

REG-1-069, Common and Contract Carriers

*** Legislation has changed the renewal period for a certificate of exemption from three years to five years. This regulation is currently undergoing review for amendment (Neb. Rev. Stat. § 2704.50).**

069.01 The purchase and use of motor vehicles, watercraft, and aircraft which are used predominantly as common or contract carriers, as well as repair and replacement parts for such equipment, are exempt from sales and use tax.

069.02 In order for a motor vehicle, watercraft, or aircraft to qualify as a common or contract carrier for sales or use tax exemption purposes, the owner of such items must submit an application on forms provided by the Nebraska Department of Revenue. Unless the motor vehicle, watercraft, or aircraft has been so qualified with the Nebraska Department of Revenue, it shall be presumed that such equipment is not a common or contract carrier for purposes of the sales and use tax exemption. This presumption may be overcome by evidence that the equipment is predominantly used as a common or contract carrier.

069.02A Only those motor vehicles, watercraft, or aircraft that are predominantly used for transporting persons or property for hire may qualify for common or contract carrier status.

069.02A(1) A common carrier is any motor vehicle, watercraft, or aircraft which is predominantly used by its owner to offer to transport the general public and the goods of the general public from place to place for compensation.

069.02A(2) A contract carrier is any motor vehicle, watercraft, or aircraft which is predominantly used by its owner to offer to transport specific persons and the goods of specific persons, on a contractual basis with such persons, from place to place for compensation.

069.02A(3) Predominantly used shall mean the total measure of use of any motor vehicle, aircraft, or watercraft (e.g., miles or hours) used to haul property as a common or contract carrier, divided by the total measure of use of the motor vehicle, aircraft, or watercraft, for all purposes, is greater than 50%. For purposes of determining this percentage, a one (1) year period of operation should be used.

EXAMPLE: Motor Vehicle #106	
Odometer reading 1/1	73,146
Odometer reading 12/31	160,409
Common/contract carrier miles from customer billing records	75,919
Total miles (160,409-73,146)	87,263
% common/contract carrier usage (75,919:87,263)	87%

069.02B Any motor vehicle, watercraft, or aircraft which is used predominantly to haul the owner's goods is a private carrier and does not qualify for the exemption.

069.02C The fact that a person may have been granted a certificate of public convenience and necessity or a permit by either the Interstate Commerce Commission or the Public Service Commission does not, in itself, qualify such person's equipment as a common or contract carrier for sales and use tax purposes.

069.03 If, based on the information provided in the application, it is found that a person operates such equipment as a common or contract carrier, a Common or Contract Carrier Certificate of Exemption will be issued. All certificates expire on October 31, 1986, and every three years thereafter. The renewal process is initiated by the Nebraska Department of Revenue. The certificate contains an exemption number assigned by the Nebraska Department of Revenue which must be used when making authorized exempt purchases. A person holding a Common or Contract Carrier Certificate of Exemption is authorized to make exempt purchases under that certificate only as hereinafter set out:

069.03A The purchase or lease of motor vehicles, trailers and/or semitrailers, watercraft, or aircraft engaged predominantly as, or to be used predominantly as, common or contract carriers of persons or property and all accessories included in the purchase price of such vehicles.069.03B The purchase of repair and maintenance parts which become a physical part of such motor vehicles, trailers and/or semitrailers, watercraft, or aircraft engaged predominantly as common or contract carriers of persons or property.069.03C Accessories purchased for use with the common or contract carrier vehicle which could have been included in the list price of the vehicle at the time of purchase.069.03D Containers designed for use on transportation equipment.

069.03D(1) Containers and accessories do not include boxes, pads, and packing materials used by transportation companies.

069.03E Equipment required by a federal or state regulatory agency to be included on a common or contract carrier vehicle operating in or through the State of Nebraska for the health or safety of passengers or cargo.

069.04 An exempt sale certificate shall be completed by the person owning such common or contract carriers and furnished to the supplier when purchasing repair and maintenance parts for the common or contract carrier vehicles.069.05 Each purchase or lease of a common or contract carrier and repair and replacement parts will be considered individually to determine if, in fact, the purchase or lease of that tangible personal property was for use predominantly as a qualified common or contract carrier or was used as a repair and maintenance part for a qualified common or contract carrier.069.06 The exemption allowed extends only to those qualified vehicles and does not extend to purchases other than the previously described tangible personal property nor to that tangible personal property when used predominantly for other than common or contract carrier purposes.

EXAMPLE: The holder of a Common or Contract Carrier Certificate of Exemption is required to pay sales or use tax when purchasing office furnishings or when purchasing motor vehicles for use in delivering or picking up tangible personal property owned by that person or for transporting that person's personnel.

069.07 The Nebraska Department of Revenue may examine the books, papers, and records of any person issued a Common or Contract Carrier Certificate of Exemption in order to determine the propriety of purchases made without the payment of Nebraska sales or use tax. The burden of proving that sales or use tax is not due is upon the purchaser.

(Sections 77-2704.30, 77-2704.50, and 77-2705(7), R.R.S. 2003; and A-1 Metro Movers, Inc. v. Egr, 264 Neb. 291 (2002). April 12, 2005.)