

LEGISLATIVE BILL 360

Approved by the Governor May 11, 2011

Introduced by Cornett, 45.

FOR AN ACT relating to revenue and taxation; to amend section 77-27,235, Reissue Revised Statutes of Nebraska, and sections 77-105, 77-202, and 77-6203, Revised Statutes Cumulative Supplement, 2010; to redefine a term; to change a property tax exemption; to change provisions relating to tax credits relative to energy generation facilities; to provide operative dates; to provide severability; to repeal the original sections; and to declare an emergency.

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

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

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

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

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

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

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

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

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national

origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

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

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

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

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

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

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

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

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

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

Sec. 3. Section 77-27,235, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,235 (1) Any producer of electricity generated by a new zero-emission renewable electric generation facility shall earn a renewable energy tax credit. For electricity generated on or after July 14, 2006, and before October 1, 2007, the credit shall be .075 cent for each kilowatt-hour of electricity generated by a new zero-emission renewable electric generation facility. For electricity generated on or after October 1, 2007, and before January 1, 2010, the credit shall be .1 cent for each kilowatt-hour of electricity generated by a new zero-emission renewable electric generation facility. For electricity generated on or after January 1, 2010, and before January 1, 2013, the credit shall be .075 cent per kilowatt-hour for electricity generated by a new zero-emission renewable electric generation facility. For electricity generated on or after January 1, 2013, ~~and before January 1, 2018,~~ the credit shall be .05 cent per kilowatt-hour for electricity generated by a new zero-emission renewable electric generation facility. The credit may be earned for production of electricity for ten years after the date that the facility is placed in operation on or after July 14, 2006.

(2) For purposes of this section:

(a) Electricity generated by a new zero-emission renewable electric generation facility means electricity that is exclusively produced by a new zero-emission renewable electric generation facility;

(b) Eligible renewable resources means wind, moving water, solar, geothermal, fuel cell, methane gas, or photovoltaic technology; and

(c) New zero-emission renewable electric generation facility means an electrical generating facility located in this state that is first placed

into service on or after July 14, 2006, which utilizes eligible renewable resources as its fuel source, and for which the operation of the facility results in no pollution or emissions that are or may be harmful to the environment as certified by the Department of Environmental Quality.

(3) The credit allowed under this section may be used to reduce the producer's Nebraska income tax liability or to obtain a refund of state sales and use taxes paid by the producer of electricity generated by a ~~zero-emission new renewable electric generation facility~~. A claim to use the credit for refund of the state sales and use taxes paid, either directly or indirectly, by the producer may be filed quarterly for electricity generated during the previous quarter by the twentieth day of the month following the end of the calendar quarter. The credit may be used to obtain a refund of state sales and use taxes paid during the quarter immediately preceding the quarter in which the claim for refund is made, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid during the quarter.

(4) The Department of Revenue may adopt and promulgate rules and regulations to permit verification of the validity and timeliness of any renewable energy tax credit claimed.

~~(5) The Environmental Quality Council may adopt and promulgate rules and regulations to certify that the operation of a new zero-emission facility results in no pollution or emissions that are or may be harmful to the environment.~~

~~(6) (5) The total amount of renewable energy tax credits that may be used by all taxpayers shall be limited to seven hundred fifty thousand dollars without further authorization from the Legislature.~~

~~(7) (6) The credit allowed under this section may not be claimed by a producer who received a sales tax exemption under section 77-2704.57 for the new zero-emission renewable electric generation facility.~~

Sec. 4. Section 77-6203, Revised Statutes Cumulative Supplement, 2010, is amended to read:

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

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

(a) Owned or operated by the federal government, the State of Nebraska, a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; or

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

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

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

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

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

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

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

(iii) When a wind turbine is decommissioned or made nonoperational by a change in law or decertification from its status as a certified renewable

export facility during a tax year, the taxes shall be prorated for the number of days during which the wind turbine was not decommissioned or was operational.

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

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

(b) The owner of a wind energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated.

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

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

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

Sec. 5. Sections 3 and 7 of this act become operative on October 1, 2011. The other sections of this act become operative on January 1, 2010.

Sec. 6. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 7. Original section 77-27,235, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 8. Original sections 77-105, 77-202, and 77-6203, Revised Statutes Cumulative Supplement, 2010, are repealed.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.