Numerical Table of Contents

REG-1-007 GROSS RECEIPTS DEFINED 2
REG-1-013 SALE FOR RESALE - RESALE CERTIFICATE 5
REG-1-014 EXEMPT SALE CERTIFICATE 9
REG-1-018 ~~RENT OR~~ LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY 13
REG-1-065 ~~TELEPHONE AND TELEGRAPH COMMUNICATION~~ TELECOMMUNICATIONS SERVICES 16
REG-1-107 MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION 19

REG-1-007 GROSS RECEIPTS DEFINED

007.01 Gross receipts ~~mean~~ means 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~~,

007.01A(1) ~~mobile~~ Mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska,

007.01A(2) ~~and intrastate message toll telephone service~~, Ancillary services, except for conference bridging services, and

007.01A(3) Intrastate telephone communications services, except for value-added, nonvoice data service. (Reg-1-065, ~~Telephone and Telegraph Communication~~ Telecommunications Services);

007.01B The gross revenue received from ~~the installation of~~ installing or furnishing intrastate telegraph service, (Reg-1-065, ~~Telephone and Telegraph Communication~~ Telecommunications 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~~ installing or furnishing satellite ~~programming,~~ servicesor community or county antenna television service, (Reg-1-081, Community or County Antenna Television Service);

007.01D(1) If any or all of the charge for installation is free to the customer and is paid by the satellite or community or county antenna television service provider to the installer, the tax must be paid and remitted by the service provider.

007.01E The gross revenue received 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~~ sales through vending machines to users or consumers, and ~~also including small~~ sales ~~on which~~ for amounts so small that no tax is collected;

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

007.01H The gross revenue received 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 in conjunction with a taxable sale, (Reg-1-026, Finance, Carrying, Service, and Interest Charges~~,~~ and Reg-1-079, Delivery Charges);

007.01J The gross revenue received from the sale of maintenance agreements, service contracts, guarantees, or warranties, when the ~~items~~ property covered or the services to be provided are taxable (Reg-1-074 Warranties and Guarantees);

007.01K The gross revenue received from computer software training provided by the retailer that sold the software, (Reg-1-088, Computer Software);

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

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

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

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

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

007.01Q The gross revenue received from bundled transactions when one or more of the products included in the bundle are taxable, (Reg-~~1-106~~ 1-108, Bundled Transactions);

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

007.01S The gross revenue received from membership fees paid to access the retailer's premises or to receive discounts where the sales made on the premises or to which the discounts apply are subject to tax; and

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

> ~~007.01S(1)~~ 007.01T(1) The cost of materials used, labor or service costs, interest paid, losses, or any other expense;
>
> ~~007.01S(2)~~ 007.01T(2) The cost of transportation of property;
>
> ~~007.01S(3)~~ 007.01T(3) The amount charged for warranties, guaranties, service contracts, or maintenance agreements;
>
> ~~007.01S(4)~~ 007.01T(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)~~ 007.01T(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)~~ 007.01T(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)~~ 007.01T(7) Any ~~mandatory~~ charge required to be paid in connection with the purchase, lease, or rental of ~~an item~~ property subject to tax.

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

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

007.02B ~~The~~ If property is returned by the purchaser, that 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 77-2701.16, 77-2701.27, 77-2701.48, 77-2701.49, 77-2701.50, 77-2701.51, 77-2701.52, 77-2701.53, and 77-2703, R.R.S, 2009. ~~February 22, 2009~~_____.)

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~~ property 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 or renting ~~such~~ the property to others~~; provided, such~~ , if the ~~rental or~~ lease or rental 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 or rental of that property is incidental to the ~~rental or~~ lease or rental of real estate.

013.02 The burden of proving that a sale of property is not a sale at retail is ~~upon~~ on the retailer (seller) unless the retailer ~~(seller)~~ accepts a properly completed resale certificate ~~providing evidence~~ or obtains the relevant data elements showing 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~~ sold, leased, or rented. The resale certificate ~~constitutes~~ is a part of the retailer's ~~(seller's)~~ records and ~~is to~~ must 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.

> 013.03A To be properly completed, a resale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 013.03B(1) through 013.03B(4). A resale certificate received within 120 days after a request for substantiation made by the Department of Revenue (Department) must be both fully completed and accepted in good faith to be properly completed.
>
> 013.03B To be ~~properly~~ fully completed, the resale certificate~~, as allowed by Reg-1-013.11,~~ must include all of the following:
>
>> ~~013.03A~~ 013.03B(1) Identification of both the purchaser and the retailer ~~(seller)~~ including the type of business engaged in by the purchaser, and the reason for the exemption;

013.03B(2) ~~Sales~~ The sales tax permit number of the purchaser. If the purchaser is licensed as a retailer in Nebraska or another state which requires a permit, ~~enter~~ the resale certificate must include the sales tax permit number. If the purchaser has no sales tax permit number, the resale certificate must state the reason the purchaser has no sales tax permit number;

~~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~~ 013.0B(3) If a paper resale certificate is used, an authorized signature. In other cases, another ~~or other~~ form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

~~013.03F~~ 013.03B(4) ~~Date~~ The 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~~ this use removes it from the "sale for resale" exemption category and ~~accordingly,~~ the use is taxable to the purchaser ~~from~~ at the time the property is first used for a purpose other than resale. 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 base. (See 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~~ retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

013.06 A retailer ~~(seller)~~ or CSP who has a recurring business relationship with ~~repeatedly making the same type of sales to~~ the ~~same~~ purchaser is not required to ~~take~~ obtain a separate resale certificate for each sale, but may ~~take~~ accept a "blanket" resale certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

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

which case the retailer ~~(seller)~~ ~~must take~~ may accept a properly completed resale or exempt sale certificate.

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

> 013.08A ~~Sellers~~ Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is received or if the ~~seller~~ retailer or CSP otherwise ~~captures~~ obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days ~~subsequent to~~ after the date of the sale.
>
> 013.08B ~~Sellers~~ Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is ~~received~~ accepted in good faith, or if the ~~seller~~ retailer or CSP otherwise obtains the relevant data elements supporting the exemption, within 120 days ~~subsequent to~~ after a request for substantiation made by the Department.
>
> 013.08C Retailers or CSPs may only accept a fully completed resale certificate under subsection 013.08B of this section with a good faith belief that the purchase is a valid sale for resale to be relieved from liability. If the resale certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

013.09 Any purchaser, or ~~the~~ agent ~~thereof~~ of the purchaser, who ~~gives~~ issues a resale certificate to the retailer ~~(seller)~~ for any purchase taxable under ~~sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes~~ the Nebraska Revenue Act, which is purchased for a use other than resale, lease, or rental in the regular course of the purchaser's business, ~~shall be~~ is subject to a penalty of ~~one hundred dollars (~~$100~~.00)~~ or ten times the tax, whichever ~~amount~~ is larger, for each instance of presentation and misuse. With regard to a blanket resale certificate, ~~said~~ the penalty ~~shall apply~~ applies to each purchase made during the period the blanket certificate is in effect.

013.10 Any purchaser, or ~~the~~ agent ~~thereof~~ of the purchaser, who fraudulently signs a resale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in ~~paragraph~~ section 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~~ SSUTA.

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

(Sections 77-2701.34, 77-2703(1)(f), 77-2706(1), (2), (3), and (4), 77-2706.01, and 77-2711(4), R.R.S. 2009. ~~February 22, 2009~~ _____.)

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~~ may be divided into four groups. The four groups are transactions that are exempt due to the characteristics of:

014.01A The ~~seller~~ retailer (seller) (entity-based exemption);

014.01B The ~~item~~ property 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 subsections 014.01A and 014.01B ~~are not required to~~ do not need to be supported by exempt sale certificates, provided the retailer's records clearly show the nature of the ~~seller~~ retailer and the ~~product~~ property being sold. A purchaser making a purchase that is exempt because it is an occasional sale is required to obtain ~~a~~ an exempt sale certificate or other documentation from the ~~seller~~ retailer that the sale was exempt.

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

014.02 The burden of proving that any sale of property ~~or services~~ is not taxable is ~~upon~~ on the retailer ~~(seller)~~ and sufficient records must be kept which reveal the nature of each exempt sale. A retailer ~~(seller)~~ ~~is required to~~ must obtain an exempt sale certificate or obtain the relevant data elements from the purchaser in support of the claim that the sale is exempt. The exempt sale certificate ~~constitutes~~ is a part of the retailer's ~~(seller's)~~ records and ~~is to~~ must 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 (Department) and ~~are required for~~ must be provided by nonprofit organizations, public schools, and common or contract carriers when making exempt purchases. (See 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 except for purchases of

industrial machinery and equipment, including repair parts, where the other state grants a reciprocal exemption for Nebraska or its political subdivisions.

014.05 A properly completed exempt sale certificate received from the purchaser is adequate proof for the retailer ~~(seller)~~ that the sale was exempt from the sales and use tax.

014.05A To be properly completed, an exempt sale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 014.05B(1) through 014.05B(5). An exempt sale certificate received within 120 days after a request for substantiation made by the Department must be both fully completed and accepted in good faith to be properly completed.

014.05B To be ~~properly~~ fully completed, the exemption certificate~~, as allowed by Reg-1-014.11,~~ must include all of the following:

~~014.05A~~ 014.05B(1) Identification of both purchaser and ~~seller~~ retailer;

014.05B(2) ~~Statement~~ A statement of the basis for exemption, including the type of activity engaged in by the purchaser ~~as described on the Nebraska Resale or Exempt Sale Certificate, Form 13, including completion of all information for the basis chosen~~;

~~014.05C~~ 014.05B(3) A statement ~~as to whether~~ that the certificate is for a single purchase or is a blanket certificate ~~for~~ covering future sales;

~~014.05D~~ ~~Authorized~~ 014.05B(4) If a paper certificate is provided, an authorized signature. In other cases, another ~~or other~~ form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

~~014.05E~~ ~~Date~~014.05B(5) The 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~~ retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

014.07 A retailer ~~(seller)~~ or CSP who has a recurring business relationship with ~~repeatedly making the same type of exempt sale to~~ the same purchaser is not required to ~~take~~ obtain a separate exempt sale certificate for each sale but may ~~take~~ accept a "blanket" certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

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 the ~~Nebraska~~ Department ~~of Revenue~~ within the time frames noted below, the retailer ~~(seller)~~ making the sale is responsible for the tax on the transaction.

014.08A ~~Sellers~~ Retailers or CSPs are relieved from liability for tax if a properly completed exemption certificate is received, or if the ~~seller~~ retailer or CSP otherwise ~~captures~~ obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days ~~subsequent to~~ after the date of the sale.

014.08B ~~Sellers~~ Retailers or CSPs are relieved from liability for the tax if a properly completed exemption certificate is ~~received~~ accepted in good faith, or if the ~~seller~~ retailer or CSP otherwise obtains the relevant data elements supporting the exemption in good faith, within 120 days ~~subsequent to~~ after a request for substantiation made by the Department.

014.08C Retailers or CSPs may only accept a fully completed exemption certificate under subsection 014.08B of this section with a good faith belief that the purchase is a valid exempt sale to be relieved from liability. If the exemption certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

014.09 Any purchaser, or ~~the~~ agent of the purchaser, who ~~gives~~ issues an exempt sale certificate to the retailer ~~(seller)~~ for any purchase which is not exempt~~ed~~ from ~~the~~ sales and use tax under ~~sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, shall be~~ the Nebraska Revenue Act, is subject to a penalty of ~~one hundred dollars ($100.00)~~ or ten times the tax, whichever ~~amount~~ is larger, for each instance of presentation and misuse. With regard to a blanket exempt sale certificate, ~~said~~ the penalty ~~shall apply~~ applies 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~~ section 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~~ SSUTA for all sales except sales to the federal government. Sales to the federal government, or an agency~~,~~ or wholly owned corporation ~~thereof~~ of the federal government, may be supported in either of two ways. First, ~~they~~ the exemption may be supported by a regular federal certificate of exemption form. An alternative procedure ~~involves~~ is maintaining purchase documentation clearly identifying the purchaser as the federal government, or an agency~~,~~ or wholly owned corporation ~~thereof~~ of the federal government. 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~~ Retailers must maintain records of exempt transactions. The ~~Nebraska~~ Department ~~of Revenue~~ may make and retain copies of any exempt sale certificate.

(Sections 77-2703(1)(f), 77-2705(7) and (8), 77-2706, 77-2711(3)(a) and (4), and 77- 2713(5), R.R.S. 2009. ~~February 22, 2009~~_____.)

REG-1-018 ~~RENT OR~~ LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY

018.01 Any person who ~~rents or~~ leases or rents property for storage, use, or other consumption in this state is a retailer. A ~~rental or~~ lease or rental is the transfer of possession or control of property for a fixed or indeterminate term for a consideration. A ~~rental or~~ lease or rental may include future options to purchase or extend the lease or rental agreement.

018.01A Receipts from a ~~rental or~~ lease or rental of property requiring recurring periodic payments are ~~taxed~~ sourced as follows: the first periodic payment is ~~taxed~~ sourced at the location where the property is received by the lessee; payments subsequent to the first payment are ~~taxed~~ sourced at the primary property location. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

018.01B Receipts from the ~~rental or~~ lease or rental of property not requiring recurring payments are ~~taxed~~ sourced where the property is received by the lessee.

018.02 ~~That person~~ Retailers who lease or rent property must obtain a permit, and collect~~,~~ and remit the state and applicable local sales tax to the Nebraska Department of Revenue (Department) in the same manner as any other retailer. The sales tax is computed on the total amount for which the property is ~~rented or~~ leased or rented, valued in money whether paid in money or otherwise, without any deduction or exclusion of any cost components such as:

018.02A The cost of the property ~~rented or~~ leased or rented;

018.02B The cost of material used, labor or service costs, interest charged, insurance, losses, or any other expenses;

018.02C The cost of transportation of the property at any time; and

018.02D The amount of any excise or property taxes levied against the property.

018.03 The total amount for which property is ~~rented or~~ leased or rented includes any services which are a part of the ~~rental or~~ lease or rental and any amount for which credit is given to the lessee by the lessor. If the ~~rental or~~ lease or rental charge is comprised of a fixed amount plus a variable amount, sales ~~or use~~ tax applies to the total of these charges.

~~018.04 All transactions for the use of equipment and an operator who does more than maintain, inspect, or set up the equipment and who is necessary for the equipment to perform as designed, are presumed not to be rentals, and therefore are exempt. (For motor vehicles with operator see Reg-1-019, Rental or Lease of Vehicles.)~~

~~018.05~~ 018.04 If a ~~seller~~ retailer establishes a separate price schedule for his or her product when the sale includes the use of the seller's equipment by the purchaser, then the difference between

the product price with the equipment and the product price without the equipment is a lease or rental subject to the sales and use tax.

~~018.06~~ 018.05 A sale for the sole purpose of that purchaser's ~~renting or~~ leasing ~~such~~ or renting the property to another person~~, except where incidental to the renting or leasing of real estate,~~ is a sale for which a resale certificate may properly be issued~~; provided~~, except where:

018.05A ~~such rental or~~ The lease or rental payments are ~~set~~ not at a fair market value~~.~~;

018.05B ~~If the~~ The property ~~purchased~~ is used by the purchaser and is also ~~rented or~~ leased or rented to others, in which case both the purchase of ~~such~~ the property is taxable and the subsequent ~~rental or~~ lease or rental of ~~such~~ the property is also taxable~~.~~; and

018.05C The property is incidental to the lease or rental of real estate, such as furniture for a furnished apartment.

018.06 A sale to an unrelated person or entity conditioned upon a simultaneous lease back to the original owner is a sale for which a resale certificate may properly be issued.

018.07 The charge for ~~use~~ the lease or rental of a cabin trailer, mobile home, or similar property for less than ~~thirty~~ 30 days is taxable. If the ~~period of use~~ lease or rental period is for ~~thirty~~ 30 days or more, it is also a taxable ~~rental or~~ lease or rental of property unless the cabin trailer or mobile home has either been permanently annexed to realty or set up for occupancy as a dwelling for human occupancy according to ~~the~~ local building codes. (Reg-1-046, Hotels, Lodgings, and Accommodations~~.~~)

018.07A A cabin trailer or mobile home has been permanently annexed to the land ~~by~~ when a permanent foundation, such as a concrete slab or concrete footings, secures the cabin trailer or mobile home to the site. Blocking and leveling ~~of~~ the ground or setting the unit on concrete blocks is not permanent annexation to the land.

018.08 A lease or rental of ~~tangible~~ property from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies is exempt when the lessor has paid the tax on its purchase of the property being leased. ~~Such~~ A lessor has the same sales and use tax liability on the purchase of property to be leased to the lessee as if the lessee had purchased the property directly.

018.08A This ~~paragraph~~ exemption applies to corporations that have at least ~~fifty~~ 50 percent ~~per cent~~ common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

018.08B Sole proprietorships are not entities separate and apart from the owners and do not qualify for this exemption.

018.09 A ~~rental or~~ lease or rental will not qualify as an occasional sale.

018.10 Regardless of how a transaction is characterized under ~~Generally Accepted Accounting Principles~~ generally accepted accounting principles, a ~~rental or~~ lease or rental does not include ~~a transaction that has the following characteristics~~ the following transactions:

018.10A A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments; ~~or~~

018.10B A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of ~~an~~ a nominal option price that does not exceed the greater of ~~one hundred dollars (~~$100.00~~)~~ or one percent of the total required payments~~.~~; and

018.10C Providing property, such as equipment, along with an operator where the operator is necessary for the property to perform as designed. For this exclusion, the operator must do more than maintain, inspect, or set up the property. For motor vehicles with an operator, see Reg-1-019, Rental or Lease of Vehicles.

018.11 ~~Rentals or leases~~ Leases or rentals of motion picture ~~film~~films, ~~or~~ video tapes, digital products, and satellite services to a person who receives the product or service electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service for use where a taxable admission is later charged for showing, ~~rentals or leases~~ are exempt.

018.12 Leases or rentals of lodgings for periods of ~~thirty~~ 30 days or more, ~~and rentals or leases of railroad rolling stock~~ are exempt.

018.13 Under Neb. Rev. Stat. section 77-2704.08, when a lessee has an option to purchase the property during the term of the lease or rental, and to apply some or all of the lease or rental payments to the purchase price of the property, the sales price may be reduced by the amount of any lease or rental payments applied to the purchase price if the lessor collected sales tax on the payments.

~~018.12~~ 018.14 The classification of a transaction as a ~~rental or~~ lease or rental is determined by the law in effect at the inception of the ~~rental or~~ lease or rental. ~~The definitions contained above are effective for rentals or leases entered into on or after January 1, 2004.~~

(Sections ~~77-2701.07,~~ 77-2701.16, 77-2701.18, ~~77-2704.28~~, 77-2701.32, 77-2701.34, 77-2701.35, 77-2703.01, 77-2704.08, and 77-2704.28, R.R.S., 2009. ~~April 12, 2005~~_____.)

REG-1-065 ~~TELEPHONE AND TELEGRAPH COMMUNICATION~~ TELECOMMUNICATIONS SERVICES

065.01 Intrastate telephone communication service and telegraph service, ~~cellular telephone~~ mobile telecommunications service, wireless paging service, and wireless radio service are taxable whether furnished by public or private corporations or enterprises. This ~~would also include~~ includes those services which are sold by mutual companies.

065.01A Intrastate telephone communications services which are taxable include ~~local exchange telephone service charges, intrastate message toll charges, cellular telephone service,~~ mobile telecommunications services, ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added nonvoice data service, wireless paging service, ~~and~~ wireless radio service, and the gross receipts from coin-operated telephones, 800 service, and 900 service, when ~~such~~ the receipts are for intrastate service.

065.01A(1) Mobile telecommunications services are intrastate if the service originates and terminates in the same state. If the customer has a place of primary use in Nebraska, intrastate telecommunications services are taxable in Nebraska.

065.01B ~~Sales of switching service and toll service made to service station customers shall be considered sales at retail for telephone use. As such, the telephone company must collect the sales tax from the service station customers for rendering such switching service.~~

~~065.01C~~ Charges made to hotels, motels, similar lodging accommodations, or any other company by telephone communication service companies for telephone communication service, including telephone communication service that may be rebilled by the telephone communication service company customer to another party, are taxable. (Reg-1-046, Hotels, Lodgings, and Accommodations~~.~~)

~~065.01D~~ 065.01C Sales of telephone directories or directory covers to Nebraska customers by telephone ~~companies~~ service providers are ~~also~~ taxable.

~~065.01E~~ 065.01D Gross receipts does not include any surcharges imposed under the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Telecommunications Relay System Act, the Nebraska Telecommunications Universal Service Fund Act, or payments between telephone service providers, as defined in federal law, for division of revenue, settlements, carrier access charges, or provision of telephone communication service.

~~065.01F~~ 065.01E Gross receipts ~~does include~~ includes the sale of a prepaid ~~telephone~~ calling service, ~~arrangement~~ but does not include the payments to a telephone service provider attributable to services rendered using a prepaid ~~telephone~~ calling ~~arrangement~~ service. A prepaid ~~telephone~~ calling ~~arrangement shall mean~~ service means the right to exclusively purchase telecommunications service that is paid for in advance that enables

the origination of calls using an access number or authorization code, whether manually or electronically dialed, and whether delivered wireless or wireline.

~~065.01G~~ 065.01F When the purchaser is not using any portion of the purchased telephone communication services, ~~such~~ the services may be purchased for resale.

065.02 The tax on intrastate ~~toll message~~ long distance charges ~~shall be~~ is computed on the gross amount of the total ~~bill rendered~~ charge for long distance, less any interstate telephone and telegram charges. The amount of the tax computed on the intrastate ~~toll message~~ long distance charges must be indicated separately on the ~~toll~~ billing statement. ~~In computing the Nebraska sales tax, the~~ The federal telecommunications excise tax, the Nebraska 911 service surcharge, the enhanced wireless 911 service surcharge, the Nebraska telecommunications relay system surcharge ~~for hearing impaired~~, and the Nebraska Universal Service Fund surcharge~~, which have been billed to customers~~ ~~shall be~~ are excluded from ~~the~~ gross receipts for purposes of computing the sales tax.

065.02A The tax on ~~local exchange telephone~~ intrastate telephone communication service, whether on a flat or measured basis, ~~shall be~~ is computed on ~~each~~ the total amount billed by the telephone ~~company~~ service provider for ~~such~~ this service.

065.02B Telegrams charged to the account of a telephone subscriber and billed by the telephone ~~company~~ service provider must include the tax as computed by the telegraph company and must appear on the ~~bill~~ billing statement in an amount equal to the regular charge for the telegrams plus the sales tax. The tax on these telegrams must be remitted by the telegraph company.

065.02C Intrastate long distance calls provided by a different ~~communication~~ service provider that are charged to the account of a telephone subscriber and billed by the telephone company must include the tax as computed by the telephone company and must appear on the ~~bill~~ billing statement in an amount equal to the regular charge for the phone call plus the sales tax. The tax on these telephone calls must be remitted by the telephone company.

065.03 Any company furnishing telephone communication service or telegraph service is required to ~~pass~~ bill the sales tax ~~on~~ to the ~~consumer~~ customer. ~~In cases where a charge is made for both intrastate and interstate exchange service, and the interstate exchange service is not charged separately or cannot be readily determined, the sales tax shall apply to the total charge.~~ A retailer of bundled transactions that 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. (Reg-1-108, Bundled Transactions)

065.04 Persons engaged in providing ~~telephone and telegraph communications and~~ telecommunications services are ~~considered to be~~ the consumers of materials, supplies, and other items ~~which~~ that they use in providing their services~~. As such,~~ and they must pay the sales and use tax ~~to the suppliers at the time of purchase~~ on their purchases.

065.05 Charges made by a telephone company to the customer for nonrecurring telecommunications charges, such as installations, service connections, move and change charges, service upgrades, optional features like call waiting or voice mail, and construction costs constitute gross receipts for telephone communication service and are taxable.

065.06 All interstate ~~toll message~~ long distance charges are exempt from the ~~Nebraska~~ sales tax, as are ~~those~~ gross receipts from coin-operated telephones ~~which~~ that are for interstate ~~toll~~ long distance services. ~~There is no tax on private lines maintained by one or more persons if there is no sale of telephone or telegraph service to the public. A private line does not include a line provided by a telephone company that is routed through a switching facility.~~

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

(Sections ~~77-2702.07, 77-2702.14,~~ 77-2701.16, and 77-2701.48, ~~and 77-2703(1)~~, R.R.S. 2009. ~~October 1, 2003~~_____.)

REG-1-107 MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

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

107.02 Manufacturer means a person who is engaged in the business of manufacturing. Persons are engaged in the business of manufacturing if more than 50 percent of their total annual revenues are derived from the sales of products they manufacture and sell as tangible personal property, or from production labor as defined in Reg-1-082.02A performed on products sold as tangible personal property by other manufacturers.

> 107.02A Total annual revenues means revenues from all of the activities, locations, divisions, departments, or operations of the person, both within and outside this state, and includes sales of annexed property, tangible personal property, services, or intangibles. Total annual revenues are measured over a period consisting of 12 consecutive months, which includes the month in which the manufacturing machinery and equipment is placed in service.
>
> 107.02B A manufacturer does not include any person who derives more than 50 percent of its total annual revenues from sales of annexed property, services other than manufacturing, intangible property, or any combination of the above, or any person who is only manufacturing a product as an incidental part of its primary business. Sales of products or materials that are annexed to real estate, either by the seller or a subcontractor of the seller, are not sales of tangible personal property.

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

> 107.03A Generation or transmission of electricity;
>
> 107.03B Growing or caring for crops or animal life;
>
> 107.03C Mining, quarrying, and any other activity performed in severing raw materials or other property from the ground;
>
> 107.03D Preparation of food for immediate consumption;
>
> 107.03E Production or transmission of data;
>
> 107.03F Production or transmission of information;
>
> 107.03G Production or transmission of programming, including computer software;
>
> 107.03H Purification or transportation of water;
>
> 107.03I Retail operations; or

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

107.04 Manufacturing machinery and equipment used in manufacturing includes:

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

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

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

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

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

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

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

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

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

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

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

107.05 Manufacturing machinery and equipment does NOT include:

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

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

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

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

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

107.05F Machinery and equipment used in research and development;

107.05G Office equipment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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