REG-1-002 CONSUMER'S USE TAX

002.01 The sales and use taxes complement each other and together provide a uniform tax upon either the sale, lease, rental, use, storage, distribution, or other consumption of all tangible personal property and on any intangible property or services the gross receipts of which are included in the measure of the sales tax under section 77-2703(1). 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 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 services the gross receipts of which are included in the measure of the sales tax under section 77-2703(1). The consumer's use tax applies when the sales tax has not been paid. It is presumed that any property or services sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, distribution, or other consumption in this state until the contrary is established. The burden of proving that any property or services delivered in this state is delivered for a purpose other than storage, use, distribution, or other consumption in this state is on the person who purchases, leases, or rents the property or services.

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

002.04 Consumer's use tax does not apply to the following:

002.04A Transactions upon which the Nebraska sales tax has been paid;

002.04A(1) See requirements for remitting sales tax by holders of direct payment permits in Reg-1-097~~, issuers of certificates of exemption for multiple points of use, Reg-1-104,~~ or certificates of exemption for direct mail, Reg-1-105.

002.04B Storage, use, or other consumption of property or services 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 has been used for its intended purpose in another state. This exemption does not apply to motor vehicles, motorboats, or airplanes; and

002.04E Transactions where the item was purchased in another state, is stored in Nebraska, and is subsequently taken to and used in another state without any use other than storage in this state.

002.05 Consumer's use tax will apply to the following:

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

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

002.05C Purchases at retail from federal government agencies and instrumentalities not required to act as collectors of Nebraska sales or use tax;

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 originally purchased tax free for resale purposes but which is later consumed for personal needs or consumed by or within the business;

002.05F Purchases from out-of-state retailers of items exempt in the other state that are used in this state and would be taxable if purchased in this state; or

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

002.06 If a purchaser who gives a Resale Certificate makes any use of the property other than retention, demonstration, or display while holding such property for sale, lease, or rental in the regular course of business, the use shall be taxable to that purchaser as of the time when the property is first so used. 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 the measure of the use tax and the tax rate to be applied will be the rate in effect at the time of use.

002.07 The amount of consumer's use tax is computed by multiplying the purchase price of the property or service by the applicable rate in effect at the time of use. The rate applicable for consumer's use tax is the same as the rate for sales tax. Purchase price means the total amount of consideration for the property or services received and includes cash, credit, property, and services rendered.

002.08 Those persons holding a sales tax permit shall on the return required thereby, report and pay all consumer's use tax for which they are liable.

002.09 Persons 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 pay the tax directly to the Nebraska Department of Revenue. Unless otherwise required by the Nebraska Department of Revenue, such consumers shall file returns annually if the tax will not exceed nine hundred dollars ($900.00). If the tax is expected to be between nine hundred dollars ($900.00) and three thousand dollars ($3,000.00), the returns shall be filed quarterly. All others shall file monthly.

002.09A Persons who are Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Streamlined Sales Tax Agreement.

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.

002.10 Returns, properly signed and accompanied by remittance, will be considered timely filed if mailed, postage prepaid, on or before the twenty-fifth day of the month following the close of the reporting period. When the twenty-fifth day falls on a Saturday, Sunday, or an approved holiday, the return will be considered timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A United States Postal

Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return.

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

002.11 Remittance must accompany the return and be in the form of a check, draft, money order, or other payment method as approved by the Tax Commissioner made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps must not be sent as payment. Cash may be used when payment is made in person at an office of the Department of Revenue.

(Sections 77-1702, 77-1784, 77-2701.42, 77-2704.30, 77-2704.31, 77-2706(3), and 77-2708(1), R.R.S. 2003, and sections 77-2703(2), and 77-2701.37, R.S.Supp., 2004; and Penney Co., Inc. v. Balka, 254 Neb. 521 (1998).

REG-1-004 PERMITS

004.01 Every person engaging in business as a retailer in Nebraska must obtain a sales tax permit by submitting a Nebraska Tax Application, Form 20, or register through an alternative method as authorized under the Streamlined Sales Tax Agreement.

004.02 Engaging in business in this state means and includes any of the following:

004.02A Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state;

004.02B Having any representatives, agents, salesmen, canvassers, or solicitors operating in this state under the authority of the retailer or a subsidiary of the retailer for the purposes of selling, delivering, or taking of orders for any property;

004.02C Deriving receipts from the rental or lease of property in this state;

004.02D Soliciting retail sales of property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

004.02E Soliciting orders from residents of this state for property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities;

004.02F Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state;

004.02G Maintaining or having a franchisee or licensee operating under the retailer‘s trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967; or

004.02H Doing any of the above as a retailer of services or on behalf of a retailer of services enumerated as taxable in Reg-1-007, Gross Receipts.

004.03 A separate application for each Nebraska retail location is required unless applying through the Streamlined Sales Tax Agreement.

004.04 Out-of-state retailers who are not engaged in business as specified in 004.02, are not required to obtain a permit. However, as a service to their Nebraska customers, those retailers are encouraged to obtain a license which allows them to collect and remit the tax in the same manner as a retailer who is engaged in business in this state. This will preclude the purchasers from having to accrue and remit their consumer's use tax liability directly to the Department of Revenue.

004.05 Upon examination and approval of the application, the Department of Revenue shall issue to the retailer the appropriate sales tax permit for each Nebraska business location. The permit is permanent, not transferrable, and valid only for the retailer in whose name it is issued

and for the conduct of business at the place designated. The permit must be conspicuously displayed at the place of business.

004.05A Retailers moving their locations may file a Nebraska change request to change the location address shown on their permits. New permits with the new address will be issued.

004.06 Retailers who temporarily will not be making any sales, may cancel their permits. When sales are resumed, the permits may be reinstated without any charge.

004.07 Upon violation of any of the sales tax statutes or regulations, the Department of Revenue may revoke or suspend the permit or permits of the violator. The procedures for revocation hearings are contained in Practice and Procedure Reg-33-008.

004.07A Following the revocation of a sales tax permit, the Department of Revenue will consider issuance of another permit only if all tax liabilities, including interest and penalties, have been paid in full, and sufficient security has been posted with the Department to ensure future compliance.

004.07A(1) The amount of the security required before the Department will reissue a sales tax permit will be no greater than three times the estimated average amount payable for the seller's reporting period or five times the estimated average amount payable for the reporting period in the case of persons habitually delinquent.

004.08 Anyone whose permit has been previously suspended or revoked shall pay the Department of Revenue, in addition to the required security specified in Reg-004.07A(1), a fee of twenty-five dollars ($25.00) for the renewal or reissuance of a permit in the event of a first revocation, and fifty dollars ($50.00) for each successive revocation. A new permit will not be issued to the same person until the Department of Revenue is satisfied that such person will comply with the sales and use tax statutes and regulations.

004.09 Anyone who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor. Upon conviction thereof, such person and each such officer shall be fined an amount not to exceed five hundred dollars ($500.00) per each day of operation.

(Sections 77-27,131, 77-2701.13, 77-2705, and 77-2713(3), R.R.S. 2003, and section 77-2703(2), R.S.Supp., 2004. .)

REG-1-006 RETAIL SALE OR SALE AT RETAIL

006.01 Retail sale or sale at retail means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

006.01A Gross receipts from sales at retail in this state are taxable except as otherwise provided.

006.01B Retail sale includes the sale or exchange of property or services for property, for money, or for services. Retail sale includes every transaction constituting a sale, whether conditional, installment, credit, or otherwise. In general, retail sale or sale at retail includes all sales of tangible personal property, or of other items the gross receipts of which are taxable. (Reg-1-007, Gross Receipts).

006.02 The test of a sale at retail is whether or not the sale is to a purchaser for use or consumption and not for resale. Services are generally consumed by the purchaser and are only rarely purchased for resale. (See Reg-1-013, Sale for Resale, or Reg-1-023, Ingredient or Component Part).

006.03 The question of who makes the sale is immaterial. The controlling consideration is whether it is a sale to a final consumer or user and not for resale.

006.04 The location of the sale is generally where the purchaser or lessee takes delivery of the property or service.

006.04A The sale occurs in this state even if the buyer intends to take the property or service to another state.

006.04B Freight terms such as FOB shipping point or FOB destination, or declarations of the parties made after the completion of the transaction are not sufficient to show where the sale occurs.

006.05 If the location where the purchaser takes delivery of the property or service cannot be determined, the sale is taxed at the address for the purchaser according to the retailer’s records.

006.06 If the retailer's records do not contain an address for the purchaser, an address obtained during the transaction, including from a payment document, may be used.

006.07 If the location of the sale cannot be determined under any of the above, the sale is taxed at the location from which the property was shipped, from which the digital goods or computer software ~~delivered electronically~~ was first available for transmission by the seller, or from which the service was provided.

006.08 The sale of utilities occurs where the meter is located or the connection is furnished.

006.09 A sale of a maintenance agreement with the covered property occurs where the property is delivered, or where the motor vehicle, trailer, semitrailer, or motorboat is registered.

006.09A A sale of a maintenance agreement separate from the covered property occurs at the location where the property being covered is normally used.

006.10 A sale occurs in another state when the seller is required by the terms of the sale to

deliver the property or service to a point outside this state.

006.10A The Department of Revenue will assume that delivery is required when the item is so large or dangerous that it requires special handling, the seller normally provides the special handling, and the seller actually delivers the item in another state.

006.10B Acceptable proof of transportation outside this state is a waybill or bill of lading, an insurance or other receipt issued by the United States Postal Service, or a trip sheet signed by both the seller's delivery agent and the person who received the goods.

006.10C If the property or service is returned to Nebraska after delivery by the seller, it is taxable in Nebraska. The buyer must pay the use tax directly to the Department of Revenue.

006.11 The provisions of this regulation do not apply to motor vehicles, trailers, and semitrailers which are sold, rented, or leased for periods of one year or more; to motorboats which are sold, rented, or leased for periods of one year or more, or to sales of aircraft that do not qualify as transportation equipment as defined in Reg-1-019, Rental or Lease of Vehicles. See also Reg-1-020, Motor Vehicles, Reg-1-067, Aircraft and Related Services, and Reg-1-096, Motorboats, for the rules on these rentals and sales.

(Section 77-2701.31, R.R.S. 2003, and sections 77-2701.34, 77-2703(1)(g), and 77-2703.01, R.S.Supp., 2004. .)

## REG-1-007 GROSS RECEIPTS DEFINED

007.01 Gross receipts mean the total amount of the sale or lease or rental price of retail sales by retailers, valued in money, whether received in money or otherwise. Gross receipts includes the value of any property, services, commodities, or precious metals, including gold or silver coins, received. Gross receipts include:

007.01A The gross revenue received from the installation of, or from furnishing local exchange telephone service, mobile telecommunications service, and intrastate message toll telephone service, (Reg-1-065, Telephone and Telegraph Communication Services);

007.01B The gross revenue received from the installation of or furnishing intrastate telegraph service, (Reg-1-065, Telephone and Telegraph Communication Services);

007.01C The gross revenue received from furnishing gas, electricity, sewer and water service, (Reg-1-066, Sewer and Water);

007.01D The gross revenue received from the installation of or furnishing satellite programming or community or county antenna television service, (Reg-1-081, Community or County Antenna Television Service);

007.01E The gross revenue from admissions, (Reg-1-044, Admissions);

007.01F The gross revenue received from the sale, lease, rental, installation, application, repair, or maintenance of tangible personal property, including the sale through vending machines to users or consumers, and also including small sales on which no tax is collected;

007.01G The gross revenue from lodging for any period less than thirty (30) days, (Reg-1-046, Hotels, Lodgings, and Accommodations);

007.01H The gross revenue from the sale, lease, license, franchise or rental of intellectual or entertainment properties, including computer software, videotapes and movie film, (Reg-1-045, Motion Picture Film and Videotape and Reg-1-088, Computer Software);

007.01I The gross revenue from charges for delivery or freight or for shipping and handling received by the retailer, (Reg-1-026, Finance, Carrying, Service, and Interest Charges, Reg-1-079, Delivery Charges);

007.01J The gross revenue from the sale of maintenance agreements, service contracts, guarantees, or warranties, when the items covered or the services to be provided are taxable;

007.01K The gross revenue from computer software training, (Reg-1-088, Computer Software);

007.01L The gross revenue from building cleaning and maintenance services, (Reg-1-098, Building Cleaning and Maintenance);

007.01M The gross revenue from pest control services, (Reg-1-100, Pest Control Services);

007.01N The gross revenue from security or detective services, (Reg-1-101, Security and Detective Services);

007.01O The gross revenue from recreational vehicle (RV) park services, (Reg-1-103, Recreational Vehicle Park Services);

007.01P The gross revenue from motor vehicle washing, waxing, towing, and painting, (Reg-1-099, Motor Vehicle Services);

~~007.01Q The gross revenue from contractor labor, (Reg-1-017, Contractors);~~

007.01Q The gross revenue from bundled transactions when one or more of the products included in the bundle are taxable, (Reg-1-106, Bundled Transactions);

007.01R The gross revenue from animal specialty services, (Reg-1-102, Animal Specialty Services); and

007.01S The total amount of the sale without deduction for:

007.01S(1) The cost of materials used, labor or service costs, interest paid, losses, or any other expense;

007.01S(2) The cost of transportation of property;

007.01S(3) The amount charged for warranties, guaranties, service contracts, or maintenance agreements;

007.01S(4) Cash rebates or refunds paid by the manufacturer to either the retailer or the purchaser, (For rebates on motor vehicles, see Reg-1-020, Motor Vehicles);

007.01S(5) The amount paid for any occupation taxes, import duties, ~~or~~ manufacturer's excise taxes or property taxes levied against the property;

007.01S(6) The cost of any license, franchise, or lease for the use of computer software or entertainment properties such as videotapes or movie films; and

007.01S(7) Any mandatory charge required to be paid in the purchase of an item subject to tax.

007.02 The definition of gross receipts does not include the following:

007.02A Discounts allowed and taken on sales, (Reg-1-024, Cash Discounts);

007.02B The portion of the sales price of property refunded to the customer either in cash or credit, (Reg-1-025, Returned Articles);

007.02C Charges for financing, carrying charges, service charges, and interest charges for credit sales, (Reg-1-026, Finance, Carrying, Service, and Interest Charges);

007.02D The value of property accepted as partial consideration on the retail sale of other similar property, (Reg-1-029,Trade-ins or Exchanges);

007.02E The amount collected for the federal luxury excise taxes on consumers; and

007.02F The amount charged for the federal retail tax on heavy trucks, trailers, and tractors.

(Sections 77-2703, 77-2701.16 ~~77-2702.07 and 77-2702.17, R.R.S. 2003.~~ .)

REG-1-009 ACCOUNTING METHODS

009.01 Gross sales must be reported in accordance with the method of accounting regularly employed in keeping the books of the particular taxpayer. Retailers may use either the cash basis, accrual basis, or any other generally recognized accounting basis which correctly reflects the operation of the business. When a basis of accounting has been adopted for reporting sales tax, the retailer may not change that basis of accounting without prior permission from the Department of Revenue.

~~009.01A Notwithstanding the method of accounting normally used, contractors will collect, report, and remit the tax on construction services for each payment that is received. If the payment is not recorded as a sale when received, the contractor must report and remit the tax based on the reporting period during which either the bill was prepared or the payment was received.~~

009.02 Retailers maintaining their regular books and records on the cash basis shall make returns on the basis of cash received during the period, provided this basis clearly reflects the operation of the business.

009.03 Retailers maintaining their regular books and records on the accrual basis, or any other basis of accounting recognized under generally accepted accounting principles, shall make returns on that basis and shall report all sales recorded during the period on the corresponding Nebraska and Local Sales and Use Tax Return, Form 10.

009.04 As is explained in Reg-1-016, Changes in Rate of Tax, the basis on which returns are required to be made shall also serve as the basis for determining the rate at which the tax is to be collected by the retailer from the purchaser.

009.05 Retailers maintaining their books and records on the accrual basis, may elect to defer remittance of sales tax not yet collected on credit, conditional, and installment sales. If such election is made, it shall be pursuant to the following conditions:

009.05A The election must be submitted in writing to the Nebraska Department of Revenue prior to the retailer's change in reporting,

009.05B Such election shall become effective the first day of the month following the month the notice of election is received by the Department; provided, such notice is postmarked no later than the 15th day of the month. Elections postmarked after the 15th day of the month shall become effective the first day of the next succeeding month (i.e., election notice postmarked September 10, effective date of election, October 1; election notice postmarked September 17, effective date of election, November 1.)

009.05C The election will be acknowledged by the Department; such acknowledgment is to be maintained with the retailer's records.

009.05D This option is available only to retailers who finance their own sales or discount them to a qualified subsidiary corporation.

009.05D(1) Retailers who accept bank or similar credit cards or who discount their credit sales to a third party, may not defer the sales tax remittance on these sales. However, retailers who both carry their own credit and discount some credit sales to a third party, may defer the sales tax remittance on that portion of credit

sales carried by the retailer.

009.05D(2) Retailers who discount their credit sales to a subsidiary corporation may elect to defer the sales tax until the subsidiary receives payment on the account. If the subsidiary corporation does not obtain a Nebraska sales tax permit, the retailer must obtain a surety bond in favor of the State of Nebraska in an amount not less than two (2) times the amount of sales tax payable on outstanding Nebraska accounts receivable held by the subsidiary as of the end of the prior calendar year. The Nebraska Department of Revenue will provide the necessary information and bond conditions upon written request. Each retailer maintaining a surety bond, shall review the amount of each bond at the close of each calendar year, adjusting same to reflect the minimum bond requirement.

009.05D(3) Failure of the subsidiary to maintain a sales tax permit, or of the retailer to maintain a bond in the required amount shall result in all sales tax not previously remitted on recorded sales becoming due and payable. The tax must be paid by the next required sales tax return filing date.

009.05E Once in effect, this election shall remain in force for a period of not less than one (1) year from the date the election becomes effective.

009.05F Retailers who wish to discontinue remitting under this option and remit sales tax in accordance with paragraph 009.03, are required to notify the Department. Payment of all deferred sales taxes will be remitted on their next required sales tax filing date corresponding to the tax period within which the notice is received by the Department. Should a retailer discontinue business while under this option, all deferred sales taxes must be remitted on its final sales tax return.

009.05G For retailers deferring sales tax remittances, the amount of tax due on a sale is determined by the sales tax rate in effect at the time the sale is recorded.

009.05H Retailers deferring sales tax remittances under this option do not qualify for the bad debt deduction as sales tax is remitted after the receipt of payment.(Reg-1-028, Bad Debts)

(Section 77-2708(1)(b)(iv), R.R.S. 2003, and sections 77-2701.10, and 77-2703(1), R.S.Supp., 2004. .)

REG-1-012 EXEMPTIONS

012.01 Certain sales are exempt. Exempt sales can be divided into four groups. The four groups are sales that are 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).

012.02 The following are the sales that are exempt. This listing does not contain an explanation of the exemption. Refer to the regulation referenced at the end of the exemption for definitions, explanations, and limitations.

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);

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);

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);

012.02C(7) Nonprofit Nebraska licensed intermediate care facilities, ~~and~~ 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);

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~~(28)~~(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(~~29~~)(30) The Nebraska Investment Finance Authority; and

012.02C(~~30~~)(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);

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);

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);

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, and Reg-1-107, Manufacturing Machinery and Equipment);

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

~~012.02D(30) Contractor labor for new construction and certain other construction projects, (Reg-1-017, Contractors);~~

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; ~~and~~

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, (Reg-1-107, Manufacturing Machinery and Equipment); and

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

012.03 Consumer's 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

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.

(Sections 77-2704.22, 77-2701.47, 77-2704.57, 77-2704.56, 77-2704.15, 77-2704.39, 77-2704.40, 77-2704.41, 77-2704.46, 77-2705(7), and 77-2706, R.R.S. 2003, and sections 77-2703(1)(f) and 77-2704.12, R.S.Supp., 2005. .)

## REG-1-013 SALE FOR RESALE - RESALE CERTIFICATE

013.01 A sale for resale is a sale of property or services to any purchaser for the purpose of resale in the normal course of the purchaser's business. The item may be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property, (Reg-1-023, Component Parts--Manufacturing, Processing, and Fabrication). A sale for resale includes a sale of property to a purchaser for the sole purpose of renting or leasing such property to others; provided, such rental or lease payments are set at a fair market value.

> 013.01A Fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the necessary facts.
>
> 013.01B A sale for resale does not include the sale of property to a purchaser whose subsequent rental or lease of that property is incidental to the rental or lease of real estate.

013.02 The burden of proving that a sale of property is not a sale at retail is upon the retailer (seller) unless the retailer (seller) accepts a properly completed resale certificate providing evidence that the property is purchased for the purpose of reselling, leasing, or renting in the regular course of the purchaser's business or is to be used as an ingredient or component part of other property to be resold, leased, or rented. The resale certificate constitutes a part of the retailer's (seller's) records and is to be retained in the same manner as other sales tax records.

013.03 A properly completed resale certificate received from the purchaser is proof for the retailer (seller) that the sale was for resale. To be properly completed, the resale certificate, as allowed by Reg-1-013.11, must include all of the following:

> 013.03A Identification of both purchaser and retailer (seller) including type of business engaged in by purchaser;
>
> 013.03B Sales tax permit number of purchaser. If the purchaser is licensed as a retailer in Nebraska or another state which requires a permit, enter the sales tax permit number. If the purchaser has no permit number, state the reason;
>
> 013.03C A general description of the property or services sold, leased, or rented by the purchaser in the regular course of his or her business;
>
> 013.03D Identification of items purchased. A single purchase certificate that covers a single sales transaction must describe the specific property or services purchased. A blanket certificate must contain a general description of the property or services commonly purchased;
>
> 013.03E Authorized signature or other form of authorization as allowed by the Streamlined Sales Tax Agreement; and
>
> 013.03F Date of issuance.

013.04 If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, such use removes it from the "sale for resale" exemption category and accordingly, the use is taxable to the purchaser from the time the property is first used. Except for a purchaser of aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of the

property is the measure of the tax. (Reg-1-035, Consumption of Untaxed Property.)

013.05 The retailer (seller) or certified service provider (CSP) holding a properly completed resale certificate is relieved from liability for tax, penalty, and interest. However, this does not apply to sellers who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption.

013.06 A retailer (seller) or CSP repeatedly making the same type of sales to the same purchaser is not required to take a separate resale certificate for each sale, but may take a blanket resale certificate covering future sales.

013.07 Sales in which the seller is required to make delivery outside of Nebraska need not be supported by resale certificates if properly supported by bills of lading, certificates of out-of-state delivery, or other documentation. However, where delivery to the out-of-state purchaser occurs in this state, the sales tax payment is required unless the sale is otherwise exempt or for actual resale purposes, in which case the retailer (seller) must take a properly completed resale or exempt sale certificate.

013.08 If in any case a resale certificate or satisfactory evidence in support of a claim that a sale is exempt cannot be produced ~~on demand~~ to the Nebraska Department of Revenue within the time frames noted below, ~~of the Nebraska Department of Revenue,~~ the retailer (seller) making the sale is responsible for the tax on the transaction.

> 013.08A Sellers are relieved from liability for the tax if a properly completed resale certificate is received, or the seller otherwise captures the relevant data elements supporting the exemption, within 90 days subsequent to the date of the sale.
>
> 013.08B Sellers are relieved from liability for the tax if a properly completed resale certificate is received, or the seller otherwise obtains the relevant data elements supporting the exemption, within 120 days subsequent to a request for substantiation made by the Department.

013.09 Any purchaser, or the agent thereof, who gives a resale certificate to the retailer (seller) for any purchase taxable under sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, which is purchased for a use other than resale, lease, or rental in the regular course of the purchaser's business, shall be 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. With regard to a blanket resale certificate, said penalty shall apply to each purchase made during the period the blanket certificate is in effect.

013.10 Any purchaser, or the agent thereof, who fraudulently signs a resale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in paragraph 013.09, be found guilty of a Class IV misdemeanor.

013.11 The Nebraska Department of Revenue will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute for this Form 13, the Multistate Tax Commission Uniform Sales and Use Tax Certificate, or a certificate of exemption authorized by the Streamlined Sales Tax Agreement.

013.12 Sellers shall maintain records of resale transactions. The Nebraska Department of Revenue may make and retain copies of any resale certificates.

(Sections 77-2706(1), (2), (3), and (4), and 77-2706.01, R.R.S. 2003, and sections 77-2701.34 and 77-2703(1)(f), R.S.Supp., 2004. .)

## REG-1-014 EXEMPT SALE CERTIFICATE

014.01 Certain sales, leases, or rentals, and the storage, use, or other consumption of property or services are not taxable. Exempt transactions can be divided into four groups. The four groups are transactions that are exempt due to:

014.01A The seller (entity-based exemption);

014.01B The item sold (product-based exemption);

014.01C The buyer (entity-based exemption); and

014.01D The buyer's intended use of the item (use-based exemption).

Transactions of the type described in 014.01A and 014.01B are not required to be supported by exempt sale certificates, provided the records clearly show the nature of the seller and the product being sold. A purchaser making a purchase that is exempt because it is an occasional sale is required to obtain a certificate or other documentation from the seller that the sale was exempt.

Transactions of the type described in 014.01C and 014.01D are required to be supported by exempt sale certificates or other suitable documentation. (Reg-1-012, Exemptions.)

014.02 The burden of proving that any sale of property or services is not taxable is upon the retailer (seller) and sufficient records must be kept which reveal the nature of each exempt sale. A retailer (seller) is required to obtain an exempt sale certificate from the purchaser in support of the claim that the sale is exempt. The exempt sale certificate constitutes a part of the retailer's (seller's) records and is to be retained in the same manner as other sales tax records.

014.03 Exemption numbers in the form of numbered certificates of exemption are issued by the Nebraska Department of Revenue and are required for nonprofit organizations, public schools, and common or contract carriers. (Reg-1-069, Common and Contract Carrier Vehicles, Reg-1-090, Nonprofit Organizations, and Reg-1-092, Educational Institutions.)

014.04 The following types of organizations are not issued numbered certificates of exemption by the Nebraska Department of Revenue: The United States government, its agencies, and corporations wholly owned by the United States government; the state, its agencies, and political subdivisions, other than public schools. Purchases by many Nebraska political subdivisions, all other states, and all political subdivisions of other states are taxable.

014.05 A properly completed exempt sale certificate received from the purchaser is proof for the retailer (seller) that the sale was exempt from the sales and use tax. To be properly completed, the exemption certificate, as allowed by Reg-1-014.11, must include all of the following:

014.05A Identification of both purchaser and seller;

014.05B Statement of basis for exemption as described on the Nebraska Resale or Exempt Sale Certificate, Form 13, including completion of all information for the basis chosen;

014.05C A statement as to whether the certificate is for a single purchase or is a blanket certificate for future sales;

014.05D Authorized signature or other form of authorization as allowed by the Streamlined Sales Tax Agreement; and

014.05E Date of issuance.

014.06 The retailer (seller) or certified service provider (CSP) holding a properly completed exempt sale certificate is relieved from liability for tax, penalty, and interest. However, this does not apply to sellers who fraudulently fail to collect tax or solicit purchasers to participate in unlawful claims of exemption.

014.07 A retailer (seller) or CSP repeatedly making the same type of exempt sale to the same purchaser is not required to take a separate exempt sale certificate for each sale but may take a blanket certificate covering future sales.

014.08 If in any case an exempt sale certificate or satisfactory evidence in support of a claim that a sale is exempt cannot be provided to ~~produced on demand of~~ the Nebraska Department of Revenue within the time frames noted below, ~~in support of a claim that a sale is exempt,~~ the retailer (seller) making the sale is responsible for the tax on the transaction.

014.08A Sellers are relieved from liability for tax if a properly completed exemption certificate is received, or the seller otherwise captures the relevant data elements supporting the exemption, within 90 days subsequent to the date of the sale.

014.08B Sellers are relieved from liability for the tax if a properly completed exemption certificate is received, or the seller otherwise obtains the relevant data elements supporting the exemption, within 120 days subsequent to a request for substantiation made by the Department.

014.09 Any purchaser, or the agent of the purchaser, who gives an exempt sale certificate to the retailer (seller) for any purchase which is not exempted from the sales and use tax under sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, shall be 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. With regard to a blanket exempt sale certificate, said penalty shall apply to each purchase made during the period the blanket certificate is in effect.

014.10 Any purchaser, or the agent of the purchaser, who fraudulently signs an exempt sale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in paragraph 014.09, be found guilty of a Class IV misdemeanor.

014.11 The Nebraska Department of Revenue will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute, a Nebraska Energy Source Exemption Certificate, Form 13E, a Nebraska Certificate of Exemption for Mobility Enhancing Equipment, Form 13ME, or a certificate of exemption authorized by the Streamlined Sales Tax Agreement for all sales except sales to the federal government. Sales to the federal government, an agency, or wholly owned corporation thereof, may be supported in either of two ways. First, they may be supported by a regular federal certificate of exemption form. An alternative procedure involves maintaining purchase documentation clearly identifying the purchaser as the federal government, an agency, or wholly owned corporation thereof. The best documents available are those which show payment was made by a United States Treasury Department warrant. (Reg-1-072, United States Government and Federal Corporations.)

014.12 Sellers shall maintain records of exempt transactions. The Nebraska Department of Revenue may make and retain copies of any exempt sale certificate.

(Sections 77-2705(7) and (8), 77-2706, 77-2711(3)(a) and (4), and 77- 2713(5), R.R.S. 2003, and section 77-2703(1)(f), R.S.Supp., 2004. .)

## REG-1-016 CHANGES IN RATE OF TAX

016.01 The rate at which the sales and use tax is imposed is subject to change or the base may be altered by legislation which extends the tax to transactions previously not taxed. The purpose of this regulation is to set out the manner in which such occurrences will affect the tax on sales and purchases made where pre-existing contracts or obligations are involved so that retailers and consumers alike can take note of possible increases for which they may become liable.

016.02 For sales, leases, or rentals, the sales tax is imposed and shall be collected and remitted by the retailer at the rate in effect at the time the gross receipts are recorded as sales under the accounting method used by the retailer to maintain his or her books and records. A lease or rental agreement which extends through a tax rate change, will recognize the changed tax rate on payments recorded on or after the rate change. (Reg-1-009, Accounting Methods.)

> 016.02A For the rental or lease of a motor vehicle, the sales tax is imposed at the rate in effect at the time of the delivery of the motor vehicle regardless of changes in the rate during the term of the lease.

016.03 If the use tax is not required to be remitted at the time of purchase, the applicable use tax rate is that rate in effect at the time of use according to the accounting basis used to maintain the taxpayer's books and records.

016.04 The retailer on a cash basis of accounting will collect and report the tax at the rate in effect at the time he or she receives a payment without regard to whether the payment is in satisfaction of an obligation predating a change in the rate. The retailer using an accrual basis of accounting will collect and report the tax at the rate in effect at the time he or she records the sale.

016.05 Persons providing services covering a period starting before, and ending after, the effective date of a rate change will bill tax as follows: (a) for a rate increase, the change will apply to the first billing period starting on or after the effective date of the change; and (b) for a rate decrease, the change will apply to bills rendered on or after the effective date of the change.

016.06 When construction contractors operating under either Option 2 or Option 3 purchase construction materials to be consumed by them, they are obligated to pay the tax on the same basis as other consumers without regard to whether the purchase of such materials is for use in completion of a construction contract executed prior to a change in the rate. However, when a written contract exists for a fixed-price construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax; provided, such refund amount exceeds ten dollars ($10.00). The contractor must submit a copy of the contract and any other evidence necessary to establish his or her entitlement to the refund.

> 016.06A In the event that the sales tax rate is decreased during the term of the fixed-price contract, the contractor shall pay to the Department of Revenue the difference between the decreased tax rate and the tax rate in effect prior to the decrease; provided, the amount of such payment exceeds ten dollars ($10.00). This procedure results in the contractor's final sales tax liability on fixed-price written contracts, to equal the rate in effect at the time the contract was entered into.

~~016.07 When construction contractors are required to collect the sales tax on contractor labor, they are obligated to collect the tax on the same basis as other contractors without regard to~~

~~whether the contractor labor was performed in the completion of a construction contract executed prior to the imposition of tax on contractor labor. However, when a written contract exists for a fixed-price construction, reconstruction, alteration, improvement, or repair project and the sales tax was first imposed on contractor labor during the term of that fixed-price contract, the taxpayer may apply for a refund of the sales tax paid on the contractor labor; provided, such refund amount exceeds ten dollars ($10.00). The taxpayer must submit a copy of the contract and any other evidence necessary to establish his or her entitlement to the refund.~~

016.07~~016.07A~~ For fixed-price contracts in which the contractor labor is taxable and which were in progress on October 1, 2007, the date on which such contractor labor became exempt, ~~In the event that the sales tax no longer applies to contractor labor during the term of the fixed-price contract~~, the taxpayer shall pay to the Department of Revenue the difference between the decreased tax collected and the tax that would have been due on the contractor labor prior to the change; provided, the amount of such payment exceeds ten dollars ($10.00). Failure to make the required payment constitutes a criminal act.

(Section 77-2701.03, R.R.S. 2003, and sections 77-2703(1) and (2), 77-2704.32, and 77-2704.33, R.S.Supp., 2004. .)

REG-1-017 CONTRACTORS

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

017.02 The following definitions will be used for this regulation.

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

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

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

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

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

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

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

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

017.02H Live plants include trees, shrubs, flowers, and sod. Live plants do not include seeds.

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

017.02J Option 1 contractor is a contractor who has elected to be taxed as a retailer or a contractor who has not made an election. See section 017.05 of this regulation.

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

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

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

017.03 Contractors may choose how they want to treat building materials for tax purposes. There are three options available to the contractor for the taxation of building materials. The choice of an option is made by completing and submitting to the Department of Revenue, a Nebraska Sales and Use Tax Election for Contractors, Form 16. This form must be filed within three months after beginning to operate as a contractor.

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

017.03B If the Form 16 is not filed, the contractor will be treated as a retailer under Option 1 for sales and use tax purposes.

017.04 Contractors may change their option. The contractor must notify the Department of Revenue in writing by submitting a new Form 16 before the change is effective. When a change becomes effective, it applies to all contracts in progress, and also to all new contracts.

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

017.04B Any contractor who changes from a tax-free inventory (Option 1 or Option 3) to a tax-paid inventory (Option 2) must pay the tax on all building materials in inventory when the new Form 16 is submitted and pay tax on all purchases as of the date of the notification. Option 1 contractors must also pay the tax on any materials that have been incorporated into an ongoing project.

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

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

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

017.05B Option 1 contractors must pay sales or use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased and on all purchases of taxable

services such as building cleaning, pest control, and security services. Tools and supplies cannot be purchased for resale.

017.05C Buildings and Structures, construction and repair.

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

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

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

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

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

017.05C(4)(a) Option 1 contractors must pay tax on all building materials annexed by an Option 1 subcontractor.

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

017.05D Property not Annexed.

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

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

017.05D(3) Option 1 contractors will collect sales tax on the total amount charged when they repair items that do not become annexed to real estate.

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

017.05E Telephone, cable, satellite programming, and other utilities.

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

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

017.05F Manufacturing Machinery and Equipment.

017.05F(1) Option 1 contractors will not collect sales tax on qualifying manufacturing machinery and equipment sold to a manufacturer regardless of whether the equipment remains tangible personal property or is annexed. (See Reg-1-107, Manufacturing Machinery and Equipment Exemption.)

017.05F(3) Option 1 contractors will not collect sales tax on the installation or repair of qualified manufacturing machinery and equipment.

017.05F(2) Option 1 contractors will not collect sales tax on repair or replacement parts or accessories purchased for use in maintaining, repairing, or refurbishing qualified manufacturing machinery and equipment.

017.05F(4) Option 1 contractors can purchase qualified manufacturing machinery and equipment for resale.

017.05G Live Plants and Sod.

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

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

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

017.05H Exempt Organizations and Exempt Governmental Units.

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

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

017.05I Direct Pay Permits.

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

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

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

017.06B Option 2 contractors must pay sales or use tax on all tools, supplies , equipment, scaffolding, and barricades purchased, rented, or leased and on all purchases of taxable services such as building cleaning, pest control, and security services. Tools and supplies cannot be purchased for resale.

017.06C Buildings and Structures, construction and repair.

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

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

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

017.06C(2)(b) Option 2 contractors must pay tax on all building materials annexed by an Option 1 subcontractor.

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

017.06C(3)(a) Option 2 contractors may receive a refund of tax paid on building materials used in a construction project that is outside the United States.

017.06D Property not Annexed.

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

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

previously paid on the items and the amount of tax collected from the customer.

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

017.06D(3) Option 2 contractors will collect sales tax on the total amount charged when items they repair that do not become annexed to real estate.

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

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

017.06E Telephone, cable, satellite programming, and other utilities.

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

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

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

017.06E(4) Except as provided in subsection017.06E(3), Option 2 contractors will not collect sales tax when working on the customer's side of the demarcation point.

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

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

017.06F Manufacturing Machinery and Equipment.

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

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

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

017.06G Live Plants and Sod.

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

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

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

017.06H Exempt Organizations and Exempt Governmental Units.

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

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

017.06I Direct Pay Permits.

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

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

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

017.07B Option 3 contractors must pay sales or use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased and on all purchases of taxable services such as building cleaning, pest control, and security services. Tools and supplies cannot be purchased for resale.

017.07C Buildings and Structures, construction and repair.

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

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

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

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

017.07C(3) Option 3 contractors must pay tax on all building materials annexed by an Option 1 subcontractor.

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

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

017.07D Property not Annexed.

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

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

017.07D(3) Option 3 contractors will collect and remit tax on the total amount charged, including both parts and repair labor, when they repair items that do not become annexed to real estate..

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

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

017.07E Telephone, cable, satellite programming, and other utilities.

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

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

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

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

017.07E(5) Option 3 contractors must pay use tax on all wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite programming, and mobile telecommunication services.

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

017.07F Manufacturing Machinery and Equipment.

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

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

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

017.07G Live Plants and Sod.

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

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

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

017.07H Exempt Organizations and Exempt Governmental Units.

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

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

017.07I Direct Pay Permits.

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

PROJECTS FOR EXEMPT ORGANIZATIONS AND EXEMPT GOVERNMENTAL UNITS

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

017.08A An exempt organization or exempt governmental unit may furnish building materials. The organization or governmental unit will give an exempt sale certificate to the sellers of the building materials.

017.08B The exempt organization or exempt governmental unit, as project owner, may be entitled to a refund of tax paid on building materials. The United States government, the state, and any educational institution established or recognized under Chapter 85 of the Nebraska Revised Statutes will not receive any refunds.

017.08B(1) The exempt organization or exempt governmental unit will not appoint the contractor as a purchasing agent. The Option 2 or Option 3 contractor will pay tax on all building materials.

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

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

017.08B(4) The applicable Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or exempt sale certificate will be kept

by the contractor or subcontractor who has been appointed or delegated as purchasing agent.

017.08C The exempt organization or exempt governmental unit may appoint the contractor as a purchasing agent. The contractor may then purchase building materials tax free. The appointment as a purchasing agent for the exempt organization or exempt governmental unit must be made before the materials are annexed.

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

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

017.08C(3) The appointment must be made using a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17.

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

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

017.08E When the contractor is operating under either Option 2 or Option 3, the contractor cannot accept an exempt sale certificate from the exempt organization or exempt governmental unit. The exempt organization or exempt governmental unit must appoint the Option 2 or Option 3 contractor as its purchasing agent, buy the materials, or apply for a refund.

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

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

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

017.11A If the tax rate is decreased during the term of the fixed-price contract, the contractor shall pay to the Department of Revenue the difference between the tax actually

paid on materials and the tax that would have been paid at the tax rate in effect prior to the decrease, provided the amount of such payment exceeds ten dollars ($10.00).

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

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

017.11C A change in the items taxed or exempted from tax is not a tax rate change for the purposes of this subsection.

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

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

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

(Section 77-2701.35, R.R.S. 2003, and sections 77-2701.10, 77-2701.16, 77-2701.42, 77-2701.44, 77-2701.45, 77-2704.12, 77-2704.15, 77-2704.33, 77-2704.55, R.S.Supp., 2004. .)

TITLE 316 CHAPTER 1
SALES AND USE TAX

REG-1-037 TRADING STAMPS AND COUPON REDEMPTION

037.01 When trading stamps are redeemed for merchandise, the transaction is a retail sale and is taxable. The tax is computed on the fair market value of the merchandise transferred in exchange for the stamps. No tax is due when stamps are redeemed for cash rather than for merchandise.

037.02 The purchase of trading stamps by a retailer for distribution to his or her customers is not regarded as the purchase of property and accordingly, no tax applies. The purchase of redemption merchandise is a purchase for resale. The stamp distributor who sells the stamps to the retailer must pay tax on their purchase of the stamps.

037.03 ~~COUPONS.~~

~~037.03A~~ When coupons, certificates, or other documentation are accepted by a retailer ~~retailers~~ as a part of the selling price of any taxable item and such retailer is reimbursed for the amount represented by the ~~coupon~~coupons, certificates, or other documentation by a third-party, e.g., a manufacturer ~~or~~ distributor, or organization, the value of the ~~coupon~~coupons, certificates, or other documentation cannot be subtracted from the selling price when determining the taxable amount at the time of the sale to the purchaser. (For gift certificates see Reg-1-036, Premiuns and Gifts.)

037.04 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 directly related to the price reduction or discount from a party other than the purchaser, the amount of the price reduction or discount cannot be subtracted from the selling price of the item when determining the taxable amount.

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

~~037.03B~~ 037.05 When coupons are issued and redeemed by the retailer, that is, if they are sponsored by him or her and are not subject to redemption by a third-party, e.g., a manufacturer or distributor, then the coupons are considered "cash discounts", and the amount of the coupon may be subtracted from the selling price.

(Section 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004. .)

REG-1-057 PRINTING AND RELATED INDUSTRIES

057.01 Printing includes all printing, lithography, photolithography, typography, color separation, rotogravure, gravure, silk screen printing, imprinting, laser printing, multilithing, mimeographing, photocopying, die cutting, binding, folding, and similar operations.

057.02 The printer must collect tax on the gross receipts for printing. The gross receipts are taxable whether the printer or the customer provides the materials. Charges for delivery, postage, or shipping paid to a printer or paid directly to the U.S. Postal service or a common carrier on behalf of the printer are taxable.

057.02A Set up charges, type setting and similar charges, and charges for die cutting, embossing, folding, and other binding operations are taxable.

057.02B The gross receipts from the sale of preprints, such as advertising supplements, newspaper inserts, or similar items, are taxable except when sold for distribution with the newspaper and delivered directly to the newspaper by the printer or a common or contract carrier.

057.03 The printer must collect tax on charges for printing aids or for the preparation of printing aids. The tax must be collected whether they are sold to a client or to another printer. Printing aids are those plates or other materials that physically transfer the image to the paper or other materials.

057.04 The printer may accept a resale or exempt sale certificate or a certificate of exemption for direct mail from a customer. When the resale or exempt sale certificate or certificate of exemption for direct mail is accepted, the printer does not have to collect the tax.

057.04A The printer may accept a resale certificate from an advertising agency acting as a retailer;

057.04B The printer may accept an exempt sale certificate from an exempt organization or governmental unit that is exempt;

057.04C The printer may accept a certificate of exemption for direct mail. The purchaser is responsible for the tax associated with the direct mail certificate. A certificate of exemption for direct mail remains in effect until it is revoked in writing by the purchaser, (See Reg-1-105, Direct Mail);

057.04D The printer may accept delivery information for direct mail. The printer will collect tax based on the jurisdictions into which the direct mail will be delivered. (See Reg-1-105, Direct Mail.)

057.05 The printer must pay tax on all machinery and equipment and on all tools, supplies, cleaning materials, and other consumables.

<u>057.05A Consumables include printing plates that are not suitable for reuse and printing plate materials used to make printing plates which are not suitable for reuse. Such plates and plate materials are not resold to the printer's customers and therefore, cannot be purchased by the printer tax-free for resale.</u>

057.06 The printer must pay the tax on printing aids it purchases to use. When the printing aids

are sold to the customer before they are used, the printer may purchase the printing aids for resale. Unless there is a written agreement to the contrary, the printing aids will be considered sold before use when the printing aids are separately listed and priced on the printer's invoice to the customer.

057.06A When the printing aids are sold to the customer after they are used, the printer must pay tax to his or her supplier and the printer must also collect tax on the sale to the customer.

057.06B The printer must pay tax on materials and artwork that are purchased to make printing aids. These materials and artwork include photographs, drawings, paintings, hand lettering, other artwork, photographic reproductions of such material, pasteups, mechanicals, or camera-ready copy.

057.07 The printer may purchase paper, ink, and bindery materials that will be part of the product sold to the customer for resale. Similar materials that are a part of the product delivered may also be purchased for resale.

057.08 If mats for comic strip drawings, syndicated columns, syndicated photos, or publicity photos are furnished to the publisher, then the columnist, syndicate, or the person who purchases the mat must pay the tax to the person who makes the mat.

057.09 Charges for duplicating by means of a computer, word processor, or memory typewriter are taxable. The taxable amount includes any amount for the original typing of the letter to be duplicated, and any customized information that will be automatically inserted into the letter.

057.10 Charges for individually typing by hand the salutation or inside address or a personalized reference on mechanically duplicated letters are exempt. Charges for addressing for mailing by hand are exempt.

057.11 Sales of signs, show cards, and posters are taxable. Charges for painting signs, show cards, and posters are taxable whether the materials are furnished by the painter or by the customer.

057.12 Charges for painting or lettering on real property, such as a building or a window, are not taxable. ~~The painter must pay tax on the materials used in such work.~~ Paint is a building material and is taxed based on the contractor option selected by the painter. (Reg-1-017, Contractors.)

(Sections 77-2701.12, 77-2701.31, 77-2701.32, 77-2701.33, 77-2701.35, and 77-2703.03, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004. .)

REG-1-066 SEWER AND WATER

066.01 The sales or use tax applies to all retail sales of sewer and water services.

066.02 Sales tax applies to all amounts paid for sewer and water, irrespective of whether there is an actual consumption or not. Thus, there is tax due on all payments whether in the form of a minimum charge, a flat rate, or other billing method.

066.03 The gross receipts from furnishing sewer service are taxable regardless of the nature of the use.

066.04 Rental charges made to the customer for meters, bottles, and related equipment are rentals of property and are taxable.

066.05 Water used for irrigation of agricultural lands, manufacturing purposes, or for the care of or consumption by animal life, the products of which ordinarily constitute food for human consumption or the pelts of which are ordinarily used for human apparel, is not taxable.

066.06 For the purpose of proper administration of the tax on sewer and water services and to insure that the full amount of any applicable tax is collected and remitted, the entire amount of sewer or water service sold or billed through one meter shall be taxable if any portion, other than incidental use, of such service is taxable.

066.07 Incidental use of water shall include uses that are connected with the exempt use, but are not themselves exempt, such as water for employees for drinking, hand washing, or restrooms. Such usage cannot exceed ten percent of the total usage through the meter.

066.08 Amounts received from installation, service connection, move and change charges, and construction are <u>not</u> gross receipts of providers of sewer and water service and are <u>not</u> taxable.

> 066.08A If there is no tangible personal property installed, annexed, or repaired and the charge is merely for activating a connected service, ~~or if the contractor labor is exempt under Reg-1-017.10,~~ such charge is not taxable.

066.09 An amount added for failure to make payment within a prescribed period shall be considered as a penalty or interest to which no tax attaches; provided, the additional charge is separately billed to the customer.

066.10 Services rendered to the United States Government and to federal agencies and instrumentalities, including those federal corporations enumerated in Reg-1-072, United States Government and Federal Corporations, are exempt. Sales to those purchasers enumerated in Reg-1-012.02C are exempt.

066.11 A water or sewer company with a formal classification of usage that reasonably reflects the actual use by the customer, and such usage is for an exempt purpose, does not need to accept an exempt sale certificate from each customer account in the classification. This provision is not to be construed as relieving the consumer of liability for the applicable tax on any such usage.

> 066.11A Acceptance of a blanket exempt sale certificate by a sewer or water company relieves the company of any further tax liability until such time as the sewer or water company is notified of a change in use.

066.12 Persons furnishing sewer and water services may elect to assume or absorb the applicable sales tax or may elect to pass the tax to the final consumer in the same manner as all other retailers. If the election is made to assume or absorb the tax, the vendor will remit the applicable tax directly to the Department of Revenue based upon the total charges made to the ultimate consumer. The receipts will not be factored to determine the proper amount of tax. All billings to the ultimate consumer shall contain a statement to the effect that no tax is being collected from customers who are exempt or that the tax has been assumed or absorbed by the vendor for taxable customers.

066.13 If the vendor of sewer and water services elects to pass the applicable tax to the final customer, the tax shall be separately stated on all billings; provided, that in lieu of separately stating the tax, the Department of Revenue hereby authorizes the vendor to include a statement on all billings to the effect that the total charge includes sales tax. The total receipts will be factored to determine the proper amount of tax. (Reg-1-008, Records)

066.14 Persons engaged in providing water and sewer service are considered the consumers of materials, supplies, and other property or services used by them in providing their services and must pay tax on their purchases.

> 066.14A Exempt governmental units providing water service must also pay tax on all purchases of materials, supplies, and other property or services used in providing water service. (See Reg-1-093.04.)
>
> 066.14B Exempt governmental units providing sewer service are exempt on all purchases of materials, supplies and other property or services used exclusively in providing sewer service. (See Reg-1-093.04 and Reg-1-093.05.)
>
> 066.14C Exempt governmental units providing water service for fire protection are exempt on all purchases of materials, supplies and other property or services used exclusively in providing water service for fire protection. (See Reg-1-093.04 and Reg-1-093.05.)

066.15 Charges made between sewer and water companies for joint control and use of facilities, duct space, pole or pin space, or other joint use of facilities in connection with furnishing sewer and water services are exempt.

(Sections 77-2701.31 and 77-2701.32, R.R.S. 2003, and sections77-2701.16 and 77-2703(1)(b), R.S.Supp., 2004. .)

REG-1-070 PRESUMPTION OF TAXABILITY

070.01 All gross receipts are taxable unless they are shown to be tax exempt. 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 a certificate to the effect that the purchase is by an exempt organization, for an exempt purpose, or pursuant to a Direct Payment Permit, ~~a certificate of exemption for multiple points of use,~~ or a certificate of exemption for direct mail. See Reg-1-014, Exempt Sale Certificate.

070.01A The Tax Commissioner shall make available a taxability matrix that is in a format pursuant to the Streamlined Sales Tax Agreement.

070.01B Sellers 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 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 CSPs or Model 2 sellers are allowed 10 days to correct an erroneous classification within approved system software before the CSP or Model 2 seller is held liable for failure to collect the correct amount of tax due.

070.02 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 burden of proving the contrary is on the purchaser.

070.03 Acceptance of a Resale Certificate, Exempt Sale Certificate, Direct Payment Permit, ~~certificate of exemption for multiple points of use,~~ certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption relieves the retailer (seller) from any further tax liability. The person giving or taking a Resale Certificate, Exempt Sale Certificate, Direct Payment Permit, ~~certificate of exemption for multiple points of use,~~ certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption in bad faith shall be 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.

(Sections 77-2703.03, 77-2705.01, 77-2705.02, 77-2705.03, and 77-2706, R.R.S. 2003, and sections 77-2703(1)(f), 77-2703(2)(e) and (f), 77-2703.02, and 77-2712.05(7), R.S.Supp., 2004. .)

REG-1-074 WARRANTIES AND GUARANTEES

074.01 A charge for the purchase of a warranty, guarantee, service agreement, service contract, or maintenance agreement, is taxable, whenever the item ~~items~~ covered or the services to be provided are taxable. ~~If an agreement covers both taxable and nontaxable items or services, the entire amount charged for the agreement is taxable.~~

~~074.02~~ 074.01A Neither sales nor use tax applies with respect to property used, or any repair labor or services performed in fulfilling the obligations for repair under such a warranty or guarantee.

~~074.03~~ 074.01B If the maintenance agreement does not provide full coverage, the amount charged for ~~labor or~~ parts used in the repair is taxable~~.~~ and the amount charged for labor in the repair is taxable if repair labor for the covered item is taxable.

~~074.03A~~ 074.01C A deductible amount that is due, except for a deductible required under an agreement covering a motor vehicle, is taxable.

074.02 If the item covered must be annexed to real estate in order to function, the charge for the agreement is exempt.

074.02A Sales or use tax applies to parts or other property used in fulfilling the obligations under such a warranty or guarantee regardless of the contractor option elected. (See Reg-1-017, Contractors)

074.02B If the maintenance agreement does not provide full coverage, the amount charged by an Option 2 or Option 3 contractor for either parts or labor is not taxable. The amount charged for parts by an Option 1 contractor, or the total amount charged by an Option 1 contractor if charges for parts and labor are not separated, is taxable.

07401C A deductible amount that is due is not taxable.

074.03 If an agreement covers both taxable and nontaxable items or services, the entire amount charged for the agreement is taxable. Parts, labor, additional charges, and deductibles will be taxed as described above in paragraphs 074.01 or 074.02 depending upon whether a maintenance agreement on the single item currently being serviced would be taxable or exempt.

074.04 Maintenance agreement shall mean any contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is subject to tax, for a stated period of time or interval of use. Maintenance agreement shall include any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement shall include contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

074.04A Maintenance agreement includes any service contract that provides repair labor~~,~~ ~~contractor labor,~~ or building cleaning ~~or maintenance~~ services.

074.04B Maintenance agreement shall not include any contract or agreement subject to the premium tax under Chapter 77, article 9 of the Nebraska Revised Statutes, from a service contract business operating with a certificate of authority from the Department of Insurance.

(Sections 77-2702.05, 77-2702.07, and 77-2702.17, R.R.S. 2003. .)

TITLE 316 CHAPTER 1
SALES AND USE TAX

REG-1-081 COMMUNITY OR COUNTY ANTENNA TELEVISION SERVICE

081.01 Those persons furnishing community or county antenna television service over or through a distribution system of wires, cables, or other conduits, as well as persons furnishing satellite programming, 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.

081.02A Prepaid satellite programming arrangements shall mean the right to purchase 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.

081.02B Prepaid satellite programming arrangements do not include payments from the seller of the arrangements to a satellite provider for the services rendered using prepaid satellite programming arrangements.

~~081.02~~081.03 All billings to the ultimate consumer shall indicate a separate amount for the tax, since the tax may not be absorbed, assumed or passed to the consumer as being included in the total price.

~~081.03~~081.04 Installation, service connection, and move and change charges are taxable receipts, whether paid to the person providing the community or county antenna television service or satellite programming, or to another person.

~~081.04~~081.05 Community or county antenna television service operators or retailers of satellite programming are consumers of property used in the provision, installation, construction, operation and servicing of such a system and their purchases of materials for such uses are taxable.

~~081.05~~081.06 Community or county antenna television service operators or retailers of satellite programming may purchase for resale tapes, movies, satellite programming, remote controls, and magazines for sale to customers.

(Sections 77-2702.07, 77-2702.14, and 77-2703(l) R.S.Supp., 1993. .)

# REG-1-082 LABOR CHARGES

## 082.01 INTRODUCTION

082.01A Labor charges relating to tangible personal property will generally fall into one of four categories: production, assembly, repair, and installation. Labor on annexed property, fixtures, or real estate is contractor labor and is generally exempt .( See ~~covered in~~ Reg-1-017, Contractors)

## 082.02 TYPES OF LABOR CHARGES

082.02A PRODUCTION LABOR. Production labor is labor used for producing, fabricating, processing, printing, or imprinting tangible personal property for consumers during which the tangible personal property is created, transformed, or reduced to a different state, quality, form, property, or thing. Transformation may occur by hand, machine, art, chemical action, or natural means. The property may be furnished by the person performing the labor; furnished directly by the consumer; or furnished indirectly through the consumer arranging for delivery of the property by a third party.

082.02B ASSEMBLY LABOR. Assembly labor is the labor involved in collecting or gathering together the various parts and placing them in their proper relationship to each other to constitute a piece of machinery, equipment, or other tangible personal property.

082.02C REPAIR LABOR. Repair labor is defined as the labor involved in restoring to essentially its original form and condition or replacing a used, worn, or damaged item of tangible personal property. Repair labor includes replacing a component or subassembly of an item with a substantially similar component or subassembly. Repair labor does not include making repair parts for another person who is making the repair.

082.02D INSTALLATION LABOR. Installation labor is defined as the labor involved in placing a piece of machinery, equipment, or other tangible personal property that is already assembled in a position where it will reasonably accomplish the purposes for which it was intended.

## 082.03 TAXABILITY OF LABOR CHARGES

082.03A Charges for production and assembly labor are taxable.

082.03B Charges for installation and repair labor are taxable when the item of property being installed, repaired, or replaced is taxable and is not annexed to real property.

082.03C Charges for labor to repair motor vehicles are not taxable.

082.03C(1) Charges for painting of motor vehicles, including labor, are taxable.

082.03C(2) Charges for labor to install accessories or add-ons to motor vehicles are taxable.

082.04 STATEMENT ON SALES INVOICE. Taxable charges for labor performed on tangible

personal property are taxable regardless of whether they are separately stated on the same sales invoice or are separately invoiced. Charges for otherwise exempt labor performed on tangible personal property are not taxable; provided, these charges are separately stated on the same sales invoice or are separately invoiced, and such separate statement is not used as a means of avoiding the imposition of the tax upon the actual sales price of the tangible personal property.

(Sections 77-2701.33, and 77-2701.35, R.R.S. 2003. .)

TITLE 316 CHAPTER 1
SALES AND USE TAX

REG-1-088 COMPUTER SOFTWARE

088.01 The gross receipts from furnishing software regardless of the manner in which it is conveyed are taxable.

088.01A The gross receipts from furnishing software includes services provided by a consultant that result in a transfer of software from the consultant to the client.

088.02 Charges for customer training are taxable whenever paid to the retailer of the software. Charges for training that are paid to a person other than the retailer of the software are exempt.

088.03 Charges for consultants who only provide generalized advice and who do not provide any software or modifications to software are exempt.

088.04 Software that alters existing software is considered separate from the existing software and is taxable.

088.05 Charges for agreements which require the seller, without additional charge or at a reduced price, to provide future enhancements, changes, or modifications, are taxable.

088.06 Computer software is a sequence of instructions which directs the computer to process either digital or analog data. Software does not include data such as mailing lists, even when in machine-readable form, or charges for converting data into machine-usable form. For the taxability of lists see Reg-1-080, Documents.

~~088.07 Computer software delivered electronically that will be concurrently available for use in more than one location may be purchased exempt pursuant to a certificate of exemption for multiple points of use.~~

~~088.07A Purchasers using a certificate of exemption for multiple points of use are responsible for remitting sales tax on the purchase of the software using a consistent and uniform method of apportionment.~~

(Sections 77-2701.35 and 77-2701.39, R.R.S. 2003, and sections 77-2701.16, 77-2703(1), and ~~77-2703.02~~, 77-2703.01,R.S.Supp., 2004. .)

## REG-1-090 NONPROFIT ORGANIZATIONS

090.01 The fact that an organization is nonprofit does not, by itself, entitle the organization to an exemption from payment of sales and use tax. The following nonprofit organizations will be exempt from payment of the Nebraska sales and use tax to the extent indicated after the organization has applied for and received an exemption certificate. Religious organizations are discussed in Reg-1-091, Religious Organizations; and educational institutions are discussed in Reg-1-092, Educational Institutions. All other nonprofit organizations are not exempt and must pay the sales and use tax.

090.01A A nonprofit organization operating any of the following facilities is only exempt on purchases for use at the facility or portion of the facility covered by the license. Any purchases by the nonprofit organization for use at facilities not included in the license or for any other activities of the nonprofit organization are not exempt from the Nebraska sales and use tax.

090.01A(1) A nonprofit hospital licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes;

090.01A(2) A nonprofit health clinic licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes, when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services, or when the health clinic receives federal funds through the United States Public Health Service;

090.01A(3) A nonprofit skilled nursing facility licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes;

090.01A(4) A nonprofit intermediate care facility defined in section 71-420, ~~and~~ a nonprofit intermediate care facility for the mentally retarded defined in section 71-421, and a nonprofit organization providing community-based services for the developmentally disabled which are licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes;

090.01A(5) A nonprofit nursing facility licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes;

090.01A(6) A licensed child-placing agency; and

090.01A(7) A licensed child-caring agency, providing 24 hour daily care, supervision, custody, or control of children in lieu of care or supervision normally exercised by parents in their own home, and licensed under sections 71-1901 to 71-1904 of the Nebraska Revised Statutes;

090.01A(7)(a) A licensed child-caring agency does not include an organization providing day care, early childhood programs, and periodic care as defined in section 71-1910 of the Nebraska Revised Statutes.

090.01B A nonprofit organization operating any of the following facilities or activities is only exempt on purchases for use at the facility or portion of the facility covered by the license, or for the activities covered by the license. Any purchases by the nonprofit organization for use at facilities not included in the license or for any other activities of

the nonprofit organization not included in the license are not exempt from the Nebraska sales and use tax.

090.01B(1) A nonprofit home health agency licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes; and

090.01B(2) An organization operating a licensed hospice or providing hospice services or respite care services licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes.

090.01C The following nonprofit organizations are exempt on all purchases.

090.01C(1) A nonprofit organization providing services exclusively to the blind; and

090.01C(2) The State Fair Board.

090.02 The nonprofit organization seeking exemption from payment of sales and use tax must complete a Nebraska Exemption Application for Sales and Use Tax, Form 4, accompanied by the necessary supporting documentation. Exemptions are granted to organizations listed under Reg-1-090.01A through Reg-1-090.01C(2) , based on a presentation of factual documentation. In those instances where licensure is a requirement, the state agency responsible for issuing that license will be contacted. Organizations approved for exemption from payment of sales and use tax are issued an Exempt Organization Certificate of Exemption. This certificate assigns the organization an exemption number (05-XXXXXXX) which must be used in claiming its exemption.

090.03 The organization must give its supplier a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, shall be completed in accordance with Reg-1-014, Exempt Sale Certificate.

090.04 Only the organization issued an Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the organization without payment of sales or use tax. Affiliated or subsidiary organizations, although operating in support of or under the guidance of an exempt organization, may not use the exempt organization's exemption certificate. The affiliated or subsidiary organization must apply for its own certificate. The affiliated or subsidiary organization may or may not qualify for its own exemption.

090.04A The sales and use tax exemption does not extend to a person purchasing property to be given or donated to an exempt organization. For an item to be purchased exempt, the person must donate the funds, and the organization must purchase the item. A retailer donating inventory to an exempt organization is required to pay the use tax on the item donated.

090.04B An exempt organization engaging in construction or repair projects will receive the benefit of its tax exempt status by complying with the provisions of Reg-1-017, Contractors. Organizations that must be licensed to be exempt must pay tax or have the contractor pay tax on all building materials for construction or repair performed before licensing. After licensing, the organization may apply for a refund.

090.05 A nonprofit organization is required to collect sales tax on sales made by the organization, with the exception of those sales enumerated in Reg-1-012.02A. Even an

organization exempted from payment of sales and use tax under Reg-1-090.01 above, is required to collect sales tax on its sales of property and services to the general public or to the members of the organization.`

090.05A Organizations making sales of property or services of a type subject to the sales tax must apply for a Nebraska Sales Tax Permit and collect sales tax on the gross receipts from such sales. When the organization purchases the property for resale, it shall complete Nebraska Resale or Exempt Sale Certificate, Form 13, section A, and give it to its supplier. This certificate, or an approved substitute form, shall be issued in accordance with Reg-1-013, Sale for Resale-Resale Certificate.

090.06 When a nonprofit organization charges for a fund-raising event that includes either food or entertainment, recreation, or amusement, and the charge is combined with the solicitation of a contribution, the portion of the amount charged representing the fair market value of what is received is a retail sale. The organization shall determine the amount properly attributable to the fair market value in advance and shall clearly indicate that amount on any ticket, receipt or other evidence issued in connection with the payment. If the charge for fair market value and the contribution amount are not separately stated, the total charge is taxable.

090.06A If there is no fair market value determined by the organization, and there is more than one ticket price, and all purchasers receive substantially the same benefits, the price of the lowest price ticket shall be presumed to be the fair market value of all tickets sold.

090.07 Charges by committees registered with the Political Accountability and Disclosure Commission, or committees for candidates for federal office, for admission to or for meals or food served at political fund-raising events are exempt.

090.07A All other sales of property by committees, other than committees for candidates for federal office, are taxable.

090.07B Committee as used in Reg-1-090.07 includes ballot question committees, candidate committees, independent committees, and political party committees.

(Sections 77-2704.10 and 77-2701.33, R.R.S. 2003, , and section 77-2704.12, R.S.Supp., 2005 .)

REG-1-093 GOVERNMENTAL UNITS

093.01 Governmental units are only exempt if they are specifically listed in either 093.04 or 093.05 of this regulation. Provisions concerning school districts are discussed in Reg-1-092, Educational Institutions. Governmental units are not assigned exemption numbers.

093.02 Employees of governmental units are not exempt. The employees are not exempt even when the governmental unit will be reimbursing them for expenses incurred, such as travel expenses.

093.03 An exemption from sales and use tax has been granted to the United States government, (see Reg-1-072, United States Government and Federal Corporations, for organizations considered a part of the United States government)

093.04 An exemption from sales and use tax has been granted to the following units of government. The exemption granted to any governmental unit in this subsection does not include any departments or portion of the governmental unit that sells electricity, gas, heat, or water. The governmental unit will be taxed the same as any other utility company. (Reg-1-066, Sewer and Water, and Reg-1-089, Energy Source Utility Exemption.) The exempt units are:

093.04A The State of Nebraska;

093.04B A Nebraska drainage district;

093.04C A Nebraska county;

093.04D A Nebraska elected county fair board;

093.04E A Nebraska county library;

093.04F A Nebraska township;

093.04G A Nebraska city;

093.04H A Nebraska municipal library;

093.04I A Nebraska village;

093.04J A Nebraska airport authority;

093.04K A Nebraska natural resource district; ~~and~~

093.04L A Nebraska rural or suburban fire protection district~~.~~; and

093.04M A Nebraska local or regional housing agency.

093.05 An exemption from sales and use tax has been granted to the following units of government. The exemption granted to any governmental unit in this subsection includes any departments or portion of the governmental unit that sells electricity, gas, heat, or water, and applies to any such activities performed by the governmental unit.

0093.05A A Nebraska irrigation or reclamation district; and

0093.05B The irrigation district of any Nebraska public power and irrigation district.

093.06 All governmental units not listed in 093.04 or 093.05 must pay the tax. Governmental units that must pay the tax include, but are not limited to:

093.06A County agricultural societies;

093.06B County historical societies;

093.06C ~~Housing authorities;~~

~~093.06D~~ Railroad transportation safety districts;

~~093.06E~~093.06D Rural water districts;

~~093.06F~~093.06E Sanitary and improvement districts;

~~093.06G~~093.06F Other states and units of government in other states;

~~093.06G(1)~~093.06F(1) Other states and units of governments in other states are exempt on the purchase of industrial equipment in this state, provided the other state grants a similar exemption to Nebraska and its units of government; and

~~093.06H~~093.06G Weed districts.

093.07 Organizations such as the following which are not governmental units but which may assist in performing governmental functions are taxable:

093.07A Volunteer fire departments;

093.07B Corporations created under the Nebraska Nonprofit Corporation Act of the Nebraska Revised Statutes;

093.07C Institutions chartered or created under federal authority, but not directly operated and controlled by the United States government; and

093.07D Organizations using funds or grants from governmental entities.

093.08 An organization established under the Nebraska Interlocal Cooperation Act by exempt governmental units may make purchases for its use without payment of tax. If any of the members are not exempt, then the organization is not exempt on any of its purchases.

093.09 An enumerated governmental unit making purchases must issue its suppliers a Nebraska Resale or Exempt Sale Certificate, Form 13, section B. An enumerated governmental unit will receive the benefit of its exemption on construction or repair projects by following the provisions of Reg-1-017, Contractors.

093.10 All governmental units of the state will collect tax on their sales.

093.11 Sales by agencies and corporations of the federal government are not exempt. The tax shall be collected and remitted by such agency or corporation unless such collection is

specifically prohibited by federal law.

093.11A If collection of the tax is prohibited by federal law, the purchaser shall pay the tax directly to the Department of Revenue.

093.12 Any governmental unit may purchase property for resale. It shall issue a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its supplier. (Reg-1-013, Sale for Resale-Resale Certificate).

(Section 21-1901, , R.R.S. 1997, and sections 77-2704.15, 77-2704.16, 77-2704.17, 77-2704.18, 77-2704.19, and 77-2704.20, R.R.S. 2003. .)

REG-1-095 MOLDS, DIES, AND PATTERNS

095.01 Sales of molds or dies to a manufacturer for use in manufacturing are exempt from tax. (Reg-1-107, Manufacturing Machinery and Equipment).

095.01A The materials necessary to create the mold or die used in manufacturing and any chemicals, solutions, or catalysts utilized in the mold or die process are all included in the exemption.

~~095.01~~095.02 Sales of molds, dies, and patterns that do not qualify as manufacturing machinery and equipment are exempt from tax only when all of the following conditions are met:

~~095.01A~~ 095.02A The mold, die, or pattern is designed and fabricated to the special order of a customer;

~~095.01B~~ 095.02B The mold, die, or pattern is built specifically for the manufacture of a single product; and

~~095.01C~~ 095.02C The mold, die, or pattern is used to produce a product which is either injection molded from plastic or stamped from metal.

~~095.02~~ 095.03 A mold or pattern is a form containing a negative impression into which a softened or fluid material is injected to achieve a predetermined shape.

~~095.03~~ 095.04 A die is a tool mounted on a press and consists of a pair, or a combination of pairs, of mating members which shape or cut metal.

~~095.04~~ 095.05 Injection molding is a process whereby a metered quantity of a heated and plasticized material is injected under pressure into a mold and allowed to solidify. The manufacturing processes of rotational molding, extrusion, compression molding, or blow molding do not qualify as injection molding.

~~095.05~~ 095.06 Metal stamping is the process in which metal is shaped by pressing a die or series of dies against the metal. The process can include operations which blank, punch, bend, iron, redress, emboss, flange, trim, or otherwise shape the metal.

~~095.06~~ 095.07 The exemption for molds, dies, and patterns does not include the machinery or equipment to which the molds, dies, or patterns are connected or attached. The exemption does not apply to the purchase of raw materials or individual parts which will be fabricated into a mold, die, or pattern where the fabricator is considered the final consumer of the mold, die, or pattern. (See Reg-1-107, Manufacturing Machinery and Equipment).

~~095.07~~ 095.08 The exemption applies to charges for modifications made to a qualifying mold, die, or pattern or to any repair or replacement parts of a qualifying mold, die or pattern.

(Section 77-2704.40, R.R.S. 1996. .)

## REG-1-097 DIRECT PAYMENT PERMIT

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

097.02 Application 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 the application, 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 three million dollars in order to qualify for a direct payment permit. Taxable purchases excludes 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.

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 day of the month following the date of purchase, lease, or rental.

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

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

097.03E(1) Cash purchases;

097.03E(2) Purchases of motor vehicles and motorboats;

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

097.03E(4) Purchases of food or beverages;

097.03E(5) Purchases of admissions; and

097.03E(6) Purchases for resale.

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

097.04 The holder of a direct payment permit must furnish a copy of the direct payment permit to each seller from whom the holder purchased taxable personal property and 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 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, upon request of the Tax Commissioner, must submit such list for examination.

097.04C If the permit is revoked or relinquished, the holder of the permit must notify all sellers given copies of the permit that the permit is no longer valid.

097.05 The receipt of a direct payment permit from the purchaser relieves the seller 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 The holder of a direct payment permit may use the permit to make tax-free purchases of computer software ~~delivered electronically~~, digital goods, or services that will be concurrently available for use in more than one jurisdiction.~~ Tax will be remitted based the requirements of Reg-1-104. A certificate of exemption for multiple points of use will not be required for such purchases~~

097.05B The holder of a direct payment permit may also use the permit to make tax-free purchases of direct mail as defined in Reg-1-105. Tax will be remitted based on the requirements of Reg-1-105. A certificate of exemption for direct mail will not be required for such purchases.

097.06 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 on items purchased from any Nebraska licensed seller or from any seller engaged in business in Nebraska.

097.06A 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 The direct payment permit can be delegated to another company in which the holder of the permit has at least an 80% ownership.

097.08 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, or for any other reason constituting the misuse of the permit.

(Sections 77-2705, 77-2705.01, 77-2705.02, and 77-2705.03, R.R.S. 2003, and sections 77-2703(1)(f) and 77-2703.02, R.S.Supp., 2004. .)

TITLE 316 CHAPTER 1
SALES AND USE TAX

REG-1-107 MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

107.01 The sale, rental, or lease of manufacturing machinery and equipment to a person engaged in the business of manufacturing for use in manufacturing is exempt from tax. A person who is engaged in the business of manufacturing will be referred to in this regulation as a manufacturer.

107.02 Manufacturers are persons who derive more than fifty percent of their total annual revenues from the sales of tangible personal property they manufacture.

107.02A The total annual revenues includes the revenues from all of the activities, locations, divisions, departments, or operations of the person. Total revenues includes sales of annexed property, sales of tangible personal property, and sales of services or intangibles.

107.02B A manufacturer does not include any person who manufactures a product as an incidental part of their primary business.

107.02C Sales of annexed products or materials are not sales of tangible personal property manufactured by a person.

107.03 Manufacturing is an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing does not include:

107.03A Retail operations.

107.03B The generation or transmission of electricity.

107.03C The production or transmission of information.

107.03D The production or transmission of programming, including computer software.

107.03E The production or transmission of data.

107.03F The preparation of food for immediate consumption.

107.03G The purification or transportation of water.

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

107.03I Sorting, cleaning, or repackaging property without any related manufacturing.

107.04 Manufacturing machinery and equipment used in manufacturing includes:

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

107.04B Machinery and equipment used in transporting, conveying, handling, or storing the raw materials or components used in manufacturing or the products produced by the manufacturer for sale.

107.04C Molds and dies (and other materials necessary to create such molds and dies) used to determine the physical characteristics of the finished product or its packaging material.

107.04D Any chemicals, solutions, or catalysts utilized in the mold or die process.

107.04E Machinery and equipment used to maintain the integrity of the product or to maintain the unique environmental conditions necessary for either the product or the machinery and equipment used in manufacturing.

107.04F Testing equipment used to measure the quality of the finished product. This includes machinery and equipment used during the manufacturing process to measure the quality of the item being manufactured.

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

107.04H Machinery and equipment used by a manufacturer to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if such produced items are consumed during the manufacturing process.

107.05 Manufacturing machinery and equipment does NOT include:

107.05A Vehicles required to be registered for operation on the roads and highways of this state.

107.05B Hand tools. Hand tools include only those tools that are held in the hand and are powered solely by human effort.

107.05C Office equipment.

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

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

107.05F Materials and parts purchased by a manufacturer to construct its own machinery or equipment used in its manufacturing process, except those used to create molds and dies.

107.05G Machinery and equipment used in research and development.

107.05H Supplies and other items consumed by a manufacturer regardless of whether or not such items are essential to the manufacturing process.

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

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

107.07 Charges for repair or replacement parts or accessories used in maintaining, repairing, or refurbishing manufacturing machinery and equipment are exempt from tax.

107.08 Charges for installation, repair, and maintenance services performed on manufacturing machinery and equipment are exempt from tax.

107.09 Charges for warranties, guarantees, and maintenance agreements covering exempt manufacturing machinery and equipment are exempt from tax.

> 107.09A Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to fulfill their obligations under such agreements.

107.10 A retailer may make a tax-free sale of qualified manufacturing machinery and equipment and any property or service identified in Reg-1-107.04 when the manufacturer issues the retailer either a properly completed Nebraska exemption certificate or another approved exemption form.

> 107.10A An Option 1 contractor may accept an exemption certificate from a manufacturer and not collect tax on annexed machinery and equipment.

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

(Sections 77-2701.46, 77-2701.47, 77-2704.22 )

## REG-1-108 BUNDLED TRANSACTIONS

108.01 Receipts from the sale of bundled transactions are taxable when one or more of the products included in the bundle are taxable.

108.02 Bundled transaction means the retail sale of two or more distinct and identifiable products which are sold for one, nonitemized price.

108.02A Bundled transactions do not include sales involving real property or services to real property.

108.02B The following items are not considered distinct and identifiable products for purposes of determining if a bundled transaction exits:

108.02B(1) Containers, boxes, sacks, bags, labels, tags, and other packaging that accompanies the sale of the product;

108.02B(2) Products provided free-of-charge with the required purchase of another product; and

108.02B(3) Components of the Sales Price definition found in Reg-1-007.01S.

108.02C The term “one nonitemized price” does not include transactions where:

108.02C(1) The sales price varies with the purchaser’s selection of products; or

108.02C(2) The sales price is separately identified by product on binding sales documents or other sales-related documents such as invoices, bills of sale, receipts, contracts, service agreements, and price lists made available to the purchaser in either paper or electronic form.

108.03 A transaction which otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

108.03A The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, is provided exclusively in connection with the service, and the true object or main product of the transaction is the service, or

108.03B The retail sale of services where one service is provided that is essential to the use or receipt of a second service the first service is provided exclusively in connection with the second service, and the true object or main product of the transaction is the second service, or

108.03C A transaction that includes taxable products and nontaxable products and the seller’s cost or sales price of the taxable products is de minimis.

108.03C(1) De minimis means the taxable product is 10% or less of the total seller’s cost or sales price.

108.03C(2) Sellers must use the full term of a service contract to determine if the taxable products are de minimis.

108.04 The determination as to whether a product is the true object or main product of a transaction will involve factors such as the business of the seller and the purchaser's object in engaging in the transaction.

108.05 Bundled transaction does not include the retail sale of food and food ingredients; drugs, over-the-counter drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or home medical supplies which are sold for one nonitemized price with taxable property where the seller's cost or sales price of the exempt items is more than 50% of the seller's total cost or sales price of the bundle.

108.06 A seller of bundled transactions which include any telecommunications services, ancillary services, internet access, or audio or video programming services may identify in its books and records the sales price of any nontaxable products and collect and remit tax on only the sales price of the taxable products in the bundle. If the price attributable to the nontaxable products is not reasonably identifiable and verifiable, the entire charge for the bundled transaction is taxable.

(Sections 77-2703 and 77-2701.48 )