

NEBRASKA ADMINISTRATIVE CODE

**Title 350 – Nebraska Department of Revenue, Property Assessment Division
Chapter 40 – Property Tax Exemption Regulations
Effective Date – 7-3-2013**

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**Title 350 – Nebraska Department of Revenue, Property Assessment Division
Chapter 40 – Property Tax Exemption Regulations**

REG-40-001 PURPOSE

These regulations govern property tax exemptions of certain real and personal property as authorized by the Constitution and laws of the State of Nebraska.

Neb. Rev. Stat. §§ 77-702, and 77-702. July 3, 2013.

REG-40-002 GENERAL RULES APPLICABLE TO PROPERTY TAX EXEMPTIONS

002.01 All property in the State is subject to property tax unless an exemption is mandated or permitted by the Nebraska Constitution and enabling legislation is adopted by the Legislature. Federal law may supersede the Nebraska Constitution with regard to taxation of property owned by the federal government or its agencies or instrumentalities.

002.02 Property tax exemptions are to be strictly construed and the burden of proof is on the party seeking an exemption to show that the property is eligible for exemption. Property tax exemptions may be allowed based on the inherent nature of the property, the ownership of the property, the use of the property, or a combination of these factors.

002.03 The following property is exempt from property taxes:

002.03A Property owned by the state and its governmental subdivisions that is used or being developed for use for a public purpose. See Chapter 15, Property Owned by the State and Governmental Subdivisions Regulations;

002.03B Property owned by and used exclusively for agricultural and horticultural societies;

002.03C Property owned by educational, religious, charitable, or cemetery organizations or any organization created for the exclusive benefit of any qualified organization, and used exclusively for educational, religious, charitable, or cemetery purposes. The property cannot be (1) owned or used for financial gain or profit to either the owner or user, (2) used for the sale of alcoholic liquors for more than 20 hours per week, or (3) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin;

002.03D Household goods and personal effects not owned or used for financial gain or profit to either the owner or user;

002.03E The increased value of land by reason of shade and ornamental trees planted along the highway;

002.03F Non-depreciable tangible personal property;

002.03G Motor vehicles required to be registered for operation on the highways of this state;

002.03H Business and agricultural inventory which includes personal property owned for purposes of leasing or renting the property to others for financial gain only if the personal property (1) is leased or rented 30 days or less, in the ordinary course of business, (2) may be returned at the option of the lessee or renter at any time, and (3) is considered household goods or personal effects if owned by an individual;

002.03I Certain depreciable tangible personal property for a specified period of time when a taxpayer has signed an agreement pursuant to the Employment and Investment Growth Act or the Nebraska Advantage Act;

002.03J Livestock, which includes all animals or other living creatures used or raised for profit;

002.03K Depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source, such as in certain wind energy generation facilities that are commissioned or in commercial operation; and

002.03L Personal property that is assembled, engineered, or processed as part of a data center, for the purpose of subsequent use at a physical location outside this state. Data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information.

Neb. Rev. Stat. §§ 77-702, and 77-702. July 3, 2013.

REG-40-003 GOVERNMENTAL PROPERTY TAX EXEMPTIONS

003.01 Real and personal property owned by the State and its governmental subdivisions that is used, or being developed for use, for a public purpose is exempt from property tax. Property of other states or their governmental subdivisions located in Nebraska is subject to property tax.

003.02 Taxation of property owned by the United States government and its agencies or instrumentalities is governed by federal law. This property is exempt unless a specific act of Congress subjects it to the state's taxing authority.

Neb. Rev. Stat. §§ 77-702, and 77-702. July 3, 2013.

REG-40-004 AGRICULTURAL AND HORTICULTURAL SOCIETY PROPERTY TAX EXEMPTIONS

004.01 Property owned by and used exclusively by agricultural and horticultural societies is exempt from property tax. A society must be the owner of the property and the exclusive use of the property must be one that will qualify the property for exemption.

004.02 Exclusive use means the predominant or primary use of the property as opposed to incidental use. The exemption will not be lost if the property is used in an occasional or incidental manner, as long as the predominant or primary use of the property is for one or more of the exempt uses.

004.03 An agricultural and horticultural society is a nonprofit organization promoting agricultural interests and includes, but is not necessarily limited to: the Nebraska State Board of Agriculture established by Chapter 2, article 1; county agricultural societies organized pursuant to Chapter 2, article 2; agricultural associations organized pursuant to Chapter 2, article 20; and, agricultural organizations organized pursuant to Chapter 2, article 28.

004.03A An agricultural and horticultural society does not include an association which devotes a substantial part of its activities to attempting to influence legislation, or which provides money, services, or endorsements to influence any political campaign for public office.

Neb. Rev. Stat. §§ 77-702, and 77-702. July 3, 2013.

REG-40-005 EDUCATIONAL, RELIGIOUS, CHARITABLE, AND CEMETERY PROPERTY TAX EXEMPTIONS

005.01 A five part statutory test is used to determine eligibility for educational, religious, charitable, and cemetery property tax exemptions. The five mandated criteria are ownership, exclusive use, no financial gain or profit, restricted alcoholic liquor sales, and prohibited discrimination. The property must meet all five criteria for the exemption to be allowed.

An organization need not be established solely for educational, religious, charitable, or cemetery purposes; it may be established for a combination of two or more of the exempt uses. For example, a religious organization may own a cemetery or an educational organization which also provides religious activities.

005.01A Educational organization means an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects, or an organization that assists students relating to the origination, processing, or guaranteeing of federally-insured student loans for higher education.

005.01A(1) Educational organization also means a museum or historical society operated exclusively for the benefit and education of the public.

005.01B Religious organization means an organization whose purpose is the dedication to, or profession of, a sectarian creed and belief in a divine or superhuman power, or powers, to be obeyed or worshipped, or the furtherance and enrichment of spiritual faith involving a code of ethics and a spiritual philosophy.

005.01C Charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons.

005.01D Cemetery organization means an organization whose purpose is to maintain areas formally set apart for the interment of human dead.

005.02 Ownership, except for motor vehicles, means the property must be owned by an educational, religious, charitable, cemetery organization, or any organization for the exclusive benefit of the educational, religious, charitable, or cemetery organization. Ownership also means the right to sell, lease, use, give away, or enter the property and the right to refuse to do any of these. All rights may or may not be vested in one owner or interest holder.

005.03 Exclusive use means the property must be used exclusively for religious, educational, charitable, or cemetery purposes. The property need not be used solely for one of the four categories of exempt use, but may be used for a combination of exempt uses. For purposes of this regulation, the term exclusive use means the predominant or primary use of the property as opposed to incidental use. The exemption will not be lost if the property is used in an incidental manner as long as the predominant or primary use of the property is for one or more of the exempt uses.

005.03A If the property, when considered as a whole, is not used exclusively for exempt purposes, but the property has a separate and distinct exempt use portion, an exemption for the value of the portion used for exempt purposes will be allowed. No exemption for a portion of the property is allowed where the exempt and nonexempt uses are commingled and the property, when considered as a whole, is not used exclusively for exempt purposes. Property which is vacant and unused for any purpose is not entitled to an exemption.

005.03B An organization claiming a property tax exemption has the burden of establishing that the property is used exclusively for exempt purposes. The following is a list of factors to be considered in determining if the organization is allowed the tax exemption in whole or in part.

005.03B(1) In the case of a private residence, an officer or employee of the organization is required to reside in the residence as part of his or her employment and for the convenience of the organization. The property must be used for the convenience of the organization and its members to such a degree that the property is an integral part of the organization. The use of the property as a residence must be incidental to the use of the property as a part of the organization's mission.

005.03B(2) If property is separate from the organization's main building, exclusive exempt use of the property must still be proved. The relative proximity of the property to the main building is one factor that may be considered in making this determination.

005.03B(3) Using income from the property for exempt purposes under federal and state income tax laws does not qualify the property for a property tax exemption. It is the use of the property that establishes whether the property is exempt. If an organization is organized under section 501(c)(3) of the Internal Revenue Code, it will not necessarily be exempt from Nebraska property taxes.

005.03B(4) Exclusive use of the property includes ongoing construction of a building or improvement that, when complete, will be used exclusively for exempt purposes. The future use of the completed building or improvement may be ascertained by the actions of the organization owning the property, including, but not limited to, resolutions of an organization's board of directors, or the amendment of the organization's articles of incorporation or bylaws, that indicate a clear intent to use the property for an exempt purpose. During construction, other nonexempt uses must be prohibited to render the property exempt from tax. Demolition of existing structures to prepare the property for its exempt use may be considered an exempt use of the property.

005.04 The following examples are provided as general guidelines. All relevant factors of each particular case must be considered when using these examples.

005.04A Exclusive Use of Residence. A qualifying organization owns residential property, which is used as the residence of an officer or employee of the organization. The officer or employee is required to reside in the residence as a condition of his or her employment and for the convenience of the organization. In addition to being the residence of the officer or employee, the residence is used for various activities of the organization, to such an extent that the residence becomes an integral part of the organization. Considering all these factors together, an exemption for the residential property would be allowed as the exclusive use is for exempt purposes.

005.04B Separate and Distinct. A qualifying organization owns a two-story building. The first floor is used by the organization as a bar and restaurant where food and alcoholic liquors are sold. The second floor is used exclusively by the organization for exempt purposes. The first floor has a nonexempt use and the second floor has an exempt use. The total actual value of this entire property is \$90,000, consisting of \$10,000 for the land and \$80,000 for the improvements. The actual value of the first floor is \$50,000 and the actual value of the second floor is \$30,000. The exempt value is the value of the second floor plus the percentage of the lot corresponding to the percentage of the second floor with respect to the total improvements. The value of the second floor is \$30,000. The percentage of the second floor with respect to the total improvements is $(\$30,000/\$80,000)*100 = 37.50\%$. The corresponding percentage exempt value of the lot is $\$10,000 * 37.50\% = \$3,750$. Hence, the total exempt value is $\$30,000 + \$3,750 = \$33,750$. In addition, personal property used on the nonexempt first floor for nonexempt purposes is taxable, while personal property on the exempt second floor used for exempt purposes is eligible for exemption.

005.04C Motor Vehicle. A qualifying organization provides a motor vehicle to an employee to use in the activities of the organization. The employee also uses the motor vehicle for personal and family use beyond incidental use. The motor vehicle is taxable since the motor vehicle is not used exclusively for exempt purposes. Motor vehicles cannot be apportioned between exempt and nonexempt use. Personal use

includes the use of the motor vehicle as transportation to and from the workplace, but this personal use does not automatically preclude an exemption.

005.04D Incidental Use. A qualifying organization conducts bingo games in the basement of its buildings two nights per week. Although conducting bingo games is not an exempt use, the use of the property for bingo is incidental, and the predominant use of the building remains exempt. No apportionment of the property is required and the entire building is exempt.

005.04E Exclusive Use. A qualifying organization owns a building, which is used for its office space, and leases a portion of the building to a private law firm. The portion leased to the private law firm is not used exclusively for exempt purposes and is not eligible for an exemption.

005.04F Vacant Lot. A qualifying organization buys a vacant lot for future use as a building site. However, the land is held idle for several years. No exemption is allowed for the tax years during which the vacant land sits idle, because the land is not used for an exempt purpose.

005.04G Use of Property. A qualifying organization owns agricultural land on which it plans to build at some future date. In the interim, the land is rented to a farmer who plants and harvests crops on the land. No exemption is allowed for the land because it is used for nonexempt purposes and the use is not incidental. The use of the income by the organization for exempt purposes will not qualify the land for a property tax exemption. It is the use of the property that qualifies it for an exemption.

005.04H Under Construction. A qualifying organization begins construction of a building on its previously-nonexempt property that will, when completed, be exclusively used for an exempt purpose. The construction effectively precludes other uses of the property. An exemption for the property under construction will be permitted.

005.04I Residential Purpose. A qualifying corporation owns and operates a residential facility for low-income elderly persons. Rent, cost of meals, and other charges are designed to cover the actual cost of the services provided. The property is used for residential purposes, not used exclusively for charitable purposes, and no exemption is allowed.

005.04J Health Care and/or Assisted Living Facility. A qualifying organization owns a health care facility which is made up of a nursing home and assisted living housing. The organization does not prescreen the applicants for financial ability prior to admission. The criteria for admission are the need for health care due to age, ill-health, or physical disability. The facility meets the definition of a health care facility and/or assisted living facility under Nebraska law. All residents are permitted to remain in the facility regardless of their ability to pay for the services provided. In this case, the property is allowed an exemption because the property is used exclusively for charitable purposes.

005.05 No Financial Gain or Profit. The property must not be used for financial gain or profit to either the owner or user. There is no financial gain or profit if no part of the income from the property is distributed to the owners, users, members, directors, officers, or private individuals. Reasonable salaries paid to employees do not constitute a distribution of financial gain or profit.

The following examples are provided as general guidelines to be used in particular cases. In utilizing these examples, all relevant factors of each particular case must be considered.

005.05A Lease by Charitable Organization. A qualifying organization leases office space in its building to other charitable organizations. All of the building is used exclusively for charitable purposes. The lease payments are used for charitable activities. The entire building is allowed an exemption, since no financial gain or profit exists and the actual use of the entire property remains charitable.

005.05B Residential Facility. A qualifying corporation owns and operates a residential facility for low-income persons. Only nominal amounts are charged for rent, or no rent is charged, depending on

the residents' ability to pay. Operational deficits are made up from outside donations and fund-raising activities. In this case, the property is allowed an exemption because: (1) no financial gain or profit exists; and (2) the use of the property is charitable since all or part of the actual cost of the housing is donated to the residents in need.

005.06 Prohibited Alcoholic Liquor Sales. The property must not be used for the sale of alcoholic liquors for more than 20 hours per week. The sale of liquor is not considered to be an exempt use for educational, religious, charitable, or cemetery purposes. Property (or portions of property) used for selling alcoholic liquors include all areas in which alcoholic liquors are normally sold, served, or consumed. For purposes of determining whether alcoholic liquor is sold in excess of 20 hours per week, a reasonable average for the tax year may be used.

005.07 Prohibited Discrimination. The property must not be owned or used by an organization that discriminates in membership or employment based on race, color, or national origin. This discrimination is contrary to public policy and may not be subsidized through a tax exemption. There must be some actual formal or informal policy of discrimination present, which denies or otherwise abridges membership or employment, to disallow an exemption. An organization is not deemed to be discriminatory even though all of its members or employees are of the same race, color, or national origin, if it is willing to admit and employ on a nondiscriminatory basis. Similarly, an organization may be deemed to be discriminatory even though it may have "token" members or employees, if it has a discriminatory policy towards prospective new members or employees.

Neb. Rev. Stat. §§ 77-202, and 77-702. July 3, 2013.

REG-40-006 APPLICATION, COUNTY REVIEW, AND APPEAL PROCEDURES FOR PROPERTY TAX EXEMPTIONS

006.01 Any organization or society seeking a property tax exemption for real or personal property, other than motor vehicles, must file an Exemption Application for Tax Exemption on Real and Personal Property by Qualifying Organizations, Form 451, on or before December 31 of the year preceding the year for which the exemption is sought, with the county assessor in which the property is located. The county assessor will then make a recommendation of approval or denial to the county board of equalization. If the exemption is approved by the county board of equalization, it will continue for a period of four years, beginning with years evenly divisible by four. The first year in each period is known as an application year (for example, 2012, 2016, 2020, etc.). If application for exemption is made and approved in an intervening year, the exemption will continue for the remainder of the applicable four-year period.

006.01A When the date for filing an application, supporting documentation, personal property return, supporting schedules, depreciation worksheet, or any other requirement falls on a Saturday, Sunday, or legal holiday, the items will be considered timely filed if delivered in person or postmarked on the next business day. The postmark date for any documents mailed using regular U.S. mail will determine the date filed. The certification or registration date of any documents sent by certified or registered mail will determine the postmark date.

006.01B To continue the exemption for a succeeding four- year period, an organization or society which previously had been granted an exemption, other than motor vehicles, must file the Form 451 with the county assessor on or before December 31 prior to an application year.

006.01C If an organization or society fails to timely file an exemption application for real or personal property, other than motor vehicles, it may, on or before June 30, apply to the county assessor. With the application, the organization or society must also file a request in writing to the county board of equalization for a waiver so that the county assessor may consider the application. If the county board of equalization finds that good cause exists for the failure to meet the filing deadline, the request for waiver must be granted. The county assessor will process the application for exemption, and must assess a penalty against the property for 10% of the tax that would have been due or \$100, whichever is less, for each month

or part of the month past December 31. Failure to file a completed application and request for waiver on or before June 30 is a waiver of the exemption for that year.

006.01C(1) The penalty will be collected and distributed by the county treasurer in the same manner as a tax on the property and interest will be assessed at the rate specified in Neb. Rev. Stat. § 45-104.01 from the date the tax would have been delinquent until it is paid. The penalty will become a lien on the property in the same manner as a tax pursuant to § 77-203.

006.01D An approved exemption for a cemetery organization or any organization for the exclusive benefit of a cemetery organization will remain in effect, without reapplication, until there is disqualification through a change in ownership or use. County assessors will annually review ownership and use of all cemetery real property and report to the county board of equalization by August 1 pursuant to Neb. Rev. Stat. § 77-202.10.

006.02 An organization or society which has been allowed an exemption for real or personal property, other than motor vehicles, must file a Statement of Reaffirmation of Tax Exemption for Use When Applying for Continued Exemption for Qualifying Organizations, Form 451A, with the county assessor on or before December 31 prior to each intervening year. The reaffirmation statement must certify that the ownership and use of the exempted property has not changed from the ownership and use of the property at the time of the application for the application year.

006.03 Any organization or society which fails to file the Form 451A (reaffirmation statement) on or before December 31, may maintain the exemption by filing the reaffirmation statement no later than the next June 30, and receiving approval from the county board of equalization. The tax exempt status will remain even if the county board of equalization originally had acted to deny the exemption because of the late filing. The county assessor must assess a penalty against the property of 10% of the tax that would have been due or \$100, whichever is less, for each calendar month or part of the month past the December 31 deadline. Failure to file a completed reaffirmation statement by June 30 is a waiver of the exemption for that assessment year.

006.03A The penalty will be collected and distributed by the county treasurer in the same manner as a tax on the property and interest will be assessed at the rate specified in Neb. Rev. Stat. § 45-104.01 from the date the tax would have been delinquent until it is paid. The penalty will become a lien on the property in the same manner as a tax pursuant to § 77-203. The county board of equalization has no authority to waive or reduce any penalty and interest which was correctly imposed.

006.04 All forms required to be filed for exemption must be completed in full and filed at the proper address. A form will not be considered timely filed if it is submitted incomplete in any material aspect, such as the description of use or the type of owner. Any incomplete form may be rejected by the county assessor for failure to constitute a proper and valid filing.

006.05 The county assessor will examine timely filed applications and will recommend either taxable or exempt status for the property to the county board of equalization by February 1 of the year for which the exemption is sought. In making the recommendation, the county assessor may specify that only a certain portion of the property should be exempt if all of the property described in the application is not eligible for exemption. The county assessor will follow this procedure for late applications filed on or before June 30, except that the February 1 date will not apply to those late applications filed after February 1.

006.06 The county assessor must maintain a list of the applications from organizations seeking tax exemption, descriptions of the property, and his or her recommendations to the county board of equalization as to whether the property is taxable or exempt.

006.06A Notice must be published in a newspaper of general circulation in the county at least 10 days prior to the county board of equalization's hearing on the applications. The notice must state that a list of the applications from organizations seeking tax exemptions, descriptions of the property, and the county assessor's recommendations are available in the office of the county assessor.

006.07 The county board of equalization must hold a public hearing on all applications for exemption to determine whether to allow or deny an exemption. The hearing will be held after the county board of equalization gives 10 days notice to the applicant at the address on the application. No exemption will be granted or denied by the county board of equalization until after the required hearing is held. A hearing must be held even if the applicant waives the opportunity to appear, since the purpose of the public hearing is also to permit members of the public to submit information regarding the tax exemption. The county board of equalization must complete its review of the exemption applications by June 1, except for hearings on motor vehicle exemptions, exemptions for property which were newly acquired or converted to an exempt use after December 31, and applications filed on or before June 30, if the county board has granted a waiver. For applications granted a waiver, the county board must hear and certify its decisions by August 15.

006.08 The county assessor or county board of equalization may cause any real or personal property exemption to be reviewed in any year to determine whether the exemption should be continued, even though the ownership or the use of the property has not changed. This review procedure must include a notice of hearing and a hearing by the county board of equalization and will proceed in the same manner as applications made pursuant to REG-40-006.07. The exemption previously allowed may be left unchanged, disallowed, or modified. If the exemption is disallowed or modified, the taxable property will be placed on the tax list retroactive to January 1.

006.08A The county assessor must maintain a list of exemptions being reviewed. For each exemption, the list must state the name of the exempt organization or society, descriptions of the property, and the recommendation of the county assessor as to whether a change in the exemption is warranted.

006.08B Notice must be published in a newspaper of general circulation in the county at least 10 days prior to any hearing of the county board of equalization, for the review of exempt status. The notice must state that a list consisting only of exemptions being reviewed, descriptions of the property, and recommendations of the county assessor regarding the exemptions being reviewed are available in the office of the county assessor.

006.09 Within seven days after any decision of the county board of equalization granting, denying, or modifying an exemption from taxation for real or tangible personal property, the county clerk must mail or deliver notice of the decision to the applicant and the county assessor.

006.09A If a previously granted exempt status is disallowed or modified, the county board of equalization must send notice of the assessed value for the taxable real property to the record owner or his or her agent's last known address. Protests on the assessed valuation must be filed within 30 days after the mailing of the notice. The procedure for filing a protest is the same as outlined in Neb. Rev. Stat. § 77-1502. The county clerk will also electronically send all decisions of the county board of equalization regarding exemptions to the Department within seven days of the board's decision pursuant to Neb. Rev. Stat. § 77-202.04.

006.09B Upon a determination of the loss of the exempt status on tangible personal property by the county board of equalization, the owner or his or her agent has 30 days after the date of denial to file a personal property return with the county assessor.

006.09B(1) If the personal property return is not filed within the 30 days, the county assessor will proceed to list and value the tangible personal property and apply a penalty of 10% of the tax due on the value added.

006.10 Persons, corporations, or organizations denied exemption from taxation for real or tangible personal property by a county board of equalization may file an appeal with the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013 within 30 days after the decision of the county board of equalization. The Tax Commissioner may, in his or her discretion, intervene in this appeal.

006.11 Persons, corporations, or organizations may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013 on or before December 31 of the year in which the notice should have been sent, for a determination of the taxable status or the actual value of their real property, because the failure to give notice pursuant to REG-40-006.09 and REG-40-006.09A prevented timely filing of a protest or appeal.

006.12 Only the county assessor, the Tax Commissioner, or the Property Tax Administrator may appeal the action of the county board of equalization granting an exemption from taxation to the Tax Equalization and Review Commission. Any appeals of the actions of the county board of equalization to the Tax Equalization and Review Commission must be made within 30 days after the decision of the county board of equalization.

006.12A The Tax Commissioner may, in his or her discretion, intervene in the appeal within 30 days after notice by the Tax Equalization and Review Commission that an appeal has been filed.

Neb. Rev. Stat. §§ 45-104.01, 77-202.01, 77-202.02, 77-202.03, 77-202.04, 77-202.05, 77-202.10, 77-203, 77-702, 77-1502, and 77-5013. July 3, 2013.

REG-40-007 PROPERTY TRANSFERS OR USE CONVERSIONS DURING TAX YEAR

007.01 When an organization or society seeks an exemption for property, except motor vehicles, acquired or converted to exempt use after January 1, but on or before July 1 of any year, the organization or society must file an Exemption Application for Tax Exemption on Real and Personal Property by Qualifying Organizations, Form 451, with the county assessor on or before July 1 and comply with all application procedures and requirements. To qualify for an exemption, the property must be used for exempt purposes as of the date of application. Failure to file the application on or before July 1 disqualifies the property for an exemption for that tax year. The county board of equalization must review the application for exemption by August 15 following the date of application, as prescribed in REG-40-006.07 and REG-40-006.08.

007.02 All nonexempt property, except motor vehicles, acquired or converted to exempt use after July 1 by an organization or society will not be allowed an exemption for that tax year. If an application is timely filed pursuant to REG-40-006, the organization may be allowed an exemption for the next tax year.

007.03 When exempt property is sold to a nonexempt entity on or after January 1 and on or before levy date, the property will be taxable retroactive to January 1 of the year the property is sold because, as of the levy date, there is taxable property upon which to levy a tax. The levy date is determined by each county board of equalization per Neb. Rev. Stat. § 77-1601 on or before October 15.

007.04 When exempt property is sold between the levy date and December 31, it will remain exempt for that year because no levy had been made upon the property.

007.05 When exempt property is sold to another educational, religious, charitable, or cemetery organization; any organization for the exclusive benefit of an educational, religious, charitable, or cemetery organization; or an agricultural or horticultural society on or before July 1, the property may be exempt only if the new owner files an application for exemption on or before July 1 of that year.

007.06 When an educational, religious, charitable, or cemetery organization; any organization for the exclusive benefit of an educational, religious, charitable, or cemetery organization; or an agricultural or horticultural society purchases property that was exempt from taxes between July 1 and the levy date, and the property continues to qualify for exemption, the purchaser must make application (Form 451) to the county assessor on or before November 15 as provided in REG-40-006.01. The county board of equalization must review the application for exemption by December 15 as prescribed in REG-40-006.07 and REG-40-006.08. The county clerk will also electronically send all decisions of the county board of equalization regarding exemptions to the Department within seven days of the board's decision pursuant to Neb. Rev. Stat. § 77-202.04.

007.07 When a federal governmental entity that is exempt from paying property taxes purchases taxable property on or after January 1 and on or before the levy date, the property will be exempt for that tax year because, as of the levy date on or before October 15, there was no taxable property upon which to levy a tax.

007.08 When a federal governmental entity that is exempt from paying property taxes purchases taxable property between the levy date and on or before December 31, the property will be exempt from taxation for that year because, as of the lien date (December 31), there is no taxable property upon which to attach a lien.

007.09 When a state agency or a political subdivision of the state purchases property on or after January 1 and on or before the levy date, and is using or developing the property for a public purpose, the property will be exempt for that year because as of the levy date, there was no taxable property upon which to levy a tax. If in the years following the purchase, the property is not being used or developed for a public purpose, it will be subject to assessment for property tax purposes or an in lieu of tax.

007.10 When the state or a political subdivision purchases property for a public purpose after the levy date and on or before the lien date, the property will be exempt from property tax for the current year, because as of the lien date there is no taxable property upon which to attach the lien.

007.11 When exempt property is transferred or converted to a nonexempt use on or before levy date, resulting in the property no longer qualifying for exemption, the county board of equalization must hold a public hearing in the manner prescribed in REG-40-006.07. The county board of equalization will place the property on the tax list retroactive to January 1 of the year the exemption is lost.

Neb. Rev. Stat. §§ 77-202, 77-202.03, and 77-702. July 3, 2013.

REG-40-008 PRE-EXISTING TAX LIENS ON TAX EXEMPT PROPERTY

008.01 When taxes, which are a lien on the property, were validly levied upon the property because the property was not exempt from taxation, the lien cannot be discharged solely by acquisition of the property by an organization or society for exempt use or conversion of the property to exempt use. When an organization or society acquires title to the property for exempt use, but does not provide for discharging any pre-existing tax liens, the property is acquired subject to the liens and the liens remain attached to the property. The property upon which the lien is attached is subject to a tax foreclosure sale in order to satisfy the pre-existing lien.

008.02 If the state, its governmental subdivisions, or a federal governmental entity acquires property subject to a pre-existing tax lien, the property is not subject to levy and sale in order to satisfy the tax lien. The lien will remain on the property until paid or until the expiration of 15 years. If the property is sold to a person or entity other than the state, its governmental subdivisions, or a federal governmental entity prior to the expiration of the lien, the property will be acquired subject to the tax lien and will be subject to sale if the lien is not satisfied.

Neb. Rev. Stat. §§ 25-1555, 77-702, 77-1737, and 77-1862. July 3, 2013.

REG-40-009 PUBLIC NOTICE OF PROPERTY TAX EXEMPTIONS

009.01 During September of each year, the county board of equalization must publish in a newspaper of general circulation in the county, a list of all real property exempted by the county board of equalization from property tax for that tax year. The list must contain the exemptions of property in the following categories: (1) agricultural and horticultural societies; (2) educational organizations; (3) religious organizations; (4) charitable organizations; (5) cemetery organizations; and (6) any organization for the exclusive benefit of an educational, religious, charitable, or cemetery organization.

009.02 The list will be grouped into the above categories and identify the following: the organization owning the exempt property; the municipality, if any, in which the property is located; the number of parcels of real property exempted; and any other information necessary to enable the general public to be aware of the types of real property granted exemptions. The list will also indicate whether a total exemption or exemption of a portion of the property has been granted.

009.03 A copy of the list and Proof of Publication must be forwarded to the Property Tax Administrator on or before November 1 of each year.

Neb. Rev. Stat. §§ 77-202.03, and 77-702. July 3, 2013.

REG-40-010 MOTOR VEHICLE TAX EXEMPTIONS

010.01 Motor vehicles, owned (as defined in the Motor Vehicle Registration Act) and used exclusively by an agricultural or horticultural society, charitable, educational, religious, or cemetery organization or any organization for the exclusive benefit of any charitable, educational, religious, or cemetery organization may be exempt from the motor vehicle tax. To qualify for an exemption, the criteria established in REG-40-004 and REG-40-005 must be met. The tax exemption for a motor vehicle extends through one registration period. Exemption from motor vehicle tax does not necessarily exempt the vehicle from sales and use taxes or wheel tax. See the Application for Exemption from Motor Vehicle Taxes by Qualifying Nonprofit Organizations, Form 457.

010.02 A partial exemption of a motor vehicle may not be granted. A motor vehicle does not have separable portions; it is either exempt or taxable in its entirety. If a motor vehicle is used for other than incidental nonexempt use, no exemption may be granted. A nonexempt use includes personal use of the motor vehicle.

010.03 An organization or society seeking tax exempt status for a motor vehicle must annually file a Form 457, with the county treasurer of the county where the motor vehicle is registered. The application must be filed not

more than 15 days before and not later than 30 days after the registration date of the motor vehicle. For a newly acquired motor vehicle, an application must be made within 30 days after the purchase date. Failure to apply for an exemption for a motor vehicle within the time specified is a waiver of the exemption for that registration year.

010.04 The county treasurer will review the Form 457, and make a recommendation to the county board of equalization within 20 days after receipt of the application. The county board of equalization review procedures will be the same as the procedures used for real and personal property, except that publication of notice in a newspaper of general circulation is not required. Upon completion of its review, the county board of equalization will certify its decision to the applicant and the county treasurer within seven days after the decision. If the exemption application cannot be processed before the motor vehicle tax is due, the organization or society will pay the tax and immediately file a claim for refund. Upon approval of the application for exemption, the county board of equalization will also approve the claim for refund. Decisions of a county board of equalization relating to the granting or denial of an exemption under this regulation may be appealed to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013.

010.05 Persons, corporations, or organizations may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013 on or before December 31 of the year notice should have been sent, for a determination of the taxable status of their motor vehicle because a failure to give notice pursuant to REG-40-010.04 prevented timely filing of an appeal.

Neb. Rev. Stat. §§ 60-3,189, 77-702, and 77-5013. July 3, 2013.

REG-40-011 DISABLED OR BLIND HONORABLY DISCHARGED VETERAN EXEMPTION

011.01 An honorably discharged veteran or a veteran with a general discharge under honorable conditions from the U.S. Armed Forces, whose disability or blindness is recognized by the Department of Veterans Affairs of the United States of America as service-connected is eligible to have the property described in REG-40-011.01D exempt from taxation if the veteran:

011.01A Has lost the use of, or has undergone amputation of, two or more extremities;

011.01B Has undergone amputation of one or more extremities and has lost the use of one or more extremities; or

011.01C Has eyesight so defective as to seriously limit his or her ability to engage in ordinary vocations and activities of life.

011.01D The following property is eligible for exemption under REG-40-011.01:

011.01D(1) A mobile home owned and occupied by the disabled or blind veteran; and

011.01D(2) One motor vehicle owned and used for his or her personal transportation.

011.02 Application for the mobile home exemption must be made to the county assessor on or before April 1 of every year. A certificate of the veteran's condition from the Department of Veterans Affairs must be attached to the application. See the Exemption Application for Honorably Discharged Disabled Veterans, Form 453. The county assessor will approve or disapprove the application and notify the taxpayer of the decision within 20 days of the filing of the application. The taxpayer may appeal to the county board of equalization within 20 days after notice of decision is mailed. The taxpayer may appeal any decision of the county board of equalization under this section to the Tax Equalization and Review Commission.

011.03 Application for the motor vehicle exemption must be made to the county treasurer, pursuant to Neb. Rev. Stat. § 23-186, not more than 15 days before and not later than 30 days after the registration date for the motor vehicle. See Form 453. A renewal application must be made annually, not sooner than the first day of the last

month of the registration period, and not later than the last day of the registration period. See Form 453. The county treasurer will approve or deny the application and notify the applicant of his or her decision within 20days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within 20days after the date the notice was mailed. The taxpayer may appeal any decision of the county board of equalization under this section to the Tax Equalization and Review Commission.

011.04 If failure to give notice pursuant to REG-40-011.02 and REG-40-011.03 prevented timely filing of a protest or appeal, the owner may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013, on or before December 31 of the year notice should have been sent, for a determination of the taxable status of their real property or motor vehicle.

Neb. Rev. Stat. §§ 60-3,185, 60-3,189, 77-202.23, 77-202.24, 77-202.25, and 77-702. July 3, 2013.

REG-40-012 BEGINNING FARMER PERSONAL PROPERTY EXEMPTION

012.01 **Definitions.**

012.01A Agricultural assets means agricultural land, livestock, farming or livestock production facilities, or buildings and machinery and equipment used for farming or livestock production.

012.01B Board means the Beginning Farmer Board comprised of the Director of Agriculture (or his or her designee), the Tax Commissioner (or his or her designee), one individual representing lenders of agricultural credit, one individual of the academic community involved in agricultural economics, and one individual from each of the three congressional districts that are involved in farming and livestock production.

012.01C Depreciable tangible personal property is subject to personal property taxation. Depreciable tangible personal property means tangible personal property which is used in a trade or business or used for the production of income, and which has a determinable life of longer than one year.

012.01C(1) Depreciable tangible personal property also includes tangible personal property which is eligible for depreciation for purposes of federal income tax, but which the owner chooses not to depreciate.

012.01C(2) Depreciable tangible personal property also includes all other tangible personal property for which a taxpayer is claiming depreciation, amortization, or Internal Revenue Code (IRC) § 179 deductions for purposes of federal income tax.

012.01C(3) Depreciable tangible personal property also includes capital expenses incurred because of major repairs, parts, labor, and installation costs that prolong the useful life, increase the value of an asset, or adapt the asset for a different use.

012.01C(4) The taxable value of depreciable tangible personal property is the net book value of the property.

012.01D Nebraska adjusted basis means the adjusted basis of tangible personal property as determined under the IRC as it exists on the assessment date, increased by the total amount allowed under the IRC for depreciation or amortization, or pursuant to an election to expense depreciable property under IRC § 179, as amended. Generally, this is the original cost of the item and includes any costs incurred in purchasing and placing the item in service such as sales or excise taxes, freight charges, installation, and testing charges.

012.01E The Nebraska depreciation factor is the percentage of the Nebraska adjusted basis that is taxable. The following table provides the depreciation factors, based on year acquired and recovery period:

NEBRASKA DEPRECIATION FACTORS

Year	Recovery Period (in years)					
	3	5	7	10	15	20
1	75.00 %	85.00 %	89.29 %	92.50 %	95.00 %	96.25 %
2	37.50 %	59.50 %	70.16 %	78.62 %	85.50 %	89.03 %
3	12.50 %	41.65 %	55.13 %	66.83 %	76.95 %	82.35 %
4	0.00 %	24.99 %	42.88 %	56.81 %	69.25 %	76.18 %
5		8.33 %	30.63 %	48.07 %	62.32 %	70.46 %
6		0.00 %	18.38 %	39.33 %	56.09 %	65.18 %
7			6.13 %	30.59 %	50.19 %	60.29 %
8			0.00 %	21.85 %	44.29 %	55.77 %
9				13.11 %	38.38 %	51.31 %
10				4.37 %	32.48 %	46.85 %
11				0.00 %	26.57 %	42.38 %
12					20.67 %	37.92 %
13					14.76 %	33.46 %
14					8.86 %	29.00 %
15					2.95 %	24.54 %
16					0.00 %	20.08 %
17						15.62 %
18						11.15 %
19						6.69 %
20						2.23 %
21						0.00 %

012.01E(1) In the table, the factor shown for year one is the percentage used January 1 of the year following the year of acquisition of the property. The factor shown for year two is the percentage used January 1 of the second year following the year of acquisition of the property, etc. When property becomes depreciable in a year other than the year it is acquired, it is subject to taxation on the first assessment date following the date it became depreciable. The net book depreciation factor for the property is based on the year it is acquired.

012.01F Net book value is the Nebraska adjusted basis of depreciable tangible personal property multiplied by the appropriate Nebraska depreciation factor.

012.01G Personal property includes all property other than real property or franchises.

012.01G(1) Tangible personal property includes all personal property possessing a physical existence, but excluding money.

012.01G(2) Intangible personal property includes property that has no intrinsic value by itself, but is representative or evidence of value, such as stocks, bonds, promissory notes, contract rights, bank accounts, money, and other such property.

012.01H Qualified beginning farmer or livestock producer means an individual who is a resident of this state, who intends to enter farming or livestock production, and who meets the eligibility guidelines in Neb. Rev. Stat. § 77-5209 and other qualifications as determined by the Beginning Farmer Board.

012.02 Procedures.

012.02A Taxpayer Filing Responsibilities.

012.02A(1) Any qualified beginning farmer or livestock producer seeking an exemption from tangible personal property tax on agricultural and horticultural machinery and equipment used in his or her operation (whether this machinery or equipment is owned or leased), must apply for the exemption. The application must be filed with the county assessor on or before December 31 of the year preceding the year the exemption from personal property tax begins. The application must be made on the Exemption Application for Qualified Beginning Farmer or Livestock Producer, Form 1027.

012.02A(2) For the initial year of application, the applicant must also file with the county assessor, the original certification from the Beginning Farmer Board stating that the applicant is a qualified beginning farmer or livestock producer.

012.02A(3) Failure to furnish the required documentation by December 31 will result in the loss of the personal property tax exemption for the first year following the application date. Upon furnishing the required documentation, the application for exemption from personal property tax will be considered for the three years thereafter.

012.02A(4) On or before May 1 of each year, the applicant must file with the county assessor a personal property return along with the supporting schedules and depreciation worksheet showing a list of all depreciable taxable tangible personal property. The exemption from personal property tax must not exceed \$100,000 of net book value of agricultural and horticultural machinery and equipment in any year.

012.02A(4)(a) Failure on the part of the beginning farmer or livestock producer to file the personal property return, supporting schedules, and depreciation worksheet on or before May 1 is a forfeiture of the exemption from personal property tax for that year and will result in the tangible personal property being subject to the personal property tax, plus applicable late filing penalties.

012.02A(4)(b) Failure on the part of the beginning farmer or livestock producer to file the personal property return, supporting schedules, and depreciation worksheet on or before May 1 will result in a loss of the year from the three-year period for exemption from personal property tax.

012.02A(5) When the date for filing an application, supporting documentation, personal property return, supporting schedules, depreciation worksheet, or any other requirement falls on a Saturday, Sunday, or legal holiday, the items will be considered timely filed if delivered in person or postmarked on the next business day. The postmark date for any documents mailed using regular U.S. mail will determine the date filed. The certification or registration date of any documents sent by certified or registered mail will determine the postmark date.

012.02A(6) If the exemption from personal property tax is granted or approved by the county assessor, it will continue for a period of three years, or until the applicant discontinues farming or livestock production.

012.02A(7) The Tax Commissioner may request the Attorney General or any county attorney to institute proceedings against any taxpayer or his or her agent for failure to comply with the provisions of any property tax law administered by or subject to the administrative jurisdiction of the Nebraska Department of Revenue.

012.02A(8) For further information on filing a personal property return and taxpayer responsibilities, see Chapter 20, Personal Property Regulations.

012.02B County Assessor's Powers and Duties.

012.02B(1) The county assessor, upon receiving an application for exemption and the necessary documentation, as required pursuant to REG-40-012.01A(2), will verify the information regarding the status of the applicant. If all of the information is accurate and complete, and all criteria for the exemption of agricultural and horticultural machinery and equipment are met, the county assessor will approve, sign the application, and on or before February 1, send written notification of approval to the applicant. An approved application will remain in effect for three years.

012.02B(2) After approving the exemption, the county assessor will exempt no more than \$100,000 of taxable personal property value in any one year. If the total agricultural and horticultural machinery and equipment schedule exceeds the \$100,000 maximum exemption, the county assessor will show the deduction for the exemption on the agricultural machinery and equipment schedule and carry forward the net taxable valuation to the front of the personal property return. The net taxable valuation of the agricultural and horticultural machinery and equipment, plus the taxable value of other nonexempt depreciable tangible personal property, will be the total taxable value for tangible personal property of the beginning farmer and livestock producer.

012.02B(3) If the application is denied, the county assessor will, on or before February 1, issue notice of his or her action to the applicant. The county assessor will state the reasons why the application was denied.

012.02B(3)(a) The applicant may protest the denial of the application for exemption to the county board of equalization within 30 days after notice by the county assessor.

012.03 Protests to the County Board of Equalization.

012.03A The applicant may protest the denial of the application for exemption to the county board of equalization within 30 days after receipt of the county assessor notice of denial.

012.03A(1) The protest must be in writing, signed, and filed with the county clerk of the county in which the property is located.

012.03A(2) If the protest is not timely filed, it will be dismissed automatically.

012.03A(3) The protest must contain a physical description of the property and a written statement explaining why the exemption should be allowed. If no description or statement is included or attached, the protest will be dismissed automatically.

012.03B The county board of equalization must decide the protest within 30 days after the filing of the protest.

012.03B(1) Within seven days of the county board of equalization's decision, the county clerk must mail written notice of the board's decision to the applicant. If the protest is denied, the notice must state the reason for denial. The county clerk will also electronically send all decisions of the county board of equalization regarding exemptions to the Department within seven days of the board's decision pursuant to Neb. Rev. Stat. § 77-202.04.

012.03C Within 30 days of the date of the decision of the county board of equalization, the applicant may appeal the board's decision to the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013.

012.03D Persons, corporations, or organizations may petition the Tax Equalization and Review Commission pursuant to Neb. Rev. Stat. § 77-5013 on or before December 31 of the year in which the

notice should have been sent, for a determination of the taxable status of their depreciable tangible personal property because the failure to give notice pursuant to REG-40-012.02B(3) and REG-40-012.03B(1) prevented timely filing of a protest or appeal.

012.03E No appeal or petition will in any manner suspend the collection of any personal property tax or the duties of officers charged with its collection during the pendency of the appeal or petition, and all personal property taxes subject to collection will be distributed as though no appeal or petition were pending.

012.03F If, by final order of the Tax Equalization and Review Commission, it is determined that the personal property tax or a part of it should be refunded, the county treasurer is authorized to make the refund upon receiving a certified copy of the final order from the Commission.

Neb. Rev. Stat. §§ 49-1202, 49-1203, 77-104, 77-105, 77-118, 77-119, 77-120, 77-377, 77-702, 77-5203, and 77-5209.02. July 3, 2013.