

LEGISLATIVE BILL 363

Approved by the Governor May 17, 1983

Introduced by Newell, 13; Morehead, 30; Kilgarin, 7; Wiitala, 31; DeCamp, 40; Goodrich, 20; Jacobson, 33; R. Johnson, 34; V. Johnson, 8; Remmers, 1; Withem, 14; Beutler, 28; Landis, 46; Fowler, 27; Rupp, 22; Schmit, 23; Nichol, 48; Haberman, 44; Pirsch, 10; Hoagland, 6

AN ACT to amend section 77-2769, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2704, 77-2715, and 77-2715.01, Revised Statutes Supplement, 1982, relating to revenue and taxation; to eliminate the sales tax on certain food; to eliminate the food sales tax credit; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 77-2704, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2704. (1) There are exempted from the computation of the amount of sales and use taxes imposed by sections 77-2701 to 77-27135 the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the following:

(a) Tangible personal property the gross receipts from the sale, lease, or rental of which, or the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state;

(b) (i) Aircraft fuel as defined under the provisions of Chapter 3, article 1;

(ii) Minerals, oil, and gas as defined under the provisions of Chapter 57; and

(iii) Motor vehicle fuels as defined, taxed, or exempted under the provisions of Chapter 66, article 4, and special fuels as defined, taxed, or exempted for use on the highways under the provisions of Chapter 66, article 6;

(c) Tangible personal property used for the

performance of a written contract entered into prior to June 1, 1967, except as provided in subdivision (1) (g) of section 77-2703;

(d) Any newspaper regularly issued at average intervals not exceeding one week; PROVIDED, that such newspaper contains matters of general interest and reports of current events;

(e) Leased tangible personal property sold to a lessee of that tangible personal property under an agreement whereby certain rental payments are credited against the purchase price of that tangible personal property; PROVIDED, that this exemption shall not exceed the amount for which the lessor has collected and paid tax on such rental payments;

(f) Prescription medicines when prescribed and dispensed for human use by a person licensed under the provisions of Chapter 71, article 1, insulin, and prosthetic devices;

(g) (i) Meals and food products, including soft drinks and candy, for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution, but such exemption shall not apply to sales at any facility or function which is open to the general public, except that concession sales by elementary and secondary schools, public or private, shall be exempt;

(ii) Meals and food products, including soft drinks and candy, for human consumption when sold by a church at a function of such church; and

(iii) Meals and food products, including soft drinks and candy, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(h) Tangible personal property which is shipped to a point outside this state pursuant to the contract of sale by delivery by the retailer to such point by means of facilities operated by the retailer, delivery by the retailer to a carrier for shipment to a consignee at such point, delivery by the retailer to the United States post office for delivery outside this state, or delivery by the retailer to a customs broker or forwarding agent for shipment outside this state. This shall include the gross receipts from sales of tangible personal property to a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property

is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common or contract carrier;

(i) Purchases by any organization created exclusively for religious purposes, any nonprofit organization providing services exclusively to the blind, any educational institution established under the provisions of Chapter 79, any private college or university, any hospital or skilled nursing facility or intermediate care facility I licensed under sections 71-2017 to 71-2029 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. The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the owner of the organization or institution. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair. Any person purchasing, storing, using, or otherwise consuming tangible personal property in the performance of any construction, improvement, or repair by or for any institution enumerated in this subdivision which is licensed upon completion although not licensed at the time of construction or improvement, which tangible personal property is incorporated into a structure and becomes the property of the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed, 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 tangible personal property physically incorporated into the construction, improvement, or repair. The Tax Commissioner shall allow a refund to the institution on any contract of construction, improvement, or repair entered into prior to July 1, 1980, whereby the person purchasing, storing, using, or otherwise consuming tangible personal property has paid the applicable sales and use tax thereon. The refund shall be calculated by multiplying the sales or use tax percentage rate times a sum equal to sixty per cent of the total contract price of such construction, improvement, or repair;

(j) The gross receipts from the sale of tangible personal property when sold through coin-operated vending machines below a sum of fifteen cents;

(k) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, and butane for use in processing, manufacturing, mining, refining, irrigation, farming, building construction, telegraph, telephone and radio communication, street, and railroad transportation services and all business, commercial and industrial uses;

(l) The use of coin-operated machines used for laundering and cleaning;

(m) Purchases by the state, including educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, or rural or suburban fire protection district, for use in a governmental capacity, or by any irrigation or reclamation district or the irrigation division of any public power and irrigation district. The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of tangible personal property which is physically incorporated into the structure and becomes the property of the state or the governmental unit. The appointment of purchasing agents must be in writing and occur prior to purchasing any tangible personal property incorporated into the construction, improvement, or repair;

(n) The purchase price of a motor vehicle purchased with funds substantially contributed by the Veterans' Administration of the United States for a disabled veteran under the provisions of section 1901, Chapter 39, Title 38, United States Code;

(o) The sale and purchase, by subscription, of any magazine or journal that is issued at average intervals not exceeding once each month;

(p) Sales and purchases of semen for use in ranching, farming, commercial or industrial uses;

(q) The gross receipts from the sale, lease, or rental of any tangible personal property to, or the storage, use, or other consumption of tangible personal property by associations or societies of Nebraska citizens qualified to receive organization, procedure, and financial support as provided under sections 2-2801 to 2-2813;

(r) All items of tangible personal property purchased from institutionally-operated institutionally operated stores, canteens, and hobby shops by inmates, residents, or clients of such state institutions. Such exemption shall not apply to the employees of state institutions;

(s) Any organization listed in subdivision (i) of this subsection or any governmental unit listed in subdivision (m) of this subsection, except the state,

which enters into a contract of construction, improvement, or repair upon real estate without first issuing a purchasing agent authorization to a contractor or repairman prior to purchasing tangible personal property to be incorporated into the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairman on the tangible personal property physically incorporated into the construction, improvement, or repair; and

(t) Manufacturing and processing equipment purchased on or after September 1, 1981, for use directly in manufacturing or processing operations, initially installed in a manufacturing facility of new construction begun on or after July 1, 1981. For purposes of this subdivision, the term new construction shall include: (i) A new facility or the physical expansion of an existing facility or (ii) installation to achieve product diversification; and

(u) Food or food products for human consumption which are eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to regulations in effect on the operative date of this section, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. As used in this subdivision, food does not include meals prepared for immediate consumption on or off the premises of the retailer and does not include foods sold through vending machines.

(2) The storage, use, or other consumption in this state of tangible personal property, the gross receipts from the sale, lease, or rental of which are required to be included in the measure of the sales tax and on which the sales tax has been paid, is exempted from the use tax.

(3) The use tax imposed in sections 77-2701 to 77-27,135 shall not apply to:

(a) The use, in this state, of materials and replacement parts which are acquired outside this state and which are moved into this state for use directly in the repair and maintenance or manufacture of motor vehicles, watercraft, railroad rolling stock whether owned by a railroad or by any person whether a common or contract carrier or otherwise, or aircraft engaged as common or contract carriers of persons or property; and

(b) The storage, use, or consumption of tangible personal property which is acquired outside this state, the sale, lease, or rental of the storage, use, or consumption of which property would be exempt from the sales or use tax were it purchased within this state.

(4) If any person, who causes tangible personal property to be brought into this state, has

already paid a tax in another state in respect to the sale or use of such property in an amount less than the tax imposed by section 77-2703, the provision of this section shall apply, but at a rate measured by the difference only between the rate imposed by section 77-2703, and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by section 77-2703, then no use tax shall be due in this state on such personal property; PROVIDED, that such other state, territory or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

(5) A lease of tangible personal property from a subsidiary to the parent company, from a parent company to a subsidiary, from one subsidiary to another subsidiary of the same parent company, or between brother-sister companies shall not be subject to the sales and use tax imposed by sections 77-2701 to 77-27,135. Such lessor company shall have the same sales and use tax liability on the purchase of property to be leased to the lessee company as the lessee company would have paid if the lessee company had purchased the property directly.

(6) There is exempted from the computation of the amount of sales and use taxes imposed by sections 77-2701 to 77-27,135 the gross receipts from the sale, lease, or rental of, and the storage, use, or other consumption in this state of railroad rolling stock whether owned by a railroad or by any other person.

(7) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed price contract, the contractor may apply to the Department of Revenue for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the materials incorporated into the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars.

Sec. 2. That section 77-2715, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2715. (1) A tax is hereby imposed for each

taxable year on the entire income of every resident individual of this state and on the income of every nonresident individual of this state which is derived from sources within this state. The tax shall be a flat percentage of, for each resident individual, the taxpayer's adjusted federal income tax liability for the taxable year, and for each nonresident individual, the taxpayer's adjusted federal income tax liability for the taxable year which is attributable to income derived from sources within this state.

The taxpayer's adjusted federal income tax liability shall be the amount of federal income tax, as determined under Subtitle A, Chapter I, subchapter A, Parts I, V, and VI of the Internal Revenue Code, for which the taxpayer would have been liable if such taxpayer had paid federal income tax based on federal taxable income as adjusted by the modifications provided in section 77-2716 without any allowance for credits against such tax permitted under the Internal Revenue Code.

The adjusted federal income tax liability of each nonresident individual taxpayer which is attributable to income derived from sources within this state shall be determined by multiplying his or her adjusted federal income tax liability by a fraction, the numerator of which is his or her taxable income derived from sources within this state as determined by section 77-2733, and the denominator of which is his or her total federal taxable income, after first subtracting from each the amounts provided in subsection (1) of section 77-2716; PROVIDED, that if the above determination attributes more or less federal income tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for, or the Tax Commissioner may require, the employment of any other method to attribute an amount of federal income tax which is reasonable and equitable in the circumstances.

(2) (a) A resident of this state shall mean an individual who is domiciled in Nebraska or who maintains a permanent place of abode in this state and spends in the aggregate more than six months of the taxable year in this state; and

(b) A nonresident shall mean an individual who is not a resident of this state.

(3) (a) There shall also be allowed to resident individuals as a credit against the tax imposed by sections 77-2744 to 77-27435, a food sales tax credit equal to twenty-eight dollars multiplied by the number of allowable personal exemptions claimed for individuals who are residents, exclusive of the extra exemptions allowable for age or blindness. In the event a dependent is claimed as an exemption on a federal return

by a nonresident taxpayer who files no return in this state; such dependent resides in this state; and the support claimed by such nonresident taxpayer is substantially spent in this state; the taxpayer in this state who has legal custody of such dependent may claim such food sales tax credit for each such dependent. A refund shall be allowed to the extent that the food sales tax credit exceeds the income tax payable by the resident individual for the taxable year but no refund shall be made in any amount less than two dollars.

(b) No individual who may be claimed as a personal exemption on another individual's return shall be entitled to a food sales tax credit or refund for himself or herself. If a food sales tax credit or refund is claimed on more than one return for the same individual; the Tax Commissioner is authorized to determine the individual entitled to claim the credit or refund provided herein.

(c) Any individual, other than a person who for more than six months of the taxable year is a resident patient or inmate of a public institution or an organization exempt from tax as a charitable institution; who maintains a permanent place of abode within this state; spending in the aggregate more than six months of the taxable year within this state; shall be conclusively presumed to have paid or paid with respect to such personal exemptions retail sales and use taxes imposed by this state equal to the maximum food sales tax credit allowable.

(d) The credits or refunds for sales taxes allowed by this subsection shall be claimed on income tax returns or in the case of an individual not having tax liability in this state on such forms or claims for refunds as the Tax Commissioner shall prescribe.

(4) Credits to minors; including any child whose parent or guardian is a recipient of aid to dependent children; shall be claimed by the parent or guardian.

(5) (3) There shall be allowed, to qualified resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135, a credit for the elderly equal to fifty per cent of the federal credit allowed under section 37 of the Internal Revenue Code.

(6) (4) Subject to termination under section 66-1055, there shall be allowed to resident individuals as a credit against the tax imposed by sections 77-2714 to 77-27,135, a credit for renewable energy source systems as provided under section 66-1047.

Sec. 3. That section 77-2715.01, Revised Statutes Supplement, 1982, be amended to read as follows:

77-2715.01. (1) On or before November 15 of each year, the State Board of Equalization and

Assessment shall set the rate of the income tax imposed by section 77-2715 for the taxable year beginning in the subsequent calendar year, and the rate of the sales tax imposed by subsection (1) of section 77-2703 which will be effective from January 1 through December 31 of the succeeding year, except that for the period May 1 through December 31, 1982, the rate of the sales tax shall be three and one half per cent.

Recognizing that an adequate cash flow is necessary to maintain the orderly implementation of various legislative acts, it is mandatory that the funding of those acts which have a fiscal impact beyond a current appropriations year be considered when setting the sales and income tax rates. Accordingly, the purpose of this subsection is to provide that the State Board of Equalization and Assessment shall set rates based on appropriations and the express obligations of the Legislature for the two succeeding calendar years following the rate-setting date. Such action will provide an adequate cash flow, the orderly implementation of the funding of acts as intended by the Legislature, and eliminate drastic fluctuations in the state sales and income tax rates.

(a) In fixing the rates, the State Board of Equalization and Assessment shall first determine the status of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date which must be financed from the receipts from the sales and use taxes, the individual and corporation income and franchise taxes and other miscellaneous receipts to the General Fund, from a certified statement of all appropriations and express obligations for the next two succeeding calendar years following the rate-setting date made by the most recent regular session of the Legislature, which statement the Director of Administrative Services shall prepare and furnish prior to the convening of such board.

(b) If the Legislature should meet in a special session during any year, the board shall add to the appropriations and express obligations as certified pursuant to subdivision (a) of this subsection, the appropriation for the legislative session, all miscellaneous claims, deficiency bills, and all emergency appropriations and express obligations.

(c) The board shall then determine the balance of the General Fund at the beginning of the period under consideration and the estimated receipts to the General Fund from all sources other than the sales, use, income, and franchise taxes for this period.

(d) The board shall then set the rates of the sales tax and income tax so that the estimated funds available pursuant to subdivision (c) of this subsection plus estimated receipts from the sales, use, income, and

franchise taxes will be not less than two per cent nor more than seven per cent in excess of the appropriations and express obligations for the next two succeeding calendar years following the rate-setting date as determined pursuant to subdivisions (a) and (b) of this subsection. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations as certified as provided in subdivision (a) of this subsection.

(e) The rates of the sales and income taxes shall be fixed so that the total sales and use taxes levied will as nearly as possible equal the total individual income tax levied for the calendar year for which the rates so fixed will be effective except when a change in the sales and use tax rate or individual income tax rate would be required solely to meet the provisions of this subdivision. The board shall set the rates in such a manner that total sales and use tax revenue should not exceed total individual income tax revenue in any particular year.

(f) For purposes of this subsection, total sales and use taxes levied shall mean the total state sales and use tax liability of all taxpayers for the calendar year, minus total food sales tax credits attributable to the same period. Total income and franchise taxes levied shall mean the total state income and franchise tax liability of all taxpayers for the calendar year, before deduction of food sales tax credits.

(g) The sales tax rate so fixed by the board shall be an increment of one-fourth of one per cent, and the income tax rate so fixed shall be an increment of one half of one per cent.

(h) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The board shall meet (a) within fifteen days after the adjournment of each regular session of the Legislature, (b) within thirty days after each special session of the Legislature, and (c) not later than the later of (i) sixty days after passage and approval or (ii) fifteen days prior to the effective date of any changes in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, or the rules and regulations issued under such laws, if such federal changes would increase or decrease the total projected income and franchise taxes levied for any twelve-month period by an

amount equal to or greater than the amount of revenue raised from such sources by a one half per cent tax rate increment and shall determine whether the rates for sales tax and income tax must be changed. At any meeting of the board held due to changes in federal law, the board shall adjust the income tax rate so that the total income and franchise taxes levied shall as nearly as possible equal the income and franchise taxes which would have been levied if there had been no change in the federal law. In making such determination the board shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for such special session, all miscellaneous claims, deficiency bills, and all emergency appropriations.

In the event the board determines the rates must be changed as a result of such regular or special session or as a result of a change in the provisions of the Internal Revenue Code of 1954 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, such sales tax rate shall be made effective at the beginning of any calendar month within the current calendar year and such income tax rate shall be effective for the current taxable year.

(3) Public notice of any meeting of the board at which sales and income tax rates are to be considered shall be given at least ten days prior to the meeting, by a news release for statewide distribution, by publication in a legal newspaper of general circulation in the state, and in such other forms as the Tax Commissioner shall deem appropriate. The notice shall contain an agenda of matters to be taken up, and a statement that all written reports and fiscal data to be considered by the board at the meeting shall be available to the public at the Tax Commissioner's office during normal business hours at least two business days prior to the meeting.

Sec. 4. That section 77-2769, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2769. (1) Every resident and nonresident individual, corporation and other entity taxed as a corporation under the Internal Revenue Code shall make a declaration of the estimated tax for the taxable year, in such form as the Tax Commissioner may prescribe; PROVIDED, that (a) no declaration is required by an individual if the estimated tax can reasonably be expected to be less than forty dollars, and (b) no declaration is required by a corporation or other entity taxed as a corporation under the Internal Revenue Code

if the estimated tax can reasonably be expected to be less than one hundred dollars.

(2) (a) Estimated tax for an individual shall mean the amount which the individual estimates to be his or her income tax under the provisions of sections 77-2714 to 77-27,135 for the taxable year less the amount which he or she estimates to be the sum of any credits allowable for tax withheld under section 77-2753, food sales tax credit under section 77-2745, tax paid to another state under section 77-2730, and tax paid on gasoline and motor fuels used for agricultural, industrial, and nonhighway purposes under section 66-452.

(b) Estimated tax for a corporation or other entity taxed as a corporation under the Internal Revenue Code shall mean the amount which the corporation or business estimates to be its franchise or income tax under the provisions of sections 77-2714 to 77-27,135 for the taxable year less the amount which is estimated to be the sum of any credits allowable for in lieu of intangible tax paid under subsection (2) of section 77-2734 and tax paid on gasoline and motor fuels used for agricultural, industrial, and nonhighway purposes under section 66-452.

(3) If they are eligible to do so for federal tax purposes, a husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(4) An individual or corporation may amend a declaration under regulations prescribed by the Tax Commissioner.

(5) The declaration of estimated tax for an individual under a disability shall be made and filed in the manner provided in subsection (2) of section 77-2763 for an income tax return.

(6) The declaration and payment of estimated tax shall be filed or paid, as the case may be, on or before the dates prescribed by the laws of the United States for filing declarations and payment of estimated federal income tax, except that the Tax Commissioner, by rule and regulation, may establish other dates for filing declarations and payment of estimated tax.

(7) The application of the provisions of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Tax Commissioner.

(8) Payment of the estimated income tax or any

installment thereof, shall be considered payment on account of the income tax imposed under the provisions of sections 77-2714 to 77-27,135 for the taxable year.

Sec. 5. Sections 1 and 6 of this act shall become operative on October 1, 1983. The remaining sections of this act shall be operative for all taxable years beginning on or after January 1, 1983, or deemed to begin on or after January 1, 1983, under the Internal Revenue Code of 1954, as amended.

Sec. 6. That original section 77-2704, Revised Statutes Supplement, 1982, is repealed.

Sec. 7. That original section 77-2769, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2715 and 77-2715.01, Revised Statutes Supplement, 1982, are repealed.