

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 902

Final Reading

(Second)

Introduced by Harr, 8; Flood, 19; Nordquist, 7; Lambert, 2.

Read first time January 09, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections 77-202
2 and 77-2704.15, Revised Statutes Supplement, 2011; to
3 define a term relating to property tax exemptions; to
4 change provisions relating to a sales tax exemption for
5 purchases by the state or a governmental unit; to require
6 voter approval in order to qualify for exemptions as
7 prescribed; to provide operative dates; to repeal the
8 original sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-202, Revised Statutes Supplement,
2 2011, is amended to read:

3 77-202 (1) The following property shall be exempt from
4 property taxes:

5 (a) Property of the state and its governmental
6 subdivisions to the extent used or being developed for use by the
7 state or governmental subdivision for a public purpose. For purposes
8 of this subdivision: ~~public~~

9 (i) Property of the state and its governmental
10 subdivisions means (A) property held in fee title by the state or a
11 governmental subdivision or (B) property beneficially owned by the
12 state or a governmental subdivision in that it is used for a public
13 purpose and is being acquired under a lease-purchase agreement,
14 financing lease, or other instrument which provides for transfer of
15 legal title to the property to the state or a governmental
16 subdivision upon payment of all amounts due thereunder. If the
17 property to be beneficially owned by a governmental subdivision has a
18 total acquisition cost that exceeds the threshold amount or will be
19 used as the site of a public building with a total estimated
20 construction cost that exceeds the threshold amount, then such
21 property shall qualify for an exemption under this section only if
22 the question of acquiring such property or constructing such public
23 building has been submitted at a primary, general, or special
24 election held within the governmental subdivision and has been
25 approved by the voters of the governmental subdivision. For purposes

1 of this subdivision, threshold amount means the greater of fifty
2 thousand dollars or six-tenths of one percent of the total actual
3 value of real and personal property of the governmental subdivision
4 that will beneficially own the property as of the end of the
5 governmental subdivision's prior fiscal year; and

6 (ii) Public purpose means use of the property ~~(i)-(A)~~ to
7 provide public services with or without cost to the recipient,
8 including the general operation of government, public education,
9 public safety, transportation, public works, civil and criminal
10 justice, public health and welfare, developments by a public housing
11 authority, parks, culture, recreation, community development, and
12 cemetery purposes, or ~~(ii)-(B)~~ to carry out the duties and
13 responsibilities conferred by law with or without consideration.
14 Public purpose does not include leasing of property to a private
15 party unless the lease of the property is at fair market value for a
16 public purpose. Leases of property by a public housing authority to
17 low-income individuals as a place of residence are for the
18 authority's public purpose;

19 (b) Unleased property of the state or its governmental
20 subdivisions which is not being used or developed for use for a
21 public purpose but upon which a payment in lieu of taxes is paid for
22 public safety, rescue, and emergency services and road or street
23 construction or maintenance services to all governmental units
24 providing such services to the property. Except as provided in
25 Article VIII, section 11, of the Constitution of Nebraska, the

1 payment in lieu of taxes shall be based on the proportionate share of
2 the cost of providing public safety, rescue, or emergency services
3 and road or street construction or maintenance services unless a
4 general policy is adopted by the governing body of the governmental
5 subdivision providing such services which provides for a different
6 method of determining the amount of the payment in lieu of taxes. The
7 governing body may adopt a general policy by ordinance or resolution
8 for determining the amount of payment in lieu of taxes by majority
9 vote after a hearing on the ordinance or resolution. Such ordinance
10 or resolution shall nevertheless result in an equitable contribution
11 for the cost of providing such services to the exempt property;

12 (c) Property owned by and used exclusively for
13 agricultural and horticultural societies;

14 (d) Property owned by educational, religious, charitable,
15 or cemetery organizations, or any organization for the exclusive
16 benefit of any such educational, religious, charitable, or cemetery
17 organization, and used exclusively for educational, religious,
18 charitable, or cemetery purposes, when such property is not (i) owned
19 or used for financial gain or profit to either the owner or user,
20 (ii) used for the sale of alcoholic liquors for more than twenty
21 hours per week, or (iii) owned or used by an organization which
22 discriminates in membership or employment based on race, color, or
23 national origin. For purposes of this subdivision, educational
24 organization means (A) an institution operated exclusively for the
25 purpose of offering regular courses with systematic instruction in

1 academic, vocational, or technical subjects or assisting students
2 through services relating to the origination, processing, or
3 guarantying of federally reinsured student loans for higher education
4 or (B) a museum or historical society operated exclusively for the
5 benefit and education of the public. For purposes of this
6 subdivision, charitable organization means an organization operated
7 exclusively for the purpose of the mental, social, or physical
8 benefit of the public or an indefinite number of persons; and

9 (e) Household goods and personal effects not owned or
10 used for financial gain or profit to either the owner or user.

11 (2) The increased value of land by reason of shade and
12 ornamental trees planted along the highway shall not be taken into
13 account in the valuation of land.

14 (3) Tangible personal property which is not depreciable
15 tangible personal property as defined in section 77-119 shall be
16 exempt from property tax.

17 (4) Motor vehicles required to be registered for
18 operation on the highways of this state shall be exempt from payment
19 of property taxes.

20 (5) Business and agricultural inventory shall be exempt
21 from the personal property tax. For purposes of this subsection,
22 business inventory includes personal property owned for purposes of
23 leasing or renting such property to others for financial gain only if
24 the personal property is of a type which in the ordinary course of
25 business is leased or rented thirty days or less and may be returned

1 at the option of the lessee or renter at any time and the personal
2 property is of a type which would be considered household goods or
3 personal effects if owned by an individual. All other personal
4 property owned for purposes of leasing or renting such property to
5 others for financial gain shall not be considered business inventory.

6 (6) Any personal property exempt pursuant to subsection
7 (2) of section 77-4105 or section 77-5209.02 shall be exempt from the
8 personal property tax.

9 (7) Livestock shall be exempt from the personal property
10 tax.

11 (8) Any personal property exempt pursuant to the Nebraska
12 Advantage Act shall be exempt from the personal property tax.

13 (9) Any depreciable tangible personal property used
14 directly in the generation of electricity using wind as the fuel
15 source shall be exempt from the property tax levied on depreciable
16 tangible personal property. Depreciable tangible personal property
17 used directly in the generation of electricity using wind as the fuel
18 source includes, but is not limited to, wind turbines, rotors and
19 blades, towers, trackers, generating equipment, transmission
20 components, substations, supporting structures or racks, inverters,
21 and other system components such as wiring, control systems,
22 switchgears, and generator step-up transformers.

23 Sec. 2. Section 77-2704.15, Revised Statutes Supplement,
24 2011, is amended to read:

25 77-2704.15 ~~(1)~~(1)(a) Sales and use taxes shall not be

1 imposed on the gross receipts from the sale, lease, or rental of and
2 the storage, use, or other consumption in this state of purchases by
3 the state, including public educational institutions recognized or
4 established under the provisions of Chapter 85, or by any county,
5 township, city, village, rural or suburban fire protection district,
6 city airport authority, county airport authority, joint airport
7 authority, drainage district organized under sections 31-401 to
8 31-450, natural resources district, elected county fair board,
9 housing agency as defined in section 71-1575 except for purchases for
10 any commercial operation that does not exclusively benefit the
11 residents of an affordable housing project, cemetery created under
12 section 12-101, or joint entity or agency formed ~~to fulfill the~~
13 ~~purposes described in the Integrated Solid Waste Management Act by~~
14 any combination of two or more counties, townships, cities, ~~or~~
15 villages, or other exempt governmental units pursuant to the
16 Interlocal Cooperation Act, the Integrated Solid Waste Management
17 Act, or the Joint Public Agency Act, except for purchases for use in
18 the business of furnishing gas, water, electricity, or heat, or by
19 any irrigation or reclamation district, the irrigation division of
20 any public power and irrigation district, or public schools or
21 learning communities established under Chapter 79.

22 (b) For purposes of this subsection, purchases by the
23 state or by a governmental unit listed in subdivision (a) of this
24 subsection include purchases by a nonprofit corporation under a
25 lease-purchase agreement, financing lease, or other instrument which

1 provides for transfer of title to the property to the state or
2 governmental unit upon payment of all amounts due thereunder. If a
3 nonprofit corporation will be making purchases under a lease-purchase
4 agreement, financing lease, or other instrument as part of a project
5 with a total estimated cost that exceeds the threshold amount, then
6 such purchases shall qualify for an exemption under this section only
7 if the question of proceeding with such project has been submitted at
8 a primary, general, or special election held within the governmental
9 unit that will be a party to the lease-purchase agreement, financing
10 lease, or other instrument and has been approved by the voters of
11 such governmental unit. For purposes of this subdivision, (i) project
12 means the acquisition of real property or the construction of a
13 public building and (ii) threshold amount means the greater of fifty
14 thousand dollars or six-tenths of one percent of the total actual
15 value of real and personal property of the governmental unit that
16 will be a party to the lease-purchase agreement, financing lease, or
17 other instrument as of the end of the governmental unit's prior
18 fiscal year.

19 (2) The appointment of purchasing agents shall be
20 recognized for the purpose of altering the status of the construction
21 contractor as the ultimate consumer of building materials which are
22 physically annexed to the structure and which subsequently belong to
23 the state or the governmental unit. The appointment of purchasing
24 agents shall be in writing and occur prior to having any building
25 materials annexed to real estate in the construction, improvement, or

1 repair. The contractor who has been appointed as a purchasing agent
2 may apply for a refund of or use as a credit against a future use tax
3 liability the tax paid on inventory items annexed to real estate in
4 the construction, improvement, or repair of a project for the state
5 or a governmental unit.

6 (3) Any governmental unit listed in subsection (1) of
7 this section, except the state, which enters into a contract of
8 construction, improvement, or repair upon property annexed to real
9 estate without first issuing a purchasing agent authorization to a
10 contractor or repairperson prior to the building materials being
11 annexed to real estate in the project may apply to the Tax
12 Commissioner for a refund of any sales and use tax paid by the
13 contractor or repairperson on the building materials physically
14 annexed to real estate in the construction, improvement, or repair.

15 Sec. 3. Sections 2 and 5 of this act become operative on
16 April 1, 2012. The other sections of this act become operative on
17 their effective date.

18 Sec. 4. Original section 77-202, Revised Statutes
19 Supplement, 2011, is repealed.

20 Sec. 5. Original section 77-2704.15, Revised Statutes
21 Supplement, 2011, is repealed.

22 Sec. 6. Since an emergency exists, this act takes effect
23 when passed and approved according to law.