

REG-1-018. Rent or Lease of Tangible Personal Property

018.01 Any person who leases or rents property for storage, use, or other consumption in this state is a retailer. A lease or rental is the transfer of possession or control of property for a fixed or indeterminate term for a consideration. A lease or rental may include future options to purchase or extend the lease or rental agreement.

018.01A Receipts from a lease or rental of property requiring recurring periodic payments are sourced as follows: the first periodic payment is sourced at the location where the property is received by the lessee; payments subsequent to the first payment are sourced at the primary property location. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

018.01B Receipts from the lease or rental of property not requiring recurring payments are sourced where the property is received by the lessee.

018.02 Retailers who lease or rent property must obtain a permit, and collect and remit the state and applicable local sales tax to the Nebraska Department of Revenue (Department) in the same manner as any other retailer. The sales tax is computed on the total amount for which the property is leased or rented, valued in money whether paid in money or otherwise, without any deduction or exclusion of any cost components such as:

018.02A The cost of the property leased or rented;

018.02B The cost of material used, labor or service costs, interest charged, insurance, losses, or any other expenses;

018.02C The cost of transportation of the property at any time; and

018.02D The amount of any excise or property taxes levied against the property.

018.03 The total amount for which property is leased or rented includes any services which are a part of the lease or rental 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, sales tax applies to the total of these charges.

018.04 If a retailer establishes a separate price schedule for his or her product when the sale includes the use of the seller's equipment by the purchaser, then the difference between the product price with the equipment and the product price without the equipment is a lease or rental subject to the sales and use tax.

018.05 A sale for the sole purpose of that purchaser's leasing or renting the property to another person is a sale for which a resale certificate may properly be issued, except where:

018.05A The lease or rental payments are not at a fair market value;

018.05B The property is used by the purchaser and is also leased or rented to others, in which case both the purchase of the property is taxable and the subsequent lease or rental of the property is also taxable; and

018.05C The property is incidental to the lease or rental of real estate, such as furniture for a furnished apartment.

018.06 A sale to an unrelated person or entity conditioned upon a simultaneous lease back to the original owner is a sale for which a resale certificate may properly be issued.

018.07 The charge for the lease or rental of a cabin trailer, mobile home, or similar property for less than 30 days is taxable. If the lease or rental period is for 30 days or more, it is also a taxable lease or rental of property unless the cabin trailer or mobile home has either been permanently annexed to realty or set up for occupancy as a dwelling for human occupancy according to local building codes. (Reg-1-046, Hotels, Lodgings, and Accommodations)

018.07A A cabin trailer or mobile home has been permanently annexed to the land when a permanent foundation, such as a concrete slab or concrete footings, secures the cabin trailer or mobile home to the site. Blocking and leveling the ground or setting the unit on concrete blocks is not permanent annexation to the land.

018.08 A lease or rental of property 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 property being leased. A lessor has the same sales and use tax liability on the purchase of property to be leased to the lessee as if the lessee had purchased the property directly.

018.08A This exemption applies to corporations that have at least 50 percent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

018.08B Sole proprietorships are not entities separate and apart from the owners and do not qualify for this exemption.

018.09 A lease or rental will not qualify as an occasional sale.

018.10 Regardless of how a transaction is characterized under generally accepted accounting principles, a lease or rental does not include the following transactions:

018.10A A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

018.10B A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of a nominal option price that does not exceed the greater of \$100.00 or one percent of the total required payments; and

018.10C Providing property, such as equipment, along with an operator where the operator is necessary for the property to perform as designed. For this exclusion, the operator must do more than maintain, inspect, or set up the property. For motor vehicles with an operator, see Reg-1-019, Rental or Lease of Vehicles.

018.11 Leases or rentals of motion picture films, video tapes, digital products, and satellite services to a person who receives the product or service electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service for use where a taxable admission is later charged for showing, are exempt.

018.12 Leases or rentals of lodgings for periods of 30 days or more, are exempt.

018.13 Under Neb. Rev. Stat. section 77-2704.08, when a lessee has an option to purchase the property during the term of the lease or rental, and to apply some or all of the lease or rental payments to the purchase price of the property, the sales price may be reduced by the amount of any lease or rental payments applied to the purchase price if the lessor collected sales tax on the payments.

018.14 The classification of a transaction as a lease or rental is determined by the law in effect at the inception of the lease or rental.

(Sections 77-2701.16, 77-2701.18, 77-2701.32, 77-2701.34, 77-2701.35, 77-2703.01, 77-2704.08, and 77-2704.28, R.R.S., 2009. November 6, 2010.)

