

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 507**

Introduced by Briese, 41.

Read first time January 22, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-382, 77-2701.16, 77-2704.10, 77-2704.24, and 77-27,132, Reissue  
3 Revised Statutes of Nebraska; to change provisions relating to a tax  
4 expenditure report; to impose sales and use taxes on certain  
5 services; to change and eliminate certain sales and use tax  
6 exemptions; to provide for the use of the net increase in tax  
7 revenue; to harmonize provisions; to provide an operative date; to  
8 repeal the original sections; and to outright repeal sections  
9 77-2704.08, 77-2704.14, 77-2704.38, 77-2704.52, 77-2704.55,  
10 77-2704.56, 77-2704.65, 77-2704.66, and 77-2704.67, Reissue Revised  
11 Statutes of Nebraska.  
12 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (g) The gross income received for animal specialty services and pet-  
15 related services, including, but not limited to ~~except~~ (i) veterinary  
16 services, (ii) specialty services performed on livestock as defined in  
17 section 54-183, and (iii) animal grooming performed by a licensed  
18 veterinarian or a licensed veterinary technician in conjunction with  
19 medical treatment; ~~and~~

20 (h) The gross income received for detective services; ~~-~~

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

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

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

25 (l) The gross income received for personal care services, including  
26 hair care, nail services, spa services, and tattoo services;

27 (m) The gross income received for maintenance, painting, repair, and  
28 interior decoration services for single-family housing;

29 (n) The gross income received for limousine, taxi, ride-sharing, and  
30 other transportation services;

31 (o) The gross income received for the services of travel agents and

1 tour operators;

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

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

5 (r) The gross income received for swimming pool cleaning and  
6 maintenance services;

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

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

10 (u) The gross income received for custom meat slaughtering services;

11 (v) The gross income received for legal services, excluding legal  
12 services performed in the furtherance of a for-profit business  
13 enterprise;

14 (w) The gross income received for accounting and tax preparation  
15 services, excluding accounting and tax preparation services performed in  
16 the furtherance of a for-profit business enterprise;

17 (x) The gross income received for tanning services;

18 (y) The gross income received for architectural services for single-  
19 family housing;

20 (z) The gross income received for telefloral delivery services;

21 (aa) The gross income received for the labor of a contractor for any  
22 major addition, remodeling, restoration, repair, or renovation of owner-  
23 occupied residential housing;

24 (bb) The gross income received for wedding planning services;

25 (cc) The gross income received for shoe-shining services;

26 (dd) The gross income received for weight loss services;

27 (ee) The gross income received for personal training services;

28 (ff) The gross income received for massage services, excluding  
29 massage services prescribed by a licensed health care professional;

30 (gg) The gross income received for interior design services;

31 (hh) The gross income received for clothing alteration services; and



1           (ii) The gross income received for plumbing services.

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

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

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

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

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

27           (10) Gross receipts does not include:

28           (a) The amount of any rebate granted by a motor vehicle or motorboat  
29 manufacturer or dealer at the time of sale of the motor vehicle or  
30 motorboat, which rebate functions as a discount from the sales price of  
31 the motor vehicle or motorboat; or

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

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

5 77-2704.10 Sales and use taxes shall not be imposed on the gross  
6 receipts from the sale, lease, or rental of and the storage, use, or  
7 other consumption in this state of:

8 ~~(1) Prepared food and food and food ingredients served by public or~~  
9 ~~private schools, school districts, student organizations, or parent-~~  
10 ~~teacher associations pursuant to an agreement with the proper school~~  
11 ~~authorities, in an elementary or secondary school or at any institution~~  
12 ~~of higher education, public or private, during the regular school day or~~  
13 ~~at an approved function of any such school or institution. This exemption~~  
14 ~~does not apply to sales by an institution of higher education at any~~  
15 ~~facility or function which is open to the general public;~~

16 (1) ~~(2)~~ Prepared food and food and food ingredients sold by a church  
17 at a function of such church;

18 (2) ~~(3)~~ Prepared food and food and food ingredients served to  
19 patients and inmates of hospitals and other institutions licensed by the  
20 state for the care of human beings; and

21 ~~(4) Fees and admissions charged for political events by ballot~~  
22 ~~question committees, candidate committees, independent committees, and~~  
23 ~~political party committees as defined in the Nebraska Political~~  
24 ~~Accountability and Disclosure Act;~~

25 (3) ~~(5)~~ Prepared food and food and food ingredients sold to the  
26 elderly, handicapped, or recipients of Supplemental Security Income by an  
27 organization that actually accepts electronic benefits transfer under  
28 regulations issued by the United States Department of Agriculture  
29 although it is not necessary for the purchaser to use electronic benefits  
30 transfer to pay for the prepared food and food and food ingredients. ;

31 ~~(6) Fees and admissions charged by a public or private elementary or~~

1 ~~secondary school and fees and admissions charged by a school district,~~  
2 ~~student organization, or parent teacher association, pursuant to an~~  
3 ~~agreement with the proper school authorities, in a public or private~~  
4 ~~elementary or secondary school during the regular school day or at an~~  
5 ~~approved function of any such school;~~

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

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

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

19 77-2704.24 (1) Sales and use taxes shall not be imposed on the gross  
20 receipts from the sale, lease, or rental of and the storage, use, or  
21 other consumption in this state of food or food ingredients except for  
22 prepared food and food sold through vending machines.

23 (2) For purposes of this section:

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

27 (b) Dietary supplement means any product, other than tobacco,  
28 intended to supplement the diet that contains one or more of the  
29 following dietary ingredients: (i) A vitamin, (ii) a mineral, (iii) an  
30 herb or other botanical, (iv) an amino acid, (v) a dietary substance for  
31 use by humans to supplement the diet by increasing the total dietary

1 intake, or (vi) a concentrate, metabolite, constituent, extract, or  
2 combination of any ingredients described in subdivisions (2)(b)(i)  
3 through (v) of this section; that is intended for ingestion in tablet,  
4 capsule, powder, softgel, gelcap, or liquid form or, if not intended for  
5 ingestion in such a form, is not presented as conventional food and is  
6 not represented for use as a sole item of a meal or of the diet; and that  
7 is required to be labeled as a dietary supplement, identifiable by the  
8 supplemental facts box found on the label and as required pursuant to 21  
9 C.F.R. 101.36, as such regulation existed on January 1, 2003;

10 (c) Food and food ingredients means substances, whether in liquid,  
11 concentrated, solid, frozen, dried, or dehydrated form, that are sold for  
12 ingestion or chewing by humans and are consumed for their taste or  
13 nutritional value. Food and food ingredients does not include alcoholic  
14 beverages, dietary supplements, ~~or~~ tobacco, soft drinks, candy, or  
15 bottled water;

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

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

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

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

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

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

1 illnesses;

2 ~~(III) (C)~~ Food sold by a seller whose proper primary North American  
3 Industry Classification System classification is manufacturing in sector  
4 311, except subsector 3118, bakeries;

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

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

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

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

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

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

20 77-27,132 (1) There is hereby created a fund to be designated the  
21 Revenue Distribution Fund which shall be set apart and maintained by the  
22 Tax Commissioner. Revenue not required to be credited to the General Fund  
23 or any other specified fund may be credited to the Revenue Distribution  
24 Fund. Credits and refunds of such revenue shall be paid from the Revenue  
25 Distribution Fund. The balance of the amount credited, after credits and  
26 refunds, shall be allocated as provided by the statutes creating such  
27 revenue.

28 (2) The Tax Commissioner shall pay to a depository bank designated  
29 by the State Treasurer all amounts collected under the Nebraska Revenue  
30 Act of 1967. The Tax Commissioner shall present to the State Treasurer  
31 bank receipts showing amounts so deposited in the bank, and of the

1 amounts so deposited the State Treasurer shall:

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

9 (b) Credit to the Highway Trust Fund all of the proceeds of the  
10 sales and use taxes derived from the sale or lease for periods of more  
11 than thirty-one days of motor vehicles, trailers, and semitrailers,  
12 except that the proceeds equal to any sales tax rate provided for in  
13 section 77-2701.02 that is in excess of five percent derived from the  
14 sale or lease for periods of more than thirty-one days of motor vehicles,  
15 trailers, and semitrailers shall be credited to the Highway Allocation  
16 Fund;

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

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

28 (e) Credit to the Property Tax Credit Cash Fund an amount equal to  
29 the net increase in state tax revenue received as a result of the changes  
30 made by this legislative bill. Such amount shall be determined annually  
31 by the Tax Commissioner.

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

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

4           Sec. 7.       Original sections 77-382, 77-2701.16, 77-2704.10,  
5 77-2704.24, and 77-27,132, Reissue Revised Statutes of Nebraska, are  
6 repealed.

7           Sec. 8. The following sections are outright repealed: Sections  
8 77-2704.08, 77-2704.14, 77-2704.38, 77-2704.52, 77-2704.55, 77-2704.56,  
9 77-2704.65, 77-2704.66, and 77-2704.67, Reissue Revised Statutes of  
10 Nebraska.