

## REG-1-002, Use Tax

**002.01 Use Tax in General.** Use tax is not a duplication of the sales tax. The sales tax and the use tax complement each other and together provide a uniform tax upon the sale, lease, rental, storage, use, distribution, or other consumption of tangible personal property and certain specified labor and services. The tangible personal property, labor, and services which are included in the sales and use tax base are described in Reg-1-001.01, Nature of the Sales Tax.

**002.02 Use Tax Imposed.** The use tax is imposed upon the storage, use, distribution, or other consumption of tangible personal property and certain specified labor and services when the purchase of the tangible personal property, labor, or services would be subject to sales tax under Reg-1-001.01, Nature of the Sales Tax. Use tax applies whenever the sales tax has not been paid.

002.02A Any property, as defined in Reg-1-001 sold, leased, or rented by any person for delivery in Nebraska is presumed to be sold, leased, or rented for storage, use, distribution, or other consumption in Nebraska, until the contrary proven. The burden of proving that any property delivered in Nebraska is delivered for a purpose other than storage, use, distribution, or other consumption in Nebraska is on the person who purchases, leases, or rents the property.

002.02B If sales 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, or if sales tax has been properly paid in Nebraska, no use tax is due. (Reg-1-071, Credit for Tax Paid to Another State)

**002.03 Remittances.** Use tax is paid directly to the Nebraska Department of Revenue (Department) by the purchaser. A permit is not required.

**002.04 Exemptions.** Use tax does not apply to the following transactions:

002.04A Transactions where the proper amount of Nebraska and local sales taxes have been paid, including sales tax remitted directly to the Department by a purchaser who holds a direct pay permit (Reg-1-097, Direct Pay Permit) or certificate of exemption for direct mail (Reg-1-105, Direct Mail);

002.04B Purchasing, leasing, renting, storing, using, distributing, or consuming property where the transaction is exempt from sales tax;

002.04C Transactions where the property has been used for its intended purpose in another state before it was brought into Nebraska. This subsection does not apply to motor vehicles, motorboats, or airplanes (Reg-1-020, Motor Vehicles, and Reg-1-067, Aircraft and Related Services);

002.04D Transactions where the property: was purchased from a seller not engaged in business in Nebraska, nor licensed to collect Nebraska sales tax; is only stored temporarily in Nebraska; and is subsequently taken to another state or processed, fabricated, or manufactured to be used for its intended purpose in another state;

002.04E Removing building materials from inventory for a construction project in another state, when the building materials were purchased from a seller not doing business in Nebraska, nor licensed to collect Nebraska sales taxes (Reg-1-017, Contractors); and

002.04F Purchases made from commissaries, base exchanges, ships' stores, or voluntary, unincorporated organizations of personnel of any branch of the Armed Forces of the U. S. by any person authorized to make these purchases.

002.05 Use tax is due on the following transactions:

002.05A Purchases for delivery in Nebraska from out-of-state retailers when the applicable state and local sales taxes have not been paid;

002.05B Retail purchases made in this state when the applicable state and local sales taxes have not been paid;

002.05C Purchases at retail from federal government agencies and instrumentalities not required to collect Nebraska sales taxes, except as provided in Reg-1-002.04F;

002.05D Purchases where an exempt sale certificate was originally given, but the property is subsequently put to a taxable use;

002.05E Use of property which was originally purchased tax-exempt using a resale certificate, but is later used for personal or business purposes;

002.05F Purchases from out-of-state retailers of property that is delivered or used in Nebraska and would be taxable if purchased in Nebraska, even if the purchase of the property is exempt in the other state; and

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

**002.06 Use of Property Purchased Using a Resale Certificate.** 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, the use is taxable to that purchaser as of the time when the property is first used in Nebraska. Except for aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of that property is the measure of the use tax. The tax rate is the rate in effect at the time of first use. (Reg-1-035, Consumption of Untaxed Property.)

**002.07 Calculating Use Tax.** The amount of use tax is computed by multiplying the sales price of the property by the applicable tax rate in effect at the time of first use. The rate applicable for use tax is the same as the rate for state and local sales taxes. Sales price means the total amount of consideration for the property received and includes cash, credit, property, and services rendered without any deduction for the cost or other expenses of the seller, charges for delivery, installation, or any other amounts charged by the seller to complete the sale.

002.08 Persons holding a sales tax permit may report and pay all use tax due on the Nebraska and Local Sales and Use Tax Return, Form 10, or a Nebraska and Local Business Use Tax Return, Form 2.

002.09 Persons who are not required to hold a sales tax permit, but who are liable for use tax, must pay the tax directly to the Department using a Nebraska and Local Business Use Tax Return, Form 2, or a Nebraska and Local Individual Use Tax Return, Form 3. Unless otherwise required by the Department, these persons must file returns annually if the expected annual amount of tax will not exceed \$900. If the expected annual amount of tax is between \$900 and \$3,000, the returns must be filed quarterly. Those with expected annual amounts of tax greater than \$3,000 must file monthly.

002.09A Persons who are registered under the Streamlined Sales and Use Tax Agreement (SSUTA) may follow the filing frequency guidelines outlined in the SSUTA.

002.09B Persons who are not required to hold a sales tax permit may also pay use tax on a Nebraska Individual Income Tax Return, Form 1040N.

002.10 Returns that are not filed electronically must be properly signed. The return and the remittance are timely filed if mailed, postage prepaid, on or before the 20th day of the month following the close of the reporting period.

002.10A When the 20th day falls on a Saturday, Sunday, or an approved holiday, a return or remittance is timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A U.S. Postal Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return or remittance.

002.10B A private postage meter date or a date stamped by a private delivery service will be considered the date of filing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

002.10C The Department will accept filing and payment methods pursuant to the SSUTA for Model 1, 2, or 3 sellers.

002.11 Unless there are amounts, words, statements, numbers, zeros, or figures shown on the use tax lines of a Nebraska and Local Sales and Use Tax Return, Form 10, submitting the form to the Department does not constitute the filing of a use tax return.

002.11A If the person files a return, the statute of limitations for issuing a deficiency determination is three years after the last day of the month following the reporting period, or three years after the return was filed, whichever is later. If the person fails to file a return, the statute of limitations for issuing a deficiency determination is six years after the last day of the month following the reporting period.

002.11B If the person does not enter amounts, words, statements, numbers, zeros, or figures on the appropriate line of a Nebraska and Local Sales and Use Tax Return, Form 10, the statute of limitations for issuing a deficiency determination for that reporting period is extended to six years after the last day of the month following the reporting period.

002.11C Statements by the person that no use tax is due, or entries made by the Department that did not come from a filed return, do not constitute the filing of a return and do not limit the statute of limitations to three years.

002.12 Remittances must be made to the Department in the form of electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax Commissioner. Checks, drafts, or money orders should be made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps cannot be sent as payment. Cash may be used only when payment is made in person at an office of the Department.

002.13 Any person who fails to file the return or remit the tax due by the due date will be subject to a penalty equal to 10% of the unpaid tax, or \$25, whichever is greater. If the failure to file a return or remit the use tax is a result of fraud, or an intent to evade the tax, a penalty of 25% of the amount of the understatement, or \$50, whichever is greater, may be assessed. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

*(Neb. Rev. Stat. §§ 77-1702, 77-1784, 77-2701.35 77-2701.37, 77-2701.42, 77-2703(2), 77-2704.30, 77-2704.31, 77-2704.44, 77-2706(3), 77-2708, and 77-2709, and McDonald's Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993), J.C. Penney Co., Inc. v. Balka, 254 Neb. 521 (1998), and 4 U.S.C. § 107. June 24, 2017.)*