

LEGISLATIVE BILL 271

Approved by the Governor May 25, 1999

Introduced by Revenue Committee: Wickersham, 49, Chairperson; Coordsen, 32; Hartnett, 45; C. Peterson, 35; Raikes, 25; Schellpeper, 18

AN ACT relating to revenue and taxation; to amend sections 21-1927 and 60-3002, Reissue Revised Statutes of Nebraska, sections 77-202 and 77-202.09, Revised Statutes Supplement, 1998, and sections 77-123, 77-202.01, and 77-202.03, Revised Statutes Supplement, 1998, as amended by sections 6, 10, and 11, respectively, Legislative Bill 194, Ninety-sixth Legislature, First Session, 1999; to change a provision relating to rights of nonprofit corporations; to change provisions relating to property tax exemptions; to provide for tax treatment of leased and unleased public property as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 21-1927, Reissue Revised Statutes of Nebraska, is amended to read:

21-1927. (a)(1) Every corporation incorporated under the Nebraska Nonprofit Corporation Act has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under the act only if incorporation under the act is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

(b) Corporations may be incorporated under the Nebraska Nonprofit Corporation Act for any one or more of, but not limited to, the following lawful purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association. Corporations may also be incorporated under the act for the purpose of providing for, erecting, owning, leasing, furnishing, and managing any building, hall, dormitory or apartments, lands, or grounds for the use or benefit in whole or in part of any governmental, religious, social, educational, scientific, fraternal, or charitable society or societies, body or bodies, institution or institutions, incorporated or unincorporated, or for the purpose of holding property of any nature in trust for such society, body, or institution or for the purpose of assisting any governmental body in obtaining grants from the federal government, the performance of any requirements necessary to obtain a federal grant, or carrying out the purpose for which a federal grant is obtained. ~~Such corporations, as to the ownership and taxation of their property, shall have all the rights, privileges, and exemptions of the body, society, or institution for whose use or benefit or for whom in trust such property is held.~~

Sec. 2. Section 60-3002, Reissue Revised Statutes of Nebraska, is amended to read:

60-3002. In addition to the registration fees provided by Chapter 60, article 3, and the motor vehicle fee imposed in section 60-3007, a motor vehicle tax is imposed on motor vehicles registered for operation upon the highways of this state except:

(1) Motor vehicles exempt from the registration fee in section 60-335;

(2) One motor vehicle owned and used for his or her personal transportation by a disabled or blind honorably discharged veteran of the United States Armed Forces as defined in section 77-202.23 whose disability or blindness is recognized by the United States Department of Veterans Affairs if an application for the exemption has been approved under subsection (1) of section 60-3006;

(3) Motor vehicles owned by Indians as defined in 25 U.S.C. 479;

(4) Motor vehicles owned by a member of the United States Armed Forces serving in this state in compliance with military or naval orders if such person is a resident of a state other than Nebraska;

(5) Motor vehicles owned by the state and its governmental subdivisions and exempt as provided in subdivision (1)(a) or (b) of section 77-202;

(6) Motor vehicles owned and used exclusively by an organization or

society qualified for a tax exemption provided in subdivision ~~(1)(b)~~ or ~~(c)~~ (1)(c) or (d) of section 77-202 if an application for the exemption provided in this subdivision has been approved under subsection (2) of section 60-3006; and

(7) Trucks, truck-trailers, trailers, semitrailers, or combinations thereof registered under section 60-305.09.

Sec. 3. Section 77-123, Revised Statutes Supplement, 1998, as amended by section 6, Legislative Bill 194, Ninety-sixth Legislature, First Session, 1999, is amended to read:

77-123. Omitted property means, for the current tax year, any taxable real property that was not assessed on March 20 and any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property exempt under subdivisions (1)(a) through ~~(e)~~ (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 7 of this act.

Sec. 4. Section 77-202, Revised Statutes Supplement, 1998, 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) ~~(b)~~ Property owned by and used exclusively for agricultural and horticultural societies;

(d) ~~(e)~~ 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 ~~shall mean~~ means an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization ~~shall mean~~ 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) ~~(d)~~ 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 ~~shall include~~ 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 shall be exempt from the personal property tax.

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

Sec. 5. Section 77-202.01, Revised Statutes Supplement, 1998, as amended by section 10, Legislative Bill 194, Ninety-sixth Legislature, First Session, 1999, is amended to read:

77-202.01. (1) Any organization or society seeking a tax exemption provided in subdivisions ~~(1)(b)~~ and (1)(c) and (d) of section 77-202 for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Property Tax Administrator. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before February 1 following.

(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

Sec. 6. Section 77-202.03, Revised Statutes Supplement, 1998, as amended by section 11, Legislative Bill 194, Ninety-sixth Legislature, First Session, 1999, is amended to read:

77-202.03. (1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions ~~(1)(b)~~ and (1)(c) and (d) of section 77-202 shall continue for a period of four years if the affidavit required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.

(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property, except real property used for cemetery purposes, shall file an affidavit with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Property Tax Administrator, certifying that the ownership and use of the exempted property has not changed during the year. Any organization or society which misses the December 31 deadline for filing the affidavit may file the affidavit by June 30. Such filing shall maintain the tax-exempt status of the property without further action by the county and regardless of any previous action by the county board to deny the exemption due to late filing of the affidavit. Upon any such late filing, the county board shall assess a penalty against the property of ten percent of the tax

that would have been assessed had the affidavit not been filed or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the affidavit is late. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

(3)(a) If any organization or society seeks a tax exemption for any real or tangible personal property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year, the organization or society shall make application for exemption on or before August 1 of that year as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.07, except that the exempt use shall be determined as of the date of application and the review by the county board of equalization shall be completed by August 15.

(b) If an organization as described in subdivision ~~(1)(b)~~ or (1)(c) or (d) of section 77-202 purchases, between August 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before December 1 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.07, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. The review shall follow the procedure set out in section 77-202.02. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.

When personal property which was exempt becomes taxable because of lost exemption status, the owner or his or her agent has thirty days after the date of denial to file a personal property return with the county assessor. Upon the expiration of the thirty days for filing a personal property return pursuant to this subsection, the county assessor shall proceed to list and value the personal property and apply the penalty pursuant to section 77-1233.04.

(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions ~~(1)(b)~~ and (1)(c) and (d) of section 77-202. Such list shall be grouped into categories as provided by the Property Tax Administrator. A copy of the list and proof of publication shall be forwarded to the Property Tax Administrator.

Sec. 7. Section 77-202.09, Revised Statutes Supplement, 1998, is amended to read:

77-202.09. Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Property Tax Administrator. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before February 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before August 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions ~~(1)(b)~~ and (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Sec. 8. (1) Leased public property, other than property leased for

a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201. Taxes shall be paid by the leaseholder and shall be a lien against the leaseholder's interest.

(2) By January 31, the state and each governmental subdivision shall provide to the appropriate county assessor a copy of each lease in effect on January 1 of that year for property owned by the state or governmental subdivision.

(3) Notice of delinquent taxes shall be timely sent to the lessee and to the state or its governmental subdivision. No lien or attachment shall be attached to the property of the state or its government subdivisions for failure of the lessee to pay the taxes due. Taxes on property assessed to the lessee shall be a first lien upon the personal property of the person to whom assessed until paid and shall be collected in the same manner as personal property taxes as provided in sections 77-1711 to 77-1724. The state or its governmental subdivisions shall not be obligated to pay the taxes upon failure of the lessee to pay.

(4) The state or any governmental subdivision may, if it chooses to do so in its discretion, provide the appropriate county assessor a description of the property rather than a copy of the lease; request that the assessor notify it of the amount of tax which would be assessed to the leaseholder; voluntarily pay that tax; and collect that tax from the leaseholder as part of the rent.

(5) Except as provided in Article VIII, section 11, of the Constitution of Nebraska, no in lieu of tax payments provided for in any other section of law shall be made with respect to any leased public property to which this section applies.

Sec. 9. (1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has unleased property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address.

(2) The state or governmental subdivision may protest such determination of the county assessor to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1.

Sec. 10. This act becomes operative on January 2, 2000.

Sec. 11. Original sections 21-1927 and 60-3002, Reissue Revised Statutes of Nebraska, sections 77-202 and 77-202.09, Revised Statutes Supplement, 1998, and sections 77-123, 77-202.01, and 77-202.03, Revised Statutes Supplement, 1998, as amended by sections 6, 10, and 11, respectively, Legislative Bill 194, Ninety-sixth Legislature, First Session, 1999, are repealed.