

LEGISLATIVE BILL 1080

Approved by the Governor April 10, 2012

Introduced by Cornett, 45; Smith, 14.

FOR AN ACT relating to revenue and taxation; to amend sections 77-2701 and 77-2701.04, Reissue Revised Statutes of Nebraska, and section 77-202, Revised Statutes Supplement, 2011; to provide a property tax exemption and a sales and use tax exemption relating to data centers; to define a term; 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 77-202, Revised Statutes Supplement, 2011, 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. 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.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

Sec. 2. Section 77-2701, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 and sections 4 and 5 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

Sec. 3. Section 77-2701.04, Reissue Revised Statutes of Nebraska, is amended to read:

77-2701.04 For purposes of sections 77-2701.04 to 77-2713 and sections 4 and 5 of this act, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.53 and section 4 of this act shall be used.

Sec. 4. Data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

Sec. 5. 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 tangible personal property and services acquired by a person operating a data center located in this state that

are assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property for the purpose of subsequent use at a physical location outside this state. Such exemption extends to keeping, retaining, or exercising any right or power over such tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state.

Sec. 6. This act becomes operative on January 1, 2013.

Sec. 7. Original sections 77-2701 and 77-2701.04, Reissue Revised Statutes of Nebraska, and section 77-202, Revised Statutes Supplement, 2011, are repealed.