

Government Exemptions and In Lieu of Tax

Overview

All property in the State of Nebraska is subject to property tax, unless an exemption is mandated or permitted by the Nebraska Constitution or by legislation. Government-owned property used for a public purpose is exempt. If the government-owned property is not used for public purpose, it may be considered taxable. In certain instances, an in lieu of tax may be paid and distributed to the governmental subdivisions to replace the loss property revenue.

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Terms

Body Corporate and Politic: Body corporate and politic shall mean a public corporation governed by certain laws for the common good.

Community Development Authority (CDA): Any community redevelopment authority created pursuant to Nebraska Revised Statute (Neb. Rev. Stat.) §18-2102.01 and any community development agency created pursuant to Neb. Rev. Stat. §18-2133 and § 18-2133.01. Community Development Authorities may be created when a city or village has implemented Tax Increment Financing (TIF) redevelopment plans where the authority oversees the implementation of the TIF projects.

Housing Agency: A body corporate and politic for the purpose of making provisions for the preservation of the public health, safety, morals, and welfare by facilitating sanitary housing conditions.

In Lieu of Tax: A payment received as substitute for a property tax.

Political Subdivision: Political subdivision shall include villages, cities of all classes, counties, school districts, community colleges, public power districts, any airport authority created by any county, city, or village pursuant to law, or any joint airport authority, and all other units of local government, including entities created by local public agencies pursuant to the Interlocal Cooperation Act.

Public Power Districts: A public corporation organized under, or subject to, Neb. Rev. Stat. §§ 70-601 to 70-682, and engage in the generation, transmission, or distribution of electric power and energy and which has the power to issue indebtedness.

Public Purpose: Public purpose means that the government-owned property is being used to provide public services with or without cost to the recipient or to perform responsibilities required by law.

Public purposes include but are not limited to: general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing agency, parks, culture, recreation, community development, and cemeteries.

Public purpose does not include the leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose.

Supportive Medical Services: Nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, dietary, X-ray, rehabilitation and psychiatric services.

Government-Owned Property

Property owned by the State of Nebraska or its governmental subdivisions that is used or being developed for use by the state or a governmental subdivision for a public purpose is exempt from property tax. Property owned by the state or its governmental subdivisions that is not being used or being developed to be used for a public purpose is subject to property taxes.

The state or its governmental subdivisions do not need to file an application to receive a property tax exemption. However, they must report leased property to the county assessor by January 31 of each year by providing the county assessor with a copy of a new lease, or a copy of a preexisting lease that has been materially changed since the previous year, and a list of previously reported leases that are still in effect.

The county assessor must determine whether the property is being used for a public purpose and if not, on or before March 1 of each year, send the governmental entity a notice of intent to tax. If the real property is leased and the governmental entity does not intend to pay the taxes for the lessee, the governmental entity must immediately forward the notice of intent to tax to the lessee.

If a governmental entity disagrees with the notice of intent to tax, a protest of the county assessor's determination may be filed with the county board of equalization (county board, also known as CBOE) on or before April 1. In the case of leased property, the lessee may also protest the taxability of the property. The county board must hear and decide the protest on or before May 1.

If the governmental entity or the lessee is dissatisfied with the decision of the county board, an appeal may be filed with the Nebraska Tax Equalization and Review Commission (TERC) **on or before June 1.**

Assessment of Government Property

Taxable government-owned real property will be assessed like other taxable real property. The county assessor must issue a valuation notice for the property on or before June 1. The valuation notice will go to the governmental entity, and if the property is leased, to the lessee. The assessed

value may be protested to the county board on or before June 30 in the same manner as other real property protests. If a protest is filed, the county board must hear and decide the protest on or before July 25, or August 10 if the county board adopted a resolution to extend the protest hearings. A valuation protest for governmentally owned property only addresses the value of the property and is not a mechanism for a second look at whether the property is exempt or subject to tax. If the governmental entity disagrees with the valuation decision of the county board, an appeal may be filed with TERC on or before August 24, or September 10 if the county board adopted a resolution to extend the protest hearings.

In Lieu of Tax

Although certain state agencies, political subdivisions and public corporations are tax-exempt, some pay in lieu of tax payments on real property. Generally, payments in lieu of taxes are made to compensate a political subdivision for some or all of the property tax revenue lost due to tax-exempt ownership or use of real property.¹ Whether an in-lieu must be paid and the amount to be paid varies with the state agency or political subdivision. The information below outlines the differences regarding in-lieu of taxes.

State and Governmental Subdivisions ([350 Neb. Admin. Code, ch. 41, § 008](#))

Unleased property of the state and governmental subdivisions not being used or developed for a public purpose may be subject to an in lieu of tax. The in lieu of tax payment will be paid to state agencies and local governmental subdivisions providing public safety, rescue and emergency services, and road, street or maintenance services to the property. Any property of the state or local governmental subdivisions will be subject to the in lieu of tax even though all services to the property are provided to the owner.

The in lieu of tax will be based on a proportionate share of each state agency or governmental subdivision's cost for providing the services. After a hearing of the governing body and a majority vote, the governing body may adopt a general policy for determining the amount of the in lieu of tax. The amount will result in an equitable contribution for the cost of providing services to the property. State agencies or governmental subdivision that own property subject to an in lieu of tax will negotiate written agreements with the state agencies or local governments who provide public safety, rescue and emergency services, or road or street construction or maintenance services as to the amount of the in lieu of tax paid to each. In lieu of payments will be considered revenue for budget purposes.

If a written agreement is not obtained on the property with all political subdivisions, the property will be subject to assessment by the assessor for property taxes. In lieu of tax agreements must be filed with the assessor on or before February 15.

Nebraska Game and Parks Commission ([350 Neb. Admin. Code, ch. 41, § 003](#))

The Nebraska Game and Parks Commission (Commission) annually pays an in-lieu of tax for land acquired for wildlife management purposes. The payments of in lieu of taxes must be the same as what the real property taxes would have been if the land was privately owned. The land is valued

¹ https://nebraskalegislature.gov/pdf/reports/research/snapshot_PILOT_2018.pdf

annually by the county assessor based on the use of the land at the time of acquisition by the Commission. The county assessor will determine the use of the land at the time of acquisition and value the land in a manner that equalizes the land with other land under that use as of January 1. Such valuation applies to the land only and not to any improvements on the land.

A Notice of Valuation Change will be provided in a similar manner as other properties on or before June 30 if the valuation is different than the previous year. The valuation may be protested by the Commission to the CBOE in the same manner as other real property and the CBOE will provide the same due process as other property valuation protests. The Commission may appeal the action of the CBOE to TERC.

The in lieu of payment is made to the county treasurer in the county where the land is located. In lieu of tax payments by the Commission are exempt from penalty or interest for any late payment. The county treasurer will distribute the payments to political subdivisions of the tax district where the land is located and shall be distributed in the same manner as other real property taxes within the tax district.

Public Power Districts and Irrigation Districts [\(350 Neb. Admin. Code, ch. 41, § 004\)](#)

All public power districts and irrigation districts that were organized to provide electricity and which paid an in lieu of tax in 1957 will continue to pay the same amount of property taxes assessed so long as the districts own the property. The treasurer will distribute the in lieu of tax payments to the political subdivisions and the state based on the 1957 distribution.

Any public power district or irrigation district that sells electricity at retail within a city or village will make in lieu of payment by April 1 each year to the county treasurer where the city or village is located. The in lieu of payment will be 5% of the gross retail sales collected within the city or village, less the amount of the 1957 in lieu of tax already allocated to the city or village. The county treasurer will distribute the payment to the city or village where the retail revenues were collected, the school district located in that city or village and the county based on the proportionate share the individual levies in the preceding year had to the total of the levies.

City or Village Electric Distribution System [\(350 Neb. Admin. Code, ch. 41, § 005\)](#)

Any city or village that has purchased or acquired an electric distribution system prior to June 10, 1947, from a public power district or irrigation to be used within the city or village *may* pay an in lieu of tax. If the city or village decides to pay an in lieu of tax, the payment is to equal the amount of the last in lieu of tax paid by the public power district. The treasurer will distribute the payment to the state, county, city or village and school district in the same amounts as it was last distributed when the system was owned by the public power or irrigation district.

Housing Agency [\(350 Neb. Admin. Code, ch. 41, § 006\)](#)

Housing agencies may pay an in lieu of tax to cover costs of services provided by various political subdivisions. The in lieu of payment will be made to the county treasurer where the agency is located and distributed based upon what the subdivision's levy is to the total of all the levies of the subdivisions that could have levied against the property.

Hospitals ([350 Neb. Admin. Code, ch. 41, § 007](#))

Hospitals which provide building or office space to anyone engaged in private business will collect from the tenant sufficient rent to pay an in lieu of tax. Hospitals will pay the in lieu of payment to the county treasurer to be distributed to the political subdivisions that could have levied on the property had it not been exempt from taxes. Each political subdivision will receive a portion of the payment based on its levy compared to the consolidated levy of all subdivisions that could have levied against the property. Space in the hospital provided for supportive medical services to the hospital patients shall be exempt from the in lieu of tax.

Community Development Authority ([350 Neb. Admin. Code, ch. 41, § 009](#))

When a Community Development Authority (CDA) purchases or acquires real property pursuant to [Neb. Rev. Stat. §§ 18-2101 to 18-2144](#), it will pay an in lieu of tax. The in lieu of tax will be equal to the amount of property taxes levied against the property or the year prior to purchase or acquisition of the real property by the authority. In subsequent years, the county board of equalization may determine a different amount of in lieu of taxes to be paid by the Community Development Authority. The in lieu of tax will be paid to the state and political subdivisions that make up the tax district where the property is located. Property in the Community Development Authority, in many instances, will be used for a Tax Increment Financing project.

Resource List:

- ❖ [Nebraska Administrative Code 350, Chapter 15 – Property Owned by the State and Governmental Subdivisions Regulations, Nebraska Department of Revenue](#)
- ❖ [Nebraska Administrative Code 350, Chapter 40 – Property Tax Exemptions Regulations, Nebraska Department of Revenue](#)
- ❖ [Nebraska Administrative Code 350, Chapter 41 – In Lieu of Tax](#)
- ❖ [Nebraska Revised Statutes, Chapter 77 Revenue and Taxation; PDF](#)

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