treasurer, designated county official, or
2 Department of Motor Vehicles shall also collect from the purchaser
3 interest from the thirtieth day through the date of payment and sales
4 tax penalties as provided in the Nebraska Revenue Act of 1967. The
5 county treasurer, designated county official, or Department of Motor
6 Vehicles shall report and remit the tax so collected to the Tax
7 Commissioner by the fifteenth day of the following month. The county
8 treasurer or designated county official shall deduct and withhold for
9 the use of the county general fund, from all amounts required to be
10 collected under this subsection, the collection fee permitted to be
11 deducted by any retailer collecting the sales tax. The Department of
12 Motor Vehicles shall deduct, withhold, and deposit in the Motor
13 Carrier Division Cash Fund the collection fee permitted to be
14 deducted by any retailer collecting the sales tax. The collection fee
15 shall be forfeited if the county treasurer, designated county
16 official, or Department of Motor Vehicles violates any rule or
17 regulation pertaining to the collection of the use tax.

18 (j)(i) The tax imposed by this section on the sale of a
19 motorboat as defined in section 37-1204 shall be the liability of the
20 purchaser. The tax shall be collected by the county treasurer or
21 designated county official at the time the purchaser makes
22 application for the registration of the motorboat. At the time of the
23 sale of a motorboat, the seller shall (A) state on the sales invoice
24 the dollar amount of the tax imposed under this section and (B)
25 furnish to the purchaser a certified statement of the transaction, in

1 such form as the Tax Commissioner prescribes, setting forth as a
2 minimum the total sales price, the allowance for any trade-in, and
3 the difference between the two. The sales tax due shall be computed
4 on the difference between the total sales price and the allowance for
5 any trade-in as disclosed by such certified statement. Any seller who
6 willfully understates the amount upon which the sales tax is due
7 shall be subject to a penalty of one thousand dollars. A copy of such
8 certified statement shall also be furnished to the Tax Commissioner.
9 Any seller who fails or refuses to furnish such certified statement
10 shall be guilty of a misdemeanor and shall, upon conviction thereof,
11 be punished by a fine of not less than twenty-five dollars nor more
12 than one hundred dollars. If the seller fails to state on the sales
13 invoice the dollar amount of the tax due, the purchaser shall have
14 the right and authority to rescind any agreement for purchase and to
15 declare the purchase null and void. If the purchaser retains such
16 motorboat in this state and does not register it within thirty days
17 of the purchase thereof, the tax imposed by this section shall
18 immediately thereafter be paid by the purchaser to the county
19 treasurer or designated county official. If the tax is not paid on or
20 before the thirtieth day after its purchase, the county treasurer or
21 designated county official shall also collect from the purchaser
22 interest from the thirtieth day through the date of payment and sales
23 tax penalties as provided in the Nebraska Revenue Act of 1967. The
24 county treasurer or designated county official shall report and remit
25 the tax so collected to the Tax Commissioner by the fifteenth day of

1 the following month. The county treasurer or designated county
2 official shall deduct and withhold for the use of the county general
3 fund, from all amounts required to be collected under this
4 subsection, the collection fee permitted to be deducted by any
5 retailer collecting the sales tax. The collection fee shall be
6 forfeited if the county treasurer or designated county official
7 violates any rule or regulation pertaining to the collection of the
8 use tax.

9 (ii) In the rental or lease of motorboats, the tax shall
10 be collected by the lessor on the rental or lease price.

11 (k) The Tax Commissioner shall adopt and promulgate
12 necessary rules and regulations for determining the amount subject to
13 the taxes imposed by this section so as to insure that the full
14 amount of any applicable tax is paid in cases in which a sale is made
15 of which a part is subject to the taxes imposed by this section and a
16 part of which is not so subject and a separate accounting is not
17 practical or economical.

18 (2) A use tax is hereby imposed on the storage, use, or
19 other consumption in this state of property purchased, leased, or
20 rented from any retailer and on any transaction the gross receipts of
21 which are subject to tax under subsection (1) of this section on or
22 after June 1, 1967, for storage, use, or other consumption in this
23 state at the rate set as provided in subsection (1) of this section
24 on the sales price of the property or, in the case of leases or
25 rentals, of the lease or rental prices.

1 (a) Every person storing, using, or otherwise consuming
2 in this state property purchased from a retailer or leased or rented
3 from another person for such purpose shall be liable for the use tax
4 at the rate in effect when his or her liability for the use tax
5 becomes certain under the accounting basis used to maintain his or
6 her books and records. His or her liability shall not be extinguished
7 until the use tax has been paid to this state, except that a receipt
8 from a retailer engaged in business in this state or from a retailer
9 who is authorized by the Tax Commissioner, under such rules and
10 regulations as he or she may prescribe, to collect the sales tax and
11 who is, for the purposes of the Nebraska Revenue Act of 1967 relating
12 to the sales tax, regarded as a retailer engaged in business in this
13 state, which receipt is given to the purchaser pursuant to
14 subdivision (b) of this subsection, shall be sufficient to relieve
15 the purchaser from further liability for the tax to which the receipt
16 refers.

17 (b) Every retailer engaged in business in this state and
18 selling, leasing, or renting property for storage, use, or other
19 consumption in this state shall, at the time of making any sale,
20 collect any tax which may be due from the purchaser and shall give to
21 the purchaser, upon request, a receipt therefor in the manner and
22 form prescribed by the Tax Commissioner.

23 (c) The Tax Commissioner, in order to facilitate the
24 proper administration of the use tax, may designate such person or
25 persons as he or she may deem necessary to be use tax collectors and

1 delegate to such persons such authority as is necessary to collect
2 any use tax which is due and payable to the State of Nebraska. The
3 Tax Commissioner may require of all persons so designated a surety
4 bond in favor of the State of Nebraska to insure against any
5 misappropriation of state funds so collected. The Tax Commissioner
6 may require any tax official, city, county, or state, to collect the
7 use tax on behalf of the state. All persons designated to or required
8 to collect the use tax shall account for such collections in the
9 manner prescribed by the Tax Commissioner. Nothing in this
10 subdivision shall be so construed as to prevent the Tax Commissioner
11 or his or her employees from collecting any use taxes due and payable
12 to the State of Nebraska.

13 (d) All persons designated to collect the use tax and all
14 persons required to collect the use tax shall forward the total of
15 such collections to the Tax Commissioner at such time and in such
16 manner as the Tax Commissioner may prescribe. For all use taxes
17 collected prior to October 1, 2002, such collectors of the use tax
18 shall deduct and withhold from the amount of taxes collected two and
19 one-half percent of the first three thousand dollars remitted each
20 month and one-half of one percent of all amounts in excess of three
21 thousand dollars remitted each month as reimbursement for the cost of
22 collecting the tax. For use taxes collected on and after October 1,
23 2002, such collectors of the use tax shall deduct and withhold from
24 the amount of taxes collected two and one-half percent of the first
25 three thousand dollars remitted each month as reimbursement for the

1 cost of collecting the tax. Any such deduction shall be forfeited to
2 the State of Nebraska if such collector violates any rule,
3 regulation, or directive of the Tax Commissioner.

4 (e) For the purpose of the proper administration of the
5 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
6 it shall be presumed that property sold, leased, or rented by any
7 person for delivery in this state is sold, leased, or rented for
8 storage, use, or other consumption in this state until the contrary
9 is established. The burden of proving the contrary is upon the person
10 who purchases, leases, or rents the property.

11 (f) For the purpose of the proper administration of the
12 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
13 for the sale of property to an advertising agency which purchases the
14 property as an agent for a disclosed or undisclosed principal, the
15 advertising agency is and remains liable for the sales and use tax on
16 the purchase the same as if the principal had made the purchase
17 directly.

18 Sec. 2. This act becomes operative on July 1, 2011.

19 Sec. 3. Original section 77-2703, Reissue Revised
20 Statutes of Nebraska, is repealed.

21 Sec. 4. Since an emergency exists, this act takes effect
22 when passed and approved according to law.