

AMENDMENTS TO LB 360

Introduced by Revenue

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 77-105, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:

5 77-105 The term tangible personal property includes all
6 personal property possessing a physical existence, excluding money.
7 The term tangible personal property also includes trade fixtures,
8 which means machinery and equipment, regardless of the degree
9 of attachment to real property, used directly in commercial,
10 manufacturing, or processing activities conducted on real property,
11 regardless of whether the real property is owned or leased,
12 and all ~~property~~ depreciable tangible personal property described
13 in subsection (9) of section 77-202 used in the generation of
14 electricity using wind as the fuel source. ~~including, but not~~
15 ~~limited to, that listed in subsection (9) of section 77-202.~~
16 The term intangible personal property includes all other personal
17 property, including money.

18 Sec. 2. Section 77-202, Revised Statutes Cumulative
19 Supplement, 2010, is amended to read:

20 77-202 (1) The following property shall be exempt from
21 property taxes:

22 (a) Property of the state and its governmental
23 subdivisions to the extent used or being developed for use by

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

15 (b) Unleased property of the state or its governmental
16 subdivisions which is not being used or developed for use for
17 a public purpose but upon which a payment in lieu of taxes is
18 paid for public safety, rescue, and emergency services and road
19 or street construction or maintenance services to all governmental
20 units providing such services to the property. Except as provided
21 in Article VIII, section 11, of the Constitution of Nebraska,
22 the payment in lieu of taxes shall be based on the proportionate
23 share of the cost of providing public safety, rescue, or emergency
24 services and road or street construction or maintenance services
25 unless a general policy is adopted by the governing body of the
26 governmental subdivision providing such services which provides for
27 a different method of determining the amount of the payment in

1 lieu of taxes. The governing body may adopt a general policy by
2 ordinance or resolution for determining the amount of payment in
3 lieu of taxes by majority vote after a hearing on the ordinance
4 or resolution. Such ordinance or resolution shall nevertheless
5 result in an equitable contribution for the cost of providing such
6 services to the exempt property;

7 (c) Property owned by and used exclusively for
8 agricultural and horticultural societies;

9 (d) Property owned by educational, religious, charitable,
10 or cemetery organizations, or any organization for the exclusive
11 benefit of any such educational, religious, charitable, or cemetery
12 organization, and used exclusively for educational, religious,
13 charitable, or cemetery purposes, when such property is not

14 (i) owned or used for financial gain or profit to either the
15 owner or user, (ii) used for the sale of alcoholic liquors for
16 more than twenty hours per week, or (iii) owned or used by
17 an organization which discriminates in membership or employment
18 based on race, color, or national origin. For purposes of this
19 subdivision, educational organization means (A) an institution
20 operated exclusively for the purpose of offering regular courses
21 with systematic instruction in academic, vocational, or technical
22 subjects or assisting students through services relating to the
23 origination, processing, or guarantying of federally reinsured
24 student loans for higher education or (B) a museum or historical
25 society operated exclusively for the benefit and education of the
26 public. For purposes of this subdivision, charitable organization
27 means an organization operated exclusively for the purpose of the

1 mental, social, or physical benefit of the public or an indefinite
2 number of persons; and

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

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

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

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

14 (5) Business and agricultural inventory shall be exempt
15 from the personal property tax. For purposes of this subsection,
16 business inventory includes personal property owned for purposes
17 of leasing or renting such property to others for financial gain
18 only if the personal property is of a type which in the ordinary
19 course of business is leased or rented thirty days or less and
20 may be returned at the option of the lessee or renter at any time
21 and the personal property is of a type which would be considered
22 household goods or personal effects if owned by an individual. All
23 other personal property owned for purposes of leasing or renting
24 such property to others for financial gain shall not be considered
25 business inventory.

26 (6) Any personal property exempt pursuant to subsection
27 (2) of section 77-4105 or section 77-5209.02 shall be exempt from

1 the personal property tax.

2 (7) Livestock shall be exempt from the personal property
3 tax.

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

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

16 Sec. 3. Section 77-6203, Revised Statutes Cumulative
17 Supplement, 2010, is amended to read:

18 77-6203 (1) The owner of a wind energy generation
19 facility annually shall pay a nameplate capacity tax equal to
20 the total nameplate capacity of the commissioned wind turbine of
21 the wind energy generation facility multiplied by a tax rate of
22 three thousand five hundred eighteen dollars per megawatt.

23 (2) No tax shall be imposed on a wind energy generation
24 facility:

25 (a) Owned or operated by the federal government, the
26 State of Nebraska, a public power district, a public power and
27 irrigation district, an individual municipality, a registered

1 group of municipalities, an electric membership association, or
2 a cooperative; or

3 (b) That is a customer-generator as defined in section
4 70-2002.

5 (3) No tax levied pursuant to this section shall be
6 construed to constitute restricted funds as defined in section
7 13-518 for the first five years after the wind energy generation
8 facility is commissioned.

9 (4) The presence of one or more wind energy generation
10 facilities or supporting infrastructure shall not be a factor in
11 the assessment, determination of actual value, or classification
12 under section 77-201 of the real property underlying or adjacent to
13 such facilities or infrastructure.

14 (5) (a) The Department of Revenue shall collect the tax
15 due under this section.

16 (b) The tax shall be imposed beginning the first calendar
17 year the wind turbine is commissioned. A wind energy generation
18 facility commissioned prior to July 15, 2010, shall be subject to
19 the tax levied pursuant to sections 77-6201 to 77-6204 on and after
20 January 1, 2010. The amount of property tax on depreciable tangible
21 personal property previously paid on a wind energy generation
22 facility commissioned prior to July 15, 2010, which is greater than
23 the amount that would have been paid pursuant to sections 77-6201
24 to 77-6204 from the date of commissioning until January 1, 2010,
25 shall be credited against any tax due under Chapter 77, and any
26 amount so credited that is unused in any tax year shall be carried
27 over to subsequent tax years until fully utilized.

1 (c) (i) The tax for the first calendar year shall be
2 prorated based upon the number of days remaining in the calendar
3 year after the wind turbine is commissioned.

4 (ii) In the first year in which a wind energy generation
5 facility is taxed or in any year in which additional commissioned
6 nameplate capacity is added to a wind energy generation facility,
7 the taxes on the initial or additional nameplate capacity shall be
8 prorated for the number of days remaining in the calendar year.

9 (iii) When a wind turbine is decommissioned or made
10 nonoperational by a change in law or decertification from its
11 status as a certified renewable export facility during a tax year,
12 the taxes shall be prorated for the number of days during which the
13 wind turbine was not decommissioned or was operational.

14 (iv) When the capacity of a wind turbine to produce
15 electricity is reduced but the wind turbine is not decommissioned,
16 the nameplate capacity of the wind turbine is deemed to be
17 unchanged.

18 (6) (a) On March 1 of each year, the owner of a wind
19 energy generation facility shall file with the Department of
20 Revenue a report on the nameplate capacity of the facility for
21 the previous year from January 1 through December 31. All taxes
22 shall be due on April 1 and shall be delinquent if not paid on a
23 quarterly basis on April 1 and each quarter thereafter. Delinquent
24 quarterly payments shall draw interest at the rate provided for in
25 section 45-104.02, as such rate may from time to time be adjusted.

26 (b) The owner of a wind energy generation facility is
27 liable for the taxes under this section with respect to the

1 facility, whether or not the owner of the facility is the owner of
2 the land on which the facility is situated.

3 (7) Failure to file a report required by subsection (6)
4 of this section, filing such report late, failure to pay taxes due,
5 or underpayment of such taxes shall result in a penalty of five
6 percent of the amount due being imposed for each quarter the report
7 is overdue or the payment is delinquent, except that the penalty
8 shall not exceed ten thousand dollars.

9 (8) The Department of Revenue shall enforce the
10 provisions of this section. The department shall adopt and
11 promulgate rules and regulations necessary for the implementation
12 and enforcement of this section.

13 (9) The Department of Revenue shall separately identify
14 the proceeds from the tax imposed by this section and shall pay all
15 such proceeds over to the county treasurer of the county where the
16 wind energy generation facility is located within thirty days after
17 receipt of such proceeds.

18 Sec. 4. This act becomes operative on January 1, 2010.

19 Sec. 5. If any section in this act or any part of any
20 section is declared invalid or unconstitutional, the declaration
21 shall not affect the validity or constitutionality of the remaining
22 portions.

23 Sec. 6. Original sections 77-105, 77-202, and 77-6203,
24 Revised Statutes Cumulative Supplement, 2010, are repealed.

25 Sec. 7. Since an emergency exists, this act takes effect
26 when passed and approved according to law.