

LEGISLATIVE BILL 716

Approved by the Governor February 18, 1972

Introduced by Maurice A. Kremer, 34th District; William H. Hasebroock, 18th District

AN ACT to adopt the Water Pollution Control Tax Refund Act.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Facility shall mean any disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery or installation constructed, used or placed in operation primarily for the purpose of reducing, controlling or eliminating water pollution caused by industrial or agricultural waste;

(2) Industrial or agricultural waste shall mean any liquid, gaseous or solid waste substance resulting from any process of industry, manufacture, trade or business, or from the development, processing or recovery of any paper or wood which is capable of polluting the waters of this state;

(3) Treatment works shall mean any plant, pumping station, incinerator or other works or reservoir used primarily for the purpose of treating, stabilizing, isolating or holding industrial or agricultural waste; and

(4) Disposal system shall mean any system used primarily for disposing of or isolating industrial or agricultural water and shall include pipe lines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting water-borne industrial or agricultural waste to a point of disposal, treatment or isolation except that which is necessary to the manufacture of products.

Sec. 2. (1) An application for a refund of Nebraska sales and use taxes paid for any water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials

incorporated or to be incorporated therein; (b) a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; and (d) the acquisition cost of the facility for which exemption is claimed.

(2) Before issuing the refund for Nebraska sales and use taxes paid by an applicant, the Tax Commissioner shall seek approval of the Department of Health and the Department of Environmental Control. The Tax Commissioner shall offer an applicant a hearing upon request of such applicant.

Sec. 3. If the Department of Health and the Department of Environmental Control find that a facility is designed and operated primarily for control, capture or removal of industrial or agricultural waste from water and is suitable, reasonably adequate, and meets the intent and purposes of the Environmental Protection Act it shall so notify the Tax Commissioner who shall issue the refund. The Department of Health and the Department of Environmental Control shall also notify the Tax Commissioner of the extent of commercial or productive value derived from any materials captured or recovered by the facility.

Sec. 4. Notice of the commissioner's refusal to issue a refund shall be sent by certified mail to the applicant.

(1) The Tax Commissioner, on notice by certified mail to the applicant giving opportunity for a hearing, shall on his own initiative or on complaint of the Department of Health or the Department of Environmental Control modify or revoke the refund whenever any of the following appears: (a) The refund was obtained by fraud or misrepresentation; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c) the facility covered by the refund is no longer used for the primary purpose of pollution control.

(2) On the mailing by certified mail to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force, or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation, all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the

maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Sec. 5. A party aggrieved by the issuance or refusal to issue, revocation or modification of a pollution control tax refund may appeal from the finding and order of the Tax Commissioner in the manner and form and within the time provided by sections 84-917 to 84-919, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 6. The Tax Commissioner shall adopt rules and regulations necessary for the administration of the provisions of this act. Such rules and regulations shall not abridge the authority of the Department of Health and the Department of Environmental Control to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the provisions of this act.

Sec. 7. This act shall be known as the Water Pollution Control Tax Refund Act.