

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 209

Introduced by Bostar, 29.

Read first time January 10, 2023

Committee:

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 77-2704.62, Reissue Revised Statutes of Nebraska, and section
3 77-202, Revised Statutes Cumulative Supplement, 2022; to provide a
4 property tax exemption and sales and use tax exemptions relating to
5 data centers; to provide an operative date; and to repeal the
6 original sections.

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

1 Section 1. Section 77-202, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 77-202 (1) The following property shall be exempt from property
4 taxes:

5 (a) Property of the state and its governmental subdivisions to the
6 extent used or being developed for use by the state or governmental
7 subdivision for a public purpose. For purposes of this subdivision:

8 (i) Property of the state and its governmental subdivisions means
9 (A) property held in fee title by the state or a governmental subdivision
10 or (B) property beneficially owned by the state or a governmental
11 subdivision in that it is used for a public purpose and is being acquired
12 under a lease-purchase agreement, financing lease, or other instrument
13 which provides for transfer of legal title to the property to the state
14 or a governmental subdivision upon payment of all amounts due thereunder.
15 If the property to be beneficially owned by a governmental subdivision
16 has a total acquisition cost that exceeds the threshold amount or will be
17 used as the site of a public building with a total estimated construction
18 cost that exceeds the threshold amount, then such property shall qualify
19 for an exemption under this section only if the question of acquiring
20 such property or constructing such public building has been submitted at
21 a primary, general, or special election held within the governmental
22 subdivision and has been approved by the voters of the governmental
23 subdivision. For purposes of this subdivision, threshold amount means the
24 greater of fifty thousand dollars or six-tenths of one percent of the
25 total actual value of real and personal property of the governmental
26 subdivision that will beneficially own the property as of the end of the
27 governmental subdivision's prior fiscal year; and

28 (ii) Public purpose means use of the property (A) to provide public
29 services with or without cost to the recipient, including the general
30 operation of government, public education, public safety, transportation,
31 public works, civil and criminal justice, public health and welfare,

1 developments by a public housing authority, parks, culture, recreation,
2 community development, and cemetery purposes, or (B) to carry out the
3 duties and responsibilities conferred by law with or without
4 consideration. Public purpose does not include leasing of property to a
5 private party unless the lease of the property is at fair market value
6 for a public purpose. Leases of property by a public housing authority to
7 low-income individuals as a place of residence are for the authority's
8 public purpose;

9 (b) Unleased property of the state or its governmental subdivisions
10 which is not being used or developed for use for a public purpose but
11 upon which a payment in lieu of taxes is paid for public safety, rescue,
12 and emergency services and road or street construction or maintenance
13 services to all governmental units providing such services to the
14 property. Except as provided in Article VIII, section 11, of the
15 Constitution of Nebraska, the payment in lieu of taxes shall be based on
16 the proportionate share of the cost of providing public safety, rescue,
17 or emergency services and road or street construction or maintenance
18 services unless a general policy is adopted by the governing body of the
19 governmental subdivision providing such services which provides for a
20 different method of determining the amount of the payment in lieu of
21 taxes. The governing body may adopt a general policy by ordinance or
22 resolution for determining the amount of payment in lieu of taxes by
23 majority vote after a hearing on the ordinance or resolution. Such
24 ordinance or resolution shall nevertheless result in an equitable
25 contribution for the cost of providing such services to the exempt
26 property;

27 (c) Property owned by and used exclusively for agricultural and
28 horticultural societies;

29 (d) Property owned by educational, religious, charitable, or
30 cemetery organizations, or any organization for the exclusive benefit of
31 any such educational, religious, charitable, or cemetery organization,

1 and used exclusively for educational, religious, charitable, or cemetery
2 purposes, when such property is not (i) owned or used for financial gain
3 or profit to either the owner or user, (ii) used for the sale of
4 alcoholic liquors for more than twenty hours per week, or (iii) owned or
5 used by an organization which discriminates in membership or employment
6 based on race, color, or national origin. For purposes of this
7 subdivision, educational organization means (A) an institution operated
8 exclusively for the purpose of offering regular courses with systematic
9 instruction in academic, vocational, or technical subjects or assisting
10 students through services relating to the origination, processing, or
11 guarantying of federally reinsured student loans for higher education or
12 (B) a museum or historical society operated exclusively for the benefit
13 and education of the public. For purposes of this subdivision, charitable
14 organization includes an organization operated exclusively for the
15 purpose of the mental, social, or physical benefit of the public or an
16 indefinite number of persons and a fraternal benefit society organized
17 and licensed under sections 44-1072 to 44-10,109; and

18 (e) Household goods and personal effects not owned or used for
19 financial gain or profit to either the owner or user.

20 (2) The increased value of land by reason of shade and ornamental
21 trees planted along the highway shall not be taken into account in the
22 valuation of land.

23 (3) Tangible personal property which is not depreciable tangible
24 personal property as defined in section 77-119 shall be exempt from
25 property tax.

26 (4) Motor vehicles, trailers, and semitrailers required to be
27 registered for operation on the highways of this state shall be exempt
28 from payment of property taxes.

29 (5) Business and agricultural inventory shall be exempt from the
30 personal property tax. For purposes of this subsection, business
31 inventory includes personal property owned for purposes of leasing or

1 renting such property to others for financial gain only if the personal
2 property is of a type which in the ordinary course of business is leased
3 or rented thirty days or less and may be returned at the option of the
4 lessee or renter at any time and the personal property is of a type which
5 would be considered household goods or personal effects if owned by an
6 individual. All other personal property owned for purposes of leasing or
7 renting such property to others for financial gain shall not be
8 considered business inventory.

9 (6) Any personal property exempt pursuant to subsection (2) of
10 section 77-4105 or section 77-5209.02 shall be exempt from the personal
11 property tax.

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

13 (8) Any personal property exempt pursuant to the Nebraska Advantage
14 Act or the Imagine Nebraska Act shall be exempt from the personal
15 property tax.

16 (9) Any depreciable tangible personal property used directly in the
17 generation of electricity using wind as the fuel source shall be exempt
18 from the property tax levied on depreciable tangible personal property.
19 Any depreciable tangible personal property used directly in the
20 generation of electricity using solar, biomass, or landfill gas as the
21 fuel source shall be exempt from the property tax levied on depreciable
22 tangible personal property if such depreciable tangible personal property
23 was installed on or after January 1, 2016, and has a nameplate capacity
24 of one hundred kilowatts or more. Depreciable tangible personal property
25 used directly in the generation of electricity using wind, solar,
26 biomass, or landfill gas as the fuel source includes, but is not limited
27 to, wind turbines, rotors and blades, towers, solar panels, trackers,
28 generating equipment, transmission components, substations, supporting
29 structures or racks, inverters, and other system components such as
30 wiring, control systems, switchgears, and generator step-up transformers.

31 (10)(a) ~~(10)~~ Any tangible personal property that is acquired by a

1 person operating a data center located in this state, that is assembled,
2 engineered, processed, fabricated, manufactured into, attached to, or
3 incorporated into other tangible personal property, both in component
4 form or that of an assembled product, for the purpose of subsequent use
5 at a physical location outside this state by the person operating a data
6 center shall be exempt from the personal property tax. Such exemption
7 extends to keeping, retaining, or exercising any right or power over
8 tangible personal property in this state for the purpose of subsequently
9 transporting it outside this state for use thereafter outside this state.

10 (b) Computers and related equipment that are acquired by a person
11 operating a data center located in this state and are used in, or
12 acquired or stored for later use in, the operation or maintenance of the
13 data center, including, without limitation, the data center's servers and
14 related equipment, temperature control infrastructure, and electrical
15 power infrastructure, shall be exempt from the personal property tax.

16 (c) For purposes of this subsection, data center means computers,
17 supporting equipment, and other organized assembly of hardware or
18 software that are designed to centralize the storage, management, or
19 dissemination of data and information, environmentally controlled
20 structures or facilities or interrelated structures or facilities that
21 provide the infrastructure for housing the equipment, such as raised
22 flooring, electricity supply, communication and data lines, Internet
23 access, cooling, security, and fire suppression, and any building housing
24 the foregoing.

25 (11) For tax years prior to tax year 2020, each person who owns
26 property required to be reported to the county assessor under section
27 77-1201 shall be allowed an exemption amount as provided in the Personal
28 Property Tax Relief Act. For tax years prior to tax year 2020, each
29 person who owns property required to be valued by the state as provided
30 in section 77-601, 77-682, 77-801, or 77-1248 shall be allowed a
31 compensating exemption factor as provided in the Personal Property Tax

1 Relief Act.

2 Sec. 2. Section 77-2704.62, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 77-2704.62 Sales and use taxes shall not be imposed on the gross
5 receipts from the purchase, sale, lease, or rental of and the storage,
6 use, or other consumption in this state of:

7 (1) Tangible ~~tangible~~ personal property and services acquired by a
8 person operating a data center located in this state that are assembled,
9 engineered, processed, fabricated, manufactured into, attached to, or
10 incorporated into other tangible personal property for the purpose of
11 subsequent use at a physical location outside this state. Such exemption
12 extends to keeping, retaining, or exercising any right or power over such
13 tangible personal property in this state for the purpose of subsequently
14 transporting it outside this state for use thereafter outside this
15 state; -

16 (2) Computers and related equipment used in, or acquired or stored
17 for later use in, the operation or maintenance of a data center,
18 including, without limitation, the data center's servers and related
19 equipment, temperature control infrastructure, and electrical power
20 infrastructure;

21 (3) Electricity or other fuel that (a) is used in, or acquired or
22 stored for later use in, electrical or backup generators and (b) is
23 purchased for use in operating a data center;

24 (4) Tangible personal property which is or will be incorporated
25 into, or which is or will be annexed to but not incorporated into, (a) a
26 building housing a data center or (b) an improvement, structure, or
27 facility that constitutes real property and is part of a data center; or

28 (5) Tangible personal property acquired by a contractor or
29 repairperson after appointment as a purchasing agent of a person
30 operating a data center when such property is or will be incorporated
31 into, or is or will be annexed to but not incorporated into, (a) the

1 building housing the data center or (b) an improvement, structure, or
2 facility that constitutes real property and is part of the data center.

3 Sec. 3. This act becomes operative on January 1, 2024.

4 Sec. 4. Original section 77-2704.62, Reissue Revised Statutes of
5 Nebraska, and section 77-202, Revised Statutes Cumulative Supplement,
6 2022, are repealed.