

LEGISLATIVE BILL 430

Approved by the Governor June 1, 1995

Introduced by Schellpeper, 18; Day, 19

AN ACT relating to sales and use taxes; to amend sections 77-2701 and 77-2702.13, Revised Statutes Supplement, 1994; to provide exemptions for certain molds, dies, and patterns and for materials used in the manufacturing of steel or cement; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of molds, dies, and patterns which have been specifically designed and fabricated to the special order of the customer. This exemption shall not include machinery, equipment, or tools to which molds, dies, and patterns have been connected or attached in order to be used for their intended purpose. For purposes of this section, molds, dies, and patterns shall mean tools that are built specifically for manufacturing a single product, which product is either injection molded from plastic or stamped from metals.

Sec. 2. Section 77-2701, Revised Statutes Supplement, 1994, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and section 1 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 3. Section 77-2702.13, Revised Statutes Supplement, 1994, is amended to read:

77-2702.13. (1) Retail sale or sale at retail shall mean:

(a) A sale of property for any purpose other than for resale in the regular course of business;

(b) A sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal. The advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly;

(c) The delivery in this state of property by an owner or former owner thereof or by a factor or agent of such owner, former owner, or factor, if the delivery is to a customer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery in such cases shall include the delivery person's selling price of the property in his or her gross receipts;

(d) The sale of admissions which shall mean the right or privilege to have access to or to use a place or location. When an admission to an activity is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. Admissions shall not include (i) fees charged by elementary or secondary schools, public or private, (ii) fees charged by school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities in an elementary or secondary school, public or private, during the regular school day or at an approved function of any such school, or (iii) fees charged by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act;

(e) A sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate;

(f) A sale of any property annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2702.05 except when such annexation is incidental to the transfer of an improvement upon real estate or the real estate; and

(g) A sale of veterinary medicines and chemicals to a veterinarian, which purchases are for the treatment of animals either directly by the veterinarian or by another person. The veterinarian is and shall remain liable for the sales and use tax on the purchase even if ownership of the veterinary medicines and chemicals is transferred to another person before

use.

(2) Retail sale or sale at retail shall not mean:

(a) The sale of:

(i) Property property which will enter into and become an ingredient or component part of property manufactured, processed, or fabricated for ultimate sale at retail; or

(ii) Refractory materials, lime, synthetic slag, mill rolls, and guides for use in manufacturing of steel or cement;

(b) The sale of:

(i) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Animal life shall include live poultry or livestock on the hoof when sales are made by the grower, producer, feeder, or any person engaged in the business of bartering, buying, or selling live poultry or livestock on the hoof;

(ii) Feed for any form of animal life or water which is supplied for consumption by animal life or which is otherwise used 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. Feed shall include all grains, minerals, salts, proteins, fats, fibers, vitamins, grit, and antibiotics commonly used as feed or feed supplements;

(iii) Seeds and annual plants, the products of which ordinarily constitute food for human consumption and which seeds and annual plants are sold to commercial producers of such products, and seed legumes, seed grasses, and seed grains when sold to be used exclusively for agricultural purposes;

(iv) Agricultural chemicals for use in agriculture and applied to land or crops. Agricultural chemicals shall not mean chemicals applied to harvested grains stored in commercial elevators;

(v) Oxygen for use in aquaculture as defined in section 2-3804.01;

or

(vi) Veterinary medicines and chemicals when sold by a licensed veterinarian who has paid the sales or use tax on such veterinary medicines and chemicals;

(c) The sale of:

(i) Nonreturnable containers when sold without contents to persons who place contents in the container and sell the contents together with the container;

(ii) Containers when sold with contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by the Nebraska Revenue Act of 1967; and

(iii) Returnable containers when sold with contents in connection with a retail sale of the contents or when resold for refilling.

The term returnable containers shall mean containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are nonreturnable containers;

(d) The sale of property the transfer of which to the consumer constitutes an occasional sale or the transfer of which to the consumer is made by way of an occasional sale;

(e) The sale of property the sale, purchase, or use of which has been taxed to that taxpayer in another state, territory, or possession of the United States of America when such other state, territory, or possession grants a reciprocal exclusion or an exemption to similar transactions in this state;

(f) The purchase in this state or the purchase outside this state, with title passing in this state, of materials and replacement parts used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 1986, and on October 31 every three years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that their certificate will expire and be null and void as of such date;

(g) The sale of railroad rolling stock whether purchased by a railroad or by any other person; or

(h) The sale of property annexed to real estate.

Sec. 4. This act becomes operative on October 1, 1995.

Sec. 5. Original sections 77-2701 and 77-2702.13, Revised Statutes Supplement, 1994, are repealed.