

LEGISLATIVE BILL 1030

Approved by the Governor April 17, 2018

Introduced by Friesen, 34.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 13-2816, Reissue Revised Statutes of Nebraska, and section 77-2703.01, Revised Statutes Cumulative Supplement, 2016; to change the sales tax sourcing rules for motor vehicles and trailers operated by public power districts; to provide an operative date; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 13-2816, Reissue Revised Statutes of Nebraska, is amended to read:

13-2816 (1) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with sections 13-2813 to 13-2815, shall govern transactions, proceedings, and activities pursuant to any sales and use tax imposed by a municipal county.

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

(a) At the place where title, possession, or segregation takes place, with the exception of sales or leases or rentals for more than one year of motor vehicles, trailers, semitrailers, and motorboats, if a purchaser takes possession of tangible personal property within a municipal county, which has enacted a tax under section 13-2813, regardless of the business location of the Nebraska retailer;

(b) At the point of delivery of utility services and community antenna television services or where such services are provided, with the exception that Nebraska intrastate message toll telephone and telegraph services which are consummated in the county where the customer is normally billed for such services;

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

(d) At the place designated on the application for registration for motor vehicles, trailers, semitrailers, and motorboats sold or leased or rented for more than one year, except that the sale of any motor vehicle or trailer operated by a public power district and registered under section 60-3,228 is consummated at the place where the motor vehicle or trailer has situs as defined in section 60-349.

Sec. 2. Section 77-2703.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

77-2703.01 (1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 shall be governed by the sourcing rules in sections 77-2703.01 to 77-2703.04.

(2) When the property or service is received by the purchaser at a business location of the retailer, the sale is sourced to that business location.

(3) When the property or service is not received by the purchaser at a business location of the retailer, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the retailer.

(4) When subsection (2) or (3) of this section does not apply, the sale is sourced to the location indicated by an address or other information for the purchaser that is available from the business records of the retailer that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.

(5) When subsection (2), (3), or (4) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsection (2), (3), (4), or (5) of this section does not apply, including the circumstance in which the retailer is without sufficient information to apply the rules in any such subsection, then the location will be determined by the address from which property was shipped, from which the digital good was first available for transmission by the retailer, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(7) The lease or rental of tangible personal property, other than property identified in subsection (8) or (9) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section. Periodic payments made subsequent to the first payment are sourced to the primary

property location for each period covered by the payment. The primary property location shall be as indicated by 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 shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(8) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment under subsection (9) of this section shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by 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. This location shall not be altered by intermittent use at different locations; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(9) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsections (2) through (6) of this section. Transportation equipment means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (9)(a) through (c) of this section.

(10) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser. For purposes of sourcing detective services subject to tax under subdivision (4)(h) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.

(11) The sale, not including lease or rental, of a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act shall be sourced to the place of registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state or, if no such registration has occurred, the place where such motor vehicle, semitrailer, or trailer is required to be registered, except that the sale of any motor vehicle or trailer operated by a public power district and registered under section 60-3,228 shall be sourced to the place where the motor vehicle or trailer has situs as defined in section 60-349.

(12) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.

Sec. 3. This act becomes operative on January 1, 2021.

Sec. 4. Original section 13-2816, Reissue Revised Statutes of Nebraska, and section 77-2703.01, Revised Statutes Cumulative Supplement, 2016, are repealed.