

LEGISLATIVE BILL 1189

Approved by the Governor April 12, 2006

Introduced by Synowiecki, 7; Baker, 44; Connealy, 16

AN ACT relating to revenue and taxation; to amend section 77-2704.15, Revised Statutes Cumulative Supplement, 2004, and sections 77-2701, 77-2701.04, 77-2701.47, and 77-2704.12, Revised Statutes Supplement, 2005; to provide, change, and eliminate sales and use tax exemptions relating to molds and dies and purchases by museums, housing agencies, and certain organizations serving persons with developmental disabilities as prescribed; to harmonize provisions; to provide an operative date; to repeal the original sections; to outright repeal section 5, Legislative Bill 968, Ninety-ninth Legislature, Second Session, 2006; and to declare an emergency.

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

Section 1. Section 77-2701, Revised Statutes Supplement, 2005, is amended to read:

77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, and 77-27,228 to 77-27,234 and section 3 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 2. Section 77-2701.04, Revised Statutes Supplement, 2005, is amended to read:

77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and section 3 of this act, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.47 shall be used.

Sec. 3. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases of fine art by any museum as defined in section 51-702.

Sec. 4. Section 77-2701.47, Revised Statutes Supplement, 2005, is amended to read:

77-2701.47 (1) Manufacturing machinery and equipment means any machinery or equipment purchased, leased, or rented by a person engaged in the business of manufacturing for use in manufacturing, including, but not limited to:

(a) Machinery or equipment for use in manufacturing to produce, fabricate, assemble, process, finish, refine, or package tangible personal property;

(b) Machinery or equipment for use in transporting, conveying, handling, or storing by the manufacturer the raw materials or components to be used in manufacturing or the products produced by the manufacturer;

(c) Molds and dies and the materials necessary to create molds and dies for use in manufacturing that determine the physical characteristics of the finished product or its packaging material, whether or not such molds or dies are permanent or temporary in nature, and including any chemicals, solutions, or catalysts utilized in the mold or die process even if such items are consumed during the course of the mold or die process;

(d) Machinery or equipment for use in manufacturing to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the machinery and equipment used in manufacturing by a manufacturer;

(e) Testing equipment for use in manufacturing to measure the quality of the finished product;

(f) Computers, software, and related peripheral equipment for use in manufacturing to guide, control, operate, or measure the manufacturing process;

(g) Machinery or equipment for use in manufacturing to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if such produced items are consumed during the course of the manufacturing process or do not become necessary or integral parts of the finished product; and

(h) A repair or replacement part or accessory purchased for use in maintaining, repairing, or refurbishing machinery and equipment used in manufacturing.

(2) Manufacturing machinery and equipment does not include: Vehicles required to be registered for operation on the roads and highways of this state; hand tools; office equipment; and computers, software, and related peripheral equipment not used in guiding, controlling, operating, or measuring of the manufacturing process. Machinery or equipment does not need to come

into direct physical contact with any of the raw materials, components, or products that are part of the manufacturing process to be considered manufacturing machinery or equipment.

Sec. 5. Section 77-2704.12, Revised Statutes Supplement, 2005, is amended to read:

77-2704.12 (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under sections 79-1601 to 79-1607, any private college or university established under sections 85-1101 to 85-1111, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, nursing facility, home health agency, hospice or hospice service, or respite care service licensed under the Health Care Facility Licensure Act and organized not for profit, any licensed child-caring agency, ~~or~~ any licensed child placement agency, or any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Sec. 6. Section 77-2704.15, Revised Statutes Cumulative Supplement, 2004, is amended to read:

77-2704.15 (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resources district, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial

operation that does not exclusively benefit the residents of an affordable housing project, or joint entity or agency formed to fulfill the purposes described in the Integrated Solid Waste Management Act by any combination of two or more counties, townships, cities, or villages pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools established under Chapter 79.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

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

Sec. 7. This act becomes operative on July 1, 2006.

Sec. 8. Original section 77-2704.15, Revised Statutes Cumulative Supplement, 2004, and sections 77-2701, 77-2701.04, 77-2701.47, and 77-2704.12, Revised Statutes Supplement, 2005, are repealed.

Sec. 9. The following section is outright repealed: Section 5, Legislative Bill 968, Ninety-ninth Legislature, Second Session, 2006.

Sec. 10. Since an emergency exists, this act takes effect when passed and approved according to law.