

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1346

Introduced by Vargas, 7.

Read first time January 17, 2024

Committee:

- 1 A BILL FOR AN ACT relating to property taxes; to amend sections 77-202,
- 2 77-202.01, 77-202.03, and 77-202.05, Revised Statutes Cumulative
- 3 Supplement, 2022; to provide a property tax exemption for qualified
- 4 affordable housing developments as prescribed; to define and
- 5 redefine terms; to change provisions relating to exemption
- 6 application procedures; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 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)(i) ~~(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 (A) (i) owned or used for financial
3 gain or profit to either the owner or user, (B) (ii) used for the sale of
4 alcoholic liquors for more than twenty hours per week, or (C) (iii) owned
5 or used by an organization which discriminates in membership or
6 employment based on race, color, or national origin.

7 (ii) For purposes of subdivision (1)(d) of this section:

8 (A) Educational this subdivision, educational organization means (I)
9 (A) an institution operated exclusively for the purpose of offering
10 regular courses with systematic instruction in academic, vocational, or
11 technical subjects or assisting students through services relating to the
12 origination, processing, or guarantying of federally reinsured student
13 loans for higher education or (II) (B) a museum or historical society
14 operated exclusively for the benefit and education of the public; -

15 (B) Charitable For purposes of this subdivision, charitable
16 organization includes (I) an organization operated exclusively for the
17 purpose of the mental, social, or physical benefit of the public or an
18 indefinite number of persons, (II) and a fraternal benefit society
19 organized and licensed under sections 44-1072 to 44-10,109, and (III) an
20 owner of a qualified affordable housing development; -and

21 (C) Qualified affordable housing development means a housing
22 development that consists of at least five residential units and includes
23 one or more eligible units;

24 (D) Eligible unit means a residential unit that is:

25 (I) Rent restricted;

26 (II) Affordable to tenants earning no more than eighty percent of
27 the area median income; and

28 (III) Constructed on or after the effective date of this act or made
29 subject to rent restrictions on or after the effective date of this act;
30 and

31 (E) Area median income means the median household income, adjusted

1 for family size, for applicable income limit areas as determined by the
2 United States Department of Housing and Urban Development.

3 (iii) For any qualified affordable housing development, the
4 exemption amount for such property shall be a percentage of the property
5 taxes that would otherwise be due. Such percentage shall be calculated as
6 follows:

7 (A) For qualified affordable housing developments containing
8 eligible units that target tenants earning no more than eighty percent of
9 the area median income, the percentage of the residential units in the
10 development that are eligible units shall be multiplied by twenty-five
11 percent;

12 (B) For qualified affordable housing developments containing
13 eligible units that target tenants earning no more than sixty percent of
14 the area median income, the percentage of the residential units in the
15 development that are eligible units shall be multiplied by seventy-five
16 percent; or

17 (C) For qualified affordable housing developments containing
18 eligible units that target tenants earning no more than fifty percent of
19 the area median income, the percentage of the residential units in the
20 development that are eligible units shall be multiplied by one hundred
21 percent; and

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

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

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

30 (4) Motor vehicles, trailers, and semitrailers required to be
31 registered for operation on the highways of this state shall be exempt

1 from payment of property taxes.

2 (5) Business and agricultural inventory shall be exempt from the
3 personal property tax. For purposes of this subsection, business
4 inventory includes personal property owned for purposes of leasing or
5 renting such property to others for financial gain only if the personal
6 property is of a type which in the ordinary course of business is leased
7 or rented thirty days or less and may be returned at the option of the
8 lessee or renter at any time and the personal property is of a type which
9 would be considered household goods or personal effects if owned by an
10 individual. All other personal property owned for purposes of leasing or
11 renting such property to others for financial gain shall not be
12 considered business inventory.

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

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

17 (8) Any personal property exempt pursuant to the Nebraska Advantage
18 Act or the Imagine Nebraska Act shall be exempt from the personal
19 property tax.

20 (9) Any depreciable tangible personal property used directly in the
21 generation of electricity using wind as the fuel source shall be exempt
22 from the property tax levied on depreciable tangible personal property.
23 Any depreciable tangible personal property used directly in the
24 generation of electricity using solar, biomass, or landfill gas as the
25 fuel source shall be exempt from the property tax levied on depreciable
26 tangible personal property if such depreciable tangible personal property
27 was installed on or after January 1, 2016, and has a nameplate capacity
28 of one hundred kilowatts or more. Depreciable tangible personal property
29 used directly in the generation of electricity using wind, solar,
30 biomass, or landfill gas as the fuel source includes, but is not limited
31 to, wind turbines, rotors and blades, towers, solar panels, trackers,

1 generating equipment, transmission components, substations, supporting
2 structures or racks, inverters, and other system components such as
3 wiring, control systems, switchgears, and generator step-up transformers.

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

22 (11) For tax years prior to tax year 2020, each person who owns
23 property required to be reported to the county assessor under section
24 77-1201 shall be allowed an exemption amount as provided in the Personal
25 Property Tax Relief Act. For tax years prior to tax year 2020, each
26 person who owns property required to be valued by the state as provided
27 in section 77-601, 77-682, 77-801, or 77-1248 shall be allowed a
28 compensating exemption factor as provided in the Personal Property Tax
29 Relief Act.

30 Sec. 2. Section 77-202.01, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 77-202.01 (1) Any organization or society seeking a tax exemption
2 provided in subdivisions (1)(c) and (d) of section 77-202 for any real or
3 tangible personal property, except real property used for cemetery
4 purposes, shall apply for exemption to the county assessor on or before
5 December 31 of the year preceding the year for which the exemption is
6 sought on forms prescribed by the Tax Commissioner. Applications that
7 lack an estimated valuation, or any other required information, shall
8 result in the denial of the requested exemption. The county assessor
9 shall examine the application and recommend either taxable or exempt for
10 the real property or tangible personal property to the county board of
11 equalization on or before March 1 following. For applications involving a
12 qualified affordable housing development as defined in section 77-202,
13 the county assessor shall also calculate the exemption amount for the
14 property in accordance with subdivision (1)(d)(iii) of section 77-202 and
15 shall submit such calculation to the county board of equalization along
16 with his or her recommendations. Notice that a list of the applications
17 from organizations seeking tax exemption, descriptions of the property,
18 and recommendations of the county assessor are available in the county
19 assessor's office shall be published in a newspaper of general
20 circulation in the county at least ten days prior to consideration of any
21 application by the county board of equalization.

22 (2) Any organization or society which fails to file an exemption
23 application on or before December 31 may apply on or before June 30 to
24 the county assessor. The organization or society shall also file in
25 writing a request with the county board of equalization for a waiver so
26 that the county assessor may consider the application for exemption. The
27 county board of equalization shall grant the waiver upon a finding that
28 good cause exists for the failure to make application on or before
29 December 31. When the waiver is granted, the county assessor shall
30 examine the application and recommend either taxable or exempt for the
31 real property or tangible personal property to the county board of

1 equalization, shall calculate the exemption amount in accordance with
2 subdivision (1)(d)(iii) of section 77-202 for applications involving a
3 qualified affordable housing development as defined in section 77-202,
4 and shall assess a penalty against the property of ten percent of the tax
5 that would have been assessed had the waiver been denied or one hundred
6 dollars, whichever is less, for each calendar month or fraction thereof
7 for which the filing of the exemption application missed the December 31
8 deadline. The penalty shall be collected and distributed in the same
9 manner as a tax on the property and interest shall be assessed at the
10 rate specified in section 45-104.01, as such rate may from time to time
11 be adjusted by the Legislature, from the date the tax would have been
12 delinquent until paid. The penalty shall also become a lien in the same
13 manner as a tax pursuant to section 77-203.

14 Sec. 3. Section 77-202.03, Revised Statutes Cumulative Supplement,
15 2022, is amended to read:

16 77-202.03 (1) Except as provided in section 77-202.10 and subsection
17 (2) of this section, a A properly granted exemption of real or tangible
18 personal property, ~~except real property used for cemetery purposes,~~
19 provided for in subdivisions (1)(c) and (d) of section 77-202 shall
20 continue for a period of four years if the statement of reaffirmation of
21 exemption required by subsection (3) ~~(2)~~ of this section is filed when
22 due. The four-year period shall begin with years evenly divisible by
23 four.

24 (2) An owner of a qualified affordable housing development as
25 defined in section 77-202 which has been granted an exemption under
26 subdivision (1)(d) of section 77-202 shall be required to reapply for the
27 exemption each year so that the exemption amount for the year can be
28 calculated in accordance with subdivision (1)(d)(iii) of section 77-202.

29 (3) ~~(2)~~ In each intervening year occurring between application
30 years, the organization or society which filed the granted exemption
31 application for the real or tangible personal property, except real

1 property used for cemetery purposes and real property that is a qualified
2 affordable housing development as defined in section 77-202, shall file a
3 statement of reaffirmation of exemption with the county assessor on or
4 before December 31 of the year preceding the year for which the exemption
5 is sought, on forms prescribed by the Tax Commissioner, certifying that
6 the ownership and use of the exempted property has not changed during the
7 year. Any organization or society which misses the December 31 deadline
8 for filing the statement of reaffirmation of exemption may file the
9 statement of reaffirmation of exemption by June 30. Such filing shall
10 maintain the tax-exempt status of the property without further action by
11 the county and regardless of any previous action by the county board of
12 equalization to deny the exemption due to late filing of the statement of
13 reaffirmation of exemption. Upon any such late filing, the county
14 assessor shall assess a penalty against the property of ten percent of
15 the tax that would have been assessed had the statement of reaffirmation
16 of exemption not been filed or one hundred dollars, whichever is less,
17 for each calendar month or fraction thereof for which the filing of the
18 statement of reaffirmation of exemption is late. The penalty shall be
19 collected and distributed in the same manner as a tax on the property and
20 interest shall be assessed at the rate specified in section 45-104.01, as
21 such rate may from time to time be adjusted by the Legislature, from the
22 date the tax would have been delinquent until paid. The penalty shall
23 also become a lien in the same manner as a tax pursuant to section
24 77-203.

25 (4)(a) ~~(3)(a)~~ If any organization or society seeks a tax exemption
26 for any real or tangible personal property acquired on or after January 1
27 of any year or converted to exempt use on or after January 1 of any year,
28 the organization or society shall make application for exemption on or
29 before July 1 of that year as provided in subsection (1) of section
30 77-202.01. The procedure for reviewing the application shall be as in
31 sections 77-202.01 to 77-202.05, except that the exempt use shall be

1 determined as of the date of application and the review by the county
2 board of equalization shall be completed by August 15.

3 (b) If an organization as described in subdivision (1)(c) or (d) of
4 section 77-202 purchases, between July 1 and the levy date, property that
5 has been granted tax exemption and the property continues to be qualified
6 for a property tax exemption, the purchaser shall on or before November
7 15 make application for exemption as provided in section 77-202.01. The
8 procedure for reviewing the application shall be as in sections 77-202.01
9 to 77-202.05, and the review by the county board of equalization shall be
10 completed by December 15.

11 ~~(5)~~ (4) In any year, the county assessor or the county board of
12 equalization may cause a review of any exemption to determine whether the
13 exemption is proper. Such a review may be taken even if the ownership or
14 use of the property has not changed from the date of the allowance of the
15 exemption. If it is determined that a change in an exemption is
16 warranted, the procedure for hearing set out in section 77-202.02 shall
17 be followed, except that the published notice shall state that the list
18 provided in the county assessor's office only includes those properties
19 being reviewed. If an exemption is denied, the county board of
20 equalization shall place the property on the tax rolls retroactive to
21 January 1 of that year if on the date of the decision of the county board
22 of equalization the property no longer qualifies for an exemption.

23 The county board of equalization shall give notice of the assessed
24 value of the real property in the same manner as outlined in section
25 77-1507, and the procedures for filing a protest shall be the same as
26 those in section 77-1502.

27 When personal property which was exempt becomes taxable because of
28 lost exemption status, the owner or his or her agent has thirty days
29 after the date of denial to file a personal property return with the
30 county assessor. Upon the expiration of the thirty days for filing a
31 personal property return pursuant to this subsection, the county assessor

1 shall proceed to list and value the personal property and apply the
2 penalty pursuant to section 77-1233.04.

3 (6) ~~(5)~~ During the month of September of each year, the county board
4 of equalization shall cause to be published in a paper of general
5 circulation in the county a list of all real estate in the county exempt
6 from taxation for that year pursuant to subdivisions (1)(c) and (d) of
7 section 77-202. Such list shall be grouped into categories as provided by
8 the Property Tax Administrator. An electronic copy of the list of real
9 property exemptions and a copy of the proof of publication shall be
10 forwarded to the Property Tax Administrator on or before November 1 of
11 each year.

12 Sec. 4. Section 77-202.05, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 77-202.05 The Tax Commissioner shall prescribe forms for
15 distribution to the county assessors on which persons, corporations, and
16 organizations may apply for tax-exempt status for real or tangible
17 personal property. The forms shall include the following information:

18 (1) Name of owner or owners of the property, and if a corporation,
19 the names of the officers and directors, and place of incorporation;

20 (2) Legal description of real property and a general description as
21 to class and use of all tangible personal property;

22 (3) The precise statutory provision under which exempt status for
23 such property is claimed; ~~and~~

24 (4) An estimated valuation for the property; and ~~-~~

25 (5) For qualified affordable housing developments as defined in
26 section 77-202:

27 (a) The total number of residential units in the development;

28 (b) The number of residential units in the development that are
29 eligible units as defined in section 77-202;

30 (c) The targeted income level for tenants of the eligible units,
31 expressed as a percentage of area median income as defined in section

1 77-202; and

2 (d) The date when the eligible units were constructed or made
3 subject to rent restrictions.

4 Sec. 5. Original sections 77-202, 77-202.01, 77-202.03, and
5 77-202.05, Revised Statutes Cumulative Supplement, 2022, are repealed.