

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 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., 2008. February 22, 2009)