

## REG-1-019, Rental or Lease of Vehicles

019.01 When the words rental or lease or derivatives thereof are hereafter used, they shall be deemed to be synonymous for the purposes of this regulation. When the word motor vehicle or vehicle is used it shall refer to automobiles, trucks, trailers, semitrailers, and truck tractors as defined in section 60-301 of the Nebraska Revised Statutes which are not classified as transportation equipment.

019.01A Lease or rental shall have the same meaning as in Reg-1-018, but shall also include any agreement covering motor vehicles where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined for federal income tax purposes.

019.02 A rental occurs when the person to whom a motor vehicle is rented exercises control over the vehicle. Control over the vehicle may be exercised by the person renting it even when drivers are furnished when:

019.02A The person has the exclusive use of the vehicle for a period of time; and

019.02B The person has the right to direct the manner of the use of the vehicle, whether exercised or not, for that period.

019.03 All lessors of motor vehicles are retailers. They are required to obtain a permit and must collect and remit the tax on the gross lease receipts, except as provided in 019.07. (For the proper amount of tax to be collected when the tax rate changes see Reg-1-016.02A). A lessor collecting the tax on the lease receipts may purchase and register the vehicles to be leased without payment of the tax on the purchase price. The lessor is purchasing such vehicles for resale. Before registering leased vehicles tax-free, evidence that the lessor holds a permit to properly collect the tax on the lease receipts must be provided to the Department of Motor Vehicles or the county treasurer, or other designated county official, of the county in which registration will occur.

019.03A Receipts from the rental or lease of a motor vehicle, other than transportation equipment, requiring recurring periodic payments are taxable at the primary property location.

019.03B Receipts from the rental or lease of a motor vehicle not requiring recurring periodic payments are taxed at the location where the vehicle is received by the purchaser.

019.03C Receipts from the rental or lease of transportation equipment are taxable where the seller transfers physical possession or control of the equipment to the buyer.

019.03C(1) Transportation equipment means:

019.03C(1)(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

019.03C(1)(b) Trucks and truck tractors with a gross weight rating of ten thousand and one pounds or greater, or trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certified by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

019.03C(1)(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

019.03C(1)(d) Containers designed for use on and component parts attached or secured on transportation equipment identified in Reg-1-019.03C(1)(a) through Reg-1-019.03C(1)(c).

019.04 The total amount for which the motor vehicle is leased includes any services which are a part of the lease and any amount for which credit is given to the lessee by the lessor. If the lease or rental charge is comprised of a fixed amount plus a variable amount, (e.g., \$15.00 per day plus \$0.15 per mile) sales or use tax applies to the total of these charges.

019.04A The total amount for which a vehicle is leased does not include any amount paid by the lessee to the county treasurer, other designated county official, or the Department of Motor Vehicles for in lieu of property tax.

019.05 A lease of a motor vehicle 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 motor vehicle being leased. Such lessor shall have the same sales and use tax liability on the purchase of the motor vehicle to be leased to the lessee as if the lessee had purchased the motor vehicle directly. This subdivision applies to corporations that have at least fifty percent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

019.06 The receipts from the lease of motor vehicles to be engaged as common or contract carrier vehicles by persons holding a numbered certificate of exemption issued by the Department of Revenue are exempt; provided, the lessor is furnished evidence that the lessee holds such certificate or number.

019.07 In lieu of collecting and remitting tax upon the gross receipts, the lessor may elect to pay the tax on the cost of all vehicles, including vehicles presently under lease. The election does not apply to motor vehicles leased for use as common or contract carrier vehicles. If such an election is made, it shall be pursuant to the following conditions:

019.07A Notice shall be filed with the Department of Revenue and such election shall be effective only upon approval;

019.07B The election, when made and approved by the Department of Revenue, shall remain in force and effect for a period of not less than two years; and

019.07C The election shall apply to all vehicles of the lessor leased for periods of one year or more, except for vehicles leased for use as common or contract carrier vehicles. Persons leasing motor vehicles for both periods of less than one year and for periods of one year or more and who have elected to remit the applicable tax on the cost of the motor vehicles at the time of purchase, must segregate the taxable receipts from the nontaxable receipts in their records.

019.08 The election shall be filed on forms prescribed by the Department of Revenue and in addition to general information shall contain a list of all vehicles under existing lease as to term of the lease, model, year, make, and fair market value, as of the date of the election. If some of the vehicles are leased for use as common or contract carrier vehicles, the list must show which vehicles are being used as common or contract carriers, the lessee of each vehicle, and the lessee's Nebraska common or contract carrier exemption number.

019.09 Vehicles under existing lease on the effective date of the election, with at least one year remaining on the existing lease, shall be valued at their fair market value and the state and applicable city sales tax computed on such amounts. The computed tax must be remitted to the Department of Motor Vehicles or the county treasurer, or other designated county official, of the county in which the vehicles are registered within five (5) days from the receipt of

approval of the lessor's option. The lessor must pay the state and applicable city sales tax on the fair market value of any vehicle the first time it is leased for a period of one year or more after the effective date of the option, unless the tax was previously paid at the time of purchase or under this subsection. The lessor must submit proof of payment of the tax to the Nebraska Department of Revenue, Taxpayer Services, P.O. Box 94818, Lincoln, Nebraska 68509.

019.10 The lessor who elects to pay the tax on the cost of such vehicles will purchase and pay the tax in the following manner: The seller shall state on the sales invoice the dollar amount of the tax and furnish the purchaser a certified statement of the transaction on a form provided by the Department of Revenue. The applicable tax will be paid by the purchaser to the Department of Motor Vehicles or the county treasurer, or other designated county official, at the time of application for registration of the motor vehicle for operation on the highways of this state. The Department of Motor Vehicles or the county treasurer, or other designated county official, shall furnish a statement for completion by the purchaser when the purchase was made from an out-of-state dealer. The purchaser will be responsible for establishing the cost (price paid) for such motor vehicle with a copy of the sales invoice or other documents.

019.10A The lessor who made the election and is purchasing a vehicle to be leased for use as a common or contract carrier vehicle, shall purchase such vehicle for resale and will not pay the tax at the time of registration.

019.10B When a vehicle that was purchased for use as a common or contract carrier vehicle is first leased for one year or more to a person who is not a common or contract carrier, the lessor shall pay the tax on the fair market value of the vehicle at the time of the lease.

019.11 A lessor who has been operating under this election for at least two years may make application to the Department of Revenue, to terminate such election. Until such time as an application to terminate has been received and acknowledged by the Department, the retailer shall continue to operate as set out in 019.07 through 019.10. The application to terminate shall be in the form of a written request and, when acknowledged by the Department, will become effective on the first day of the month following the postmark date of the acknowledgment.

019.12 Tax paid on vehicles under existing leases at the time the election is terminated cannot be refunded either to the lessor or lessee. State and applicable local option sales tax will be charged and collected on the gross vehicle lease receipts beginning with the billing issued on or after the first day of the month following the postmark date of the acknowledgment of termination.

*(Sections 77-2701.33 and 77-2701.35, R.R.S. 2003, and sections 77-2701.34, 77-2703(1)(g) and (h), and 77-2703.01(8) and (9), R.S.Supp., 2004. April 12, 2005.)*