

# **State of Nebraska**

# **2019**

# **Interim Tax Expenditure**

# **Report**

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**DEPARTMENT OF REVENUE**

**October 15, 2019**

# Introduction

This 2019 Interim Tax Expenditure Report and Summary is published by the Nebraska Department of Revenue (DOR), pursuant to the Tax Expenditure Reporting Act, [Neb. Rev. Stat. §§ 77-379 through 77-385](#). This report provides a review of tax and fee (tax) expenditures to enable the Legislature to better determine those sectors of the economy that are receiving indirect subsidies as a result of tax expenditures. This Interim Report provides updated estimates for that portion of the sales tax exemptions found in [Neb. Rev. Stat. § 77-382\(2\)\(d\) to \(f\)](#). The full Tax Expenditure Report is published biennially during even-numbered years.

A “tax expenditure” is defined as a revenue reduction that occurs in the tax base of the state or a political subdivision as a result of an exemption, deduction, exclusion, tax deferral, credit, or preferential rate introduced into the tax structure. See [Neb. Rev. Stat. § 77-381\(1\)](#).

This report is submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Legislature’s Revenue and Appropriations Committees. This report is also available on DOR’s website at [revenue.nebraska.gov](http://revenue.nebraska.gov).

Questions and comments regarding the format, content, and usefulness of the information provided in this report may be directed to Lydia Brasch, Legislative Coordinator, at [lydia.brasch@nebraska.gov](mailto:lydia.brasch@nebraska.gov) or 402-471-5679.



Tony Fulton  
Tax Commissioner

October 15, 2019

# Nebraska Tax Expenditure Reporting Requirements

## Neb. Rev. Stat. § 77-379 provides:

Sections 77-379 to 77-385 shall be known and may be cited as the Tax Expenditure Reporting Act.

## Neb. Rev. Stat. § 77-380 provides:

It is the intent of sections 77-202.03 and 77-380 to 77-385 to provide a mechanism which will enable the Legislature to better determine those sectors of the economy which are receiving indirect subsidies as a result of tax expenditures. The Legislature recognizes that the present budgeting system fails to accurately and totally reflect the revenue lost due to such tax expenditures and that as a result undetermined amounts of potential revenue are escaping public or legislative scrutiny. The loss of such potential revenue causes a narrowing of the tax base which in turn forces higher tax rates on the remaining tax base.

## Neb. Rev. Stat. § 77-381 provides:

For purposes of the Tax Expenditure Reporting Act, unless the context otherwise requires:

- (1) Tax expenditure shall mean a revenue reduction that occurs in the tax base of the state or a political subdivision as the result of an exemption, deduction, exclusion, tax deferral, credit, or preferential rate introduced into the tax structure;
- (2) Department shall mean the Department of Revenue;
- (3) Income tax shall mean the tax imposed upon individuals and corporations under the Nebraska Revenue Act of 1967;
- (4) Sales tax shall mean the tax imposed upon expenditures under the Nebraska Revenue Act of 1967;
- (5) Property tax shall mean the tax imposed upon real and personal property under Chapter 77; and
- (6) Miscellaneous tax shall mean revenue sources other than income, sales, and property taxes for state and local government including, but not limited to, motor fuel taxes, liquor taxes, cigarette taxes, inheritance and estate taxes, generation-skipping transfer taxes, insurance premium taxes, and occupation taxes and fees or other taxes which generate state or local revenue annually in excess of two million dollars.

## Neb. Rev. Stat. § 77-382 provides:

(1) The department shall prepare a tax expenditure report describing (a) the basic provisions of the Nebraska tax laws, (b) the actual or estimated revenue loss caused by the exemptions, deductions, exclusions, deferrals, credits, and preferential rates in effect on July 1 of each year and allowed under Nebraska's tax structure and in the property tax, (c) the actual or estimated revenue loss caused by failure to impose sales and use tax on services purchased for nonbusiness use, and (d) the elements which make up the tax base for state and local income, including income, sales and use, property, and miscellaneous taxes.

(2) The department shall review the major tax exemptions for which state general funds are used to reduce the impact of revenue lost due to a tax expenditure. The report shall indicate an estimate of the amount of the reduction in revenue resulting from the operation of all tax expenditures. The report shall list each tax expenditure relating to sales and use tax under the following categories:

- (a) Agriculture, which shall include a separate listing for the following items: Agricultural machinery; agricultural chemicals; seeds sold to commercial producers; water for irrigation and manufacturing; commercial artificial insemination; mineral oil as dust suppressant; animal grooming; oxygen for use in aquaculture; animal life whose products constitute food for human consumption; and grains;

- (b) Business across state lines, which shall include a separate listing for the following items: Property shipped out-of-state; fabrication labor for items to be shipped out-of-state; property to be transported out-of-state; property purchased in other states to be used in Nebraska; aircraft delivery to an out-of-state resident or business; state reciprocal agreements for industrial machinery; and property taxed in another state;
- (c) Common carrier and logistics, which shall include a separate listing for the following items: Railroad rolling stock and repair parts and services; common or contract carriers and repair parts and services; common or contract carrier accessories; and common or contract carrier safety equipment;
- (d) Consumer goods, which shall include a separate listing for the following items: Motor vehicles and motorboat trade-ins; merchandise trade-ins; certain medical equipment and medicine; newspapers; laundromats; telefloral deliveries; motor vehicle discounts for the disabled; and political campaign fundraisers;
- (e) Energy, which shall include a separate listing for the following items: Motor fuels; energy used in industry; energy used in agriculture; aviation fuel; and minerals, oil, and gas severed from real property;
- (f) Food, which shall include a separate listing for the following items: Food for home consumption; Supplemental Nutrition Assistance Program; school lunches; meals sold by hospitals; meals sold by institutions at a flat rate; food for the elderly, handicapped, and Supplemental Security Income recipients; and meals sold by churches;
- (g) General business, which shall include a separate listing for the following items: Component and ingredient parts; manufacturing machinery; containers; film rentals; molds and dies; syndicated programming; intercompany sales; intercompany leases; sale of a business or farm machinery; and transfer of property in a change of business ownership;
- (h) Lodging and shelter, which shall include a separate listing for the following item: Room rentals by certain institutions;
- (i) Miscellaneous, which shall include a separate listing for the following items: Cash discounts and coupons; separately stated finance charges; casual sales; lease-to-purchase agreements; and separately stated taxes;
- (j) Nonprofits, governments, and exempt entities, which shall include a separate listing for the following items: Purchases by political subdivisions of the state; purchases by churches and nonprofit colleges and medical facilities; purchasing agents for public real estate construction improvements; contractor as purchasing agent for public agencies; Nebraska lottery; admissions to school events; sales on Native American Indian reservations; school-supporting fundraisers; fine art purchases by a museum; purchases by the Nebraska State Fair Board; purchases by the Nebraska Investment Finance Authority and licensees of the State Racing Commission; purchases by the United States Government; public records; and sales by religious organizations;
- (k) Recent sales tax expenditures, which shall include a separate listing for each sales tax expenditure created by statute or rule and regulation after July 19, 2012;
- (l) Services purchased for nonbusiness use, which shall include a separate listing for each such service, including, but not limited to, the following items: Motor vehicle cleaning, maintenance, and repair services; cleaning and repair of clothing; cleaning, maintenance, and repair of other tangible personal property; maintenance, painting, and repair of real property; entertainment admissions; personal care services; lawn care, gardening, and landscaping services; pet-related services; storage and moving services; household utilities; other personal services; taxi, limousine, and other

transportation services; legal services; accounting services; other professional services; and other real estate services; and

(m) Telecommunications, which shall include a separate listing for the following items: Telecommunications access charges; prepaid calling arrangements; conference bridging services; and nonvoice data services.

(3) It is the intent of the Legislature that nothing in the Tax Expenditure Reporting Act shall cause the valuation or assessment of any property exempt from taxation on the basis of its use exclusively for religious, educational, or charitable purposes.

**Neb. Rev. Stat. § 77-383 provides:**

The department may request from any state or local official or agency any information necessary to complete the reports required under § 77-382 and subsection (2) of § 77-385. All state and local officials or agencies shall cooperate with the department with respect to any such request.

**Neb. Rev. Stat. § 77-385 provides:**

(1) The report required under § 77-382 and a summary of the report shall be submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Legislature's Revenue and Appropriations Committees on or before October 15, 1991, and October 15 of every even-numbered year thereafter. The report submitted to the executive board and the committees shall be submitted electronically. The department shall, on or before December 1 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request. The summary shall be included with or appended to the Governor's budget presented to the Legislature in odd-numbered years.

(2)(a) In addition to the tax expenditure report required under § 77-382, the department shall prepare an annual report that focuses specifically on the tax expenditures relating to sales and use tax as follows:

(i) For 2014 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(a) through (c) of § 77-382;

(ii) For 2015 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(d) through (f) of § 77-382;

(iii) For 2016 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(g) through (j) of § 77-382; and

(iv) For 2017 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(k) through (m) of § 77-382.

(b) The report required under this subsection shall be submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Revenue Committee of the Legislature and the Appropriations Committee of the Legislature on or before October 15 of each year. The report submitted to the executive board and the committees shall be submitted electronically. The department shall, on or before December 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

# **Nebraska and Local Sales and Use Taxes**

## **Basic Provisions and Tax Base**

### **Sales Tax<sup>1</sup>**

Nebraska sales tax is imposed upon the gross receipts from:

- All sales, leases, rentals, installation, application, and repair of tangible personal property, except for repair labor on motor vehicles;
- Providing public utilities, cable services, or satellite services;
- Selling intellectual or entertainment property;
- Selling admissions, bundled transactions, prepaid calling arrangements, or specified digital products;
- Selling warranties, guarantees, service agreements, and maintenance agreements on taxable property;
- Renting or furnishing accommodations or lodging for periods of less than 30 days; and
- Selling or providing certain services.

The state sales tax rate is 5.5%.

Property is defined as all tangible and intangible property (including rights, licenses, franchises) that is subject to tax; and any services that are subject to tax.

### **Use Tax<sup>1</sup>**

Use tax is a complement to the sales tax and is imposed upon the storage, use, distribution, or other consumption of all tangible personal property, and taxable sales of intangible property, services, bundled transactions, or specified digital products purchased at retail when the sales tax has not been paid.

### **Local Sales and Use Taxes**

Any Nebraska county or incorporated municipality (city) may impose a local sales and use tax upon approval by a majority of their voters in a regular election. The local tax applies to the identical transactions subject to the state sales and use tax, with the exception of direct-to-home satellite programming, which is exempt from local, but not state sales taxes under federal law. Local sales taxes of 0.5%, 1%, 1.5%, 1.75%, and 2% may be approved by municipal voters, except in cities of the metropolitan class, which are limited to a local sales tax rate of 0.5%, 1%, or 1.5%. Voters in counties may also impose a local sales tax of 0.5%, 1%, or 1.5%. Unless the county sales tax is to satisfy a judgment that is in excess of \$25 million, the county sales tax applies only to transactions sourced in areas in the county that are outside municipalities with a local sales tax. The tax is collected and remitted to the state and is then remitted to the municipalities and counties after deducting refunds and a 3% administrative fee. The 3% fee from municipalities is deposited in the Municipal Equalization Fund; the 3% fee from counties is deposited in the State General Fund.

Sources are listed for most estimates provided in Section A. The data sources cited in each category provide the raw data and are analyzed by DOR to arrive at the estimates. Some estimates are based on confidential DOR return information, so a data source is not provided. In some cases, no reliable data exists to provide an estimate, and is listed as "not available."

For 2019 and each fourth year thereafter, [Neb. Rev. Stat. § 77-385\(2\)\(a\)\(ii\)](#) requires DOR to analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(d) through (f) of [§ 77-382](#). These are the Consumer Goods, Energy, and Food sections of the full Tax Expenditure Report. This report satisfies the requirements of that section.

<sup>1</sup>The taxes collected are deposited into four funds: the State General Fund; the Highway Trust Fund, the State Highway Capital Improvement Fund, and the Game and Parks Commission Capital Maintenance Fund. Deposits to the Highway Trust Fund are made from the sales and use taxes derived from sales and leases of motor vehicles, trailers, and semi-trailers registered in Nebraska. The balance of taxes collected is deposited into the State General Fund. The proceeds from 1/4 of one cent of the sales tax is deposited in the State Highway Capital Improvement Fund. The proceeds from sales or leases of motorboats, all-terrain vehicle, and utility-type vehicles are deposited in the Game and Parks Commission Capital Maintenance Fund.

# Consumer Goods

## 1. Motor Vehicle/Motorboat Trade-ins

**Statutory citation:** [77-2701.35\(3\)\(e\)\(ii\)](#)

**Enacted:** 1967

**Description:** The value of a motor vehicle, motorboat, all-terrain vehicle, or utility-type vehicle taken by any person in trade as all or part of the consideration for a sale of another motor vehicle, motorboat, all-terrain vehicle, or utility-type vehicle.

**Estimate:** \$69,773,000

**Data source:** Nebraska Department of Motor Vehicles

## 2. Merchandise Trade-ins

**Statutory citation:** [77-2701.35\(3\)\(e\)\(i\)](#)

**Enacted:** 1967

**Description:** The value of trade-ins taken in connection with a sale of property.

**Estimate:** Not available

**Data source:** Not available

## 3. Certain Medical Equipment and Medicine

**Statutory citation:** [77-2704.09\(1\)](#)

**Enacted:** 1967

**Description:** Insulin, prescription drugs, mobility-enhancing equipment, drugs sold under a doctor's prescription, and durable medical equipment, home medical supplies, prosthetic devices, oxygen, and any oxygen equipment for a patient's use sold under a doctor's prescription and are eligible for coverage by Medicaid.

**Estimate:** \$185,912,000

**Data source:** U.S. Department of Health and Human Services, Center for Medicare Services, Office of the Actuary

## 4. Newspapers

**Statutory citation:** [77-2704.07](#)

**Enacted:** 1967

**Description:** Newspapers issued at least once a week; and newspaper advertising supplements distributed with newspapers.

**Estimate:** \$3,249,000

**Data source:** U.S. Census Bureau, Annual Services Survey

## 5. Laundromats

**Statutory citation:** [77-2704.14](#)

**Enacted:** 1967

**Description:** The use of coin-operated machines for laundering and cleaning, except for washing motor vehicles.

**Estimate:** \$565,000

**Data source:** U.S. Census Bureau, Economic Census; Annual Services Survey

## 6. Tele-floral Deliveries

**Regulation:** [1-052.03](#)

**Description:** Amounts received by Nebraska florists who make deliveries in this state pursuant to instructions received from florists in other states.

**Estimate:** \$215,200

**Data source:** Nebraska Department of Revenue sales and use tax records

## **7. Motor Vehicle Discounts for the Disabled**

**Statutory citation:** [77-2704.21](#)

**Enacted:** 1969

**Description:** The entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the U.S. Department of Veterans Affairs or the Nebraska Department of Health and Human Services for a disabled person. If the amount contributed is less than the maximum amount, the exemption is based on the portion of the purchase price contributed.

**Estimate:** \$18,000

**Data source:** U.S. Department of Veterans Affairs

## **8. Political Campaign Fundraisers**

**Statutory citation:** [77-2704.10\(4\)](#)

**Enacted:** 1993

**Description:** Fees and admissions charged for political events by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act.

**Estimate:** Not available

**Data source:** Not available

# Energy

## **9. Motor Fuels**

**Statutory citation:** [77-2704.05](#)

**Enacted:** 1967

**Description:** Motor vehicle fuels such as gasoline, including casing head or natural gasoline, and any other liquids or gases for use in motor vehicles or motorboats; diesel and compressed fuels delivered into the fuel supply tanks of other vehicles; or for railroad use.

**Estimate:** \$215,655,000

**Data source:** Nebraska Department of Revenue; U.S. Department of Energy, Energy Information Administration

## **10. Energy Used in Industry**

**Statutory citation:** [77-2704.13\(2\)](#)

**Enacted:** 1967; amended in 1985 to limit the exemption to situations where more than 50% of the energy is used for certain industries.

**Description:** Sales and purchases of the energy sources in [§ 77-2704.13\(1\)](#) when more than 50% of the amount purchased is for use directly in processing, manufacturing, or refining, in the generation of electricity, in the compression of natural gas for retail sale as a vehicle fuel, or by any hospital.

**Estimate:** \$107,650,000

**Data source:** U.S. Department of Energy, Energy Information Administration, State Energy Price and Expenditure Report

## **11. Energy Used in Agriculture**

**Statutory citation:** [77-2704.13\(1\)](#)

**Enacted:** 1967; amended in 1985 to limit the exemption to situations where more than 50% of the energy is used directly in irrigation or farming (wood and corn as fuel sources were added in 2009).

**Description:** Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, butane, wood as fuel, and corn as fuel when more than 50% of the amount purchased is for use directly in irrigation or farming.

**Estimate:** \$60,027,000

**Data source:** U.S. Department of Agriculture, Agricultural Census

- 12. Aviation Fuel**  
**Statutory citation:** [77-2704.03](#)  
**Enacted:** 1967  
**Description:** Fuel for use in aircraft, specifically aviation gasoline and jet fuel.  
**Estimate:** \$7,314,000  
**Data source:** Nebraska Department of Revenue; U.S. Department of Energy, Energy Information Administration
- 13. Minerals, Oil, and Gas Severed from Real Property**  
**Statutory citation:** [77-2704.04](#)  
**Enacted:** 1967  
**Description:** Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of minerals, oil, and gas.  
**Estimate:** \$6,577,000  
**Data source:** Nebraska Department of Revenue, Form 61 returns
- 14. Net Metering of Electricity**  
**Statutory citation:** [77-2701.16\(2\)\(c\)\(ii\)](#)  
**Enacted:** 2013  
**Description:** A customer-generator's electricity production will be netted against their electricity consumption for the purpose of determining the customer-generator's sales tax liability.  
**Estimate:** \$49,600  
**Data Source:** U.S. Department of Energy, Energy Information Administration
- 15. Community-Based Energy Development (C-BED) Projects**  
**Statutory citation:** [77-2704.57](#)  
**Enacted:** 2014  
**Description:** Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project.  
**Estimate:** \$816,139  
**Data Source:** Nebraska Department of Revenue, Renewable Energy Generation Facilities Operating in Nebraska.
- 16. Energy Used to Compress Natural Gas for Fuel**  
**Statutory citation:** [77-2704.13](#)  
**Enacted:** 2014  
**Description:** Sales and use taxes shall not be imposed on energy sources or fuels when more than 50% of the amount purchased is for use directly in processing manufacturing, or refining, in the generation of electricity, in the compression of natural gas for retail sale as a vehicle fuel, or by any hospital.  
**Estimate:** Not available  
**Data source:** Not available

## Food

### 17. Food or Food Ingredients (including but not limited to, food for home consumption)

**Statutory citation:** [77-2704.24](#)

**Enacted:** 1983

**Description:** Food or food ingredients, except prepared food and food sold through vending machines.

Estimate excludes Supplemental Nutrition Assistance Program purchases.

**Estimate:** \$192,137,000

**Data source:** U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditure Survey

### 18. Supplemental Nutrition Assistance Program (SNAP) – formerly “food stamps”

**Statutory citation:** [77-2704.54](#)

**Enacted:** 1983

**Description:** Food or food ingredients that are purchased by electronic benefits transfer or with food coupons.

**Estimate:** \$12,419,000

**Data source:** U.S. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program

**Note:** State taxation is prohibited by federal law.

### 19. Prepared Food Sold by Schools

**Statutory citation:** [77-2704.10\(1\)](#)

**Enacted:** 1967

**Description:** Prepared food, including soft drinks and candy, 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 school or institution. However, this exemption does not apply to sales at any facility or function that is open to the general public, except that concession sales by elementary and secondary schools, public or private, are exempt.

**Estimate:** \$9,416,000

**Data source:** Nebraska Department of Education, Annual Financial Report; University of Nebraska room and board rates; National Center for Education Statistics

### 20. Prepared Food Sold by Hospitals

**Statutory citation:** [77-2704.10\(3\)](#)

**Enacted:** 1967

**Description:** Prepared food, including soft drinks and candies, for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State of Nebraska for care of human beings.

**Estimate:** \$750,000

**Data source:** U.S. Census Bureau, Economic Census

### 21. Prepared Food Sold by Institutions at a Flat Rate

**Regulations:** [1-083.09, 1-083.10](#)

**Description:** Prepared food furnished at fraternities, sororities, cooperative student societies, and summer camps that charge a single amount to attend.

**Estimate:** \$1,309,000

**Data source:** U.S. Census Bureau, Economic Census

**Note:** Educational institutions are included in #19 above.

**22. Prepared Food for Elderly, Handicapped, and Supplemental Security Income Recipients**

**Statutory citation:** [77-2704.10\(5\)](#)

**Enacted:** 2003

**Description:** Prepared food sold to the elderly, handicapped, or recipients of Supplemental Security Income by an organization that accepts SNAP or food coupons under regulations issued by the U.S. Department of Agriculture, although it is not necessary for the purchaser to use SNAP or food coupons to pay for the meal.

**Estimate:** \$41,000

**Data source:** Internal Revenue Service Exempt Organizations Business Master File via National Center for Charitable Statistics; Meals on Wheels Association of America

**23. Prepared Food Sold by Churches**

**Statutory citation:** [77-2704.10\(2\)](#)

**Enacted:** 1967

**Description:** Prepared food, including soft drinks and candies, for human consumption when sold by a church at a church function.

**Estimate:** Not available

**Data source:** Not available