

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1189**

FINAL READING

Introduced by Synowiecki, 7; Baker, 44; Connealy, 16

Read first time January 18, 2006

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-2704.15, Revised Statutes Cumulative Supplement,  
3 2004, and sections 77-2701, 77-2701.04, 77-2701.47,  
4 and 77-2704.12, Revised Statutes Supplement, 2005;  
5 to provide, change, and eliminate sales and use tax  
6 exemptions relating to molds and dies and purchases by  
7 museums, housing agencies, and certain organizations  
8 serving persons with developmental disabilities as  
9 prescribed; to harmonize provisions; to provide an  
10 operative date; to repeal the original sections;  
11 to outright repeal section 5, Legislative Bill 968,  
12 Ninety-ninth Legislature, Second Session, 2006; and to  
13 declare an emergency.

LB 1189

LB 1189

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

1           Section 1. Section 77-2701, Revised Statutes Supplement,  
2 2005, is amended to read:

3           77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, and  
4 77-27,228 to 77-27,234 and section 3 of this act shall be known and  
5 may be cited as the Nebraska Revenue Act of 1967.

6           Sec. 2. Section 77-2701.04, Revised Statutes Supplement,  
7 2005, is amended to read:

8           77-2701.04 For purposes of sections 77-2701.04 to 77-2713  
9 and section 3 of this act, unless the context otherwise requires,  
10 the definitions found in sections 77-2701.05 to 77-2701.47 shall be  
11 used.

12           Sec. 3. Sales and use taxes shall not be imposed on the  
13 gross receipts from the sale, lease, or rental of and the storage,  
14 use, or other consumption in this state of purchases of fine art by  
15 any museum as defined in section 51-702.

16           Sec. 4. Section 77-2701.47, Revised Statutes Supplement,  
17 2005, is amended to read:

18           77-2701.47 (1) Manufacturing machinery and equipment  
19 means any machinery or equipment purchased, leased, or rented  
20 by a person engaged in the business of manufacturing for use in  
21 manufacturing, including, but not limited to:

22           (a) Machinery or equipment for use in manufacturing to  
23 produce, fabricate, assemble, process, finish, refine, or package  
24 tangible personal property;

25           (b) Machinery or equipment for use in transporting,

1 conveying, handling, or storing by the manufacturer the raw  
2 materials or components to be used in manufacturing or the products  
3 produced by the manufacturer;

4 (c) Molds and dies and the materials necessary to create  
5 molds and dies for use in manufacturing that determine the physical  
6 characteristics of the finished product or its packaging material,  
7 whether or not such molds or dies are permanent or temporary  
8 in nature, and including any chemicals, solutions, or catalysts  
9 utilized in the mold or die process even if such items are consumed  
10 during the course of the mold or die process;

11 (d) Machinery or equipment for use in manufacturing  
12 to maintain the integrity of the product or to maintain unique  
13 environmental conditions required for either the product or the  
14 machinery and equipment used in manufacturing by a manufacturer;

15 (e) Testing equipment for use in manufacturing to measure  
16 the quality of the finished product;

17 (f) Computers, software, and related peripheral equipment  
18 for use in manufacturing to guide, control, operate, or measure the  
19 manufacturing process;

20 (g) Machinery or equipment for use in manufacturing to  
21 produce steam, electricity, or chemical catalysts and solutions  
22 that are essential to the manufacturing process even if such  
23 produced items are consumed during the course of the manufacturing  
24 process or do not become necessary or integral parts of the  
25 finished product; and

1           (h) A repair or replacement part or accessory purchased  
2 for use in maintaining, repairing, or refurbishing machinery and  
3 equipment used in manufacturing.

4           (2) Manufacturing machinery and equipment does not  
5 include: Vehicles required to be registered for operation on the  
6 roads and highways of this state; hand tools; office equipment; and  
7 computers, software, and related peripheral equipment not used in  
8 guiding, controlling, operating, or measuring of the manufacturing  
9 process. Machinery or equipment does not need to come into direct  
10 physical contact with any of the raw materials, components,  
11 or products that are part of the manufacturing process to be  
12 considered manufacturing machinery or equipment.

13           Sec. 5. Section 77-2704.12, Revised Statutes Supplement,  
14 2005, is amended to read:

15           77-2704.12 (1) Sales and use taxes shall not be imposed  
16 on the gross receipts from the sale, lease, or rental of and the  
17 storage, use, or other consumption in this state of purchases by  
18 any organization created exclusively for religious purposes, any  
19 nonprofit organization providing services exclusively to the blind,  
20 any private educational institution established under sections  
21 79-1601 to 79-1607, any private college or university established  
22 under sections 85-1101 to 85-1111, any hospital, health clinic when  
23 two or more hospitals or the parent corporations of the hospitals  
24 own or control the health clinic for the purpose of reducing  
25 the cost of health services or when the health clinic receives

1 federal funds through the United States Public Health Service for  
2 the purpose of serving populations that are medically underserved,  
3 skilled nursing facility, intermediate care facility, intermediate  
4 care facility for the mentally retarded, nursing facility, home  
5 health agency, hospice or hospice service, or respite care  
6 service licensed under the Health Care Facility Licensure Act  
7 and organized not for profit, any licensed child-caring agency, ~~or~~  
8 any licensed child placement agency, or any nonprofit organization  
9 certified by the Department of Health and Human Services to  
10 provide community-based services for persons with developmental  
11 disabilities.

12 (2) Any organization listed in subsection (1) of this  
13 section shall apply for an exemption on forms provided by the  
14 Tax Commissioner. The application shall be approved and a numbered  
15 certificate of exemption received by the applicant organization in  
16 order to be exempt from the sales and use tax.

17 (3) The appointment of purchasing agents shall be  
18 recognized for the purpose of altering the status of the  
19 construction contractor as the ultimate consumer of building  
20 materials which are physically annexed to the structure and  
21 which subsequently belong to the owner of the organization or  
22 institution. The appointment of purchasing agents shall be in  
23 writing and occur prior to having any building materials annexed  
24 to real estate in the construction, improvement, or repair. The  
25 contractor who has been appointed as a purchasing agent may apply

1 for a refund of or use as a credit against a future use tax  
2 liability the tax paid on inventory items annexed to real estate  
3 in the construction, improvement, or repair of a project for a  
4 licensed not-for-profit institution.

5 (4) Any organization listed in subsection (1) of this  
6 section which enters into a contract of construction, improvement,  
7 or repair upon property annexed to real estate without first  
8 issuing a purchasing agent authorization to a contractor or  
9 repairperson prior to the building materials being annexed to  
10 real estate in the project may apply to the Tax Commissioner for  
11 a refund of any sales and use tax paid by the contractor or  
12 repairperson on the building materials physically annexed to real  
13 estate in the construction, improvement, or repair.

14 (5) Any person purchasing, storing, using, or  
15 otherwise consuming building materials in the performance of any  
16 construction, improvement, or repair by or for any institution  
17 enumerated in subsection (1) of this section which is licensed upon  
18 completion although not licensed at the time of construction or  
19 improvement, which building materials are annexed to real estate  
20 and which subsequently belong to the owner of the institution,  
21 shall pay any applicable sales or use tax thereon. Upon becoming  
22 licensed and receiving a numbered certificate of exemption,  
23 the institution organized not for profit shall be entitled to  
24 a refund of the amount of taxes so paid in the performance  
25 of such construction, improvement, or repair and shall submit

1 whatever evidence is required by the Tax Commissioner sufficient  
2 to establish the total sales and use tax paid upon the building  
3 materials physically annexed to real estate in the construction,  
4 improvement, or repair.

5 Sec. 6. Section 77-2704.15, Revised Statutes Cumulative  
6 Supplement, 2004, is amended to read:

7 77-2704.15 (1) Sales and use taxes shall not be imposed  
8 on the gross receipts from the sale, lease, or rental of and  
9 the storage, use, or other consumption in this state of purchases  
10 by the state, including public educational institutions recognized  
11 or established under the provisions of Chapter 85, or by any  
12 county, township, city, village, rural or suburban fire protection  
13 district, city airport authority, county airport authority, joint  
14 airport authority, drainage district organized under sections  
15 31-401 to 31-450, natural resources district, elected county fair  
16 board, housing agency as defined in section 71-1575 except for  
17 purchases for any commercial operation that does not exclusively  
18 benefit the residents of an affordable housing project, or joint  
19 entity or agency formed to fulfill the purposes described in the  
20 Integrated Solid Waste Management Act by any combination of two  
21 or more counties, townships, cities, or villages pursuant to the  
22 Interlocal Cooperation Act, the Integrated Solid Waste Management  
23 Act, or the Joint Public Agency Act, except for purchases for use  
24 in the business of furnishing gas, water, electricity, or heat, or  
25 by any irrigation or reclamation district, the irrigation division

1 of any public power and irrigation district, or public schools  
2 established under Chapter 79.

3 (2) The appointment of purchasing agents shall be  
4 recognized for the purpose of altering the status of the  
5 construction contractor as the ultimate consumer of building  
6 materials which are physically annexed to the structure and which  
7 subsequently belong to the state or the governmental unit. The  
8 appointment of purchasing agents shall be in writing and occur  
9 prior to having any building materials annexed to real estate in  
10 the construction, improvement, or repair. The contractor who has  
11 been appointed as a purchasing agent may apply for a refund of or  
12 use as a credit against a future use tax liability the tax paid  
13 on inventory items annexed to real estate in the construction,  
14 improvement, or repair of a project for the state or a governmental  
15 unit.

16 (3) Any governmental unit listed in subsection (1) of  
17 this section, except the state, which enters into a contract  
18 of construction, improvement, or repair upon property annexed to  
19 real estate without first issuing a purchasing agent authorization  
20 to a contractor or repairperson prior to the building materials  
21 being annexed to real estate in the project may apply to the Tax  
22 Commissioner for a refund of any sales and use tax paid by the  
23 contractor or repairperson on the building materials physically  
24 annexed to real estate in the construction, improvement, or repair.

25 Sec. 7. This act becomes operative on July 1, 2006.

1                   Sec. 8. Original section 77-2704.15, Revised Statutes  
2 Cumulative Supplement, 2004, and sections 77-2701, 77-2701.04,  
3 77-2701.47, and 77-2704.12, Revised Statutes Supplement, 2005, are  
4 repealed.

5                   Sec. 9. The following section is outright repealed:  
6 Section 5, Legislative Bill 968, Ninety-ninth Legislature, Second  
7 Session, 2006.

8                   Sec. 10. Since an emergency exists, this act takes effect  
9 when passed and approved according to law.