

# PROPOSED SALES TAX REGULATIONS

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# PROPOSED SALES TAX REGULATIONS

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## SALES TAX REGULATIONS

### REG-1-005 RETAILERS AND SELLERS

005.01 Retailer means any seller and wherever either of these terms is used, it is construed to include the other. Retailer includes:

005.01A Any person engaged in the business of selling, leasing, or renting property or services whenever the receipts of which are subject to sales tax;

005.01B Any person engaged in the business of making sales at auction of tangible personal property for storage, use, or other consumption, or who is collecting the proceeds of an auction (Reg-1-034 Auction and Consignment Sales);

005.01C Any person who leases or rents tangible personal property to another for storage, use, or other consumption, except film rentals when ~~an~~ sales tax is charged on the admission, admission tax is charged and interchanged railroad rolling stock ~~interchanged pursuant to the provisions of the Interstate Commerce Act~~ (Reg-1-018 Rent or Lease of Tangible Personal Property);

005.01D Any person who is renting or furnishing lodging for periods of less than ~~thirty~~ (30) days, except a facility which is either licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes, or operated by an educational institution established or recognized under Chapter 79 or 85 of the Nebraska Revised Statutes, ~~in~~ which when rooms are regularly used to house students for a consideration for periods in excess of ~~thirty~~ (30) days (Reg-1-046, Hotels, Lodgings, and Accommodations);

005.01E Any person who is furnishing telephone, mobile telecommunications, telegraph, gas, electricity, sewer, or water service (Reg-1-065, Telecommunications Service, and Reg-1-066, Sewer and Water);

005.01F Any person who is furnishing community or county antenna television service or satellite programming service (Reg-1-081, Community or County Antenna Television Service);

005.01G Any person who is charging admissions, except admissions charged by elementary or secondary schools, public or private, or school districts, student organizations, or parent-teacher associations pursuant to an agreement with proper school authorities, or admissions to fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees that are registered with the Political Accountability and Disclosure Commission or are for candidates for federal office (Reg-1-044, Admissions);

005.01H Any person who is renting or otherwise furnishing tangible personal property under an agreement requiring the periodic cleaning or laundering of such tangible personal property (Reg-1-049, Linen and Clothing Suppliers);

005.01I Any person who is selling or otherwise providing warranties, guarantees, service contracts, or maintenance agreements covering taxable property or services (Reg-1-074, Warranties and Guarantees);

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005.01J Any person who is selling or otherwise providing computer software or computer software training, when provided by the retailer that sold the software (Reg-1-088 Computer Software);

~~005.01K Any person making drop shipments from a Nebraska location to delivery locations in Nebraska for an out of state retailer who is not licensed in Nebraska for sales tax;~~

~~005.01L Any contractor who has elected to be treated as a retailer, or any contractor who has failed to make an election (Reg-1-017, Contractors);~~

~~005.01M~~ 005.01L Any person who is selling live plants, other than as a part of the transfer of an improvement to real estate or the real estate (Reg-1-017, Contractors); ~~and~~

~~005.01N~~ 005.01M Any person who is the promoter, operator, or organizer of a fair, flea market, craft show, or similar event (Reg-1-033, Transient and Itinerant Sellers.);

~~005.01N(1)~~ 005.01M(1) Retailer does not include any person making sales at a fair, flea market, craft show, or similar event when the licensed promoter, operator, or organizer has arranged to remit the sales tax on behalf of that person for the show.

005.01N Any person providing any of the following:

005.01N(1) Animal specialty services, except for veterinary services and specialty services performed on livestock (Reg-1-102, Animal Specialty Services);

005.01N(2) Building cleaning services (Reg-1-098, Building Cleaning);

005.01N(3) Digital audio works, digital audiovisual works, digital books, and digital codes;

005.01N(4) Installing and applying tangible personal property where the sale of the property is subject to tax (Reg-1-082, Labor Charges);

005.01N(5) Motor vehicle washing, waxing, towing, and painting services (Reg-1-099, Motor Vehicle Services);

005.01N(6) Pest control services (Reg-1-100, Pest Control Services);

005.01N(7) Recreational vehicle park services (Reg-1-103, Recreational Vehicle Park Services);

005.01N(8) Repairing or maintaining tangible personal property, except motor vehicles, where the sale of the property would be subject to tax (Reg-1-082, Labor Charges); and

005.01N(9) Security and detective services (Reg-1-101, Security and Detective Services.)

005.01O Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, or any other property for telephone, telegraph, cable, satellite, or mobile telecommunications services on the customer's or service provider's side of the demarcation point (Reg-1-017, Contractors.)

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005.01P Option 2 and Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, or any other property for telephone, telegraph, cable, satellite, or mobile telecommunications services (Reg-1-017, Contractors):

005.01P(1) On the service provider's side of the demarcation point, or

005.01P(2) On the customer's side of the demarcation point when acting as a subcontractor for telephone, telegraph, cable, satellite, or mobile telecommunications service providers.

005.02 A distributor may enter into an agreement with the Department of Revenue to collect tax for representatives working for the distributor. The distributor must collect and remit tax from representatives on the sales price of each item sold at the tax rate imposed at the delivery location of each sale. When the distributor has entered into this agreement, the individual representatives are not required to hold their own sales tax permits.

~~005.02~~ 005.03 A person does not have to be engaged solely in a retail business in order to be liable for collecting, reporting, and remitting the sales and use tax. Manufacturers, producers, ~~jobbers~~, or wholesalers are liable for collection of the tax to the extent that they make sales at retail or have gross receipts which are taxable. Sales are sales for resale only if a resale certificate is ~~procured~~ received from the ~~buyer~~ purchaser. All other sales are presumed to be taxable.

~~005.03~~ 005.04 Model 1 seller means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own retail purchases.

~~005.04~~ 005.05 Model 2 seller means a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax.

~~005.05~~ 005.06 Model 3 seller means a seller that has sales in at least five member states of the Streamlined Sales Tax Agreement, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller.

(Sections 77-2701.16, 77-2701.21, 77-2701.22, 77-2701.23, 77-2701.31, 77-2701.32, and 77-2705, R.R.S 2009. April 12, 2005\_\_\_\_.)

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## REG-1-017 CONTRACTORS

017.01 Gross receipts from construction projects or the repair of real estate or fixtures are generally exempt from sales or use tax, except as otherwise stated in this regulation. In most cases, ~~the sales or purchases of building materials will be~~ are taxable ~~even when contractor labor is not taxed.~~

017.02 The following definitions will be used for ~~this regulation~~ all regulations in Title 316, Chapter 1.

~~017.02A A contractor is any person who repairs property annexed to, or who annexes property to, real estate, including leased property, by attaching building materials to the improvement or annexed property being built or repaired, or who arranges for such annexation.~~

~~017.02B~~ Annexed means attached to real estate so that: (1) the property becomes real estate; or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional.

~~017.02C A structure is any construction composed of building materials arranged and fitted together in some way, such as a bridge, highway, street light, dam, television tower, fence, sewer, water line, or billboard.~~

~~017.02D A building is~~ 017.02B Building means any free-standing structure enclosed within a roof and exterior walls. It does not have to be enclosed on all sides. It is designed for the housing, shelter, enclosure, and support of individuals, animals, manufacturing, or property of any kind. It must be annexed to the land.

~~017.02D(1)~~ 017.02B(1) A building includes manufactured housing that is either set up for occupancy as a dwelling according to local building codes, or that is permanently annexed to real estate. (See Reg-1-018, Rent or Lease of Tangible Personal Property.)

~~017.02E~~ 017.02C Building materials ~~are~~ mean any property, including fixtures, that will be annexed to the land or an improvement on the land. Building materials do not include tools, supplies, or any items that will not be annexed.

~~017.02D~~ Contractor means any person who repairs property annexed to, or who annexes property to, real estate, including leased property, by attaching building materials to the annexed property or improvement being built or repaired, or who arranges for annexation of property.

~~0017.02F The demarcation~~ 017.02E Demarcation point is means the point at which the wire or cable that is owned and maintained by a telephone or cable company is connected to the inside station wiring owned by and dedicated to the customer's use.

~~017.02G A fixture is~~ 017.02F Fixture means a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item. Examples are central air conditioners, water heaters, garbage disposals, built-in dishwashers, and furnaces.

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~~017.02H~~ 017.02G Live plants ~~include means and includes~~ trees, shrubs, flowers, and sod. Live plants do not include seeds.

~~017.02I~~ A ~~recognized trade professional includes any person required to be licensed to practice his or her trade, such as a plumber, or electrician.~~

~~017.02J~~ 017.02H Option 1 contractor ~~is~~ means a contractor who has elected to be taxed as a retailer of building materials with a tax-exempt inventory or a contractor who has not made an election. See section 017.05 of this regulation.

~~017.02K~~ 017.02I Option 2 contractor ~~is~~ means a contractor who has elected to be taxed as the consumer of building materials with a tax-paid inventory. See section 017.06 of this regulation.

~~017.02L~~ 017.02J Option 3 contractor ~~is~~ means a contractor who has elected to be taxed as the consumer of building materials with a tax-free inventory. See section 017.07 of this regulation.

017.02K Recognized trade professional means any person required to be licensed to practice his or her trade, such as a plumber or electrician.

~~017.02M~~ 017.02L Supplies are mean those items ~~that are~~ consumed or used during construction ~~but~~ that do not become a part of the building or structure.

017.02M Structure means any construction composed of building materials arranged and fitted together in some way and annexed to land, such as a bridge, highway, street light, dam, television tower, fence, sewer, water line, or billboard.

017.03 Contractors may choose how they want to treat building materials for tax purposes. There are three options available to the contractor for the taxation of building materials. The choice of an option is made by completing ~~and submitting to the Department of Revenue, a Nebraska Sales and Use Tax Election for Contractors, Form 16~~ the Nebraska Department of Labor's online Contractor/Subcontractor Registration Application located at [www.dol.nebraska.gov](http://www.dol.nebraska.gov). The contractor/subcontractor registration information, including the contractor option elected, is displayed in the Contractor Registration Database. Before performing any construction work in Nebraska, a contractor must be registered in the Contractor Registration Database. This form must be filed within three months after beginning to operate as a contractor.

017.03A The ~~selected~~ option selected applies to all construction contracts. A contractor may not operate under more than one option at the same time.

017.03B If the ~~Form 16 is not filed~~ registration application is not completed or an election is not made, the contractor will be treated as a retailer under Option 1 for sales and use tax purposes.

017.04 Contractors may change their option using the Department of Labor's website ([www.dol.nebraska.gov](http://www.dol.nebraska.gov)) for contractor/subcontractor registration. The contractor must notify the Department of Revenue in writing by submitting a new Form 16 before the change is effective. When a change becomes effective, it The new contractor option applies to all contracts in progress and also to all new contracts.

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~~017.04A All changes are effective on the first day of a month. If notified on or before the 15th, the change will take effect the first day of the next month. If notified after the 15th, the change will be delayed and will take effect a month later.~~

~~017.04B~~ Any contractor who changes from a tax-free inventory (Option 1 or Option 3) to a tax-paid inventory (Option 2) must pay the remit use tax to the Department of Revenue (Department) on all building materials in inventory on the date the change is effective. ~~when the new Form 16 is submitted and pay~~ The contractor must also begin paying sales tax on all purchases as of the date of the notification the change is effective. Option 1 contractors must also pay the remit use tax on any building materials on which sales or use tax has not already been paid or collected that have has been incorporated into an ongoing project.

~~017.04C~~ 017.04B Any contractor who changes from a tax-paid inventory (Option 2) to a tax-free inventory (Option 1 or Option 3) will receive a credit for the sales or use tax previously paid on its building materials in inventory at the time the contractor option change becomes effective. Provided To receive the credit, the contractor submits with its new Form 16 must submit a signed statement to the Department that details the amount of credit to which it is entitled. The credit will be placed on the contractor's account and can be used as the building materials that were in inventory are annexed and payments become due to the Department of Revenue. The contractor is not entitled to a refund of ~~the any sales or use tax previously paid on the building materials in inventory.~~

### 017.05 OPTION 1-TO BE TREATED AS A RETAILER WITH A TAX-FREE EXEMPT INVENTORY.

017.05A Option 1 contractors are retailers of ~~those~~ building materials that become annexed. All Option 1 contractors must have a Nebraska Sales Tax Permit.

017.05B Option 1 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. ~~Tools and supplies~~ Option 1 contractors cannot be purchased purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.05C Buildings and Structures, ~~construction and repair~~ Construction and Repair.

017.05C(1) Option 1 contractors must collect sales tax from all ~~of~~ their customers, including contractors, on the total amount charged for building materials they annex to real estate or use to repair fixtures or property annexed to real estate, even if they sell a building or structure.

~~017.05C(2) Option 1 contractors must collect sales tax on the total amount charged for building materials they use to repair fixtures or property annexed to real estate.~~

017.05C(2) Option 1 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.05C(3) Fabrication, production, or repair labor performed by another person on building materials for an Option 1 contractor are part of the cost of the

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building materials. The Option 1 contractor must collect sales tax on the total amount charged to the customer for building materials, including these labor charges, which are annexed to real estate by the Option 1 contractor. (Reg-1-082, Labor Charges.)

~~017.05C(3)~~ 017.05C(4) Option 1 contractors will not normally ~~not~~ collect sales tax on separately stated labor charges of the Option 1 contractor. (See Reg-1-082, Labor Charges.)

~~017.05C(3)(a)~~ 017.05C(4)(a) Option 1 contractors who charge one amount for both building materials and labor ~~are required to~~ must collect sales tax on the total amount charged.

~~017.05C(4)~~ 017.05C(5) Option 1 contractors may purchase all ~~All~~ building materials and other ~~items to be resold may be purchased~~ property for resale ~~purposes without paying sales tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.~~

~~017.05C(4)(a)~~ 017.05C(5)(a) Option 1 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an another Option 1 subcontractor.

~~017.05C(4)(b)~~ 017.05C(5)(b) Option 1 contractors are not required to ~~pay the~~ remit use tax on building materials annexed in a construction project that is in another state or in a construction project that is outside the United States.

017.05C(5)(c) Option 1 contractors may purchase for resale any fabrication, production, or repair labor performed by another person on building materials that will be annexed to real estate by the Option 1 contractor.

### 017.05D Property not Annexed.

017.05D(1) Option 1 contractors are retailers ~~for any sales~~ of building materials or other property that ~~are~~ is not annexed. Option 1 contractors ~~will~~ must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.05D(2) Option 1 contractors ~~will~~ must collect sales tax on the total amount charged for installation of ~~items~~ tangible personal property that ~~do~~ does not become annexed to real estate. ~~Items~~ Tangible personal property that normally ~~do~~ does not become annexed ~~include~~ includes ~~throw rugs,~~ draperies, window air conditioners, and silt ~~fences~~ fencing.

017.05D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.05D(3)(a) Option 1 contractors who only install silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.05D(3)(b) Option 1 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and



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must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.05D(3)(c) Option 1 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing. Option 1 contractors cannot purchase silt fencing tax-exempt for resale.

~~017.05D(3)~~ 017.05D(4) Option 1 contractors will must collect sales tax on the total amount charged when they repair items that do not become annexed to real estate for repairing or fabricating tangible personal property that is not annexed by the Option 1 contractor (Reg-1-082, Labor Charges.).

~~017.05D(4)~~ 017.05D(5) Option 1 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and are required to must collect sales tax on the total amount charged for such these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

~~017.05E Telephone, cable, satellite programming, Cable, Satellite Services, and other utilities~~ Other Utilities.

017.05E(1) Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite programming, dishes or receivers, or any other property for telephone, telegraph, cable, satellite programming, services, and mobile telecommunication services on the general distribution system or on the customer's side of the demarcation point are required to must collect sales tax on the total amount charged for the materials and labor regardless of whether the property is annexed or remains tangible personal property.

017.05E(2) If any or all of the charge for installation of tangible personal property is paid to the Option 1 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third-party service provider (Reg-1-081, Community or County Antenna Television Services.)

~~017.05E(2)~~ 017.05E(3) Option 1 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.05F Manufacturing Machinery and Equipment- (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.05F(1) Option 1 contractors will not collect sales tax on qualifying manufacturing machinery and equipment sold to a manufacturer regardless of whether the equipment remains tangible personal property or is annexed if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer. (See Reg-1-107, Manufacturing Machinery and Equipment Exemption.)

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~~017.05F(3)~~ 017.05F(2) Option 1 contractors will not collect sales tax on the installation or repair of qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

~~017.05F(2)~~ 017.05F(3) Option 1 contractors will not collect sales tax on the amount charged for repair or replacement parts or accessories purchased for use in maintaining, repairing, or refurbishing qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(4) Option 1 contractors ~~can~~ may purchase qualified manufacturing machinery and equipment for resale by issuing a properly completed Resale or Exempt Sale Certificate, Form 13, to the seller.

### 017.05G Live Plants ~~and Sod.~~

017.05G(1) Option 1 contractors planting live plants, ~~including sod,~~ must collect sales tax on the total amount charged for the live plants ~~or sod~~ and on the labor charge for installation of the live plants ~~or sod~~.

017.05G(2) Option 1 contractors who annex building materials and install live plants, ~~or sod~~ must collect sales tax on the total amount charged, unless the labor charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.05G(3) Option 1 contractors must pay sales tax or remit use tax on all live plants ~~or sod~~ and the installation for the live plants ~~or sod~~ installed by another person.

### 017.05H Exempt Organizations and Exempt Governmental Units.

017.05H(1) Option 1 contractors annexing building materials for exempt organizations or exempt governmental units ~~or exempt organizations~~ will not collect tax on the building materials when the exempt organization or exempt governmental unit ~~or exempt organization~~ has followed the procedures in section 017.08 of this regulation.

017.05H(2) Option 1 contractors will not collect sales tax on qualified materials for use in a community-based energy development (C-BED) project.

### 017.05I Direct Pay Permits.

017.05I(1) Option 1 contractors who annex building materials for a project owner holding a valid direct pay permit may accept a copy of the direct pay permit and will not collect sales tax on the amount charged directly to the project owner for the building materials.

## 017.06 OPTION 2-TO BE TREATED AS A CONSUMER WITH A TAX-PAID INVENTORY.

017.06A Option 2 contractors are consumers of ~~these~~ building materials that become annexed. Option 2 contractors who make sales described in subsections 017.06D, 017.06E, or 017.06G are retailers and must have a Nebraska Sales Tax Permit.

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017.06B Option 2 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. ~~Tools and supplies~~ Option 2 contractors cannot be purchased purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.06C Buildings and Structures, ~~construction and repair~~ Construction and Repair.

017.06C(1) Option 2 contractors will not normally ~~not~~ collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.06C(2) Option 2 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

~~017.06C(2)~~ 017.06C(3) Option 2 contractors must pay ~~the~~ sales tax on all building materials and other taxable items when purchased or received.

~~017.06C(2)(a)~~ 017.06C(3)(a) Option 2 contractors must ~~pay the~~ remit use tax directly to the ~~Nebraska Department of Revenue~~ on all building materials and other taxable items on which no sales tax has been paid when the materials or other items are received.

~~017.06C(2)(b)~~ 017.06C(3)(b) Option 2 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

017.06C(3)(c) Option 2 contractors must pay sales or remit use tax on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 2 contractor. (Reg-1-082, Labor Charges.)

~~017.06C(3)~~ 017.06C(4) Option 2 contractors are not allowed a credit or refund for ~~the~~ sales or use taxes paid on building materials subject to ~~the~~ sales tax, that are withdrawn from tax-paid inventory for annexation to real estate in another state.

~~017.06C(3)(a)~~ 017.06C(4)(a) Option 2 contractors may receive a credit or refund for use tax paid on building materials that are withdrawn from inventory for annexation to real estate in another state only if the seller of the building materials is not licensed to collect sales tax in this state and is not engaged in business in this state. (Reg-1-004.02 for definition of “engaged in business in this state.”)

017.06C(4)(b) Option 2 contractors may receive a credit or refund of tax paid on building materials used in a construction project that is outside the United States.

017.06D Property not Annexed.

017.06D(1) Option 2 contractors are retailers for any sales of building materials or other property that is not annexed. Option 2 contractors must ~~will~~ collect sales tax on the total amount charged unless the sale is otherwise exempt.

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017.06D(1)(a) When ~~over-the-counter~~ retail sales of tax-paid inventory items are made, the Option 2 contractor must will collect sales tax on the full sales price. The tax ~~remitted~~ reported to the Department of Revenue will be the difference between the Nebraska and local option tax the contractor previously paid on the items and the ~~amount of~~ tax collected from the customer.

017.06D(2) Option 2 contractors must will collect sales tax on the total amount charged for installation of ~~items~~ tangible personal property that does that do not become annexed to real estate. ~~Items-Tangible personal property that normally do~~ does not become annexed ~~include~~ includes ~~throw-rugs,~~ draperies, window air conditioners, and silt ~~fences~~ fencing.

017.06D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.06D(3)(a) Option 2 contractors who only installs silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.06D(3)(b) Option 2 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.06D(3)(c) Option 2 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing.

~~017.06D(3)~~ 017.06D(4) Option 2 contractors must will collect sales tax on the total amount charged ~~when items they repair that do not become annexed to real estate for repairing or fabricating tangible personal property that is not annexed by the Option 2 contractor (Reg-1-082, Labor Charges.)~~

~~017.06D(4)~~ 017.06D(5) Option 2 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and are required to must collect sales tax on the total amount charged for ~~such~~ these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

~~017.06D(5)~~ 017.06D(6) Option 2 contractors may purchase items tax-exempt free when ~~such~~ these items will be resold without being annexed.

017.06E ~~Telephone, cable, satellite programming, and other utilities~~ Cable Satellite Services, and Other Utilities.

017.06E(1) Option 2 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite ~~programming,~~ dishes or receivers, or any other property for telephone, telegraph, cable, satellite ~~programming,~~ services, and mobile telecommunications services must will collect sales tax as follows:

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~~017.06E(2)~~ 017.06E(1)(a) Option 2 contractors ~~will~~ must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point, (i.e., the general distribution system), ~~regardless of whether the property is annexed or remains tangible personal property.~~

~~017.06E(3)~~ 017.02E(1)(b) Option 2 contractors ~~will~~ must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

~~017.06E(4)~~ 017.02E(1)(c) Except as provided in subsection ~~017.06E(3)(1)(b)~~, Option 2 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.02E(1)(d) Option 2 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

~~017.06E(5)~~ 017.06E(2) Option 2 contractors must pay sales tax or remit use tax on all of their purchases of wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite ~~programming,~~ services, and mobile telecommunications services.

~~017.06E(6)~~ ~~Option 2 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.~~

017.02E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 2 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third party service provider. (Reg-1-081, Community and County Antenna Television Service.)

017.06F Manufacturing Machinery and Equipment: (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.06F(1) Option 2 contractors must pay sales tax or remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a ~~customer~~ manufacturer.

017.06F(1)(a) Option 2 contractors cannot purchase ~~such~~ these items without paying tax even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.06F(2) Option 2 contractors will not collect sales tax on charges to install, or repair,~~or maintain~~ qualified manufacturing machinery and equipment.

017.06G Live Plants and Sod.

017.06G(1) Option 2 contractors planting live plants, ~~including sod,~~ must collect sales tax on the total amount charged for the live plants ~~and sod,~~ and on the labor charge for installation of the live plants ~~and sod.~~

## PROPOSED SALES TAX REGULATIONS

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017.06G(2) Option 2 contractors who annex building materials and install live plants ~~or sod~~ must collect sales tax on the total amount charged, unless the charges for the live plants, sod, and related installation labor for annexing the building materials are separately stated from the labor charges for installing live plants.

017.06G(3) Option 2 contractors must pay sales tax or remit use tax on all live plants ~~or sod~~ and the installation for the live plants ~~or sod~~ installed by another person.

### 017.06H Exempt Organizations and Exempt Governmental Units.

017.06H(1) Option 2 contractors annexing building materials for exempt organizations or exempt governmental units ~~or exempt organizations~~ may purchase building materials without paying the sales or use tax when the exempt organization or exempt governmental unit ~~or exempt organization~~ has followed the procedures in section 017.08 of this regulation.

017.06H(2) Option 2 contractors may purchase qualified materials for use in a community-based energy development (C-BED) project ~~tax-free~~ exempt.

### 017.06I Direct Pay Permits.

017.06I(1) Option 2 contractors must pay sales tax or remit use tax on building materials annexed even if they have a copy of the direct pay permit from the project owner.

### 017.07 OPTION 3-TO BE TREATED AS A CONSUMER WITH A TAX-FREE EXEMPT INVENTORY.

017.07A Option 3 contractors are consumers of ~~those~~ building materials that become annexed. Option 3 contractors who make sales described in subsections 017.07D, 017.07E, or 017.07G are retailers and must have a Nebraska Sales Tax Permit.

017.07B Option 3 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. ~~Tools and supplies~~ Option 3 contractors cannot be purchased purchase these items exempt for resale or by using a Purchasing Agent Appointment.

### 017.07C Buildings and Structures, ~~construction and repair~~ Construction and Repair.

017.07C(1) Option 3 contractors will not normally ~~not~~ collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.07C(2) Option 3 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

~~017.07C(2)~~ 017.07C(3) All building materials and other items—property that will ~~to~~ be resold may be purchased for resale purposes without paying tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

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~~017.07C(2)(a)~~ 017.07C(3)(a) Option 3 contractors must ~~pay the remit~~ use tax directly to the Department of Revenue on all building materials when the building materials are removed from inventory or when received at the job site.

~~017.07C(2)(b)~~ 017.07C(3)(b) Option 3 contractors must ~~pay the remit~~ use tax directly to the Department of Revenue on all other taxable ~~items~~ property on which no sales tax was paid when the ~~items are~~ property is received.

017.07C(3)(c) Option 3 contractors must remit use tax directly to the Department on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 3 contractor. (Reg-1-082, Labor Charges.)

~~017.07C(3)~~ (4) Option 3 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

~~017.07C(4)~~ (5) Option 3 contractors must ~~pay the remit~~ use tax on building materials purchased with a resale certificate that are withdrawn from inventory for annexation to real estate in another state.

~~017.07C(4)(a)~~ (5)(a) Option 3 contractors are not required to ~~pay the remit~~ use tax on building materials used in a construction project that is outside the United States.

~~017.07C(4)(b)~~ (5)(b) Option 3 contractors are not required to remit use tax on building materials withdrawn from inventory for annexation to real estate in another state if the seller of the building materials is not engaged in business in this state and is not licensed to collect sales tax in this state (Reg-1-002, Consumer's Use Tax). (See also Reg-1-004.02 for the definition of "engaged in business in this state.")

### 017.07D Property not Annexed.

017.07D(1) Option 3 contractors are retailers for any sales of building materials or other property that is not annexed. Option 3 contractors ~~will~~ must collect sales tax on the total amount charged.

017.07D(2) Option 3 contractors ~~will~~ must collect sales tax on the total amount charged for installation of ~~items that do~~ tangible personal property that does not become annexed to real estate. ~~Items~~ Tangible personal property that normally ~~do~~ does not become annexed ~~include throw rugs,~~ includes draperies, window air conditioners, and silt ~~fences~~ fencing.

017.07D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.07D(3)(a) Option 3 contractors hired only to install silt fencing are making retail sales and must collect tax on the total amount charged.

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017.07D(3)(b) Option 3 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing and must remit use tax on their cost of the silt fencing materials.

017.07D(3)(c) Option 3 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing. Option 3 contractors cannot purchase silt fencing tax-exempt for resale.

~~017.07D(3)~~ 017.07D(4) Option 3 contractors will must collect and remit sales tax on the total amount charged, including both parts and repair labor, when they repair items that do not become annexed to real estate for repairing or fabricating tangible personal property that is not annexed by the Option 3 contractor.

~~017.07D(4)~~ 017.07D(5) Option 3 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and are required to must collect and remit sales tax on the total amount charged for such these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

~~017.07D(5)~~ 017.07D(6) Option 3 contractors will not remit use tax on items that are resold without being annexed.

~~017.07E Telephone, cable, satellite programming, Cable, Satellite Services, and other utilities~~ Other Utilities.

017.07E(1) Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite programming, services, and mobile telecommunication services providers must will collect sales tax as follows:

~~017.07E(2)~~ 017.07E(1)(a) Option 3 contractors must will collect sales tax on the total amount charged when working on the service provider's side of the demarcation point, (i.e., the general distribution system), regardless of whether the property is annexed or remains tangible personal property.

~~017.07E(3)~~ 017.07E(1)(b) Option 3 contractors must will collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

~~017.07E(4)~~ 017.07E(2)(c) Except as provided in 017.07E(3)(1)(b), Option 3 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.07E(1)(d) Option 3 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

~~017.07E(5)~~ 017.07E(2) Option 3 contractors must pay use remit use tax on all wire, cable, outlets, and other property used to install or construct telephone,



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telegraph, cable, satellite ~~programming~~, services, and mobile telecommunication services.

~~017.07E(6) Option 3 contractors will not collect tax on labor charges for installing or connecting gas, electricity, sewer, and water services.~~

017.07E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 3 contractor by a third-party service provider, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid to the Department by the third-party service provider (Reg-1-081, Community and County Antenna Television Service.)

017.07F Manufacturing Machinery and Equipment (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.07F(1) Option 3 contractors must ~~pay~~ remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a ~~customer~~ manufacturer.

017.07F(1)(a) Option 3 contractors must ~~pay the~~ remit use tax on ~~such these~~ items even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.07F(2) Option 3 contractors will not collect sales tax on charges to install, or repair, ~~or maintain~~ qualified manufacturing machinery and equipment.

~~017.07G Live Plants and Sod.~~

~~017.07G(1) Option 3 contractors planting live plants, including sod, must collect sales tax on the total amount charged for the live plants and sod, and on the labor charged charge for installation of the live plants and sod.~~

017.07G(2) Option 3 contractors who annex building materials and install live plants ~~and sod~~ must collect sales tax on the total amount charged unless the charges for ~~the live plants, sod and related installation labor~~ annexing the building materials are separately stated from the labor charges for installing live plants.

017.07G(3) Option 3 contractors must pay sales tax or remit use tax on all live plants ~~or sod~~ and the installation for the live plants ~~or sod~~ installed by another person.

~~017.07H Exempt Organizations and Exempt Governmental Units.~~

~~017.07H(1) Option 3 contractors annexing building materials for exempt organizations or exempt governmental units or exempt organizations are not required to pay the remit use tax on building materials when the exempt organization or exempt governmental unit or exempt organization has followed the procedures in section 017.08 of this regulation.~~

017.07H(2) Option 3 contractors are not required to remit use tax on their cost of qualified materials for use in a community-based energy development (C-BED) project.

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### 017.07I Direct Pay Permits.

017.07I(1) Option 3 contractors must ~~pay the~~ remit use tax on building materials annexed even if they have a copy of the direct payment permit from the project owner.

### 017.08 PROJECTS FOR EXEMPT ORGANIZATIONS AND EXEMPT GOVERNMENTAL UNITS

017.08A Qualified exempt organizations and exempt governmental units are listed in Reg-1-012, Exemptions. The following procedures allow the exempt organizations or exempt governmental units to have construction completed without the payment of tax on building materials which are physically annexed to the building or structure and which subsequently ~~belong to~~ are owned by the exempt governmental unit or exempt organization. The contractor must ~~still~~ pay sales tax or remit use tax on its purchases or rentals of tools, supplies, equipment, ~~barricades,~~ scaffolding, barricades, and on all purchases of taxable services such as building cleaning, pest control and security services, and supplies.

017.08A(1) An exempt organization or exempt governmental unit may furnish building materials. The organization or governmental unit will ~~give an exempt sale certificate~~ issue a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, to the sellers retailers of the building materials.

017.08BA(2) The exempt organization or exempt governmental unit, as project owner, may be entitled to a refund of tax paid on building materials. The United States government, the state, and educational institutions under the governance of the University of Nebraska Board of Regents, or State College Board of Trustees ~~any educational institution established or recognized under Chapter 85 of the Nebraska Revised Statutes~~ will not receive any refunds.

017.08B(1) ~~A(2)(a)~~ The If the exempt organization or exempt governmental unit will not appoint the contractor as a purchasing agent. ~~The,~~ the Option 2 or Option 3 contractor ~~will~~ must pay sales tax or remit use tax on all building materials. The exempt organization or exempt governmental unit may obtain a refund of the tax paid if:

017.08-B(2) ~~A(2)(b)~~ The Option 2 or Option 3 contractor ~~will provide~~ provides the exempt organization or exempt governmental unit with a certified statement of the tax paid on the building materials by the contractor and all subcontractors, and

017.08-B(3) ~~A(2)(c)~~ The exempt organization or exempt governmental unit ~~will~~ apply applies for a refund from the Department of ~~Revenue.~~ The exempt organization or exempt governmental unit may apply for a refund of any sales tax it paid directly on building materials, and any sales or use tax paid or remitted on building materials by Option 2 or 3 contractors as shown on a certified statement from the contractor.

017.08CA(3) The exempt organization or exempt governmental unit may appoint the contractor as a purchasing agent. The contractor may then purchase building materials

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tax-free. The appointment as a purchasing agent for the exempt organization or exempt governmental unit must be made before the building materials are annexed.

~~017.08C(1)–A(3)(a)~~ The contractor will delegate to all subcontractors the authorization as purchasing agent, ~~as indicated in 017.08C(2) and 017.08C(3).~~

~~017.08–C(2)–A(3)(b)~~ The contractor or subcontractors will provide an exempt sale certificate and a copy of the purchasing agent appointment to suppliers when purchasing the building materials to be annexed.

~~017.08–C(3)–A(3)(c)~~ The appointment must be made using a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or a previously approved substitute form containing the same information.

~~017.08–C(4)–A(3)(d)~~ The United States government may use its own forms to make the purchasing agent appointment. If the United States government chooses not to issue a purchasing agent appointment, the building materials will be taxable.

~~017.08–C(5)–A(3)(e)~~ The applicable Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or exempt sale certificate will be kept by the contractor or subcontractor who has been appointed or delegated as purchasing agent.

~~017.08D~~ A(4) When a contractor is operating ~~as a retailer~~ under Option 1, and is the only contractor involved in the project, that contractor may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, from the exempt organization or exempt governmental unit. The Option 1 contractor will not charge sales tax to the exempt organization or exempt governmental unit ~~tax~~.

~~017.08E~~ A(5) When the contractor is operating under either Option 2 or Option 3, the contractor cannot accept an exempt sale certificate from the exempt organization or exempt governmental unit. The exempt organization or exempt governmental unit must appoint the Option 2 or Option 3 contractor as its purchasing agent, buy the materials, or apply for a refund of sales tax that is paid.

~~017.098B~~ When an organization is required to be licensed, certified, approved, or accredited in order to be an exempt organization, but the organization was not licensed, certified, approved, or accredited at the time of the construction, the organization cannot issue either a purchasing agent appointment or an exemption certificate. When the organization becomes licensed, certified, approved, or accredited upon completion of the project, ~~it~~ the exempt organization may apply for a refund of the tax ~~paid~~ remitted or collected by the contractors.

~~017.40~~ 17.08C Generally, a contractor cannot obtain a refund of any tax ~~paid~~ remitted or collected on a project for an exempt organization or exempt governmental unit. The refund will normally be paid to the exempt organization or exempt governmental unit. A contractor may only obtain a refund or credit of tax paid on building materials when the contractor was appointed as a purchasing agent before the materials were annexed and the contractor paid tax on the building materials.

### 017.09 FIXED PRICE CONTRACTS

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~~017.11~~ 017.09A A contractor using fixed-price contracts may owe the state additional tax or may receive a refund of tax on building materials used in fixed-price contracts when there is a tax rate change.

~~017.11A~~ 09A(1) If the tax rate is decreased during the term of the fixed-price contract, the contractor ~~shall pay~~ must remit to the Department of ~~Revenue~~ the difference between the tax actually paid on building materials and the tax that would have been paid at the tax rate in effect prior to the decrease, provided the amount of such payment exceeds ten dollars (~~\$10.00~~).

~~017.11B~~ 09A(2) If the tax rate is increased during the term of a fixed-price contract, the contractor ~~shall~~ must pay to the Department of ~~Revenue~~ the sales or use tax at the increased rate on all materials purchased. The contractor may receive a refund of the amount of the additional sales or use tax paid because of the rate increase, provided the amount of the additional sales or use tax exceeds ten dollars (~~\$10.00~~).

~~017.11B(1)~~ 09A(2)(a) The contractor must submit a copy of the contract and any other appropriate evidence to document the amount of additional sales or use tax paid on the building materials in the project.

~~017.11C~~ 09A(3) A change in the ~~items~~ property taxed or exempted from tax is not a tax rate change for the purposes of this subsection.

~~017.11D~~ 09A(4) An adoption, repeal, or change in the rate of a local option tax is a tax rate change for purposes of this subsection and may result in a refund, or require the payment of additional tax.

~~017.12~~ 017.09B An owner of a construction project completed using a fixed-price contract may owe the state additional sales or use tax on contractor labor in fixed-price contracts when the taxability of contractor labor changes.

~~017.12A~~ 017.09B(1) If the sales or use tax on contractor labor no longer applies to a construction project during the term of the fixed-price contract, the owner of the construction project ~~shall~~ must pay to the contractor or the Department of ~~Revenue~~, the difference between the sales or use tax actually paid on contractor labor and the sales or use tax that would have been paid prior to the change, provided the amount of such payment exceeds ten dollars (~~\$10.00~~).

(Section 48-2117, R.S. Supp. 2009 and sections 77-2701.10, 77-2701.16, 77-2701.34, 77-2701.42, 77-2701.44, ~~77-2701.45~~, 77-2704.12, 77-2704.15, ~~77-2704.32~~, 77-2704.33, ~~77-2704.44~~, and 77-2704.55, R.R.S., 2009. ~~July 16, 2005~~ \_\_\_\_\_.)

# PROPOSED SALES TAX REGULATIONS

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## REG-1-045 MOTION PICTURE FILM, VIDEOTAPE, AND PROGRAMMING

045.01 Except as provided in ~~paragraph~~ sections 045.02 and 045.03, ~~the~~ sales and use tax applies to the gross receipts from the sale or lease of entertainment properties, including videotape, digital goods, motion picture film, satellite programming, and satellite signal descrambling or decoding devices. Gross receipts includes the total amount charged for entertainment property including but not limited to any license, royalty, franchise, broadcast fee, or other method establishing the charge.

045.02 ~~The sales or~~ Sales and use tax is not applicable to ~~rentals or leases or rentals~~ of entertainment properties to theaters, or other exhibiting enterprises, where the ~~admissions~~ admission to the showing or the charge to view is taxable.

045.03 ~~The sales~~ Sales and use tax does not apply to the sale, lease, license, rental, or use of ~~personal~~ property or digital goods containing copyrighted material for rebroadcast by a radio or television station to the general public if the purchaser is operating under a certificate from the Federal Communications Commission.

(Sections ~~77-2701.16(9), 77-2702.07, 77-2702.14, 77-2702.16, 77-2702.17, and 77-2704.39, 77-2701.16, 77-2701.34, 77-2701.50, 77-2701.51, 77-2701.52, and 77-2701.53, R.R.S., 2009. November 11, 1998~~ \_\_\_\_\_.)

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## REG-1-062 ANIMAL LIFE

062.01 Sales of any form of animal life, the products of which ordinarily constitute food for human consumption, are exempt from the sales tax. Cattle, sheep, swine, baby chicks, turkey poults, poultry, and bees are examples of exempt forms of animal life. Sales of game birds subject to permit and regulation by the Game and Parks Commission are also exempt from the sales tax.

062.01A Game birds means coots, cranes, curlew, doves, grouse, partridges, pheasants, plovers, prairie chickens, quail, rails, snipes, swans, woodcocks, wild turkeys, and all migratory waterfowl.

062.01B Migratory waterfowl means ducks, geese, brant, or other migratory waterfowl subject to regulation by the Game and Parks Commission.

062.02 Purchases of animal life, the products of which do not ordinarily constitute food for human consumption, such as cats, dogs, zebras, mink, parakeets, penguins, canaries, chinchillas, horses, donkeys, mules, domesticated elk and deer, ostriches, and emus, are examples of taxable forms of animal life. Purchases of ~~taxable~~ these forms of animal life are taxable to the purchaser even when ~~such animal life is~~ purchased for breeding purposes.

062.03 Certain animal specialty services provided to animal life may be taxable. See Reg-1-102, Animal Specialty Services, regarding the taxation of animal specialty services.

(Section ~~77-2702.13, 77-2704.46~~, R.R.S. 2009. ~~October 1, 2003~~ \_\_\_\_\_.)

# PROPOSED SALES TAX REGULATIONS

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## **REG-1-080 SALES OF LEGAL, MEDICAL, AND COMMERCIAL DOCUMENTS AND RECORDS**

080.01 Charges for providing documents are exempt as a governmental service ~~If if the law or ordinance requires the furnishing of documents or copies of documents, such as permits or licenses, by a governmental agency, or if the documents are the transaction is nontaxable as a governmental service. If furnishing of copies is merely permissive, such as copies of public records that are required to be available for public inspection, it is not taxable.~~

080.01A Public records mean public records as defined in section 84-712.01.

080.01B Documents which are developed, produced, or acquired and made available for commercial sale to the general public are taxable, unless the price for the document is fixed by state law, rule, or regulation.

080.02 Charges for originals or copies of depositions, bills of exceptions, and transcripts prepared and sold by a court reporter are not taxable. Depositions, bills of exceptions, and transcripts or copies of depositions, bills of exceptions, and transcripts prepared and sold by anyone other than a court reporter are taxable.

080.02A Bill of exceptions means a verbatim record of anything and everything said or done by anyone in the course of trial or any other proceeding; any motion, comment, or statement made by the court in the presence and hearing of a panel of potential jurors or the trial jury; any objection to the court's proposed instructions or to instructions tendered by any party, together with the court's rulings, and in post trial proceeding; amendments to the bill of exceptions, together with the court's rulings; and the index of the bill of exceptions.

080.02B Court reporter means a person who possess the knowledge, skill, and ability to produce a verbatim record of court and other legal proceedings.

080.02C Deposition means a written declaration under oath in accordance with procedures provided by law, made upon notice to the adverse party for the purpose of enabling him or her to attend and cross-examine, or made upon written interrogatories pursuant to section 25-1242 of the Nebraska Revised Statutes.

080.02D Transcript means a writing or record (original or copy) of judicial, legislative, administrative, or other legal proceedings, including, but not limited to: pleadings upon which the case was tried; the judgment, decree, or final order sought to be reversed, vacated, or modified; the lower court's memorandum opinion, if any; and other parts of the record as are necessary and material to the assignments of error.

080.02E Verbatim record means one which accurately reflects the spoken word and nonverbal communication and action.

~~080.02~~ 080.03 Blueprints, abstracts, law briefs, and other similar documents furnished in connection with personal services in a professional capacity are not taxable when furnished as a part of the rendition of providing personal services.

## PROPOSED SALES TAX REGULATIONS

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~~080.03 Persons performing such professional services are consumers of all materials and supplies used in connection therewith and must pay the sales tax when purchasing such materials and supplies.~~

080.04 If blueprints, abstracts, law briefs, or other similar documents or the information on such documents are sold by a person without ~~the rendition of providing~~ providing personal services in a professional capacity, the sales tax must be collected ~~upon~~ on the sale of ~~such~~ the documents.

080.05 Mailing lists and prospect lists provided in the form of labels, magnetic media, or diskette, whether in an electronic or any other format, are taxable.

080.06 Sales of Nebraska Statutes, reports of court cases, advance sheets, brand books, departmental manuals, and other similar publications are taxable.

080.07 Sales of copies of medical records provided to the patient or a person named as the patient's power of attorney for health care are not taxable. A power of attorney for health care, under Neb. Rev. Stat. §§ 30-3401 through 30-3432, authorizes a designated attorney-in-fact to make health care decisions for the principal when the principal is incapable.

080.08 Persons performing professional services are consumers of all materials and supplies used in rendering their professional services and must pay the sales or use tax when purchasing materials and supplies.

(Section 25-1280, R.R.S., 2004, sections 77-2701.33, 77-2704.58, 77-2704.59, R.R.S. 2009, and ABI v Egr, 264 Neb. 574 (2002). ~~March 7, 2006~~\_\_\_\_\_.)



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## REG-1-102 ANIMAL SPECIALTY SERVICES

102.01 Gross receipts from animal specialty services are subject to tax, except for animal specialty services provided to livestock. Animal specialty services provided to 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, are taxable unless these animals are also livestock as defined in this regulation.

102.01A Livestock means domesticated cattle, horses, mules, donkeys, sheep, and swine. All other animals are not considered livestock for the purposes of this regulation.

102.02 Animal specialty services include, but are not limited to:

102.02A Boarding or caring for an animal;

102.02B Grooming;

102.02C Training, exercising, or handling;

102.02D Animal waste removal;

102.02E Breeding or insemination services;

102.02F Identification implants; or

102.02G Cremation, burial, or disposal services.

102.03 Animal specialty services do not include:

102.03A Professional services, including hospitalization, by a veterinarian as defined in Reg-1-078, Veterinarians;

102.03B Animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment;

102.03C Breeding or insemination services for use in ranching, farming, commercial, or industrial uses;

~~102.03C~~ 102.03D Impound fees set by local ordinance or amounts collected by animal control agencies for violations of local ordinances.

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102.04 An animal specialty provider must pay sales or use tax on all purchases of materials, equipment, and supplies, including shampoos, flea and tick treatments, and food, used to provide his or her services.

(Section ~~77-2702.07~~ 77-2701.16, R.R.S. 2009. ~~October 1, 2003~~ \_\_\_\_.)

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## REG-1-107 MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

107.01 The sale, lease, or rental of manufacturing machinery and equipment to a manufacturer for use in manufacturing is exempt from tax.

107.02 Manufacturer means a person who is primarily engaged in the business of manufacturing. Persons are primarily engaged in the business of manufacturing if more of their total annual revenues are derived from the sales of products they manufacture and sell as tangible personal property, or from production labor as defined in Reg-1-082.02A performed on products sold as tangible personal property by other manufacturers than from any other commercial activity.

107.02A A manufacturer does not include any person who derives more of its total annual revenues from selling annexed property, selling services, selling intangible property, making retail sales, generating electricity, producing or transmitting information, programming, or data, providing food or drink service, purifying or transporting water, mining or quarrying, or engaging in any other business than from the business of manufacturing.

107.02B Sales of products or materials that are annexed to real estate, either by the seller or a subcontractor of the seller, are not sales of tangible personal property.

107.02C Total annual revenues means revenues from all of the activities, locations, divisions, departments, or operations of the person, both within and outside this state, and includes sales of annexed property, tangible personal property, services, or intangibles. Total annual revenues are measured over a period of 12 consecutive months, including the month in which the manufacturing machinery and equipment is placed in service.

107.03 Manufacturing means an action, or series of actions, performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing requires a physical change to the tangible personal property and does not include an increase in the value of a product without a physical change. Manufacturing does not include:

107.03A Generation or transmission of electricity;

107.03B Growing or caring for crops or animal life;

107.03C Mining, quarrying, and any other activity performed in severing raw materials or other property from the ground;

107.03D Preparation of food for immediate consumption;

107.03E Production or transmission of data;

107.03F Production or transmission of information;

107.03G Production or transmission of programming, including computer software;

107.03H Purification or transportation of water;

107.03I Retail operations; or

107.03J Sorting, cleaning, or repackaging of property, or breaking bulk quantities of property into smaller units or packages.

## PROPOSED SALES TAX REGULATIONS

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### 107.04 Manufacturing machinery and equipment used in manufacturing includes:

107.04A Chemicals, solutions, or catalysts when utilized in a mold or die process;

107.04B Computers, software, and related peripheral equipment used to guide, control, operate, or measure the manufacturing process;

107.04C Machinery and equipment used by a manufacturer to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if the produced items are consumed during the manufacturing process, but does not include the chemical catalysts and solutions themselves (See subsection 1-107.05B);

107.04D Machinery and equipment used to maintain the integrity of the product or to maintain the unique environmental conditions necessary for either the product or the manufacturing machinery and equipment. Heating, ventilating, and cooling the workplace to make conditions suitable for employees is not maintaining unique environmental conditions;

107.04E Machinery and equipment used to produce, fabricate, assemble, process, finish, refine, or package tangible personal property for sale;

107.04E(1) Machinery and equipment includes items attached to manufacturing machinery and equipment, which facilitate its operations or functions, such as drill bits or sanding belts.

107.04F Machinery and equipment used to transport, convey, handle, or store the raw materials or components used in manufacturing, or the products produced by the manufacturer for sale. This includes forklifts and other motorized vehicles used within the manufacturing facility, but does not include any containers used to transport the manufactured products to customers. (See Reg-1-107.05D);

107.04G Materials and parts purchased by a manufacturer to construct its own machinery and equipment, or its own molds and dies used in its manufacturing process;

107.04H Molds and dies used to determine the physical characteristics of the finished product or its packaging material;

107.04I Testing equipment used to measure the quality of the finished product. This includes machinery and equipment used during the manufacturing process to measure the quality of the item being manufactured, but does not include any equipment used in research and development to improve existing products or develop new products; and

107.04J Tools powered by sources other than human effort, such as electricity, battery, or compressed air.

### 107.05 Manufacturing machinery and equipment does NOT include:

107.05A Building materials purchased by a manufacturer to attach, anchor, house, enclose, or supply external power to machinery and equipment used in its manufacturing process;

107.05B Chemicals, solutions, and catalysts, except those utilized in a mold or die process, whether or not such items are essential to the manufacturing process;

## PROPOSED SALES TAX REGULATIONS

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107.05C Computers, software, and related peripheral equipment which are not used in guiding, controlling, operating, or measuring the manufacturing process;

107.05D Containers used to transport the manufactured product to customers including, but not limited to, pallets, tanks for welding gases, and bottles. Containers will be taxed or exempted pursuant to the provisions of Reg-1-043, Containers;

107.05E Hand tools. Hand tools means only those tools that are held in the hand and are powered solely by human effort;

107.05F Machinery and equipment used in research and development;

107.05G Office equipment;

107.05H Supplies and other items consumed by a manufacturer whether or not such items are essential to the manufacturing process, such as solvents or cutting oils; and

107.05I Vehicles required to be registered for operation on the roads and highways of this state and items attached to the vehicles.

107.06 Person means any individual, firm, partnership, limited liability company, joint venture, association, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or other group or combination acting as a unit.

107.07 When machinery and equipment is used for both manufacturing and for other purposes, the manufacturing use must be more than 50 percent of the total use to qualify for the exemption specified in this regulation. When a manufacturer claims an exemption for manufacturing machinery and equipment, it must maintain records clearly showing that it used the machinery and equipment more than 50 percent of the time in its manufacturing process.

107.08 Option 2 or Option 3 contractors who purchase and annex manufacturing machinery and equipment for a manufacturer must pay sales or use tax on their cost of the manufacturing machinery and equipment or the parts and components of the manufacturing machinery and equipment. Option 2 and Option 3 contractors may not accept an exemption certificate from a manufacturer for annexed manufacturing machinery and equipment.

107.09 Repair or replacement parts or accessories purchased by a manufacturer and used in maintaining, repairing, or refurbishing manufacturing machinery and equipment are exempt from tax.

107.09A Persons who do not qualify as a manufacturer in any year must pay tax on all purchases of repair parts and repair labor for the manufacturing machinery and equipment made during that year, even if the manufacturing machinery and equipment was exempt when it was purchased.

107.09B Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to repair annexed manufacturing machinery and equipment.

107.10 Purchases by a manufacturer of installation, repair, or maintenance services performed on exempt manufacturing machinery and equipment are exempt from tax.

107.11 Purchases by a manufacturer of warranties, guarantees, or maintenance agreements covering exempt manufacturing machinery and equipment are exempt from tax.

## PROPOSED SALES TAX REGULATIONS

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107.11A Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to fulfill their obligations under these agreements.

107.12 A retailer may make a tax-free sale of manufacturing machinery and equipment and any property or service identified in Reg-1-107.04 when the manufacturer issues the retailer either a properly completed Nebraska exemption certificate or another exemption form approved by the Department of Revenue under Reg-1-014, Exempt Sale Certificate.

107.12A An Option 1 contractor may accept an exemption certificate from a manufacturer and not collect tax on annexed manufacturing machinery and equipment.

(Sections 77-2701.46, 77-2701.47, and 77-2704.22 R.R.S. 2009.\_\_\_\_\_)

# PROPOSED SALES TAX REGULATIONS

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## **REG-1-109 COMMUNITY-BASED ENERGY DEVELOPMENT (C-BED) PROJECTS**

109.01 Sales of qualified materials for use in the manufacture, installation, construction, repair, or replacement of qualified community-based energy development (C-BED) projects are exempt from sales and use tax provided the purchaser files the appropriate documentation as required under this regulation.

109.02 The following definitions will be used for this regulation.

109.02A C-BED project means a new wind energy project:

109.02A(1) That meets the eligible ownership structure and other requirements as set forth in Neb. Rev. Stat. § 77-2704.57 and §§ 70-1901 to 70-1909, and in this regulation;

109.02A(2) Which is supported by a resolution adopted by the county or counties in which the C-BED project is to be located or by the tribal council for a C-BED project located within the boundaries of an Indian Reservation located in Nebraska; and

109.02A(3) Where at least 33% of the gross power purchase agreement payments over the life of the power purchase agreement must flow to the qualified owners or local community. Equity partners, if any, may receive the remaining payments.

109.02B C-BED project developer means both the person arranging and organizing the C-BED project, and any person who is operationally responsible for the C-BED project.

109.02C Debt financing payments mean principal, interest, and other typical financing costs paid by the C-BED project developer to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments do not include the repayment of principal at the time of a refinancing.

109.02D Electric supplier means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail.

109.02E Electric utility means an electric supplier that:

109.02E(1) Owns more than 100 miles of 115 kilovolt or larger transmission lines in Nebraska;

109.02E(2) Owns more than 200 megawatts of electric generating facilities; and

109.02E(3) Has the obligation to directly serve more than 200 megawatts of wholesale or retail electric load in Nebraska.

109.02F Eligible ownership structure means:

109.02F(1) For a C-BED project that consists of more than two wind turbines:

109.02F(1)(a) The C-BED project must be developed by one or more qualified owners and may also include equity partners;

## PROPOSED SALES TAX REGULATIONS

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109.02F(1)(b) No single individual qualified owner may own, directly or indirectly, more than 15% of the C-BED project; and

109.02F(1)(c) No single electric supplier may own, directly or indirectly, more than 15% of the C-BED project, and the combined ownership of all electric suppliers cannot exceed 25% of the C-BED project.

109.02F(2) For a C-BED project that consists of one or two wind turbines:

109.02F(2)(a) The C-BED project must be developed by one or more qualified owners and may also include equity partners; and

109.02F(2)(b) No single electric supplier may own, directly or indirectly, more than 15% of the C-BED project, and the combined ownership of all electric suppliers cannot exceed 25% of the C-BED project.

109.02G Equity partner means a person who is not a qualified owner and who has received an ownership interest in exchange for an investment in the C-BED project.

109.02H Gross power purchase agreement payments mean the total amount of payments received from the purchaser of the power during the life of the agreement. For power purchase agreements entered into after August 29, 2009 and on or before December 31, 2011, if the qualified owners have a combined total of at least 33% of the equity ownership in the C-BED project, gross power purchase agreement payments will be reduced by the debt financing payments. For the purposes of determining eligibility of the project, an estimate of the payments and their recipients will be used.

109.02I New wind energy project means the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, that is used to convert wind energy to electrical energy, or for the transmission of this electricity to the purchaser.

109.02J Payments to the local community mean payments that are made to local residents, property owners, or governments.

109.02J(1) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a wind turbine is located, wind energy easement payments, real and personal property tax receipts from the C-BED project, and loan payments received or processed by a local financial institution that is actually financing construction of the project.

109.02J(2) Payments to the local community do not include construction costs, purchases of qualified or nonqualified property prior to the initial delivery of power payments or deposits received or processed by local financial institutions, and loan payments received or processed by a local financial institution on behalf of a non-local financial institution that is actually financing construction of the project.

109.02K Qualified property means any property used to manufacture, install, construct, repair, or replace a device used in a C-BED project such as a wind charger, windmill, or wind turbine including the substation, power lines connecting these devices together and power lines connecting the project to the electrical grid system, and property used to



## PROPOSED SALES TAX REGULATIONS

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construct the pads that support the wind chargers, windmills, wind turbines, windmill towers, and substations.

109.02K(1) Nonqualified property means all property other than qualified property.

109.02K(2) Nonqualified property includes, but is not limited to: motor vehicles; maintenance equipment and tools; communication systems (i.e., meteorological towers and data recorders-computer systems that are not an integral part of the wind turbine); information centers and related security systems (i.e., cameras and recorders); erosion control systems (i.e., landscaping, grass seed, sod, and irrigation systems); office and maintenance buildings; computer equipment that is not an integral part of the wind turbine; office equipment; signage of any kind; furnishings; roads; bridges; gates; fencing; site lighting; and any materials for the electrical grid system. The purchase and use of property that is not qualified property is taxable.

109.02L Qualified owner means a person or organization with an equity ownership stake in the project who is:

109.02L(1) A Nebraska resident;

109.02L(2) A limited liability company that is organized under the Limited Liability Company Act and which has only Nebraska residents as members.

109.02L(3) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

109.02L(4) An electric supplier; or

109.02L(5) A tribal council of a federally recognized American Indian Tribe with a reservation located in Nebraska.

109.03 To receive the sales and use tax exemption, the C-BED project developer must submit a Community-Based Energy Development Project Application and the following supporting documentation to the Nebraska Department of Revenue (Department):

109.03A The organization of the C-BED project;

109.03B The proposed distribution structure of the payments made under the power purchase agreement;

109.03C A copy of the power purchase agreement;

109.03D The C-BED project financial pro forma; articles of incorporation; operating agreements;

109.03E A copy of the resolution in support adopted by the county board or tribal council where the project is located; and

109.03F Written documentation demonstrating that a written offer to become a qualified owner has been made to each owner on whose property a turbine will be located to the extent feasible.

## PROPOSED SALES TAX REGULATIONS

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109.04 If the Department approves the C-BED Project Application, the Department will subsequently issue a Certificate of Exemption that may be used by the project developer and contractors to purchase qualified property tax-free.

109.04A To purchase qualified property tax-free, the C-BED project developer and any contractors must complete and issue to each vendor a Nebraska Resale or Exempt Sale Certificate, Form 13, and attach a copy of the Certificate of Exemption. The basis for the exemption must be entered on the Form 13.

109.04B A C-BED project developer or contractor may claim and receive a refund of any sales or use tax paid for purchases of qualified property made after the Department has received the application for the Certificate of Exemption, and before the Department has issued the Certificate of Exemption if the project met all the requirements of a C-BED project at the time of the purchase.

109.05 The Department may examine the actual payments to qualified owners and the local community and the distribution of the power purchase agreement payments to determine if the projected distributions were met. If the power purchase agreement payments to qualified owners and the local community do not meet the requirements of this regulation or Neb. Rev. Stat. § 77-2704.57, the Department may recover the amount of the sales or use tax that should have been paid on property used at the project from the C-BED project developer, at any time up to and including three years after the end of the power purchase agreement.

109.05A The amount due under this section includes the sales and use taxes that would have been paid if no Certificate of Exemption had been granted, and interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the date the tax was due until the date the sales and use tax is paid.

109.05B At any time prior to the end of the power purchase agreement, the C-BED project developer may voluntarily surrender the Certificate of Exemption granted by the Tax Commissioner and pay the Department the amount of sales and use tax that should have been paid, plus interest.

109.06 To meet the requirements of the exemption, at least 33% of the gross power purchase agreement payments must be distributed to the qualified owners or the local community. Only payments made after the receipt of the first power purchase agreement payments will be considered when determining the percentage received by the qualified owners or the local community. Distribution of a tax attribute, a noncash benefit, loan proceeds, or some other payment that does not come out of the power purchase agreement payments will not be considered.

109.06A Payments to the local community are those payments that are defined above as payments to the local community in section 109.02J of this regulation.

109.06B For power purchase agreements entered into after August 29, 2009 and on or before December 31, 2011, if the qualified owners have a combined total of at least 33% of the equity ownership in the C-BED project, the gross power purchase agreement payments will be reduced by the debt financing payments.

109.06C To prevent the same payment from being counted both as a distribution to the owner and as a local payment or debt financing payment, the distributions to the qualified

## PROPOSED SALES TAX REGULATIONS

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owners for any purpose will be considered prior to all expenses other than expenses that are considered to be local payments, or any debt financing that reduces the gross power purchase agreement payments. Any expenses that are allocated to the owners must be allocated in the same proportion as the distributions of the power purchase agreement payments for the same year.

109.06D In determining if debt financing may be excluded under section 1-109.06B, the percentage of ownership that is considered is the percentage of ownership for the same year that the debt financing payment is to be excluded.

109.07 Changes in Ownership Structure. If there is any change in the ownership structure after the application is submitted or approved, including a change of an equity partner, a new application must be submitted to the Department. If the new ownership structure does not meet the statutory requirements and the new application is not approved by the Department, all purchases of qualifying property after the effective date of the change in ownership structure are taxable.

109.07A A C-BED project developer must notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in the ownership structure which makes the project no longer eligible as a C-BED project.

109.07B The Tax Commissioner must notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in the ownership structure which makes the project no longer eligible as a C-BED project.

109.07C Acquisition of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the sales and use tax exemption for all purchases of qualifying property made after the date of the acquisition by the electric utility, and may require payment of any sales and use taxes not previously paid if the payments to the qualified owners and the local community no longer meet the required criteria for the period the agreement was in effect.

109.08 Changes in the Power Purchase Agreement. The C-BED project developer must notify the Tax Commissioner of any changes in the power purchase agreement or of the termination of the agreement. If the power purchase agreement is amended, a new application must be submitted. If the distribution of the gross power purchase agreement payments no longer meets the statutory requirements and the new application is not approved by the Department, the Department may recover the amount of the sales or use tax that should have been paid on materials used at the project from the C-BED project developer, at any time up to and including three years after the end of the power purchase agreement, and interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the date the tax was due until the date the sales or use tax is paid.

109.09 Changes in Documents Supporting the Application. The C-BED project developer must notify the Tax Commissioner of any changes in any of the other documents supporting the application during the life of the power purchase agreement. The Tax Commissioner will determine if a new application must be submitted based on the changes made.

(Sections 70-1001.01, 70-1901 to 70-1909 and 77-2704.57, R.R.S. 2009. \_\_\_\_.)

# PROPOSED SALES TAX REGULATIONS

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## NONRESIDENT CONTRACTOR REGULATIONS

**REG – 8-001 through REG-8-006 are repealed.**