

LEGISLATIVE BILL 1367

Approved by the Governor April 4, 1972

Introduced by Willard H. Waldo, 31st District

AN ACT to amend section 77-2715, Revised Statutes Supplement, 1969, and section 77-2704, Revised Statutes Supplement, 1971, as amended by section 1, Legislative Bill 1153, Eighty-second Legislature, Second Session, 1972, relating to taxation; to provide additional exemptions from the sales and use tax as prescribed; to increase the food sales tax credit; and to repeal the original sections.

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

Section 1. That section 77-2704, Revised Statutes Supplement, 1971, as amended by section 1, Legislative Bill 1153, Eighty-second Legislature, Second Session, 1972, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by sections 77-2701 to 77-27,135 the gross receipts from the sale, lease or rental of and the storage, use, or other consumption in this state of the following:

(a) Tangible personal property the gross receipts from the sale, lease, or rental of which, or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state;

(b) (i) Aircraft fuel as defined under the provisions of Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under the provisions of Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed or exempted under the provisions of Chapter 66, article 4, and special fuels as defined, taxed or exempted for use on the highways under the provisions of Chapter 66, article 6;

(c) Tangible personal property used for the performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1) (g)

of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week; Provided, that such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property; Provided, that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin, and prosthetic devices;

(g) (i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is shipped to a point outside this state pursuant to the contract of sale by delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. This shall include the gross receipts from sales of tangible personal property

to a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i) The gross receipts from the sale, lease, or rental of any tangible personal property to, or the storage, use, or other consumption of tangible personal property by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any school, public or private, any educational institution established under the provisions of Chapter 14, 79, or 85, any private college or university, any licensed hospital, or any orphanage, or any licensed child placement agency. Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any such institution organized not for profit, including a hospital which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon. The institution organized not for profit including a hospital which is licensed upon completion although not licensed at the time of construction or improvement shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair. Such refund shall be calculated by multiplying the sales or use tax percentage rate times a sum equal to sixty per cent of the total contract price of such construction, improvement or repair. For the purposes of this subdivision such institution organized not for profit including a hospital which is licensed upon completion although not licensed at the time of construction or improvement shall submit whatever evidence is required by the Tax Commissioner sufficient to establish such total contract price;

(j) The gross receipts from the sale of tangible personal property when sold through coin-operated vending machines below a sum of fifteen cents;

(k) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane for use in processing, manufacturing, mining, refining, irrigation, farming, building construction, telegraph, telephone and radio communication, street, and railroad transportation

services and all business, commercial and industrial uses;

(l) The use of coin-operated machines used for laundering and cleaning;

(m) Purchases by the state or by any county, township, city, village, or rural or suburban fire protection district, for use in a governmental capacity, or by any irrigation or reclamation district or the irrigation division of any public power and irrigation district. Any rural or suburban fire protection district, irrigation or reclamation district, or the irrigation division of any public power and irrigation district shall, upon the filing of a claim therefor in the manner provided in subdivision (1) (i) of section 77-2703, be entitled to a refund of any sales or use tax which it has paid prior to February 24, 1969 from which it is made exempt by the provisions of this section, but no refund shall be made in any amount less than five dollars;

(n) The purchase price of a motor vehicle purchased with funds substantially contributed by the Veterans' Administration of the United States for a disabled veteran under the provisions of section 1901, Chapter 39, Title 38, United States Code;

(o) The sale and purchase, by subscription, of any magazine or journal that is issued at average intervals not exceeding once each month; and

(p) Sales and purchases of semen for use in ranching, farming, commercial or industrial uses; and

(q) The gross receipts from the sale, lease, or rental of any tangible personal property to, or the storage, use, or other consumption of tangible personal property by associations or societies of Nebraska citizens qualified to receive organization, procedure, and financial support as provided under sections 2-2801 to 2-2813.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in sections 77-2701 to 77-27,135 shall not apply to:

(a) The use, in this state, of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock, or aircraft engaged as common or contract carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental or the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

(4) If any person, who causes tangible personal property to be brought into this state, has already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by section 77-2703 and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property; Provided, that such other state, territory or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by sections 77-2701 to 77-27,135. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

Sec. 2. That section 77-2715, Revised Statutes Supplement, 1969, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each taxable year on the entire income of every resident individual of this state and on the income of every nonresident individual of this state which is derived from sources within this state. The tax shall be a flat percentage of, for each resident individual, the taxpayer's adjusted federal income tax liability for the taxable year, and for each nonresident individual, the taxpayer's adjusted federal income tax liability for the

taxable year which is attributable to income derived from sources within this state.

The taxpayer's adjusted federal income tax liability shall be the amount of federal income tax for which the taxpayer would have been liable if such taxpayer had paid federal income tax based on federal taxable income as adjusted by the modifications provided in section 77-2716 without any allowance for credits against such tax permitted under the Internal Revenue Code.

The adjusted federal income tax liability of each nonresident individual taxpayer which is attributable to income derived from sources within this state shall be determined by multiplying his adjusted federal income tax liability by a fraction, the numerator of which is his taxable income derived from sources within this state as determined by section 77-2733, and the denominator of which is his total federal taxable income, after first subtracting from each the amounts provided in subsection (1) of section 77-2716; Provided, that if the above determination attributes more or less federal income tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for, or the Tax Commissioner may require, the employment of any other method to attribute an amount of federal income tax which is reasonable and equitable in the circumstances.

(2) (a) A resident of this state shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state; and

(b) A nonresident shall mean an individual who is not a resident of this state.

(3) (a) There shall also be allowed to resident individuals as a credit against the tax imposed by sections 77-2701 to 77-27,135, a food sales tax credit equal to ~~seven~~ ten dollars multiplied by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. A refund shall be allowed to the extent that the food sales tax credit exceeds the income tax payable by the resident individual for the taxable year but no refund shall be made in any amount less than two dollars.

(b) No individual who may be claimed as a personal exemption on another individual's return shall

be entitled to a food sales tax credit or refund for himself. If a food sales tax credit or refund is claimed on more than one return for the same individual, the Tax Commissioner is authorized to determine the individual entitled to claim the credit or refund provided herein.

(c) Any individual, other than a person who for more than six months of the taxable year is a resident patient or inmate of a public institution or an organization exempt from tax as a charitable institution, who maintains a permanent place of abode within this state, spending in the aggregate more than six months of the taxable year within this state, shall be conclusively presumed to have paid or paid with respect to such personal exemptions retail sales and use taxes imposed by this state equal to the maximum food sales tax credit allowable.

(d) The credits or refunds for sales taxes allowed by this subsection shall be claimed on income tax returns or in the case of an individual not having tax liability in this state on such forms or claims for refunds as the Tax Commissioner shall prescribe.

Sec. 3. That original section 77-2715, Revised Statutes Supplement, 1969, and section 77-2704, Revised Statutes Supplement, 1971, as amended by section 1, Legislative Bill 1153, Eighty-second Legislature, Second Session, 1972, are repealed.