

## LEGISLATIVE BILL 841

Approved by the Governor April 14, 2004

Introduced by Byars, 30

AN ACT relating to revenue and taxation; to amend section 77-2704.12, Reissue Revised Statutes of Nebraska; to change provisions relating to sales and use tax exemptions; to adopt the ICF/MR Reimbursement Protection Act; to eliminate a filing requirement; to provide operative dates; to repeal the original section; to outright repeal section 77-2704.37, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 77-2704.12, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.12. (1) 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 purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any private educational institution established under sections 79-1601 to 79-1607, any private college or university established under sections 85-1101 to 85-1111, any hospital, health clinic when two or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, skilled nursing facility, intermediate care facility, intermediate care facility for the mentally retarded, or nursing facility licensed under the Health Care Facility Licensure Act and organized not for profit, any nonprofit organization providing services primarily for home health care purposes, any licensed child-caring agency, or any licensed child placement agency.

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

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of property which is physically annexed to the structure and which subsequently belongs to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any property annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

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

(5) Any person purchasing, storing, using, or otherwise consuming property in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which property is annexed to real estate and which subsequently belongs to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the property physically annexed to real estate in the construction, improvement, or repair.

Sec. 2. Sections 2 to 10 of this act shall be known and may be cited as the ICF/MR Reimbursement Protection Act.

Sec. 3. For purposes of the ICF/MR Reimbursement Protection Act:

(1) Department means the Department of Health and Human Services Finance and Support;

(2) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(3) Medicaid program means the medical assistance program established pursuant to sections 68-1018 to 68-1025; and

(4) Net revenue means the revenue paid to an intermediate care facility for the mentally retarded for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

Sec. 4. (1) Each intermediate care facility for the mentally retarded shall pay a tax equal to six percent of its net revenue for the most recent State of Nebraska fiscal year.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/MR Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for the mentally retarded, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for the mentally retarded which participate in the medicaid program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

Sec. 5. (1) The ICF/MR Reimbursement Protection Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Interest and income earned by the fund shall be credited to the fund.

(2) For fiscal year 2004-05, proceeds from the tax imposed under section 4 of this act shall be allocated as follows:

(a) First, fifty-five thousand dollars to the department for administration of the fund;

(b) Second, payment to intermediate care facilities for the mentally retarded for the cost of the tax;

(c) Third, three hundred thousand dollars, in addition to any federal medicaid matching funds, for increases in payments to non-state-operated intermediate care facilities for the mentally retarded which shall be such facilities' only increase in payments for such fiscal year;

(d) Fourth, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for the purpose of reducing the waiting list of persons with developmental disabilities; and

(e) Fifth, any money remaining in the fund after the allocations required by subdivisions (2)(a) through (d) of this section have been made shall be transferred to the General Fund.

(3) For FY2005-06 and each fiscal year thereafter, proceeds from the tax imposed pursuant to section 4 of this act shall be remitted to the State Treasurer for credit as follows:

(a) To the ICF/MR Reimbursement Protection Fund for allocation as described in this subdivision: (i) Fifty-five thousand dollars for administration of the fund; (ii) the amount needed to reimburse intermediate care facilities for the mentally retarded for the cost of the tax; (iii) three hundred thousand dollars for payment of rates to non-state-operated intermediate care facilities; and (iv) three hundred twelve thousand dollars for community-based services for persons with developmental disabilities; and

(b) To the General Fund: The remainder of the proceeds.

Sec. 6. (1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ICF/MR Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for the mentally retarded.

(2) The tax imposed under section 4 of this act is not due and payable until such amendment to the state medicaid plan is approved by the Centers for Medicare and Medicaid Services.

Sec. 7. (1) Collection of the tax imposed by section 4 of this act shall be discontinued if:

(a) The amendment to the state medicaid plan described in section 6 of this act is disapproved by the Centers for Medicare and Medicaid Services;

(b) The department reduces rates paid to intermediate care facilities for the mentally retarded to an amount less than the rates effective September 1, 2003; or

(c) The department or any other state agency attempts to utilize the money in the ICF/MR Reimbursement Protection Fund for any use other than uses permitted pursuant to the ICF/MR Reimbursement Protection Act.

(2) If collection of the tax is discontinued as provided in subsection (1) of this section, all money in the fund shall be returned to the intermediate care facilities for the mentally retarded from which the tax was collected on the same basis as the tax was assessed.

Sec. 8. (1) An intermediate care facility for the mentally retarded that fails to pay the tax required by section 4 of this act shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for the mentally retarded for the year for which the tax is assessed.

(2) Penalties shall be collected by the department and remitted to the State Treasurer for credit to the permanent school fund.

Sec. 9. An intermediate care facility for the mentally retarded that has paid a tax that is not required by section 4 of this act may file a claim for refund with the department. The department may by rule and regulation establish procedures for filing and consideration of such claims.

Sec. 10. The department may adopt and promulgate rules and regulations to carry out the ICF/MR Reimbursement Protection Act.

Sec. 11. Sections 1, 12, and 13 of this act become operative on October 1, 2004. The other sections of this act become operative on their effective date.

Sec. 12. Original section 77-2704.12, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 13. The following section is outright repealed: Section 77-2704.37, Reissue Revised Statutes of Nebraska.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.