

Sales and Use Tax Regulations

NEBRASKA DEPARTMENT OF REVENUE

Title 316, Chapter 1 – SALES AND USE TAX REGULATIONS

REG-1-002 CONSUMER'S USE TAX

002.01 Use Tax in General. Use tax is not a duplication of the sales tax. The sales tax and the use tax complement each other and together provide a uniform tax upon either the sale, lease, rental, use, storage, use, distribution, or other consumption of all tangible personal property and ~~on any intangible property or certain specified labor and services.~~ ~~the gross receipts of~~ The tangible personal property, labor, and services which are included in the measure of the sales and use tax under section 77-2703(1) base are described in Reg-1-001.01, Nature of the Sales Tax. Use tax is not a duplication of the sales tax. ~~The storage, use, distribution, or other consumption of any item is taxable if the purchase of the item would be taxable if the transaction was completed in this state.~~

002.02 Use Tax Imposed. The consumer's use tax is imposed upon the storage, use, distribution, or other consumption of any tangible personal property and ~~on any intangible property or certain specified labor and services~~ ~~the gross receipts of which are included in the measure of the sales tax under section 77-2703(1)~~ when the purchase of the tangible personal property, labor, or services would be subject to sales tax under Reg-1-001.01, Nature of the Sales Tax. ~~The consumer's use~~ Use tax applies ~~when~~ whenever the sales tax has not been paid. ~~It is presumed that any~~

002.02A Any property, as defined in Reg-1-001 ~~or services~~ sold, leased, or rented by any person for delivery in ~~this state~~ Nebraska is presumed to be sold, leased, or rented for storage, use, distribution, or other consumption in ~~this state~~ Nebraska, until the contrary is ~~established~~ proven. The burden of proving that any property ~~or services~~ delivered in ~~this state~~ Nebraska is delivered for a purpose other than storage, use, distribution, or other consumption in ~~this state~~ Nebraska is on the person who purchases, leases, or rents the property ~~or services~~.

002.02B If sales tax has been properly paid on the sale, purchase, use, or other consumption of property or services in another state at a rate equal to or greater than the

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rate in Nebraska, or if sales tax has been properly paid in Nebraska, no use tax is due. (Reg-1-071, Credit for Tax Paid to Another State)

002.03 **Remittances.** ~~Consumer's use~~ Use tax is paid directly to the Nebraska Department of Revenue (Department) by the purchaser. A permit is not ~~necessary or~~ required.

002.04 **Exemptions.** ~~Consumer's use~~ Use tax does not apply to the following transactions:

002.04A ~~Transactions upon which~~ where the proper amount of Nebraska and local sales tax has taxes have been paid, including sales tax remitted directly to the Department by a purchaser who holds a direct pay permit (Reg-1-097, Direct Pay Permit) or certificate of exemption for direct mail (Reg-1-105, Direct Mail);

~~002.04A(1) See requirements for remitting sales tax by holders of direct payment permits in Reg-1-097 or certificates of exemption for direct mail, Reg-1-105.~~

002.04B ~~Storage, use~~ Purchasing, leasing, renting, storing, using, distributing, or other consumption of consuming property or services where the transaction is exempt from sales tax;

002.04C ~~Transactions where the tax has been properly paid on the sale, purchase, use, or other consumption of property or services in another state at a rate equal to or greater than the rate in Nebraska. (Reg-1-071, Credit for Tax Paid to Another State);~~

~~002.04D~~ Transactions where the ~~item~~ purchased property has been used for its intended purpose in another state before it was brought into Nebraska. This exemption subsection does not apply to motor vehicles, motorboats, or airplanes (Reg-1-020, Motor Vehicles, and Reg-1-067, Aircraft and Related Services); and

~~002.04E~~ 002.04D Transactions where the ~~item~~ property: was purchased ~~in another state from a seller not engaged in business in Nebraska, nor licensed to collect Nebraska sales tax;~~ is only stored temporarily in Nebraska; and is subsequently taken to ~~and another state or processed, fabricated, or manufactured to be used for its intended purpose in another state without any use other than storage in this state;~~

002.04E Removing building materials from inventory for a construction project in another state, when the building materials were purchased from a seller not doing

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business in Nebraska, nor licensed to collect Nebraska sales taxes (Reg-1-017, Contractors); and

002.04F Purchases made from commissaries, base exchanges, ships' stores, or voluntary, unincorporated organizations of personnel of any branch of the Armed Forces of the U. S. by any person authorized to make these purchases.

002.05 ~~Consumer's use~~ Use tax will apply to ~~is due on~~ the following transactions:

002.05A Purchases for delivery in Nebraska from out-of-state retailers when the applicable state and local sales and use tax has taxes have not been paid;

002.05B Retail purchases made in this state when the applicable state and local sales tax has taxes have not been paid;

002.05C Purchases at retail from federal government agencies and instrumentalities not required to ~~act as collectors of~~ collect Nebraska sales ~~or use tax~~ taxes, except as provided in Reg-1-002.04F;

002.05D Purchases where an exempt sale certificate was originally given, but the property ~~or service~~ is subsequently put to a taxable use;

002.05E Use of property ~~or services~~ which was originally purchased ~~tax-exempt free for resale purposes~~ using a resale certificate, but which is later consumed ~~used~~ for personal or business purposes needs or consumed by or within the business;

002.05F Purchases from out-of-state retailers of ~~items~~ property exempt in the other state that are is delivered or used in this state Nebraska and would be taxable if purchased in ~~this state~~ Nebraska, even if the purchase of the property is exempt in the other state; or and

002.05G Purchases of property in Nebraska that ~~are is~~ manufactured, processed, or fabricated in another state and that ~~are is~~ not used for ~~their~~ its intended purposes in the other state after its manufacture, processing, or fabrication.

002.06 **Use of Property Purchased Using a Resale Certificate.** If a purchaser who gives a ~~Resale Certificate~~ resale certificate makes any use of the property other than retention,

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demonstration, or display while holding ~~such property~~ it for sale, lease, or rental in the regular course of business, the use ~~shall be~~ is taxable to that purchaser as of the time when the property is first ~~so~~ used in Nebraska. Except for a ~~purchaser~~ of aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of that property ~~to him or her shall be deemed~~ is the measure of the use tax, ~~and the~~ The tax rate ~~to be applied will be~~ is the rate in effect at the time of first use. (Reg-1-035, Consumption of Untaxed Property.)

002.07 **Calculating Use Tax.** The amount of ~~consumer's~~ use tax is computed by multiplying the ~~purchase sales~~ price of the property ~~or service~~ by the applicable tax rate in effect at the time of first use. The rate applicable for ~~consumer's~~ use tax is the same as the rate for state and local sales tax taxes. Purchase Sales price means the total amount of consideration for the property ~~or services~~ received and includes cash, credit, property, and services rendered without any deduction for the cost or other expenses of the seller, charges for delivery, installation, or any other amounts charged by the seller to complete the sale.

002.08 ~~Those persons~~ Persons holding a sales tax permit ~~shall~~ may report and pay all use tax due on the ~~return required thereby, report and pay all consumer's use tax for which they are liable~~ Nebraska and Local Sales and Use Tax Return, Form 10, or a Nebraska and Local Business Use Tax Return, Form 2.

002.09 Persons who are not required to hold a sales tax permit, but who are liable for ~~consumer's~~ use tax, ~~shall obtain a consumer's use tax return and report and~~ must pay the tax directly to the Nebraska Department of Revenue using a Nebraska and Local Business Use Tax Return, Form 2, or a Nebraska and Local Individual Use Tax Return, Form 3. Unless otherwise required by the Nebraska Department of Revenue, these persons must ~~such consumers shall~~ file returns annually if the expected annual amount of tax will not exceed ~~nine hundred dollars (\$900.00)~~. If the expected annual amount of tax is ~~expected to be~~ between ~~nine hundred dollars (\$900.00)~~ and ~~three thousand dollars (\$3,000.00)~~, the returns ~~shall~~ must be filed quarterly. ~~All others shall~~ Those with expected annual amounts of tax greater than \$3,000 must file monthly.

002.09A Persons who are ~~Model 1, 2, or 3 sellers~~ registered under the Streamlined Sales and Use Tax Agreement (SSUTA) may follow the filing frequency guidelines outlined in the ~~Streamlined Sales Tax Agreement~~ SSUTA.

002.09B ~~Persons who are registered under the Streamlined Sales Tax Agreement, do not have a legal requirement to register in the state, and are not Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Agreement.~~

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002.09B Persons who are not required to hold a sales tax permit may also pay use tax on a Nebraska Individual Income Tax Return, Form 1040N.

002.10 Returns, that are not filed electronically must be properly signed, and accompanied by remittance will be considered The return and the remittance are timely filed if mailed, postage prepaid, on or before the ~~twenty-fifth~~ 20th day of the month following the close of the reporting period.

002.10AWhen the ~~twenty-fifth~~ 20th day falls on a Saturday, Sunday, or an approved holiday, ~~the a return or remittance will be considered~~ is timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A ~~United States~~ U.S. Postal Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return or remittance.

002.10B A private postage meter date or a date stamped by a private delivery service will be considered the date of filing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

002.10A 002.10C The Tax Commissioner Department will comply with the format for accept filing methods and payment methods pursuant to the Streamlined Sales Tax Agreement SSUTA for Model 1, 2, or 3 sellers.

002.11 Unless there are amounts, words, statements, numbers, zeros, or figures shown on the use tax lines of a Nebraska and Local Sales and Use Tax Return, Form 10, submitting the form to the Department does not constitute the filing of a use tax return.

002.11A If the person files a return, the statute of limitations for issuing a deficiency determination is three years after the last day of the month following the reporting period, or three years after the return was filed, whichever is later. If the person fails to file a return, the statute of limitations for issuing a deficiency determination is six years after the last day of the month following the reporting period.

002.11B If the person does not enter amounts, words, statements, numbers, zeros, or figures on the appropriate line of a Nebraska and Local Sales and Use Tax Return, Form 10, the statute of limitations for issuing a deficiency determination for that reporting

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period is extended to six years after the last day of the month following the reporting period.

002.11C Statements by the person that no use tax is due, or entries made by the Department that did not come from a filed return, do not constitute the filing of a return and do not limit the statute of limitations to three years.

~~002.11 Remittance~~ 002.12 Remittances must accompany the return and be made to the Department in the form of an electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax Commissioner. Checks, drafts, or money orders should be made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps must not cannot be sent as payment. Cash may be used only when payment is made in person at an office of the Department of Revenue.

002.13 Any person who fails to file the return or remit the tax due by the due date will be subject to a penalty equal to 10% of the unpaid tax, or \$25, whichever is greater. If the failure to file a return or remit the use tax is a result of fraud, or an intent to evade the tax, a penalty of 25% of the amount of the understatement, or \$50, whichever is greater, may be assessed. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

(Neb. Rev. Stat. §§ 77-1702, 77-1784, ~~77-2701.35~~ 77-2701.37, 77-2701.42, 77-2703(2), 77-2704.30, 77-2704.31, ~~77-2704.44~~, 77-2706(3), 77-2708, and ~~77-2709~~, and *McDonald's Executive Offices v. Nebraska Department of Revenue*, 243 Neb. 82 (1993), *J.C. Penney Co., Inc. v. Balka*, 254 Neb. 521 (1998), and 4 U.S.C. § 107. ~~February 22, 2009~~____.)

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REG-1-008 RECORDS

008.01 **Retailers are Required to Keep Records.** Every retailer is required to keep records ~~in order necessary~~ to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent ~~businessman~~ businessperson engaged in a similar activity, together with all documents supporting entries in the books of accounts. Schedules and working papers used in ~~the preparation of the tax~~ preparing tax returns ~~and all resale certificates and exemption certificates~~ must also be retained.

008.01A Every retailer must keep exempt sale certificates, resale certificates, energy source exemption certificates, or other adequate proof to support a tax exemption for any sales. The retailer must keep all documentation necessary to support deductions from gross receipts on the tax return.

008.01B Model 1, 2, and 3 sellers may maintain records in accordance with the Streamlined Sales and Use Tax Agreement.

008.02 The records created at the time of sale may ~~take the form of~~ be sales slips, sales invoices, guest checks, tally sheets, itemized lists, or other memoranda. A cash register tape may be acceptable if it preserves sufficient information.

008.02A ~~Items~~ Property may be described by a symbol if the symbol is representative of a class of merchandise or services which are always taxable or tax exempt. If a ~~vendor~~ retailer sells only tax exempt merchandise in a "Department P", a description of such this merchandise as "Department P" is sufficient; provided, the vendor uses such if the retailer uses that symbol consistently to describe the same merchandise.

008.02B However, if a ~~vendor~~ retailer sells several types of merchandise, both taxable and tax exempt, in a single department, his or her records must individually identify the types of merchandise which are tax exempt.

008.03 **When Tax is Commingled with Receipts.** A retailer who maintains records where the amount of tax collected is commingled with the receipts from the sale may determine taxable receipts in the following manner:

008.03A The receipts from any sales which are specifically exempt or otherwise excluded from sales tax are subtracted from total receipts. The remainder represents the receipts from the taxable sales plus the tax collected, and

008.03B The remainder is divided by one plus the rate of tax in effect.

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~~008.03C The purpose of this portion of the regulation is to permit the widest possible latitude in the internal record systems of retailers and to avoid requiring certain retailers to compute and remit the tax on a base which already includes the tax.~~

008.04 **Records Required to Determine Use Tax.** Every person storing, using, or otherwise consuming ~~in this state~~ property ~~or services in Nebraska~~ must keep receipts, invoices, and other pertinent records ~~as is necessary to establish the amount of tax for which he or she~~ the person is liable. Any person having ~~in his or her possession or custody~~ information relating to taxable sales of property or services in the person's possession or custody, the storage, use, or other consumption of which is subject to tax, may be required at any time to submit the names and addresses of the purchasers, the sales price of the property, and the date of the sale.

008.05 **Right to Examine Records.** The Tax Commissioner or any person authorized in writing by ~~him or her~~ the Tax Commissioner may examine the books, papers, records, electronic media, or and equipment of any person to ascertain or verify the accuracy of any return filed; or, if no return is filed by the person, to ascertain and determine the amount required to be paid. The right to examine books, papers, records, electronic media, and equipment of any person includes, but is not limited to, the right to request and retain paper or electronic copies of the books, papers, records, and media.

008.06 **Administrative Subpoenas.** The Tax Commissioner may require persons undergoing an audit, examination, or review to provide records that are necessary to make a proper determination of the person's compliance with, or the amount due under, the laws of this state. If warranted, the Tax Commissioner may issue an administrative subpoena.

008.06A An administrative subpoena must clearly state the scope of the demand for records and any other requirements and state when, where, and how to comply with the administrative subpoena.

008.06B An administrative subpoena may be enforced by the Attorney General, acting on behalf of the Tax Commissioner, in an action filed in the District Court of Lancaster County.

~~008.06~~ 008.07 Records must be retained for a ~~period not less than~~ minimum of three years after the return is filed, or while any refund claim or petition for redetermination of a deficiency determination is pending, unless the Nebraska Department of Revenue (Department) ~~, in writing,~~ authorizes their destruction in writing at an earlier date. However, the Department may issue a

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deficiency determination within ~~five~~ six years after any amount of tax is determined due and payable when a properly completed return has not been filed or the amount of the deficiency exceeds 25% of the amount stated on the return.

~~008.07~~ 008.08 When records are missing, all gross receipts are presumed to be taxable, or the Department may estimate a person's liability for tax based on ~~what~~ the best available records ~~are available~~. The person required to keep the records has the burden to show that the gross receipts are not taxable or that the estimate is incorrect.

(Neb. Rev. Stat. §§ 77-366, 77-375, 77-376, 77-377, 77-2705(7), 77-2709, and 77-2711. ~~April 12, 2005~~ ____.)

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REG-1-012 EXEMPTIONS

~~012.01 Certain sales are transactions are exempt from sales and use taxes. Exempt sales can be divided into four groups. The four groups are sales that are~~ Transactions may be exempt because of:

~~012.01A The seller (entity-based exemption);~~

~~012.01B The item sold (product-based exemption);~~

~~012.01C The buyer (entity-based exemption); or~~

~~012.01D The buyer's intended use of the item (use-based exemption); or~~

~~012.01E A combination of two or more of these characteristics.~~

~~012.02 The following are the sales that are exempt. This listing does not contain an explanation of the exemption. There is no single, comprehensive list of transactions, items, entities, and uses that are exempt from sales and use taxes. Each transaction must be evaluated individually to determine if an exemption applies. Refer to the regulation referenced at the end of the exemption for definitions, explanations, and limitations~~ website of the Nebraska Department of Revenue (www.revenue.nebraska.gov) for a list of most exemptions and separate regulations that define, explain, and describe limitations on the exemptions.

~~012.02A Entity-based transactions which are exempt because of the seller include:~~

~~012.02A(1) Meals served to students by schools, student organizations or parent-teacher associations during the regular school day or at school functions not open to the general public, (Reg 1-092, Educational Institutions);~~

~~012.02A(2) Concession sales of food by elementary and secondary schools at events including those open to the public, (Reg 1-092, Educational Institutions);~~

~~012.02A(3) Admissions charged by schools, student organizations, or parent-teacher associations during the regular school day or at school functions including those open to the public, (Reg 1-092, Educational Institutions);~~

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~~012.02A(4) Sales by parent booster clubs, parent-teacher associations, parent-teacher student associations, or school-operated stores approved by elementary or secondary schools if the proceeds are used to support school activities or the school itself, (Reg 1-092, Educational Institutions);~~

~~012.02A(5) Meals sold by churches at church functions, (Reg 1-091, Religious Organizations);~~

~~012.02A(6) Meals served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings, (Reg 1-083, Food Service);~~

~~012.02A(7) Rooms in a licensed health care facility, (Reg 1-046, Hotels, Lodgings, and Accommodations);~~

~~012.02A(8) Occasional sales, (Reg 1-022, Occasional Sales); and~~

~~012.02A(9) Admissions charged or meals sold at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees, (Reg 1-090, Nonprofit Organizations).~~

~~012.02B Product-based transactions which are exempt because of the item sold include:~~

~~012.02B(1) Aircraft fuels;~~

~~012.02B(2) Motor vehicle fuels as defined in Chapter 66, article 4, of the Nebraska Revised Statutes;~~

~~012.02B(3) Newspapers issued at least fifty-two times a year, (Reg 1-054, Newspapers);~~

~~012.02B(4) Prescription medicines (Reg 1-050, Medicines and Medical Equipment);~~

~~012.02B(5) Insulin, (Reg 1-050, Medicines and Medical Equipment);~~

~~012.02B(6) Animals ordinarily used as food for human consumption, (Reg 1-062, Animal Life);~~

~~012.02B(7) Lodging rented for thirty (30) days or longer, (Reg 1-046, Hotels, Lodgings, and Accommodations);~~

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~~012.02B(8) Rental of rooms in dormitories operated by an educational institution, (Reg 1-046, Hotels, Lodgings, and Accommodations);~~

~~012.02B(9) Laundry and dry cleaning services through the use of coin-operated machines, (Reg 1-048, Laundries and Dry Cleaners);~~

~~012.02B(10) A motor vehicle purchased with funds contributed by the Veterans Administration of the United States, (Reg 1-020, Motor Vehicles);~~

~~012.02B(11) A motor vehicle purchased with funds contributed by Nebraska Health and Human Services Finance and Support, (Reg 1-020, Motor Vehicles);~~

~~012.02B(12) Railroad rolling stock and replacement parts, (Reg 1-068, Railroads);~~

~~012.02B(13) Food, but not meals, for human consumption, Reg 1-087, Food for Human Consumption; and~~

~~012.02B(14) Nebraska Lottery tickets.~~

~~012.02C Entity based transactions which are exempt because of the buyer include:~~

~~012.02C(1) The United States government and its agencies, (Reg 1-072, United States Government and Federal Corporations);~~

~~012.02C(2) Organizations created exclusively for religious purposes, (Reg 1-091, Religious Organizations);~~

~~012.02C(3) Nonprofit organizations providing services exclusively to the blind, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(4) Public or private Nebraska educational institutions, (Reg 1-092, Educational Institutions);~~

~~012.02C(5) Nonprofit Nebraska licensed hospitals, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(6) Nonprofit Nebraska licensed skilled nursing facilities, (Reg 1-090, Nonprofit Organizations);~~

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~~012.02C(7) Nonprofit Nebraska licensed intermediate care facilities, nonprofit Nebraska licensed intermediate care facilities for the mentally retarded, and nonprofit Nebraska certified organizations providing community-based services for the developmentally disabled. (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(8) Nonprofit Nebraska licensed home health agencies, hospices or hospice services, or respite care services, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(9) Nonprofit Nebraska licensed nursing facilities, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(10) Nonprofit Nebraska licensed health clinics, when owned or controlled by two or more nonprofit hospitals, or which receive federal funds through the U.S. Public Health Service, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(11) Nebraska child caring agencies licensed for the full-time custody and care of children, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(12) Nebraska licensed child placing agencies, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(13) The State of Nebraska, (Reg 1-093, Governmental Units);~~

~~012.02C(14) The State Fair Board, (Reg 1-090, Nonprofit Organizations);~~

~~012.02C(15) Any Nebraska county, township, city, or village, (Reg 1-093, Governmental Units);~~

~~012.02C(16) Any Nebraska elected county fair board, (Reg 1-093, Governmental Units);~~

~~012.02C(17) Any Nebraska county or municipal library, (Reg 1-093, Governmental Units);~~

~~012.02C(18) Any Nebraska rural or suburban fire protection district, (Reg 1-093, Governmental Units);~~

~~012.02C(19) Any Nebraska irrigation district, (Reg 1-093, Governmental Units);~~

~~012.02C(20) Any Nebraska reclamation district, (Reg 1-093, Governmental Units);~~

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~~012.02C(21) The irrigation division of any Nebraska public power and irrigation district, (Reg 1-093, Governmental Units);~~

~~012.02C(22) A Native American Indian living on the Indian reservation or a Native American Indian Tribal Council when the sale is within the boundaries of an Indian Reservation;~~

~~012.02C(23) Certain foreign diplomats, (Reg 1-072, United States Government and Federal Corporations);~~

~~012.02C(24) The American National Red Cross, (Reg 1-072, United States Government and Federal Corporations);~~

~~012.02C(25) Any Nebraska natural resource district, (Reg 1-093, Governmental Units);~~

~~012.02C(26) Any Nebraska airport authority, (Reg 1-093, Governmental Units);~~

~~012.02C(27) Any Nebraska drainage district, (Reg 1-093, Governmental Units);~~

~~012.02C(28) Any Nebraska local or regional housing agency, (Reg 1-093, Governmental Units);~~

~~012.02C(29) Another state or unit of government in the other state, when the other state grants a reciprocal exemption to Nebraska and Nebraska political subdivisions, and the item purchased was industrial equipment, (Reg 1-093, Governmental Units);~~

~~012.02C(30) The Nebraska Investment Finance Authority; and~~

~~012.02C(31) The Small Business Development Authority.~~

~~012.02D Use-based transactions are exempt because of the purchaser's intended use of the property. The consumer's use tax is due on these items if they are used in a manner other than originally intended. Included in this group are sales of:~~

~~012.02D(1) Property purchased to be resold prior to the use of such property, (Reg 1-013, Sale for Resale-Resale Certificate);~~

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~~012.02D(2) Property which will be incorporated as an ingredient or component part of an item to be sold, (Reg 1-023, Component Parts Manufacturing, Processing, and Fabrication);~~

~~012.02D(3) Fabrication labor on property that will be resold or that is an ingredient or component part of an item to be sold, (Reg 1-023, Component Parts Manufacturing, Processing, and Fabrication);~~

~~012.02D(4) Property delivered outside Nebraska, (Reg 1-006, Retail Sale or Sale at Retail);~~

~~012.02D(5) Fabrication labor on materials delivered outside Nebraska by the retailer, (Reg 1-006, Retail Sale or Sale at Retail);~~

~~012.02D(6) Feed or water for the care of or consumption by animals ordinarily used as food for human consumption or for human apparel, (Reg 1-063, Feed, Water, Agricultural Chemicals, and Veterinary Medicines for Animal Life);~~

~~012.02D(7) Seeds and annual plants for agricultural purposes, (Reg 1-060, Seeds and Plants);~~

~~012.02D(8) Diesel fuel as defined in Chapter 66, article 4 and compressed fuel as defined in the Compressed Fuel Tax Act, of the Nebraska Revised Statutes for use in vehicles, (Reg 1-089, Energy Source Utility Exemption);~~

~~012.02D(9) Agricultural chemicals to be applied to land or crops, and oxygen for use in aquaculture, (Reg 1-061, Agricultural Chemicals);~~

~~012.02D(10) Nonreturnable containers when sold empty for resale with the contents, (Reg 1-043, Containers);~~

~~012.02D(11) Returnable containers when sold with the contents, or when returned for refilling, (Reg 1-043, Containers);~~

~~012.02D(12) All containers when the contents are exempt, (Reg 1-043, Containers);~~

~~012.02D(13) Fuel, including electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, butane, nuclear fuel, oxygen, and coke when more than 50% is for use in irrigation or farming, (Reg 1-089, Energy Source Utility Exemption);~~

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~~012.02D(14) Fuel, including electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, butane, nuclear fuel, oxygen, and coke when more than 50% is for use in processing, manufacturing, or refining of products, in the generation of electricity, or by a hospital, (Reg 1-089, Energy Source Utility Exemption);~~

~~012.02D(15) Water purchased for irrigation of agricultural lands, (Reg 1-066, Sewer and Water);~~

~~012.02D(16) Water for manufacturing purposes, (Reg 1-066, Sewer and Water);~~

~~012.02D(17) Motor vehicles, watercraft, or aircraft used as common or contract carriers, and replacement parts for such vehicles, (Reg 1-069, Common and Contract Carrier Vehicles);~~

~~012.02D(18) Semen or insemination services for ranching, farming, commercial, or industrial uses;~~

~~012.02D(19) Items for use in a municipally owned public transportation system for passengers;~~

~~012.02D(20) Items for use with a racetrack by a licensee of the State Racing Commission;~~

~~012.02D(21) An airplane, or repairs to an airplane, that will not be located in Nebraska by a nonresident, (Reg 1-067, Aircraft and Related Services);~~

~~012.02D(22) Oxygen prescribed for human use, (Reg 1-050, Medicines and Medical Equipment);~~

~~012.02D(23) Prosthetic devices when prescribed for human use, (Reg 1-050, Medicines and Medical Equipment);~~

~~012.02D(24) Durable medical equipment and medical supplies when prescribed for human use, (Reg 1-050, Medicines and Medical Equipment);~~

~~012.02D(25) Mobility enhancing equipment when prescribed for human use, (Reg 1-050, Medicines and Medical Equipment);~~

~~012.02D(26) Newspaper advertising supplements delivered directly to and distributed with any newspaper, (Reg 1-054, Newspapers);~~

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~~012.02D(27) Personal property 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, (Reg 1-045, Motion Picture Film, Videotape, and Programming);~~

~~012.02D(28) Molds, dies, and patterns specifically designed and fabricated to the special order of a customer and used to manufacture a single product that is injection molded from plastic or stamped from metal, and molds and dies and materials necessary to create such molds and dies, for use in manufacturing, (Reg-1-095, Molds, Dies and Patterns);~~

~~012.02D(29) Animal specialty services provided to livestock, (Reg 1-102, Animal Specialty Services);~~

~~012.02D(30) Materials for use in the manufacture, installation, construction, repair, or replacement of qualified community-based energy development (C-BED) projects;~~

~~012.02D(31) Repair labor on licensable motor vehicles and other items not subject to tax;~~

~~012.02D(32) Agricultural machinery and equipment for use in commercial agriculture, (Reg 1-094, Agricultural Machinery and Equipment Refund);~~

~~012.02D(33) Manufacturing machinery and equipment purchased by a manufacturer for use in manufacturing for use in manufacturing; and~~

~~012.02D(34) Fine art purchased by a museum as defined in section 51-702(6).~~

~~012.03 Consumer's use Use tax does not apply to the following:~~

~~012.03A Transactions upon which the Nebraska sales tax has been paid;~~

~~012.03B Storage, use, or consumption of items exempt from sales tax;~~

~~012.03C Transactions where the taxpayer has properly paid a tax in another state at a rate equal to or greater than the rate in Nebraska, (Reg 1-071, Credit for Tax Paid to Another State);~~

~~012.03D Items that were purchased and used in another state before being brought into Nebraska; and~~

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~~012.03E Removal from inventory of items purchased from a seller not doing business in this state by a contractor for a project in another state, (Reg 1-017, Contractors).~~

~~012.04 The seller must keep exempt sale certificates, resale certificates, energy source exemption certificates, or other adequate proof to support exemption on sales described in Reg 1-012.02C and Reg 1-012.02D. The seller must retain the exempt sale certificate or resale certificate to support deductions from gross receipts on the tax return.~~

~~(Neb. Rev. Stat. § 77-2712.05(3) ~~77-2704.03, 77-2704.39, 77-2704.40, 77-2704.41, 77-2704.46, 77-2701.47, 77-2704.56, 77-2705(7), and 77-2706, 2704.12, and 77-2704.15,~~. February 22, 2009____.)~~

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REG-1-022 OCCASIONAL SALES

022.01 ~~Transactions that qualify as occasional~~ Occasional sales are exempt from sales tax. Occasional sale means a sale, but not a lease or rental, of property ~~that is in a transaction described in Reg-1-022.02 through Reg-1-022.09. this regulation or a sale by a religious organization described in Reg-1-091, Religious Organizations.~~

022.02 ~~An occasional sale described in this regulation does not include:~~

~~022.02A Any sale that is made, supervised, or aided by an auctioneer or agent or employee of an auctioneer;~~

~~022.02B Any sale where the seller did not pay the tax on the item that is being sold. The seller is considered to have paid the tax when:~~

~~022.02B(1) the seller purchased the item before June 1, 1967, or the seller was not required to pay the tax on the purchase or subsequent use of the item, or~~

~~022.02B(2) the seller obtained the item through a sale or transfer described in paragraph 022.03 and the previous owner paid the tax.~~

~~022.02C Any sale of any inventory of property purchased for resale or for lease.~~

~~022.02D Any sale of a motor vehicle, new property, or motorboat on or after January 1, 1997, except a sale in section 022.03.~~

022.03 An occasional sale includes ~~the following~~ transactions. ~~The transactions in sections 022.03A through 022.03A(9) may involve either new or used property, a motor vehicle, or a motorboat.~~ 022.03A In which where the property is the subject of an intercompany sale from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies.

022.02A This ~~subdivision~~ applies to corporations that have at least ~~fifty per cent~~ 50% common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations;

022.02B Sole proprietorships are not entities separate and apart from the owners and do not qualify for this exemption.

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022.03 An occasional sale includes sales of property:

~~022.03A(1)~~ 022.03A From one corporation to another corporation pursuant to a reorganization. Reorganization ~~shall mean~~ means a statutory merger or consolidation; or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

022.03B From one limited liability company to another limited liability company pursuant to a reorganization;

~~022.03A(2)~~ 022.03C In connection with the winding up, dissolution, or liquidation of a corporation, partnership, or limited liability company ~~only when if~~ there is a distribution of the property of ~~such~~ the corporation, partnership, or limited liability company to the shareholders in kind if the portion of the property so distributed to the shareholder is owners substantially in proportion to ~~the~~ their share of stock or securities ~~held by the shareholders~~ in the corporation, or interests of the owners of the partnership or limited liability company;

~~022.03A(3)~~ 022.03D To a corporation, partnership, or limited liability company for the purpose of ~~organization of such~~ organizing the corporation, partnership, or limited liability company or ~~the contribution of~~ contributing additional capital to ~~such a~~ corporation when the former owners of the property are immediately after the transfer in control of the corporation, partnership, or limited liability company immediately after the transfer, and the stock, ~~or~~ securities, or interest received by each; is substantially in proportion to his or her interest in the property prior to the transfer; or

~~022.03A(4)~~ To a partnership in the organization of ~~such~~ partnership if the former owners of the property are immediately after the transfer partners in such partnership and the interest in the partnership, received by each, is substantially in proportion to his or her interest in the property prior to the transfer;

~~022.03A(5)~~ From a partnership to the partners when made in kind in the dissolution of such partnership if the portion of the property so distributed to the partners in the partnership is substantially in proportion to the interest in the partnership held by the partners; and

~~022.03A(6)~~ To a limited liability company in the organization of ~~such~~ limited liability company if the former owners of the property transferred are, immediately after the transfer, members of such limited liability company and the interest in the limited liability company received by each is substantially in proportion to his or her interest in the property prior to the transfer;

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~~022.03A(7) From a limited liability company to the members thereof when made in kind in the dissolution of such limited liability company if the portion of the property so distributed to the members of the limited liability company is substantially in proportion to the interest in the limited liability company held by the members;~~

~~022.03A(8) From one limited liability company to another limited liability company pursuant to a reorganization; or~~

~~022.03A(9) 022.03E~~ Any other transaction that qualifies as a tax-free transaction under the Internal Revenue Code of 1986, as amended.

022.04 The transactions described in Reg-1-022.02 and Reg-1-022.03 may involve new or used property, motor vehicles, or motorboats. Persons claiming the occasional sale exclusion for purchases of motor vehicles or motorboats must provide the county treasurer, or other designated county official, with evidence that the transfer falls within Reg-1-022.02 or Reg-1-022.03, at the time of registration of the motor vehicle or motorboat.

~~022.04 An occasional~~ 022.05 Occasional sale includes the sale of either new or used business assets, where a person liquidates his or her business in a single transaction ~~in a sale~~ to a single buyer. ~~Such~~ The liquidation must be all or substantially all of the property of the trade or business.

~~022.05~~ 022.06 Occasional sale includes a sale of used business or farm machinery or equipment ~~in which was property~~ productively used by a seller or the seller's predecessor as a depreciable capital asset for ~~more than~~ at least one year in ~~his~~ the business ~~is sold~~. The purchaser must obtain an exempt sale certificate or other documentation from the seller demonstrating that the sale was sales tax exempt. See Reg-1-014.

022.07 The transactions described in Reg-1-022.02 through Reg-1-022.06 may include aircraft, and are occasional sales only if the seller or the seller's predecessor previously paid sales or use tax, the seller purchased the property prior to June 1, 1967, or the sale was exempt from sales and use tax when the property was purchased.

~~022.06~~ 022.08 Occasional sale includes a sale of household goods and personal effects by an individual when ~~such~~ the property was originally acquired and used for personal use. ~~All such~~ These sales must occur at an individual's residence, and may include the property of more than one person, or be carried out by an individual on an online auction site.

~~022.06A Such~~ 022.08A These sales may not be held on more than three days during a calendar year at any residence or on an online auction site.

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~~022.06B~~ Such 022.08B These sales may not include property of a type which is similar to property that is sold by the individual or any member of his or her household in a trade or business.

022.08C Household goods and personal effects do not include motor vehicles, motorboats, or aircraft.

022.09 Occasional sale includes one sale activity during a calendar year by a nonprofit religious organization.

022.09A The sale must be during an activity of the nonprofit religious organization, but it does not have to take place at a location owned by the nonprofit religious organization.

022.09B The sale may last up to three consecutive days.

022.09C The nonprofit religious organization may have the assistance of an auctioneer at this sale without having to collect sales tax on the property or services sold.

022.09D The nonprofit religious organization may sell anything it owns at its sale. The property or services sold may be made especially for the sale, purchased for the sale, or donated to the nonprofit religious organization for the sale. Sales of motor vehicles, trailers, or semi-trailers made at the sale are not occasional sales.

022.10 Occasional sale does not include:

022.10A Any sale that is made, supervised, or aided by an auctioneer, or agent or employee of an auctioneer, except for a sale by a nonprofit religious organization as provided in Reg-1-022.09C;

022.10B Any sale of inventory or property purchased for resale or for lease;

022.10C Any sale of a motor vehicle or motorboat, except a sale described in Reg-1-022.02 or Reg-1-022.03; or

022.10D Any sale of new property, except a sale described in Reg-1-022.02, Reg-1-022.03, Reg-1-022.05, or Reg-1-022.09.

~~022.07 Persons claiming the occasional sale exclusion as applicable to motor vehicles or motorboats shall provide the county treasurer, or other designated county official, at the time of registration of the vehicle or motorboat with evidence the transfer falls within paragraph 022.03. No other sales of motor vehicles or motorboats qualify as occasional sales.~~

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~~(Section 77-2702.09, R.R.S. 1996. (Neb. Rev. Stat. §§ 77-2701.24 and 77-2704.48, and Attorney General Opinion Number 252, June 16, 1978, November 11, 1998 _____.))~~

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REG-1-024 CASH DISCOUNTS AND REBATES

024.01 ~~Discounts allowed by the retailer to customers are deductible in arriving at the net sales price which is taxable. A cash discount allowed by the retailer is a reduction in the sales price, and the tax is computed and paid on the sales price after allowance for the discount. Such~~ These discounts must appear on the invoices, records, and accounts of the retailer and be substantiated to the satisfaction of the Nebraska Department of Revenue. A discount is not a proper deduction cannot be deducted from gross receipts when given on the sale if it is applied to a sale of property or services which are is exempt from the sales tax.

024.02 A cash discount ~~is usually~~ may be offered by the seller ~~as an inducement for~~ to induce payment within a specified time. A volume discount ~~is usually~~ may be offered ~~for~~ by the seller to induce larger purchases. ~~These discounts may not be deducted by the seller until it has been given to the purchaser. Such~~ Sales tax is calculated on the sales price of the property less the cash or volume discount allowed at the time of the sale. If the discount is not allowed until a later time, these discounts will be are allowed as a deductions on the seller's sales tax return only when there is sufficient evidence in the ~~records of the seller~~ seller's records to indicate that ~~such~~ the discounts have been given to the purchaser, ~~and the sales reported on the sales tax return are the amount of sales before discounts, and the purchaser was credited or refunded any sales tax associated with the discount.~~

024.03 A cash rebate or instant rebate is not deductible in arriving at the ~~net sales price which is taxable.~~

024.03A A cash rebate is usually allowed given to the purchaser directly by a manufacturer subsequent to after the actual sales transaction is complete, and is contingent upon the claimant purchaser submitting proof that the sales transaction has been finalized.

024.03B An instant rebate is allowed at the point of sale without any additional conditions or requirements placed on the buyer, but is also reimbursed by the manufacturer to the seller. As

024.03C Because the sales tax is imposed upon the sales transaction gross receipts of the seller (Reg-1-001, Nature of the Sales Tax), a subsequent rebate of a portion of that the

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sales price; by a third party does not reduce the ~~original sales price~~ seller's gross receipts upon which the sales tax is imposed.

024.04 Vouchers, other certificates, price reductions, or group discounts which are reimbursed by a third party are not cash or volume discounts and do not reduce the seller's gross receipts upon which sales tax is imposed. (Reg-1-037, Trading Stamps, Coupons, Vouchers, Certificates, and Group Discounts).

024.05 See Reg-1-020, Motor Vehicles, for rebates on motor vehicles and Reg-1-096, Motorboats, for rebates on motorboats.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2701.35, January 24, 1993.....)

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REG-1-029 TRADE-INS OR EXCHANGES

029.01 When property is sold and part of the ~~selling sales~~ price is ~~resolved through the purchaser satisfied by trading in a used item property~~ that is similar to the ~~item property~~ being sold, the retailer must collect and remit sales tax on the difference between the total selling price and the amount allowed on the trade-in. ~~029.01A Making payment with an item~~ If the property provided by the purchaser that is not similar to the item property being purchased, or is a commodity regularly traded on an open market, the transaction is a taxable barter transaction and not a trade-in, and tax must be collected on the full price of the property sold.

~~029.01B See Reg-1-020, Motor Vehicles, for exchanges of motor vehicles and trailers between individuals.~~

029.02 If the trade-in allowance ~~exceeds~~ is greater than the value at which ~~the property traded in the trade-in~~ is later carried for inventory purposes, the excess ~~allowance is a form of consideration and~~ is not an allowable cash discount on a subsequent sales tax return. There is no refund of sales tax previously paid on the property traded in, even if the buyer is paid for the difference.

029.03 ~~Under the foregoing, the~~ The full selling price shall be included in "gross sales and services" on the Nebraska and Local Sales and Use Tax Return, Form 10, and the ~~agreed value of trade-in allowance for the article property taken in trade is deducted to arrive at~~ calculate "net taxable sales." The deduction for the trade-in allowance cannot exceed the sales price of the property sold, even if the buyer is paid for the difference.

029.04 If the property taken in trade is used by the retailer and not to be resold in the retailer's regular course of business, ~~he or she~~ the retailer must collect and remit ~~the sales~~ tax on the difference between the total selling price and the amount allowed on the trade-in. ~~In addition, the~~ The retailer must also pay the use tax on the amount allowed on the trade-in for using the item property. (Reg-1-035, Consumption of Untaxed Property.)

029.05 See Reg-1-020, Motor Vehicles, and Reg-1-096, Motorboats, for exchanges of motor vehicles and motor boats.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2701.35. ~~May 14, 1994~~ _____.)

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REG-1-033 TRANSIENT AND ITINERANT SELLERS

033.01 The requirement that any person must have a sales tax permit before he or she may lawfully sell property or services at retail in this state applies to all forms of retail selling, ~~whether including sales made~~ through stores; from private residences; at flea markets, fairs, or temporary booths; from trucks and wagons; by house-to-house canvass; by advertising through newspapers, ~~or radio, and or~~ television; or in any ~~other~~ similar manner.

033.02 A distributor ~~selling through that uses~~ mobile salespersons may enter into an agreement with the Nebraska Department of Revenue (Department) to collect and remit sales taxes for salespersons working for the distributor as independent contractors. ~~The distributor must record the retail price of each item sold and the location of each sale.~~ When the distributor has entered into ~~such~~ an agreement;

033.02A ~~the~~ The individual sellers do not need individual sales tax permits; and

033.02B The distributor must record the retail price of each item sold and the location of each sale.

033.03 The promoter or operator of a trade show, craft show, flea market, or fair ~~is required to~~ must be licensed as a retailer. ~~The promoter can agree with persons if:~~

033.03A The promoter and the sellers making sales at the event to agree that the promoter will collect and remit the tax for those who do not have a sales tax permits. If the promoter and the seller ~~make such an enter into this kind of agreement,~~ the seller is not required to obtain a sales tax permit; or

033.03B The promoter is making taxable sales.

033.04 Persons who sell property at retail from locations other than a store may be required to post a bond with the ~~Nebraska Department of Revenue~~ as a condition of ~~their~~ obtaining a sales tax permit. ~~The posting of a~~ The bond is conditioned upon their assures full compliance with the provisions of the ~~Nebraska Revenue Act of 1967, as amended,~~ and ~~their accounting to the Department for that all monies~~ sales taxes due are collected and remitted thereunder.

033.05 Transient and itinerant sellers who have obtained a sales tax permits must have ~~their permits~~ the original or a copy of the permit in their possession and must display ~~them~~ it upon request.

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(Neb. Rev. Stat. §§ 77-2702.14, 77-2705(3), and 77-2713(1). ~~January 24, 1993~~____.)

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REG-1-036 PREMIUMS AND GIFTS DONATIONS, PRIZES, AND PROMOTIONAL GIVE-AWAYS

036.01 **Donations.** Donors who are regarded as the consumers of the items any property purchased to be donated and their the purchase of the item property in Nebraska is taxable, unless an exemption otherwise applies. If a gift is delivered in Nebraska to either a the donor or the donee, the sale is completed in Nebraska and sales tax must be collected by the Nebraska retailer; from the donor.

036.01A If a person donates cash to an organization that is exempt from paying sales tax (sales tax exempt nonprofit), the sales tax exempt nonprofit can purchase property to be given away in a raffle or contest without paying or collecting sales tax.

036.01B Persons who purchase property that is donated to a sales tax exempt nonprofit are the consumers of the property donated and must pay sales tax on the purchase whether the property is delivered to the donor or to the sales tax exempt nonprofit.

036.01C If the donated property is a motor vehicle, the donor must pay use tax to the county treasurer based on the cost of the motor vehicle to the donor and the location of the donor.

036.02 however, if the retailer delivers the item **Out-of-State Deliveries.** Retailers who deliver property to either the donor or the donee at a destination location outside of this State Nebraska, are not required to collect no Nebraska sales tax is applicable. For determination of point of delivery, see Reg-1-006, Retail Sale or Sale at Retail.

036.03 **Prizes Awarded by Sales Tax Exempt Nonprofits.** Sales tax exempt nonprofits may purchase property to be awarded as prizes sales tax exempt. The recipient of the property that is awarded by the sales tax exempt nonprofit does not have to pay sales or use tax upon receiving the property. (Reg-1-090, Nonprofit Organizations, and Reg-1-014, Exempt Sale Certificate)

036.04 **Motor Vehicles Awarded as Prizes.** If the property awarded is a motor vehicle, sales tax is collected at the time the motor vehicle is purchased, donated, or registered in Nebraska, based on the purchase price, the location of the nonprofit organization or winner, and whether the nonprofit or the winner purchased the motor vehicle. This is shown in the examples in subsections A through E below. Use tax may also be due if there is a later transfer of title without registration. (Reg-1-020, Motor Vehicles)

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036.04A For example, if a sales tax exempt nonprofit purchases and takes title to a motor vehicle to be awarded to the winner of a raffle or contest, the winner does not owe sales tax when registering the motor vehicle, because the nonprofit is exempt from sales tax and the winner did not purchase the motor vehicle. The sales tax exempt nonprofit must provide the winner a completed Nebraska Sales/Use Tax and Tire Fee Statement, Form 6, with exemption block 1 or 10 checked, and include its sales tax exemption number. The winner then provides a copy of the Form 6 to the county treasurer showing the tax exempt status of the sales tax exempt nonprofit at the time the winner registers the motor vehicle.

036.04B However, if a sales tax exempt nonprofit never takes title to the motor vehicle that is awarded in a raffle or contest, but instead pays the dealer the purchase price after the raffle or contest is concluded, and the title to the motor vehicle transfers directly to the winner, the winner is deemed to have purchased the motor vehicle and owes sales tax at the time of registration based on the amount paid by the sales tax exempt nonprofit on the winner's behalf. The sales tax that is due is calculated based on the registration address of the winner.

036.04C A nonprofit organization that is not sales tax exempt which purchases and takes title to a motor vehicle that will be awarded to the winner of a raffle or contest must pay the sales tax to the county treasurer based on the business location of the nonprofit organization. The winner does not owe additional sales tax at the time of registration because the winner did not purchase the motor vehicle. The nonprofit organization must provide the winner a completed Nebraska Sales/Use Tax and Tire Fee Statement, Form 6, with exemption block 10 checked. The winner then provides a copy of the Form 6 to the county treasurer at the time the winner registers the motor vehicle.

036.04D However, if a nonprofit organization that is not sales tax exempt does not take title to the motor vehicle, but instead pays the dealer the purchase price after the raffle or contest is concluded, and the title to the motor vehicle transfers directly to the winner of the raffle or contest, the winner is deemed to have purchased the motor vehicle and owes sales tax at the time of registration based on the amount paid by the nonprofit organization on the winner's behalf. The sales tax that is due is calculated based on the registration address of the winner.

036.04E If a dealer donates a motor vehicle to a nonprofit which awards the motor vehicle as a prize in a raffle or contest, the dealer must pay sales or use tax to the county treasurer. The tax is calculated based on the dealer's cost of the motor vehicle and its business address. The winner owes no additional sales tax at the time of registration because the winner paid nothing for the motor vehicle. This applies regardless of whether or not the nonprofit is sales tax exempt.

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~~036.02~~ 036.05 Promotional Give-Aways. The sale of ~~items~~ property to be given away for advertising or promotional purposes is taxable. ~~The sale to a donor of items to be given or donated for charitable purposes to an exempt organization is taxable.~~ ~~036.03~~ Where the item ~~If~~ property is purchased for resale and subsequently given away, the purchaser must include ~~in his or her tax return his or her~~ the cost of such goods ~~the property on the use tax return and pay remit the use tax due thereon.~~

~~036.04~~ A purchase by an exempt organization for the purpose of giving the item away, such as a prize in a contest, or raffle, is exempt. The recipient of the item does not have to pay the tax.

~~036.04A~~ 036.06 Pickle Cards, Lottery Tickets, and Raffle Tickets. Sales of pickle cards, lottery tickets, and raffle tickets to individual participants are sales of a chance to win and are exempt from ~~the sales or use tax and use taxes.~~ The sale of the pickle cards or tickets to ~~the an~~ organization is taxable, unless ~~the organization~~ it is an a sales tax-exempt organization or an a sales tax-exempt governmental unit. (Reg-1-090 Nonprofit Organizations, and Reg-1-093, Governmental Units)

~~036.04B~~ 036.07 Nebraska Lottery Tickets. Sales of Nebraska Lottery tickets to individual participants or to Lottery Game Retailers are exempt from sales and use taxes.

~~036.05~~ The purchase of a gift certificate is exempt. ~~When the donee uses the certificate, in whole or in part, the transaction is taxable the same as if cash were used to make the purchase.~~

(Neb. Rev. Stat. §§ ~~77-2702.13, 77-2704.11, 77-2701.16, 77-2703, 77-2703.01, 77-2704.12, 77-2704.38, 77-2705,~~ and 77-2706(3). ~~May 14, 1994~~ _____.)

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REG-1-037 TRADING STAMPS, AND COUPON REDEMPTION COUPONS, CERTIFICATES, VOUCHERS, REIMBURSED PRICE REDUCTIONS, AND GROUP DISCOUNTS

037.01 **Redeeming Trading Stamps.** When trading stamps are redeemed for merchandise, the transaction is a retail sale and is ~~taxable~~ subject to sales tax. The tax is computed on the fair market value of the merchandise transferred in exchange for the stamps. The retailer may purchase redemption merchandise for resale. No sales tax is due when stamps are redeemed for cash rather than for merchandise.

037.02 **Purchasing Trading Stamps.** ~~The purchase of trading stamps by~~ If a retailer purchases trading stamps for distribution to distribute to his or her customers, the transaction is not regarded as the considered a purchase of property and accordingly, no sales tax is due applies. ~~The purchase of redemption merchandise is a purchase for resale.~~ The stamp distributor who sells the stamps to the retailer must pay sales or use tax on ~~their~~ its purchase of the stamps.

037.03 **Coupons, Reimbursed Price Reductions, or Group Discounts When Reimbursed by a Third Party.** When coupons, ~~certificates,~~ reimbursed price reductions, or group discounts ~~other documentation~~ are accepted by a retailer as ~~a part~~ some or all of the selling price of any taxable item, and ~~such the retailer is reimbursed for the amount represented by the coupons, certificates, or other documentation by~~ receives services, payment, or reimbursement from a third-party, e.g., a (for example, the manufacturer, distributor, or organization an unrelated person), the value of the coupons, reimbursed price reductions, certificates, or group discounts other documentation cannot be subtracted from the selling price when determining the taxable amount at the time of the sale to the purchaser gross receipts. ~~(For gift certificates see Reg 1-036, Premiums and Gifts.)~~

~~037.04~~ **037.03A Reimbursed Price Reductions or Group Discounts.** If the purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount, and the retailer receives ~~consideration~~ payment or reimbursement for granting directly related to the price reduction or discount from a third party other than the purchaser, the amount of the price reduction or discount cannot be subtracted from payment or reimbursement is part of the selling price of the item when determining the taxable amount gross receipts.

~~037.04A~~ A preferred customer card that is available to any patron does not constitute membership in such group or organization.

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~~037.05~~ **037.04 Coupons, Price Reductions, or Group Discounts When Not Reimbursed by a Third Party.** When coupons or group discounts are issued, granted, or ~~and redeemed~~ accepted by the retailer as part of the selling price of any taxable property, that is, if they are sponsored by him or her and are ~~the retailer does~~ not subject to redemption by a ~~receive~~ any services, payment, or reimbursement from a third-party, e.g., a manufacturer or distributor, then the coupons, certificates, vouchers, or group discounts are considered "cash discounts", and the amount of the ~~coupon~~ may be subtracted from the selling price of the property when determining gross receipts.

037.05 Certificates or Vouchers. The sale of gift certificates, promotional certificates, or vouchers is not taxable.

037.05A Redemption of Promotional Certificates or Vouchers. When gift certificates, promotional certificates, or vouchers are redeemed in whole or in part, they are treated as if cash were used up to the face value of the certificate or voucher, even if the retailer or a third party originally sold it for less than face value.

037.05B If a retailer contracts with a third party to market promotional certificates or vouchers to the public in exchange for making purchases from the retailer (for example, Groupon, Deal of the Day, or a fundraising group), the face value of the promotional certificate or voucher is consideration for the sale if it is redeemed by the retailer. The gross receipts of the retailer is the full retail value of the property sold regardless of the amount paid by the customer to the third party.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2701.35. ~~February 22, 2009~~____.)

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REG-1-039 PROMOTING OR ADVERTISING THAT ABSORPTION OF THE TAX IS ABSORBED IS PROHIBITED

039.01 ~~The retailer is~~ Retailers are required to ~~pass on to~~ charge the consumer or user the full amount of the state and local sales ~~and use~~ tax. The retailer must collect the tax as an item separate and distinct from the selling price, except that:

039.01A The Tax Commissioner by regulation may permit retailers of certain classifications of property to include the tax imposed in the total sales price and state that the tax is included.

039.01A(1) Regulations which authorize retailers to include the tax in the total sales price of the property include: Reg-1-031, Coin-Operated Machines; Reg-1-040, Alcoholic Liquors Consumed on the Premises; Reg-1-044, Admissions; and Reg-1-083, Prepared Food and Beverage Service.

039.01A(2) Regulations which authorize these retailers to include the tax in the price of a specific type of property or service must be adopted prior to advertising that the tax is included in the sales price of the property.

039.01B Public utilities furnishing sewer, water, electricity, and gas may elect to absorb the tax, remit the amount of tax based upon the total charges made to taxable consumers, and include a statement on the bill to the effect that the tax has been absorbed by the utility. (See Reg-1-066, Sewer and Water; and Reg-1-089, Energy Source Utility Exemption)

039.02 Unless authorized by regulation, it ~~is~~ a Class IV misdemeanor for a retailer, directly or indirectly, to assert, promote, advertise, imply, or represent to the public in any manner that the tax or any part of the tax will be assumed, absorbed, or refunded by the retailer, or that it will not be added to the purchase price, ~~provided that the Tax Commissioner by regulation may permit a retailer to add and collect the tax imposed without separately stating the tax. The regulation containing the authorization to include the tax in the price of a specific type of property or service must be adopted prior to the advertising of the item. See Reg 33-007 for the procedure for requesting such a regulation.~~

039.03 The following are examples of prohibited statements that cannot be included in any advertising or other promotional communication:

039.03A Tax-free sale;

039.03B Pay no sales tax;

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039.03C Purchases will be discounted by the amount of the sales tax;

039.03D Sales tax stimulus sale;

039.03E We will pay your sales tax; and

039.03F Tax credit sale.

~~039.02 The provisions of this regulation do not apply to public utilities. (Reg 1-066, Sewer and Water.)~~

(Neb. Rev. Stat. §§ ~~77-2702.07~~ 77-2701.16, 77-2703(1)(b) and (c), and 77-2713(5). ~~January 24, 1993~~ ____.)

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REG-1-044 ADMISSIONS

044.01 The term "admission", as used herein, means the right or privilege to have access to or use a place or location where amusement, entertainment or recreation is provided. The gross receipts from the sale of admissions, including surcharges, are subject to sales tax. This includes season or subscription tickets for specific occasions or for multiple occasions, either limited or unlimited during a period of time.

044.02 The term "membership", as used herein, means having all the participation rights of belonging to an organization which shall include, but are not necessarily limited to, the voting for officers, the holding of office, and the ability to change the constitution and bylaws. The payment or receipt of membership dues is exempted from the sales and use tax. Membership shall not include any charge that is intended to allow admission to a place or event, or series of events, rather than to confer participation rights.

044.03 The tax may be included in the total admission price. If the tax is included in the total admission price, a statement must appear on the ticket to the effect that the sales tax is included in such price unless the price is separately stated on a sign posted in a conspicuous place where the admissions are sold.

044.04 The amount of tax on admissions is calculated at the rate in effect on the date of the sale at the place where the admission will be granted.

044.04A When a single charge is made to cover admission to more than one attraction under the same management, the tax is computed on the basis of a single charge. If separate charges are made for each attraction, the tax is computed on each charge or on the total of the separate charges.

044.05 No refund or credit of the sales tax is allowed by reason of nonuse of any ticket of admission except where the selling price of the ticket is also refunded.

044.06 Places of amusement, entertainment, or recreation include, but are not limited to, amusement parks, archery ranges, art exhibits, auditoriums, baseball parks, bowling alleys, cabarets, country clubs, dance halls, driving ranges, fairgrounds, fishing ponds, football stadiums, golf courses, gymnasiums, health clubs, miniature golf courses, movie theaters, museums, night clubs, parks, race tracks, racquetball courts, skating rinks, skeet ranges, street fairs, swimming pools, superslides, theaters, trap ranges, toning salons, and zoos.

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044.07 ~~An admission does not constitute a rental of the facilities. Consequently, the purchase, lease, or rental of any property by the owner or operator charging the admission is taxable and is not for resale.~~

044.08 ~~Where a separate charge, in addition to the admission, is made for actual rental of property such as bowling shoes, roller skates, stadium seat cushions, etc., such gross receipts are taxable. The original purchase of such property may be made with a resale certificate where the use is to be solely for renting or leasing purposes.~~

044.09 ~~Cover charges, minimum charges, charges for reservations, or any similar charges are charges for admissions, and the sales tax must be collected and remitted on the gross receipts.~~

044.10 ~~The operation of a checkroom is a service, and shall not be considered an admission. The gross receipts from the operation of coat or hat checkrooms should not be included in the gross receipts upon which sales tax is computed.~~

044.11 ~~Admissions charged by public or private elementary or secondary schools or school districts are exempt. Admissions charged by student organizations or parent teacher associations in a public or private elementary or secondary school during the regular school day or at an approved function of the school, are exempt.~~

044.12 ~~The gift of an admission is exempt. The donor must pay tax on any payments made to obtain the admission that was given away.~~

044.13 ~~When the charge for an admission to an activity conducted by a nonprofit organization is combined with the solicitation of a contribution see Reg 1-090, Nonprofit Organizations, for the proper taxation of the amount charged.~~

044.14 ~~Charges for admission to political fund raising events by ballot question committees, candidate committees, independent committees, and political party committees, which are either registered with the Political Accountability and Disclosure Commission, or are committees for candidates for federal office, are exempt.~~

044.01 Definitions.

044.01A Access to a place or location means the right to be in the place or location for purposes of amusement, entertainment, or recreation at a time when the general public is not allowed at that place or location absent the granting of the admission.

044.01B Admission means the right or privilege to have access to or use a place or location where amusement, entertainment, or recreation is provided to an audience.

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spectators, or the participants in the activity. Admission includes memberships that grant access to a place or location, but do not include all the participation rights of belonging to the organization including, but not limited to the right to: hold office; vote for officers; and change the policies of the organization.

044.01B(1) Admission does not include a membership which grants all the participation rights of belonging to an organization, including, but not limited to: voting for officers; holding an office; and having the ability to change the policies of the organization.

044.01B(2) Admission does not include a charge for leasing or renting a location, facility, or part of a location or facility.

044.01B(3) Admission does not include a charge for practice or instruction.

044.01C Entertainment means amusement or diversion provided to an audience or spectators by performers.

044.01D Instruction means teaching skills necessary to perform a sport or activity proficiently.

044.01E Lease or rental of a location, facility, or part of a location or facility means that the owner or lessor:

044.01E(1) Cedes control of the location, facility, or part of the location or facility for a period of time; and

044.01E(2) Cedes the right to determine who is granted access to the location, facility, or part of a location or facility to the lessee for the period of the lease or rental.

044.01F Practice means an organized time for instruction, training, or rehearsing skills to become proficient in the sport or activity.

044.01G Recreation means a sport or activity engaged in by participants for purposes of refreshment, relaxation, or diversion of the participants. Recreation includes competition unless it is a professional competition. Whether a competition is professional or recreational is determined based on the nature of the event as a whole and not the professional status of any particular competitor.

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44.02 Sales of Admissions Subject to Sales Tax. The gross receipts from selling admissions, including surcharges, are subject to sales tax. This includes season or subscription tickets for specific occasions or for multiple occasions, either limited or unlimited, during a period of time.

044.02A Cover charges, minimum charges, charges for reservations, or any similar charges are charges for admissions.

044.02B Charges by an organizer of a recreational sports league or competition to teams or individuals to participate where the games or competitions occur in locations under the control of the organizer at the time the games or competitions occur are admissions subject to sales tax unless an exemption applies.

044.02B(1) Charges to teams to participate in the league or competition include mandatory gate fees charged in lieu of collecting gate admissions to spectators and other mandatory charges to teams or participants.

044.02B(2) Charges by the team to individuals who will be participating are not admissions, unless the charge is by the organizer of the league. For example, amounts charged by a city recreation department to teams to participate in a city-organized adult softball league are taxable admissions, but the amount the teams collect from the individuals to cover team expenses, including the entry fee, are not.

044.02C When an admission to an activity or a membership constituting an admission is combined with soliciting a contribution, the portion or the amount charged representing the fair market price of the admission is subject to sales tax. The fair market value is determined according to Reg-1-090.09, Nonprofit Organizations.

044.02D Charges that are not admissions.

044.02D(1) Charges by an organizer of a recreational sports league or competition where the games or competition occur in locations that are not under the control of the organizer during the competition are not admissions. Examples include running events conducted on public streets and trails.

044.02D(2) Charges for participating in a workshop, seminar, class, convention, business meeting, or similar events primarily for training or educational purposes are not admissions.

044.02D(3) Charges for operating a coat or hat checkroom.

Sales and Use Tax Regulations

044.02D(4) Charges for operating a summer camp or a day camp are not admissions.

044.03 Places of Amusement, Entertainment, or Recreation. Places where amusement, entertainment, or recreation are typically provided to an audience, spectators, or participants in the activity include, but are not limited to: amusement parks; archery ranges; art exhibits; auditoriums; baseball parks; bowling alleys; cabarets; country clubs; dance halls; driving ranges; fairgrounds; fishing ponds; stadiums; golf courses; gymnasiums; health clubs; miniature golf courses; movie theaters; museums; night clubs; parks; race tracks; racquetball courts; skating rinks; batting cages; skeet ranges; street fairs; swimming pools; superslides; theaters; trap ranges; and toning salons.

044.03A Owners or operators who charge individuals for access to these places are selling admissions subject to sales tax, even if some of the individuals use the facility for practice or instruction.

044.03B If the owner or operator sets aside certain times for practice or instruction, charges to the students during these times are not admissions. Leasing or renting one of these places, in whole or in part, for purposes of practice or instruction conducted by the lessee, is not an admission.

044.03C To be considered practice or instruction, access must be limited to those participating in the practice or instruction.

044.04 Property Purchased by the Owner or Operator. The owner or operator of a place of amusement, entertainment, or recreation is the consumer of any property purchased, leased, or rented for use in the business of providing amusement, entertainment, or recreation. The owner or operator must pay sales or use taxes on these purchases, leases, or rentals.

044.04A If a separate charge, in addition to the admission, is made for renting property such as bowling shoes, roller skates, stadium seat cushions, etc., the gross receipts from the rental of this property are taxable.

044.04B The owner or operator may purchase property to be used solely for rental or lease using a resale certificate.

044.05 Sales Tax May Be Included in the Price Charged. The sales tax may be included in the total admission price. If the sales tax is included in the total admission price, a statement that the sales tax is included in the price must appear on the admission ticket, or on a sign posted in a conspicuous place where the admissions are sold.

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044.06 **Applicable Rate and Location.** The sales tax on admissions is calculated at the rate in effect on the date of the sale at the place where the admission will be granted.

044.06A If a single charge is made to cover admission to more than one attraction under the same management, the sales tax is computed on the basis of a single charge at the rate applicable at the business location of the retailer.

044.06B If the admission to each attraction can be purchased separately, the sales tax is computed on each charge at the rate applicable at the location of each attraction; or on the total of the separate charges at the rate applicable at the business location of the retailer.

044.07 **Unused Tickets.** No refund or credit of the sales tax is allowed because an admission was not used, unless the selling price of the ticket was also refunded.

044.08 **Ticket Resellers.** Admissions cannot be resold because the second seller does not have the right to grant or deny access to the place or location. Ticket resellers are providing a nontaxable service.

044.09 **Exemptions.**

044.09A Admissions charged by elementary or secondary schools are exempt.

044.09B Admissions charged by school districts, student organizations, or parent-teacher associations to an event or activity held in an elementary or secondary school during the regular school day, or at an approved function of the school, are exempt. Admissions charged by the Nebraska School Activities Association, athletic or academic conferences, or similar organizations that have been approved by the elementary or secondary schools, are exempt.

044.09C Admissions to political fund-raising events by ballot question committees, candidate committees, independent committees, or political party committees, as defined in the Political Accountability and Disclosure Act, or committees for candidates for federal office, are exempt.

044.09D Amounts charged by political subdivisions or organizations that are exempt from income taxes under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, (IRC) to participate in youth sports events, youth sports leagues, or youth competitive educational activities are exempt.

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044.09D(1) Competitive educational activity means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants compete in an activity related to an intellectual field.

044.09D(2) Sports event means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a sport.

044.09D(3) Sports league means an organized series of sports competitions taking place over several weeks or months between teams or individuals that are members of the league.

044.09D(4) Youth sports event, youth sports league, or youth competitive educational activity means an event, league, or activity that is restricted to participants who are less than 19 years of age.

044.09E Charges for participants in any activity provided by a nonprofit organization that is exempt from income tax under IRC § 501(c)(3), which conducts statewide sport events with multiple sports for both adults and youth are exempt.

044.09F Charges for participants in any activity provided by a nonprofit organization that is exempt from income tax under IRC § 501(c)(3), which is affiliated with a national organization, primarily dedicated to youth development and healthy living, and which offers sports instruction and sports leagues or sports events in multiple sports are exempt.

044.09G The exemptions in Reg-1-044.09D through 044.09F include any separately-stated charges to teams or participants that must be paid in order to compete.

044.09G(1) For example, if an organization described in Reg-1-044.09E or 044.09F charges an entry fee to teams to compete in a youth softball or baseball tournament, and also charges each team a separate, mandatory “gate fee” in lieu of charging admissions to spectators, both the entry fee and the gate fee are considered charges to participate and are exempt.

044.09G(2) However, if the organization charges an entry fee, but also allows teams to purchase tournament passes which allow spectators to enter the venue, and the teams may purchase as many passes as they wish or no passes at all, the charges for the tournament passes are not considered charges to participants and are not exempt. The IRC § 501(c)(3) organization must collect, report, and remit sales tax on sales of the tournament passes.

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044.09H Beginning January 1, 2016, admissions and memberships to a nationally accredited zoo or aquarium operated by a public or nonprofit corporation primarily for educational, scientific, or tourism purposes are exempt.

044.10 The gift of an admission is exempt. The donor must pay sales tax on any payments made to obtain the admission that was given away.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2701.32, ~~77-2701.34~~, ~~77-2701.55~~, 77-2703(1), 77-2704.10, and ~~77-2704.63~~; 26 U.S.C. § 170(l), *Berrington Corp. v. Nebraska Department of Revenue*, 277 Neb. 765, 765 N.W.2d 448, 2009, *The Governors of the Knights of Ak-Sar-Ben v. Department of Revenue*, Doc. 352, Pg. 148 (Lancaster Co. Dist. Ct., Dec. 27, 1984); and Attorney General's Opinion No. 88, dated 11/17/69. ~~April 12, 2005~~_____.)

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REG-1-050 MEDICINES AND MEDICAL EQUIPMENT

050.01 The following definitions apply to this regulation and Reg-1-051, Physicians and Dentists. The Nebraska Department of Revenue will rely upon determinations of the Nebraska Medical Assistance Program operated by the Nebraska Department of Health and Human Services (Medicaid) to determine if specific equipment, supplies, or devices are eligible for coverage under Medicaid.

050.01A Appropriate for use in the home means the equipment can be used or operated by a person without specialized training.

050.01B Drug means any compounds, substances, or preparations, other than grooming and hygiene products such as soap, toiletries, and cosmetics, food and food ingredients, dietary supplements, or alcoholic beverages which are:

050.01B(1) Recognized in the official U.S. Pharmacopoeia, official U.S. Homeopathic Pharmacopoeia, or official National Formulary;

050.01B(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

050.01B(3) Intended to affect the structure or function of the body.

050.01C Durable medical equipment means equipment, including repair and replacement parts, that:

050.01C(1) Can withstand repeated use;

050.01C(2) Is primarily and customarily used to serve a medical purpose;

050.01C(3) Is not generally useful to a person in the absence of illness or injury;
and

050.01C(4) Is appropriate for use in the home.

050.01C(5) Durable medical equipment does not include exercise equipment, recliners, vibrators, hot tubs, or monitoring devices unless the monitoring devices are necessary to use other durable medical equipment.

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050.01D Home medical supplies means supplies primarily and customarily used to serve a medical purpose that are appropriate for use in the home and are not generally useful to a person in the absence of illness or injury. Home medical supplies do not include items for personal comfort, hygiene, or cosmetic purposes, or any drugs.

050.01E Mobility enhancing equipment means equipment, including repair and replacement parts, which:

050.01E(1) Is primarily and customarily used to provide or increase the ability to move from one place to another;

050.01E(2) Is not generally used by persons with normal mobility; and

050.01E(3) Is appropriate for use either in a home or a motor vehicle.

050.01E(4) Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, for example, power steering, power brakes, automatic door locks, or running boards.

050.01F Oxygen equipment means oxygen cylinders, cylinder transport devices, including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories.

050.01G Over-the-counter drug means a drug containing a label as required by 21 C.F.R. 201.66. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

050.01H Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner licensed under the Uniform Credentialing Act.

005.01I Prosthetic device means replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. Prosthetic devices include any supplies used with prosthetic devices and any repair or replacement parts.

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050.02 Sales of mobility enhancing equipment for human use are exempt from sales and use tax when supported by a prescription issued by a practitioner licensed under the Uniform Credentialing Act. Taxation of mobility enhancing equipment that is annexed to real estate will be governed by the selected option of the contractor annexing the mobility enhancing equipment. (Reg-1-017, Contractors).

050.02A Option 1 contractors may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, and a copy of the prescription to exempt the equipment or materials from sales tax.

050.02B Option 2 and Option 3 contractors are the consumers of all mobility enhancing equipment that is purchased and annexed to real estate. Option 2 and Option 3 contractors must pay tax on this equipment and materials, and do not collect sales tax from their customers. Option 2 and Option 3 contractors cannot accept a Form 13 or a prescription from their customer to exempt the equipment or materials from tax.

~~050.01 Home~~ 050.03 Sales of home medical supplies, oxygen, oxygen equipment, prosthetic devices, mobility enhancing equipment, and durable medical equipment, and supplies used with the equipment or devices are exempt from sales and use tax if the home medical supplies, oxygen, oxygen equipment, prosthetic devices, or durable medical equipment are:

050.03A Sold for a human patient's use;

050.03B Sold pursuant to a prescription issued by a practitioner licensed under the Uniform Credentialing Act for the treatment of a medical condition; and

050.03C Either;

050.03C(1) Paid for or eligible for coverage under Medicaid, or

050.03C(2) Transferred to the patient during a procedure which is paid for or eligible for coverage under Medicaid, regardless of whether or not the patient is eligible for assistance, covered under the Nebraska Medical Assistance Program operated by Nebraska Health and Human Services Finance and Support are exempt. The same items are also exempt when prescribed by a practitioner licensed under Chapter 71, article 1, or the Advanced Practice Registered Nurse Act of the Nebraska Revised Statutes for the treatment of a medical condition for a person not receiving benefits under the Nebraska Medical Assistance Program.

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050.04 Sales of drugs for human use, except over-the-counter drugs, are exempt from sales and use tax when supported by a prescription issued by a practitioner licensed under the Uniform Credentialing Act.

050.04A Over-the-counter drugs that can be purchased without a prescription are taxable even if they are prescribed by a practitioner licensed under the Uniform Credentialing Act.

050.04B All illegal drugs are taxable.

050.05 Sales of insulin for human use with or without a prescription are exempt from sales tax.

050.01A 050.06 Purchases by physicians and dentists are discussed in Reg-1-051, Physicians and Dentists.

050.01B 050.07 Purchases by ~~medical facilities~~ hospitals, clinics, or health care practitioner facilities that are not sales tax-exempt are taxed in the same manner as purchases by physicians and dentists are taxed. The medical facility Hospitals, clinics, or health care practitioner facilities must maintain copies of the records showing that prescriptions were issued for items transferred without any tax paid or collected.

~~050.02 Sales of drugs, other than over-the-counter drugs, that have been prescribed in writing by physicians or dentists for human use and are dispensed by a licensed pharmacist are exempt from sales and use tax. Sales of drugs, other than over-the-counter drugs, which have been orally prescribed by a physician or a dentist are exempt from the sales and use tax; provided, the prescription is recorded and signed by the licensed pharmacist and filed in the same manner as written prescriptions. Drugs, other than over-the-counter drugs, sold pursuant to the refilling of a prescription from a physician or a dentist are also exempt.~~

~~050.02A Drugs not sold in accordance with the above procedures are taxable.~~

~~050.02B Over-the-counter drugs that can be purchased without a prescription are taxable even when they are prescribed by a doctor.~~

~~050.02C All illegal drugs are taxable.~~

050.03 050.08 Retailers making sales of drugs, other than over-the-counter drugs, durable medical equipment, home medical supplies, prosthetic devices, or mobility enhancing equipment, must keep the prescription sales records segregated from other sales records. All original prescriptions must be filed and available for inspection by the Department of Revenue.

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When a sale is made to refill a prescription, the records of the retailer must show the identification number of the original prescription in order that reference to the original may be made.

050.04 The sale of insulin with or without a prescription is exempt.

050.05 The sale of corrective lenses, either as eyeglasses or contact lenses, with a prescription are exempt. Cleaning devices, cleaning or wetting solutions, and cases are taxable.

050.06 The sale of hearing aids with a prescription by a practitioner licensed under Chapter 71, article 1 or a Hearing Aid Instrument Dispenser and Fitter licensed under Chapter 71, article 47 of the Nebraska Revised Statutes are exempt. The sale of hearing aid batteries is exempt when the retailer maintains a copy of the prescription for the exact batteries purchased.

050.07 The following definitions are to be used as guidelines to determine the exempt status of equipment, supplies, or devices. The Department of Revenue will rely upon determinations of the Nebraska Medical Assistance Program operated by Nebraska Health and Human Services Finance and Support as to whether specific supplies, devices, or equipment are included within the terms used in this exemption.

050.07A Dental prosthetics shall mean any artificial dental or oral device used on or attached to the human body which replaces or corrects a deficient part of the body.

050.07B Durable medical equipment shall mean equipment, including repair and replacement parts, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is not generally useful to a person in the absence of illness or injury, and is appropriate for use in the home. Durable medical equipment does not include exercise equipment, recliners, vibrators, hot tubs, or monitoring devices not necessary in the use of other durable medical equipment.

050.07C Home medical supplies shall mean supplies primarily and customarily used to serve a medical purpose that are appropriate for use in the home and are not generally useful to a person in the absence of illness or injury. Home medical supplies do not include items for personal comfort, hygiene, or cosmetic purposes, or any drugs.

050.07D Mobility enhancing equipment means equipment that enables a disabled or handicapped person to enter, exit, or move from one place to another in his or her residence, and equipment installed on a motor vehicle to make the motor vehicle suitable for use by a disabled or handicapped person.

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~~050.07E Oxygen equipment shall mean oxygen cylinders, cylinder transport devices, including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories.~~

~~050.07F Drugs means any compounds, substances, or preparations, recognized in the U.S. Pharmacopoeia, U.S. Homeopathic Pharmacopoeia, or National Formulary which are intended for use in the diagnosis, cure, or treatment of disease or intended to affect the structure or function of the body. Drugs do not include grooming and hygiene products such as soap, toiletries, and cosmetics.~~

~~050.07G Prosthetic devices shall mean replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. Prosthetic devices include any supplies used with such devices and any repair or replacement parts.~~

~~050.07H Appropriate for use in the home means the equipment can be used or operated by a person without specialized training.~~

~~050.07I Over the counter drug means a drug containing a label as required by 21 C.F.R. 201.66.~~

~~050.08 Charges for home medical supplies, oxygen equipment, mobility enhancing equipment, or durable medical equipment that are purchased with a doctor's prescription and are billed under Part B of Medicare, are exempt.~~

~~050.09 Charges which are billed under Medicaid the Nebraska Medical Assistance Program operated by the Nebraska Department of Health and Human Services and are paid ~~on a~~ by the State of Nebraska ~~Treasury Warrant,~~ are deemed to be purchases by the state and are exempt from sales tax.~~

~~(Neb. Rev. Stat. §§ 77-2704.02, 77-2704.09, 77-2704.12 and 77-2704.15, March 7, 2006 ____.)~~

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REG-1-051 PHYSICIANS AND DENTISTS

051.01 Charges for professional services rendered by physicians and dentists are not taxable.

051.02 Physicians and dentists are considered consumers of all property and services which they purchase for use in the practice of their professions.

051.02A ~~Drugs, not including~~ Sales of drugs, except over-the-counter drugs, prosthetic devices, durable medical equipment, mobility enhancing equipment, that is suitable for use by only one patient, and home medical supplies, that are consumed in the treatment of a patient which are exempt from sales tax if purchased by a physician or dentist to be prescribed, dispensed, administered, or transferred to an individual human patient during the treatment of the patient, if the purchase by the patient would be exempt under Reg-1-050, Medicines and Medical Equipment, if purchased directly by the patient, are exempt when purchased by the doctor or dentist.

051.02B ~~Supplies~~ Sales of supplies that are used in examinations or diagnosis, and test or diagnostic equipment, are taxable when purchased or leased by the physician or dentist for use in his or her practice or for use by more than one patient.

051.02C ~~Durable medical equipment may be purchased by the physician or dentist without the payment of tax when the ownership of the equipment will be transferred to the patient. Durable~~ Sales of durable medical equipment, mobility enhancing equipment, and home medical supplies that is are not transferred to a specific patient is are taxable when purchased by the physician or dentist.

051.02D Sales of equipment, tools, supplies, software, or other technology necessary to use durable medical equipment, prosthetic devices, supplies, mobility enhancing equipment, or home medical supplies are taxable.

051.03 When physicians ~~and or~~ dentists ~~separately~~ sell property separately from treating patients, they are required to collect the tax on ~~such~~ these sales or ~~to~~ maintain records, ~~other than in a location separate from~~ confidential patient records, showing ~~such~~ the sales were exempt from sales tax.

051.04 Under Nebraska law, procuring, furnishing, donating, processing, distributing, or using human whole blood, plasma, blood products, blood derivatives, and other human tissues such as corneas, bones, or organs for the purpose of injecting, transfusing, or transplanting any of them in the human body is providing a service and not a sale of property subject to sales or use taxes; whether or not any payment is received.

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051.05 Charges for copies of medical records are taxable except for:

051.05A Medical records provided to the patient or a person holding that patient's power of attorney for health care, defined in Neb Rev. Stat. §§ 30-3401 through 30-3432; or

051.05B Medical records sold to Medicare, Medicaid, or an entity that is exempt from sales and use tax.

051.06 The definitions found in Reg-1-050.01 apply to this regulation.

(Neb. Rev. Stat. §§ 71-4001, 77-2704.09 and 77-2704.59. ~~April 12, 2005~~____.)

Sales and Use Tax Regulations

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, domestic sheep, swine, ~~baby chicks,~~ ~~turkey poult,~~ poultry, domestic goats, 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,~~ for example, zoo animals, parakeets, penguins, canaries, chinchillas, horses, donkeys, mules, ~~domesticated~~ elk and deer, ostriches, ~~and~~ emus, and pets, such as cats, dogs, and birds, or breeding stock of any of these animals are examples of taxable forms of animal life. Purchases of these forms of animal life are taxable to the purchaser even when 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.

(Neb. Rev. Stat. § 77-2704.46. ~~June 6, 2011~~ _____.)

Sales and Use Tax Regulations

REG-1-063 FEED, WATER, AGRICULTURAL CHEMICALS, AND VETERINARY MEDICINES FOR ANIMAL LIFE

063.01 Feed, agricultural chemicals, veterinary medicines, feed supplements, and water are exempt from sales tax when consumed by, used for consumption by, use on, or use used in caring for animal life. ~~of a kind,~~

063.01A For purposes of this regulation, animal life is limited to animals, 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 exempt from the sales tax.~~

~~063.01A For the purposes of this regulation, animal life is limited to those animals that are included in 063.01.~~

063.01B Cattle, domestic sheep, swine, mink, chinchillas, poultry, domestic goats, game birds subject to permit and regulation by the Nebraska Game and Parks Commission, and bees are examples of food-producing or pelt-producing animal life.

063.02 Feed and feed supplements ~~includes~~ include whole and processed grains or mixtures ~~thereof~~ of grains, silage, hay, and forages or meals made ~~therefrom~~ from these products, mill feeds and commercial feeds, minerals, salt, proteins, fats, fibers, vitamins, bone meal, cod liver oil, limestone, calcium carbonate, grit, and oyster shell. The sale of ~~such~~ these items to be used either separately or mixed as a feed or a feed supplement is exempt from ~~the~~ sales tax whether sold as a premix, concentrate, top dressing, or in raw form.

063.03 Water supplied for the care of animal life ~~shall include~~ includes water purchased to be applied on ~~such~~ animal life for cooling or cleaning purposes.

063.04 Water is exempt from sales tax only ~~when~~ if any incidental use of the water for other than care of or consumption by animal life is less than ~~ten percent~~ 10% of the water purchased. Each ~~person-purchaser~~ claiming an exemption for water usage ~~shall~~ must provide the seller with ~~an exempt sale certificate~~ a Nebraska Resale or Exempt Sale Certificate, Form 13, unless the water company has a formal classification of useage, as provided in Reg-1-066 that is restricted to exempt uses and the useage by the purchaser is within the classification. Reg-1-066 (Sewer and Water)

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063.05 Veterinary medicines ~~as used in this regulation includes~~ include medicines for the prevention or treatment of disease or injury in animals and ~~includes~~ include all drugs, antibiotics, viruses, serums, toxins, antitoxins, or analogous products of natural or synthetic origin. (Reg-1-078, Veterinarians and Veterinary Medicines)

063.06 Agricultural chemicals ~~as used in this regulation includes~~ include pesticides, insecticides, fungicides, growth-regulating chemicals, hormones, rodenticides, or any other substance or mixture intended for preventing, destroying, repelling, or mitigating pests of animals or to affect the structure or function of animals. (Reg-1-078, Veterinarians and Veterinary Medicines)

063.07 Sales of feed, feed supplements, veterinary medicines, and agricultural chemicals labeled by the manufacturer as solely for treatment or care of food-producing animals do not require ~~an exempt sale certificate~~ a Nebraska Resale or Exempt Sale Certificate, Form 13, when the seller has other documentation to support the exempt sale. ~~063.07A~~ Sales of feed, feed supplements, veterinary medicines, and agricultural chemicals that can be used in the treatment or care of both food-producing animals and nonfood-producing animals are taxable unless supported by an exempt sale certificate.

063.08 Sales of feed, feed supplements, veterinary medicines, agricultural chemicals, or water for non-food producing and non-pelt producing animals, ~~such as for example, zoo animals~~ zebras, parakeets, ~~penguins~~, canaries, donkeys, horses, mules, ~~domesticated~~ elk and deer, ostriches, emus, ~~horses~~, work animals, and pets, such as cats, dogs, and birds, or breeding stock of these animals are taxable.

(Neb. Rev. Stat. §§ ~~77-2702.07~~ and 77-2701.16 and 77-2704.41. ~~October 1, 2003~~ ____.)

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REG-1-070 PRESUMPTION OF TAXABILITY

070.01 All gross receipts are taxable unless they are shown to be tax exempt. The retailer (seller) has the burden of proving that a sale of tangible personal property (or other transaction of a type subject to sales tax) is an exempt transaction ~~is upon the retailer (seller), unless he or she requires the purchaser to sign~~ presents a signed certificate to the effect demonstrating that the purchase is by an exempt organization, for an exempt purpose, pursuant to a Direct Payment Permit direct payment permit, or a certificate of exemption for direct mail. See Reg-1-014, Exempt Sale Certificate.

~~070.01A~~ 070.02 The Tax Commissioner ~~shall~~ will make available a taxability matrix that is in a format ~~pursuant to~~ in compliance with the Streamlined Sales and Use Tax Agreement.

~~070.01B~~ 070.02A Sellers, Model 2 sellers, or certified service providers (CSPs) relying on information contained in the taxability matrix are relieved from liability for tax, penalty, or interest resulting from incorrect data in the matrix.

~~070.01C~~ 070.02B Purchasers or a purchaser's ~~certified service provider (CSP)~~ relying on erroneous information in the taxability matrix or the rates and boundaries database are relieved from liability for any penalty resulting from a failure to pay the tax, but remain liable for any tax and interest.

~~070.01D~~ 070.02C CSPs or Model 2 sellers are allowed 10 days after notification by the Department that an item or transaction has been incorrectly classified, to correct an the erroneous classification contained within approved system software before the CSP or Model 2 seller is held liable for failure to collect the correct amount of tax due.

070.03 Sellers may not structure transactions or billing of charges as a means of avoiding the imposition of tax on the gross receipts of the sale. For example, understating charges for the taxable parts of a transaction while overstating charges for the nontaxable parts of the transaction will be ignored for purposes of the sales tax.

~~070.02~~ 070.04 For ~~consumer's~~ use tax purposes, it is presumed that any property or service sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state. The purchaser carries the burden of proving the contrary ~~is on the purchaser.~~

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~~070.03~~ 070.05 Acceptance of a Resale Certificate, Exempt Sale Certificate, ~~Direct Payment Permit~~ direct payment permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption relieves the retailer (~~seller~~) from any further tax liability.

070.06 The person ~~giving or taking~~ who presents a Resale Certificate, Exempt Sale Certificate, ~~Direct Payment Permit~~ direct payment permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption ~~in bad faith shall be~~ which the person knows, at the time of purchase, to be an improper use of the certificate or permit, is guilty of a misdemeanor.

~~070.04~~ When there are two prices for an item that is not normally taxed, and the higher price includes something that would otherwise be taxable, the difference in price is taxable.

(Neb. Rev. Stat. §§ ~~77-2703, 77-2705,~~ 77-2705.01, 77-2705.02, 77-2705.03, and 77-2706. ~~February 22, 2009~~ _____.)

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REG-1-071 CREDIT FOR TAX PAID TO ANOTHER STATE

071.01 If a person brings property or services into ~~the State of~~ Nebraska for storage, use, or other consumption and has properly paid a sales, use, excise, or ~~occupation~~ similar tax to a foreign state ~~and or~~ any of ~~its~~ its political subdivisions, in connection with the sale of the property or services, then a credit is allowed for the payment of that tax. The credit ~~shall be~~ is applied first against the amount of any use tax due this state, ~~and any~~. Any unused portion of the credit shall ~~is~~ then ~~be~~ applied against the amount of any use tax due a ~~subdivision~~ Nebraska municipality or county that levies a local sales tax.

071.02 If the tax paid to the foreign state and its political subdivisions is less than the use tax imposed by Nebraska and its subdivisions, ~~then~~ the difference is due. ~~In the event~~ If the sales, use, excise, or ~~occupation~~ similar tax properly paid to the foreign state ~~and or~~ any of its political subdivisions ~~thereof~~, is equal to or exceeds the use tax imposed by Nebraska and its political subdivisions, use tax is not due Nebraska. Any excess is not refundable nor may it be used as a credit against the use tax due on purchases of any other property or service.

071.03 The credit allowed ~~in the preceding paragraphs~~, is limited to a credit for the amount of foreign state ~~and or~~ political subdivision tax actually paid, and does not ~~extend to~~ include the amount of any credits allowed in the other state, ~~any amount that is refundable by the other state, or the incidence of the tax. (i.e. the use~~ Use tax due in Nebraska ~~may not~~ cannot be extinguished through a tax exemption afforded on the same transaction by a foreign state).

071.04 Sales tax is properly paid to a foreign state or its political subdivision if the tax is legally due to the foreign state or its political subdivision.

071.04A Sales tax is NOT considered legally due to the foreign state or its political subdivision if:

071.04A(1) The purchaser is entitled to a refund of the tax paid to the foreign state or its political subdivision for any reason;

071.04A(2) The delivery neither originates nor terminates in the foreign state;

071.04A(3) The property was never stored, used, or consumed in the foreign state; or

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071.04A(4) The sale was not properly sourced to the foreign state.

071.04B If the sales tax is not legally due the foreign state, the tax is not considered properly paid and no credit will be allowed in Nebraska.

071.05 Tax paid to the seller of advertising and promotional direct mail based upon the shipping point, or tax paid to the seller of other direct mail based upon the purchaser's address, pursuant to Regulations 1-105.04 and 1-105.05, respectively, does not constitute a properly-paid tax for purposes of allowing credit against the use tax due to the state or locality based upon the delivery address.

(Neb. Rev. Stat. §§ 77-2703.03 and 77-2704.31. ~~May 14, 1994~~____.)

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REG-1-075 CONFIDENTIAL INFORMATION

075.01 ~~It shall be~~ Except as provided in Neb. Rev. Stat. § 77-2711 or the regulations of the Nebraska Department of Revenue (Department), it is a misdemeanor for the Tax Commissioner, his or her any employees, legal representatives, or agents of the Department, any employee of the State Treasurer or the Department of Administrative Services, or any person receiving information from any of them, to:

075.01A Divulge ~~divulge or to~~ make known in any manner, the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty; ~~or~~

075.01B Divulge the amount or source of income, profits, losses, expenditures, or any ~~particular thereof, set forth or~~ related items disclosed in any return; ~~or~~

075.01C to permit Permit any return, copy of a return, or any book containing any abstract or ~~particulars~~ items from the return to be seen or examined by any person not connected with the ~~Tax Commissioner~~ Department. ~~The preceding shall not be construed:~~

~~075.01A To prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or grantors, of a certified copy of any return or report.~~

~~075.01B To prohibit the publication of statistics.~~

~~075.01C To prohibit the inspection by the Attorney General, other legal representative of the State of Nebraska, or county attorney of reports or returns of any taxpayer when:~~

~~075.01C(1) such information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county; or~~

~~075.01C(2) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced.~~

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075.01D ~~To prohibit the furnishing of information to the Treasury Department of the United States, Postal Inspectors of the United States Postal Service, or to tax officials of other states allowing similar privileges to the Tax Commissioner and the Department of Revenue.~~

075.01E ~~To prohibit the disclosure to another party to a transaction of information or records concerning the transaction between the taxpayer and the other party.~~

075.02 Information as to whether or not a taxpayer has a valid Sales Tax Permit, has been granted an exemption, or regarding which option has been elected by a contractor may be released to any person upon request.

075.03 The ~~Tax Commissioner~~ Department will comply with the provisions of the Streamlined Sales and Use Tax Agreement for the protection and retention of personally-identifiable information of ~~consumers~~ taxpayers.

(Neb. Rev. Stat. § 77-2711. ~~March 7, 2006~~ _____.)

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REG-1-078 VETERINARIANS AND VETERINARY MEDICINES

078.01 The following definitions ~~will be used for~~ apply to this regulation.

078.01A Veterinary medicines ~~includes~~ include medicines for the prevention or treatment of disease or injury in animals and ~~includes~~ include all drugs, antibiotics, viruses, serums, toxins, antitoxins, or analogous products of natural or synthetic origin.

078.01B Agricultural chemicals ~~includes~~ include pesticides, insecticides, fungicides, growth-regulating chemicals, hormones, and rodenticides or any other substance or mixture intended for use in preventing, destroying, repelling, or mitigating pests of animals, or to affect the structure or function of animals.

078.01C Food-producing or pelt-producing animals ~~includes~~ include animal life, the products of which ordinarily constitute food for human consumption; or the pelts of which are ordinarily used for human apparel. Cattle, sheep, swine, ~~baby chicks, turkey poults,~~ mink, chinchillas, poultry, goats, game birds subject to permit and regulation by the Game and Parks Commission, and bees are examples of ~~exempt forms of~~ food-producing or pelt-producing animal life.

078.01D Non-food producing animals ~~includes~~ include ~~animals such as cats, dogs, zebras~~ zoo animals, parakeets, penguins, canaries, horses, donkeys, mules, domesticated elk and deer, ostriches, ~~and~~ emus, and pets, such as cats, dogs, and birds, or breeding stock of any of these animals.

078.01E ~~Rendering~~ Providing professional services ~~occurs when~~ means the veterinarian has established a doctor-patient, or doctor-client relationship with the client.

078.01F Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine.

078.02 Veterinarians are ~~primarily~~ engaged in the business of ~~rendering~~ providing professional services to owners of domestic animals through care, medication, and treatment of their animals. Charges for professional services ~~rendered~~ provided by veterinarians and veterinary clinics are not taxable.

078.03 Veterinarians and veterinary clinics are consumers of all property and services they purchase for use in ~~the rendition of~~ providing professional services and they are required to pay sales or use tax on all purchases except ~~for~~:

078.03A Purchases of veterinary medicines and agricultural chemicals to be used in the treatment or care of food-producing or pelt-producing animals;

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078.03B Purchases of feed and feed supplements to be fed to food-producing or pelt-producing animals;

078.03C Purchases of veterinary medicines, agricultural chemicals, and other products that are not used to ~~render~~ provide professional services but are sold at retail; and

078.03D Purchases of animal specialty services for livestock.

078.04 Veterinarians and veterinary clinics ~~who~~ that purchase items without paying sales or use taxes ~~tax~~ and use ~~such~~ these items ~~in rendering~~ when providing professional services ~~are required to~~ must remit use tax on ~~their~~ the cost of the item, unless the item is otherwise exempt.

078.05 Veterinarians or veterinary clinics that sell veterinary medicines, agricultural chemicals, feed, feed supplements, veterinary supplies, equipment, or other products, or ~~that~~ provide animal specialty services, ~~apart from the rendition of~~ separate from providing professional services, are required to collect sales tax from their customers, unless ~~such~~ the sales are otherwise exempt.

078.05A See Reg-1-063, Feed, Water, Agricultural Chemicals, And Veterinary Medicines for Animal Life, for details regarding documentation ~~requirements~~ required to support certain exempt sales.

078.05B See Reg-1-102, Animal Specialty Services, for details regarding taxability of ~~such~~ animal specialty services.

078.05C If a veterinarian or veterinary clinic paid sales tax at the time of purchase on the items sold ~~were tax paid when purchased by the veterinarian or veterinary clinic, the sales tax is~~ must be collected from the customer on the full retail ~~sale~~ price. The veterinarian or veterinary clinic will remit to the state the difference between the sales tax collected from the customer and the sales tax previously paid by the veterinarian or veterinary clinic on those items.078.06 Items used in ~~rendering~~ providing professional services are not retail sales regardless of how the charges are itemized on the billing invoice.

078.07 The practice of veterinary medicine is not commercial agriculture. Therefore, machinery and equipment purchased by veterinarians and veterinary clinics to be used in their veterinary practice is are not exempt under Reg-1-094, Agricultural Machinery ~~And~~ and Equipment Refund.

(Neb. Rev. Stat. §§ 54-183, 77-2701.16(3)(g), and 77-2704.41. ~~October 1, 2003~~ _____.)

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REG-1-081 COMMUNITY OR COUNTY ANTENNA TELEVISION CABLE AND SATELLITE SERVICE

081.01 ~~Those persons~~ Gross receipts for furnishing community or county antenna television service (cable service) ~~over or through a distribution system of wires, cables, or other conduits, as well as persons,~~ furnishing satellite television or radio programming (satellite service), or selling prepaid satellite service are subject to sales tax ~~are required to obtain Sales Tax Permits, and collect and remit the sales tax on the gross receipts from the furnishing of such service.~~

081.02 ~~Gross receipts includes the sale of prepaid satellite programming arrangements.~~

081.01A Furnishing cable service means delivering programming to customers using signals transmitted over or through a distribution system of wires, cables, or other conduits.

081.01B Furnishing satellite service means delivering programming to customers using signals emitted by satellites and received by receivers at the customer's location.

081.02A Prepaid 081.01C Selling prepaid satellite programming arrangements shall service means selling the right to purchase obtain satellite service from a person that furnishes satellite service which is paid for in advance and which enables the receipt of satellite service using an access code or authorization code to activate a satellite receiver. The seller of the prepaid satellite service does not have to furnish the satellite service for the sale to be subject to tax.

~~081.02B Prepaid satellite programming arrangements do~~ 081.02 Gross receipts for furnishing prepaid satellite services does not include payments from the seller of the arrangements prepaid service to a satellite service provider for the services rendered using prepaid satellite programming arrangements.

081.03 All billings to the ~~ultimate~~ final consumer ~~shall~~ must indicate a separate amount for the sales tax, since the tax may not be absorbed, assumed, or passed to the consumer as being included in the total price.

081.04 Installation, service connection, and move and change charges are taxable gross receipts, whether paid to the person providing the ~~community or county antenna television cable service~~ or satellite programming service, or to another person.

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081.04A When an Option 2 or Option 3 contractor is not acting as a subcontractor for a public utility, labor charges for installation performed on the customer's side of the demarcation point are not subject to tax. Reg-1-017, Contractors.

081.04B Cable service operators and retailers of satellite service are not public utilities for purposes of this section.

081.05 If any or all of the charge for the activation commission, finder's fee, installation charge, or similar payment is paid to the installer by a third-party service provider any tax due must be paid and remitted to the Department by the third-party service provider.

~~081.05~~ 081.06 Community or county antenna television Cable service operators or and retailers of satellite ~~programming service~~ are consumers of property used in ~~the provision, installation, construction, operation providing, installing, constructing, operating, or and~~ servicing of ~~such a the system, and their purchases~~ Purchases of materials for ~~such uses~~ these purposes are taxable.

~~081.06~~ 081.07 Community or county antenna television Cable service operators or and retailers of satellite ~~programming services~~ may purchase ~~for resale~~ tapes, movies, digital goods, satellite programming, remote controls, and magazines sales tax exempt for sale resale to customers, but must collect sales tax on sales or rentals of these items to their customers.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2701.32, and 77-2703(1). ~~February 22, 2009~~____.)

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REG-1-097 DIRECT PAYMENT PERMIT

097.01 Companies ~~that are~~ issued a direct payment permit are authorized to pay the proper Nebraska and local ~~option~~ sales tax on certain purchases directly to the Nebraska Department of Revenue (Department) in lieu of paying the sales tax to the seller.

097.02 ~~Application~~ Companies may apply for a direct payment permit ~~can be made~~ by completing a Nebraska Application for Direct Payment Authorization, Form 20DP, and paying the nonrefundable \$10.00 application fee. ~~Upon approval of~~ If the application is approved, a direct payment permit will be issued.

097.03 In order to qualify for a direct payment permit, the applicant must meet the following conditions:

097.03A The company must have annual taxable purchases in Nebraska of ~~personal~~ property and services totaling at least \$3 million ~~three million dollars in order to qualify for a direct payment permit~~. Taxable purchases ~~excludes~~ exclude those purchases for which a resale certificate could be used.;

097.03B The company must demonstrate that its system of accruing tax on purchases is adequate for accruing tax on all taxable purchases.;

and

097.03C The company must agree to accrue and pay all sales and use taxes to the Nebraska Department of Revenue on or before the ~~25th~~ 20th day of the month following the date of purchase, lease, or rental.

~~097.03D~~ 097.04 The holder of a direct payment permit ~~is not entitled to~~ will not receive any collection fee on those taxes due on taxable ~~purchases~~ property purchased under the direct payment permit.

~~097.03E~~ 097.05 The holder of a direct payment permit cannot use the permit ~~in connection with~~ for the following transactions:

097.03E(1) 097.05A Cash purchases;

097.03E(2) 097.05B Purchases of motor vehicles, ~~and~~ motorboats, all-terrain vehicles, and utility-type vehicles;

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~~097.03E(3)~~ 097.05C Purchases of lodging and related services;

~~097.03E(4)~~ 097.05D Purchases of food or beverages;

~~097.03E(5)~~ 097.05E Purchases of admissions; and

~~097.03E(6)~~ 097.05F Purchases for resale.

~~097.03F~~ 097.06 The company ~~accepts~~ must accept responsibility for use by any other company to which the direct payment permit has been delegated.

~~097.04~~ 097.07 The holder of a direct payment permit must furnish a copy of the direct payment permit to each seller ~~from whom the holder purchased~~ for purchases of taxable personal property and or services on which an exemption is claimed.

~~097.04A~~ The holder of a direct payment permit must furnish a copy of the direct payment permit to each seller at least once every three years.

~~097.04B~~ 097.07A The holder of a direct payment permit must keep a current list of all sellers from whom purchases are made under the direct payment permit, and, submit the list for examination upon request of the Tax Commissioner, ~~must submit such list for examination.~~

~~097.04C~~ 097.07B If the permit is revoked or relinquished, the holder of the permit must notify all sellers ~~given~~ who have been furnished copies of the permit that the permit is no longer valid.

~~097.05~~ 097.08 ~~The receipt of~~ If a seller receives a direct payment permit from ~~the~~ a purchaser, ~~relieves~~ the seller is relieved from the obligation to collect tax on taxable sales. A copy of the direct payment permit must be maintained in the records of the seller.

~~097.05A~~ 097.08A The holder of a direct payment permit may use the permit to make tax-~~free~~exempt purchases of computer software, digital goods, or services that will be concurrently available for use in more than one jurisdiction.

~~097.05B~~ 097.08B The holder of a direct payment permit may also use the permit to make tax-~~free~~exempt purchases of direct mail as defined in Reg-1-105. ~~Tax~~ Sales tax will be

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remitted based on the requirements of Reg-1-105. A certificate of exemption for direct mail ~~will~~ is not be required for ~~such~~ direct mail purchases.

~~097.06~~ 097.09 The tax that is remitted by a company issued a direct payment permit is a sales tax. The company issued a direct payment permit cannot claim an exemption under ~~Reg-1-02.04E~~ Reg-1-002E on items purchased from any Nebraska licensed seller or from any seller engaged in business in Nebraska.

~~097.06A~~ 097.10 Items purchased under the special permission letter of exemption for certain common carriers as provided in Reg-1-015 and delivered in Nebraska are not subject to sales and use tax when shipped outside Nebraska, even though the same company has been granted the authority to operate under the provisions of the direct payment permit program for sales and use tax purposes.

~~097.07~~ 097.11 The direct payment permit can be delegated to another company ~~in which~~ if the holder of the permit has at least an 80% ownership of the other company.

~~097.08~~ 097.12 The Tax Commissioner may revoke a direct payment permit any time the holder of the permit no longer qualifies for the issuance of a permit, fails to comply with the conditions under which the permit was ~~granted~~ issued, or for any other reason constituting ~~the~~ misuse of the permit.

(Neb. Rev. Stat. §§ 77-2703(1)(f), 77-2705, 77-2705.01, 77-2705.02, and 77-2705.03. ~~February 22, 2009~~ _____.)

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REG-1-105 DIRECT MAIL

105.01 Direct mail means printed material delivered or distributed by U.S. mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

105.01A Advertising and promotional direct mail means direct mail that is intended to attract public attention to a product, person, business, or organization or attempt to sell, popularize, or secure financial support for the same. Advertising and promotional direct mail includes, but is not limited to: flyers, brochures, and catalogs.

105.01B Other direct mail includes transactional documents that contain personal information specific to the addressee, such as billing invoices and bank statements, or legal mailings such as privacy notices and stockholder reports. Other direct mail does not include the development of billing information or data processing services that are more than incidental to the transaction.

105.02 Sales of advertising and promotional direct mail and other direct mail ~~material~~ are exempt from sales tax when the purchaser furnishes the seller with a certificate of exemption for direct mail.

105.02A The purchaser issuing the certificate of exemption for direct mail is responsible for remitting sales use tax on material delivered to locations within Nebraska. The tax is due on the Nebraska portion on or before the ~~25th~~ 20th day of the month following the close of the reporting period.

105.02B A certificate of exemption for direct mail remains in effect until it is revoked, in writing, by the purchaser.

105.03 In lieu of a certificate of exemption for direct mail, purchasers of advertising and promotional direct mail ~~material~~ may furnish the seller with delivery information showing the jurisdictions to which the advertising and promotional direct mail is delivered.

105.03A If the purchaser is unable to provide the seller with information showing the state and local jurisdictions to which the advertising and promotional direct mail is

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delivered, the purchaser may utilize any reasonable, consistent, and uniform method of allocating the sale to the jurisdictions of delivery. Acceptable methods of allocation include:

105.03A(1) Population in the jurisdictions of delivery as a percentage of the total population in the distribution area;

105.03A(2) Percentage of customer accounts in the jurisdictions of delivery as a percentage of the total number of customer accounts of the purchaser; or

105.03A(3) Summary by zip code.

105.03B The seller ~~will~~must collect sales tax on the gross receipts from the sale of advertising and promotional direct mail material delivered to locations within Nebraska.

105.04 If the purchaser of advertising and promotional direct mail does not provide the seller with either a certificate of exemption, delivery information, or an allocation method under Reg-1-105.03A, the seller must collect sales tax on sales of advertising and promotional direct mail based upon the address from which the advertising and promotional direct mail was shipped.

105.05 If the purchaser of other direct mail does not provide the seller with a certificate of exemption, the seller must collect sales tax on sales of other direct mail based upon the purchaser's address.

105.06 The sales tax paid to the seller under either sections 105.04 or 105.05 does not constitute a properly-paid tax for purposes of allowing credit against the use tax due to the state or locality based upon the delivery locations.

~~105.04~~ 105.07 A properly completed certificate of exemption for direct mail received from the purchaser is conclusive proof for the seller that the sale is exempt.

~~105.05~~105.08 The Nebraska Department of Revenue (Department) will recognize only the Streamlined Sales and Use Tax ~~Program (SSTP)~~ Agreement (SSUTA) certificate of exemption for direct mail or a previously-approved substitute for this certificate. To be properly completed, the certificate of exemption for direct mail must include all of the following:

~~105.05A~~105.08A Identification of both the purchaser and retailer (seller) including the type of business engaged in by the purchaser;

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~~105.05B~~ 105.08B ~~Consumer's~~ The use tax or sales tax permit number of the purchaser. If the purchaser has no permit number, state the reason;

~~105.05C~~ 105.08C ~~Authorized~~ An authorized signature or other form of authorization as required by the ~~Streamlined Sales Tax Agreement~~ SSUTA; and

~~105.05D~~ 105.08D ~~Date~~ The date of issuance.

~~105.06~~ 105.09 Any purchaser, or the agent ~~thereof~~ for the purchaser, who gives a certificate of exemption for direct mail or delivery instructions to the retailer (~~seller~~) covering purchases of advertising and promotional direct mail which are not for delivery to a mass audience, ~~shall be is~~ subject to a penalty of ~~one hundred dollars (\$100.00)~~ or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. The penalty ~~shall apply~~ applies to each purchase made during the period the certificate is in effect.

~~105.07~~ 105.10 Any purchaser, or the agent ~~thereof~~ for the purchaser, who fraudulently signs a certificate ~~for~~ of exemption for direct mail or provides delivery instructions with intent to avoid payment of the tax may, in addition to the penalty set out in ~~paragraph 105.07~~ section 105.09, be found guilty of a Class IV misdemeanor.

~~105.08~~ 105.11 The ~~Nebraska~~ Department of ~~Revenue~~ may make and retain copies of any certificates of exemption for direct mail or any delivery instructions received from the purchaser.

(Neb. Rev. Stat. §§ 77-2701.12, 77-2703.03, and 77-2713(5). ~~April 12, 2005~~____.)