

REG-1-016, Changes in Rate of Tax

*** Legislation has repealed the special provision for motor vehicle leases contained in Reg-1-016.02A. This regulation is currently undergoing review for amendment (Neb. Rev. Stat. § 77-2703).**

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 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, , 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., 2008. February 22, 2009.)