

## LEGISLATIVE BILL 947

Approved by the Governor April 10, 2002

Introduced by Wickersham, 49

AN ACT relating to revenue and taxation; to amend section 77-27,147, Reissue Revised Statutes of Nebraska, sections 13-326 and 77-2702.07, Revised Statutes Supplement, 2000, and section 77-2701, Revised Statutes Supplement, 2001; to change provisions relating to the taxation of mobile telecommunications service; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) For mobile telecommunications service provided and billed to a customer by a home service provider for any billing period ending on or after August 1, 2002:

(a) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(b) All taxable charges for such mobile telecommunications service shall be subject to tax by the state or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(c) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(2) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on the effective date of this act, the Tax Commissioner may, but shall not be required to:

(a) Provide or contract for a tax assignment data base based upon standards identified in 4 U.S.C. 119, as such section existed on the effective date of this act, with the following conditions:

(i) If such data base is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base; or

(ii) If such data base is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on the effective date of this act; and

(b) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on the effective date of this act.

(3) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to taxation unless the home service provider can reasonably separate charges not subject to taxation using the records of the home service provider that are kept in the regular course of business.

(4) For purposes of this section:

(a) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(b) Home service provider means a telecommunications company as defined in section 86-1403 that has contracted with a customer to provide mobile telecommunications service;

(c) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes: (i) Both one-way and two-way wireless communications services; (ii) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and (iii) any personal communications service;

(d) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use must be the residential street address or the primary business street address of the customer and must be within the service area of the home service provider; and

(e) Tax means the sales taxes levied under sections 13-319, 77-2703, and 77-27,142, the surcharges levied under the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, and sections 86-2201 to 86-2214, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

Sec. 2. Section 13-326, Revised Statutes Supplement, 2000, is amended to read:

13-326. (1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 13-319, 13-324, and 13-325, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a county.

(2) For the purposes of the sales and use tax imposed by a county, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are consummated:

(a) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and motorboats, if a purchaser takes possession of tangible personal property within a county which has enacted a tax under section 13-319, regardless of the business location of the Nebraska retailer;

(b) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that (a) Nebraska intrastate message toll telephone and telegraph services, other than mobile telecommunications service as described in section 1 of this act, which are consummated in the county where the customer is normally billed for such services and (b) such mobile telecommunications service that originates and terminates in the same state shall be consummated in the county where the customer has a place of primary use;

(c) At the physical location of individual vending machines; and

(d) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and motorboats sold or leased or rented for more than one year.

Sec. 3. Section 77-2701, Revised Statutes Supplement, 2001, is amended to read:

77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222 and section 1 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 4. Section 77-2702.07, Revised Statutes Supplement, 2000, is amended to read:

77-2702.07. (1) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(c) The cost of transportation of the property;

(d) The amount of any excise or property tax levied against the property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

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

(a) In the furnishing of telephone communication service, other than

mobile telecommunications service as described in section 1 of this act, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. In the furnishing of mobile telecommunications service as described in section 1 of this act, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications service that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

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

(c) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands and manufacturing purposes, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

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

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller. Gross receipts shall not mean the amount charged for training customers in the use of computer software if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the computer software; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967 and except as provided in section 77-2704.39.

(4) Gross receipts shall not include any of the following:

(a) Cash discounts allowed and taken on sales;

(b) (i) Before January 1, 1997, the amount of any rebate granted by a motor vehicle manufacturer or dealer at the time of sale of the motor vehicle, which rebate functions as a discount from the sales price of the motor vehicle; and

(ii) On and after January 1, 1997, the amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;

(c) Sales price of property returned by customers when the full sales price is refunded either in cash or credit;

(d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property;

(e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;

(f) (i) Before January 1, 1997, the value of a motor vehicle taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle; and

(ii) On and after January 1, 1997, the value of a motor vehicle or

motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat;

(g) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the property prior to June 1, 1967, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration; or

(h) Except as provided in subsection (2) of this section, the amount charged for labor or services rendered in installing or applying the property sold if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the property.

Sec. 5. Section 77-27,147, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,147. All relevant provisions of the Nebraska Revenue Act of 1967, as amended from time to time, and not inconsistent with the Local Option Revenue Act, shall govern transactions, proceedings, and activities pursuant to any tax imposed under the Local Option Revenue Act.

For the purposes of the Local Option Revenue Act, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, are consummated:

(1) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and commencing January 1, 1997, motorboats, if a purchaser takes possession of tangible personal property within a municipality which has enacted a tax under the Local Option Revenue Act, regardless of the business location of the Nebraska retailer;

(2) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that (a) Nebraska intrastate message toll telephone and telegraph services, other than mobile telecommunications service as described in section 1 of this act, shall be consummated in the municipality where the customer is normally billed for such service and (b) such mobile telecommunications service that originates and terminates in the same state shall be consummated in the municipality where the customer has a place of primary use;

(3) At the physical location of individual vending machines; and

(4) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and commencing January 1, 1997, motorboats sold or leased or rented for more than one year.

Sec. 6. Original section 77-27,147, Reissue Revised Statutes of Nebraska, sections 13-326 and 77-2702.07, Revised Statutes Supplement, 2000, and section 77-2701, Revised Statutes Supplement, 2001, are repealed.