

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1001

Introduced by White, 8.

Read first time January 16, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-2701.16 and 77-27,132, Revised Statutes Supplement,
3 2007; to adopt the Low-Income Home Energy Conservation
4 Act; to provide for a sales and use tax exemption; to
5 harmonize provisions; to repeal the original sections;
6 and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Low-Income Home Energy Conservation Act.

3 Sec. 2. The Legislature finds and declares that:

4 (1) Many residents of this state find it difficult to pay
5 for the cost of heating, cooling, and lighting their homes;

6 (2) Energy conservation helps to maintain affordable
7 energy bills, reduces the amount of money spent on imported energy
8 sources, lessens the need for new power plants and other energy
9 infrastructure, and helps mitigate the impact of energy generation
10 on the environment; and

11 (3) It serves a public purpose to provide funding to
12 eligible persons for eligible energy conservation improvements in
13 accordance with the Low-Income Home Energy Conservation Act.

14 Sec. 3. For purposes of the Low-Income Home Energy
15 Conservation Act:

16 (1) Department means the Department of Revenue;

17 (2) Eligible energy conservation grant means a grant
18 paid to an eligible person for an eligible energy conservation
19 improvement;

20 (3) Eligible energy conservation improvement means a
21 device, a method, equipment, or material that reduces consumption
22 of or increases efficiency in the use of electricity or natural gas
23 for a residence owned by an eligible person, including, but not
24 limited to, insulation and ventilation, storm or thermal doors or
25 windows, awnings, caulking and weatherstripping, furnace efficiency

1 modifications, thermostat or lighting controls, replacement or
2 modification of lighting fixtures or bulbs to increase the energy
3 efficiency of the home's lighting system, and systems to turn off
4 or vary the delivery of energy;

5 (4) Eligible entity means an entity providing matching
6 funds pursuant to section 4 of this act and which is a public
7 power district organized under Chapter 70, article 6, an electric
8 cooperative corporation organized under Chapter 70, article 7, a
9 rural public power district organized under Chapter 70, article 8,
10 a joint entity organized under the Interlocal Cooperation Act, or
11 a municipality; and

12 (5) Eligible person means any resident of Nebraska who
13 owns his or her residence and whose household income is at or
14 below one hundred fifty percent of the federal poverty level, as
15 determined in accordance with the act.

16 Sec. 4. (1) The Energy Conservation Improvement Fund is
17 created. The fund shall be administered by the department. Revenue
18 from the following sources shall be remitted to the State Treasurer
19 for credit to the fund:

20 (a) Twenty percent of the sales and use tax proceeds
21 received by the department during the preceding calendar year from
22 an eligible entity that provides matching funds as provided in
23 subsection (2) of this section; and

24 (b) Matching funds remitted to the department by an
25 eligible entity to assist in funding eligible energy conservation

1 grants.

2 (2) An eligible entity may remit to the department
3 matching funds equal to twenty percent of the eligible entity's
4 sales and use tax payments to the department for the preceding
5 calendar year, to be used for eligible energy conservation grants
6 under the Low-Income Home Energy Conservation Act.

7 Sec. 5. (1) An eligible entity that has remitted matching
8 funds to the department as provided in section 4 of this act may
9 establish and administer a program of eligible energy conservation
10 grants.

11 (2) The program shall provide for eligible energy
12 conservation grants from the Energy Conservation Improvement Fund
13 to eligible persons for installing eligible energy conservation
14 improvements, upon certification by the eligible entity that it
15 has approved an eligible energy conservation improvement for the
16 residence of the eligible person. The eligible entity shall verify
17 the purchase and installation of the eligible energy conservation
18 improvement at the eligible person's residence.

19 Sec. 6. An eligible entity may contract with any
20 qualified person, agency, or business entity to make eligibility
21 determinations for eligible energy conservation grants under the
22 Low-Income Home Energy Conservation Act.

23 Sec. 7. Upon written request by an eligible entity on or
24 after February 1, 2009, and each year thereafter, the department
25 shall return to the eligible entity any matching funds remitted by

1 the eligible entity under section 4 of this act that have not been
2 used for eligible energy conservation grants during the preceding
3 calendar year. An eligible entity may elect to have the department
4 retain any such remaining funds for additional eligible energy
5 conservation grants and shall so notify the department.

6 Sec. 8. Beginning April 1, 2009, and annually on or
7 before that date thereafter, each eligible entity administering
8 a program for eligible energy conservation grants under the
9 Low-Income Home Energy Conservation Act shall submit to the
10 department a report describing each eligible energy conservation
11 grant made by the eligible entity during the preceding calendar
12 year and the eligible energy conservation improvement for which
13 each such grant was made.

14 Sec. 9. The department may adopt and promulgate rules
15 and regulations to carry out its duties under the Low-Income Home
16 Energy Conservation Act.

17 Sec. 10. Section 77-2701.16, Revised Statutes Supplement,
18 2007, is amended to read:

19 77-2701.16 (1) Gross receipts shall mean the total amount
20 of the sale or lease or rental price, as the case may be, of
21 the retail sales of retailers valued in money whether received in
22 money or otherwise, without any deduction on account of any of the
23 following:

24 (a) The cost of property sold. In accordance with rules
25 and regulations adopted and promulgated by the Tax Commissioner, a

1 deduction may be taken if the retailer has purchased property for
2 some purpose other than resale, has reimbursed his or her vendor
3 for tax which the vendor is required to pay to the state or has
4 paid the use tax with respect to the property, and has resold
5 the property prior to making any use of the property other than
6 retention, demonstration, or display while holding it for sale in
7 the regular course of business. If such a deduction is taken by the
8 retailer, no refund or credit will be allowed to his or her vendor
9 with respect to the sale of the property;

10 (b) The cost of the materials used, labor or service
11 costs, interest paid, losses, or any other expense;

12 (c) The cost of transportation of the property;

13 (d) The amount of any excise or property tax levied
14 against the property except as otherwise provided in the Nebraska
15 Revenue Act of 1967; or

16 (e) The amount charged for warranties, guarantees, or
17 maintenance agreements.

18 (2) Gross receipts of every person engaged as a public
19 utility specified in this subsection or as a community antenna
20 television service operator or any person involved in connecting
21 and installing services defined in subdivision (2)(a), (b), or (d)
22 of this section shall mean:

23 (a) In the furnishing of telephone communication service,
24 other than mobile telecommunications service as described in
25 section 77-2706.02, the gross income received from furnishing local

1 exchange telephone service and intrastate message toll telephone
2 service. In the furnishing of mobile telecommunications service
3 as described in section 77-2706.02, the gross income received
4 from furnishing mobile telecommunications service that originates
5 and terminates in the same state to a customer with a place
6 of primary use in Nebraska. Gross receipts shall not mean (i)
7 the gross income, including division of revenue, settlements, or
8 carrier access charges received on or after January 1, 1984, from
9 the sale of a telephone communication service to a communication
10 service provider for purposes of furnishing telephone communication
11 service or (ii) the gross income attributable to services rendered
12 using a prepaid telephone calling arrangement. For purposes of
13 this subdivision, a prepaid telephone calling arrangement shall
14 mean the right to exclusively purchase telecommunications service
15 that is paid for in advance that enables the origination of calls
16 using an access number or authorization code, whether manually or
17 electronically dialed;

18 (b) In the furnishing of telegraph service, the gross
19 income received from the furnishing of intrastate telegraph
20 services;

21 (c) In the furnishing of gas, electricity, sewer, and
22 water service except water used for irrigation of agricultural
23 lands and manufacturing purposes, the gross income received from
24 the furnishing of such services upon billings or statements
25 rendered to consumers for such utility services; and

1 (d) In the furnishing of community antenna television
2 service, the gross income received from the furnishing of such
3 community antenna television service as regulated under sections
4 18-2201 to 18-2205 or 23-383 to 23-388.

5 Gross receipts shall also mean gross income received from
6 the provision, installation, construction, servicing, or removal of
7 property used in conjunction with the furnishing, installing, or
8 connecting of any public utility services specified in subdivision
9 (2)(a) or (b) of this section or community antenna television
10 service specified in subdivision (2)(d) of this section. Gross
11 receipts shall not mean gross income received from telephone
12 directory advertising.

13 (3) Gross receipts of every person engaged in selling,
14 leasing, or otherwise providing intellectual or entertainment
15 property shall mean:

16 (a) In the furnishing of computer software, the gross
17 income received, including the charges for coding, punching, or
18 otherwise producing computer software and the charges for the
19 tapes, disks, punched cards, or other properties furnished by the
20 seller; and

21 (b) In the furnishing of videotapes, movie film,
22 satellite programming, satellite programming service, and satellite
23 television signal descrambling or decoding devices, the gross
24 income received from the license, franchise, or other method
25 establishing the charge except the gross income received from

1 videotape and film rentals, satellite programming, and satellite
2 programming service when the sales tax or the admission tax is
3 charged under the Nebraska Revenue Act of 1967 and except as
4 provided in section 77-2704.39.

5 (4) Gross receipts for providing a service shall mean:

6 (a) The gross income received for building cleaning and
7 maintenance, pest control, and security;

8 (b) The gross income received for motor vehicle washing,
9 waxing, towing, and painting;

10 (c) The gross income received for computer software
11 training;

12 (d) The gross income received for installing and applying
13 tangible personal property if the sale of the property is subject
14 to tax;

15 (e) The gross income received for labor by a contractor
16 except as provided in section 77-2704.55;

17 (f) The gross income received for services of
18 recreational vehicle parks;

19 (g) The gross income received for labor for repair or
20 maintenance services performed with regard to tangible personal
21 property the sale of which would be subject to sales and use
22 taxes, excluding motor vehicles, except as otherwise provided in
23 subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

24 (h) The gross income received for animal specialty
25 services except (i) veterinary services and (ii) specialty services

1 performed on livestock as defined in section 54-183; and

2 (i) The gross income received for detective services.

3 (5) Gross receipts shall not include any of the
4 following:

5 (a) Cash discounts allowed and taken on sales;

6 (b) The amount of any rebate granted by a motor vehicle
7 or motorboat manufacturer or dealer at the time of sale of the
8 motor vehicle or motorboat, which rebate functions as a discount
9 from the sales price of the motor vehicle or motorboat;

10 (c) Sales price of property or services returned or
11 rejected by customers when the full sales price is refunded either
12 in cash or credit;

13 (d) The amount charged for finance charges, carrying
14 charges, service charges, or interest from credit extended on sales
15 of property or services under contracts providing for deferred
16 payments of the purchase price if such charges are not used as a
17 means of avoiding imposition of the tax upon the actual sales price
18 of the property or services;

19 (e) The value of property taken by a seller in trade as
20 all or a part of the consideration for a sale of property of any
21 kind or nature;

22 (f) The value of a motor vehicle or motorboat taken by
23 any person in trade as all or a part of the consideration for a
24 sale of another motor vehicle or motorboat;

25 (g) Receipts from conditional sale contracts, installment

1 sale contracts, rentals, and leases executed in writing prior to
2 June 1, 1967, and with delivery of the property prior to June
3 1, 1967, if such conditional sale contracts, installment sale
4 contracts, rentals, or leases are for a fixed price and are not
5 subject to negotiation or alteration; ~~or~~

6 (h) Except as provided in subsection (2) of this section,
7 until October 1, 2002, the amount charged for labor or services
8 rendered in installing or applying the property sold if such amount
9 is separately stated and such separate statement is not used as a
10 means of avoiding imposition of the tax upon the actual sales price
11 of the property.

12 (6) Subsections (1) through (6) of this section terminate
13 on January 1, 2004.

14 (7) Gross receipts means the total amount of the sale or
15 lease or rental price, as the case may be, of the retail sales of
16 retailers.

17 (8) Gross receipts of every person engaged as a public
18 utility specified in this subsection or as a community antenna
19 television service operator or any person involved in connecting
20 and installing services defined in subdivision (8)(a), (b), or (d)
21 of this section means:

22 (a)(i) In the furnishing of telephone communication
23 service, other than mobile telecommunications service as described
24 in section 77-2703.04, the gross income received from furnishing
25 local exchange telephone service and intrastate message toll

1 telephone service; and

2 (ii) In the furnishing of mobile telecommunications
3 service as described in section 77-2703.04, the gross income
4 received from furnishing mobile telecommunications service that
5 originates and terminates in the same state to a customer with a
6 place of primary use in Nebraska;

7 (b) In the furnishing of telegraph service, the gross
8 income received from the furnishing of intrastate telegraph
9 services;

10 (c) In the furnishing of gas, electricity, sewer, and
11 water service, the gross income received from the furnishing of
12 such services upon billings or statements rendered to consumers for
13 such utility services;

14 (d) In the furnishing of community antenna television
15 service, the gross income received from the furnishing of such
16 community antenna television service as regulated under sections
17 18-2201 to 18-2205 or 23-383 to 23-388; and

18 (e) The gross income received from the provision,
19 installation, construction, servicing, or removal of property used
20 in conjunction with the furnishing, installing, or connecting of
21 any public utility services specified in subdivision (8)(a) or (b)
22 of this section or community antenna television service specified
23 in subdivision (8)(d) of this section, except when acting as a
24 subcontractor for a public utility, this subdivision does not
25 apply to the gross income received by a contractor electing to be

1 treated as a consumer of building materials under subdivision (2)
2 or (3) of section 77-2701.10 for any such services performed on the
3 customer's side of the utility demarcation point.

4 (9) Gross receipts of every person engaged in selling,
5 leasing, or otherwise providing intellectual or entertainment
6 property means:

7 (a) In the furnishing of computer software, the gross
8 income received, including the charges for coding, punching, or
9 otherwise producing any computer software and the charges for the
10 tapes, disks, punched cards, or other properties furnished by the
11 seller; and

12 (b) In the furnishing of videotapes, movie film,
13 satellite programming, satellite programming service, and satellite
14 television signal descrambling or decoding devices, the gross
15 income received from the license, franchise, or other method
16 establishing the charge.

17 (10) Gross receipts for providing a service means:

18 (a) The gross income received for building cleaning and
19 maintenance, pest control, and security;

20 (b) The gross income received for motor vehicle washing,
21 waxing, towing, and painting;

22 (c) The gross income received for computer software
23 training;

24 (d) The gross income received for installing and applying
25 tangible personal property if the sale of the property is subject

1 to tax;

2 (e) The gross income received for services of
3 recreational vehicle parks;

4 (f) The gross income received for labor for repair or
5 maintenance services performed with regard to tangible personal
6 property the sale of which would be subject to sales and use taxes,
7 excluding motor vehicles, except as otherwise provided in section
8 77-2704.26 or 77-2704.50;

9 (g) The gross income received for animal specialty
10 services except (i) veterinary services and (ii) specialty services
11 performed on livestock as defined in section 54-183; and

12 (h) The gross income received for detective services.

13 (11) Gross receipts includes the sale of admissions which
14 means the right or privilege to have access to or to use a place
15 or location. An admission includes a membership that allows access
16 to or use of a place or location, but which membership does not
17 include the right to hold office, vote, or change the policies of
18 the organization. When an admission to an activity or a membership
19 constituting an admission pursuant to this subsection is combined
20 with the solicitation of a contribution, the portion or the amount
21 charged representing the fair market price of the admission shall
22 be considered a retail sale subject to the tax imposed by section
23 77-2703. The organization conducting the activity shall determine
24 the amount properly attributable to the purchase of the privilege,
25 benefit, or other consideration in advance, and such amount shall

1 be clearly indicated on any ticket, receipt, or other evidence
2 issued in connection with the payment.

3 (12) Gross receipts includes the sale of live plants
4 incorporated into real estate except when such incorporation is
5 incidental to the transfer of an improvement upon real estate or
6 the real estate.

7 (13) Gross receipts includes the sale of any building
8 materials annexed to real estate by a person electing to be taxed
9 as a retailer pursuant to subdivision (1) of section 77-2701.10.

10 (14) Gross receipts includes the sale of prepaid
11 telephone calling arrangements and the recharge of prepaid
12 telephone calling arrangements. If the sale or recharge of a
13 prepaid telephone calling arrangement does not take place at
14 the vendor's place of business, the sale or recharge shall be
15 conclusively determined to take place at the customer's shipping
16 address or, if there is no item shipped, at the customer's
17 billing address. For purposes of this subsection, a prepaid
18 telephone calling arrangement means the right to exclusively
19 purchase telecommunications services that are paid for in advance
20 that enables the origination of calls using an access number or
21 authorization code, whether manually or electronically dialed.

22 (15) Gross receipts does not include:

23 (a) The amount of any rebate granted by a motor vehicle
24 or motorboat manufacturer or dealer at the time of sale of the
25 motor vehicle or motorboat, which rebate functions as a discount

1 from the sales price of the motor vehicle or motorboat; ~~or~~

2 (b) The price of property or services returned or
3 rejected by customers when the full sales price is refunded
4 either in cash or credit; or -

5 (c) Receipts from the sale, lease, or rental of any
6 eligible energy conservation improvement to an eligible person
7 under the Low-Income Home Energy Conservation Act.

8 (16) Subsections (7) through (15) of this section become
9 operative on January 1, 2004.

10 (17) The Tax Commissioner shall hold a hearing on rules
11 and regulations to carry out the changes made to this section by
12 Laws 2003, LB 759. It is the intent of the Legislature that the Tax
13 Commissioner adopt and promulgate rules and regulations to carry
14 out such changes.

15 Sec. 11. Section 77-27,132, Revised Statutes Supplement,
16 2007, is amended to read:

17 77-27,132 (1) There is hereby created a fund to be
18 designated the Revenue Distribution Fund which shall be set apart
19 and maintained by the Tax Commissioner. Revenue not required to be
20 credited to the General Fund or any other specified fund may be
21 credited to the Revenue Distribution Fund. Credits and refunds of
22 such revenue shall be paid from the Revenue Distribution Fund. The
23 balance of the amount credited, after credits and refunds, shall be
24 allocated as provided by the statutes creating such revenue.

25 (2) The Tax Commissioner shall pay to a depository bank

1 designated by the State Treasurer all amounts collected under the
2 Nebraska Revenue Act of 1967. The Tax Commissioner shall present
3 to the State Treasurer bank receipts showing amounts so deposited
4 in the bank, and of the amounts so deposited the State Treasurer
5 shall credit to the Highway Trust Fund all of the proceeds of the
6 sales and use taxes derived from the sale or lease for periods
7 of more than thirty-one days of motor vehicles, trailers, and
8 semitrailers, except that (a) twenty percent of the sales and
9 use tax proceeds received each year from an eligible entity as
10 described in subdivision (1)(a) of section 4 of this act shall
11 be credited to the Energy Conservation Improvement Fund created
12 pursuant to such section and (b) the proceeds equal to any sales
13 tax rate provided for in section 77-2701.02 that is in excess of
14 five percent derived from the sale or lease for periods of more
15 than thirty-one days of motor vehicles, trailers, and semitrailers
16 shall be credited to the Highway Allocation Fund. The balance of
17 all amounts collected under the Nebraska Revenue Act of 1967 shall
18 be credited to the General Fund.

19 Sec. 12. Original sections 77-2701.16 and 77-27,132,
20 Revised Statutes Supplement, 2007, are repealed.

21 Sec. 13. Since an emergency exists, this act takes effect
22 when passed and approved according to law.