

## REG-1-093, Governmental Units

093.01 Governmental units are only exempt from sales and use tax if they are specifically listed in subsections 093.04 through 093.06 of this regulation. Public educational institutions are discussed in Reg-1-092, Educational Institutions.

093.02 Governmental units are not required to have exemption numbers.

093.03 The United States (U.S.) government, its agencies, instrumentalities, and corporations wholly owned by the U.S. government are exempt from sales and use tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the U.S. government for the benefit of the public, are generally taxable. (See Reg-1-072, United States Government and Federal Corporations, for organizations considered a part of the U.S. government.)

093.04 The following governmental units in Nebraska are exempt from sales and use tax:

093.04A The State of Nebraska;

093.04B A municipality, including a municipal library;

093.04C A county or township, including a county or township library;

093.04D A natural resource district;

093.04E A joint entity or agency formed to fulfill the purposes of the Integrated Solid Waste Management Act;

093.04F A city, county, or joint airport authority;

093.04G An elected county fair board;

093.04H A rural or suburban fire protection district;

093.04I A drainage district;

093.04J A local or regional housing agency, except for purchases for any commercial operation that does not exclusively benefit the residents of the affordable housing project; and

093.04K Wyuka Cemetery.

093.05 A Nebraska irrigation or reclamation district, including one that is part of a Nebraska public power and irrigation district, is exempt from sales and use tax, including any departments or portion of the district that sells electricity, gas, heat, or water.

093.06 A nonprofit corporation formed by an exempt governmental unit listed in sections 093.04 or 093.05 for the sole purpose of issuing tax-exempt bonds to finance one or more projects for the exempt governmental unit is exempt from sales and use tax for building materials, equipment, or other property purchased for the project or projects with the proceeds from the tax-exempt bonds to the same extent the exempt governmental unit would be exempt, if all of the following conditions are satisfied:

093.06A The nonprofit corporation is essentially public in nature;

093.06B The exempt governmental unit holds a beneficial interest in the nonprofit corporation;

093.06C The nonprofit corporation has or will issue bonds on behalf of the exempt governmental unit to finance a project or projects where the interest paid on the bonds is exempt from federal income tax under 26 U.S.C. § 103;

093.06D The project or projects will be the subject of a lease-purchase agreement, financing lease, or other instrument which provides for the transfer of full legal title to the property to the governmental unit when all amounts due under the lease or other instrument are paid and the indebtedness is retired; and

093.06E If a construction project has a total estimated cost greater than \$50,000 or 0.6% of the total actual value of real and personal property of the exempt governmental unit for the previous fiscal year, whichever is greater, the construction project must have been approved by a majority of the voters of the exempt governmental unit at a primary, general, or special election.

093.07 All governmental units not listed in sections 093.04 through 093.06 must pay sales tax or remit use tax on taxable purchases. Governmental units that are not exempt from sales and use tax include, but are not limited to:

093.07A A railroad transportation safety district;

093.07B A rural water district;

093.07C A sanitary and improvement district;

093.07D Another state and any unit of government in another state except that another state, and any unit of government in another state, is tax exempt for purchases of industrial equipment in this state, including parts for repairs, if the other state grants a similar reciprocal exemption to Nebraska and its units of government; and

093.07E A county weed district board.

093.08 Organizations which are not governmental units, but which assist in performing governmental functions are not exempt from sales or use tax. These organizations include, but are not limited to:

093.08A A volunteer fire department;

093.08B A county agricultural society or county historical society;

093.08C A corporation created under the Nebraska Nonprofit Corporation Act of the Nebraska Revised Statutes;

093.08D An institution chartered or created under federal authority, but not directly operated and controlled by the U.S. government; and

093.08E An organization using funds or grants from governmental units.

093.09 An organization established under the Nebraska Interlocal Cooperation Act entirely by exempt governmental units may make purchases for its use exempt from sales and use tax after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). If any of the members are not exempt, then the organization is not exempt for any of its purchases.

093.10 The exempt governmental unit must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

093.11 An exempt governmental unit engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. Except for the State of Nebraska, if the exempt governmental unit does not

issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt governmental unit may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

093.12 A governmental unit is required to collect sales tax on sales of property by the governmental unit, unless the sale is otherwise exempt.

093.13 Sales by agencies and corporations of the U.S. government are addressed in Reg-1-072.05.

093.14 Any governmental unit may purchase property tax exempt for resale if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. (Reg-1-013, Sale for Resale-Resale Certificate.) This certificate, or an approved substitute form, must be issued in accordance with Reg-1-014, Exempt Sale Certificate.

093.15 Purchases by employees of the governmental unit using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the governmental unit, and even if the governmental unit will be reimbursing the employees for expenses incurred, including purchases of prepared food and lodging.

093.16 The exemptions granted to any governmental unit listed in 093.04 through 093.06 do not apply to purchases for use in the business of furnishing gas, water, electricity, or heat. The governmental unit will pay sales tax or remit use tax the same as any privately-owned utility company. (Reg-1-066, Sewer and Water, and Reg-1-089, Energy Source Utility Exemption.)

093.16A When property is shared by a taxable department and by an exempt department, (for example, a piece of equipment that is sometimes used by the water department and sometimes used by the sewer department), sales or use tax is due on the portion of the total amount paid that reflects the use by the taxable department.

093.16A(1) The governmental unit may allocate the amount paid for the property between the exempt department and the taxable department by any method that reasonably reflects the use of the property by each department, and pay sales tax or remit use tax on the portion of the sales price that reflects the allocation to the taxable department.

093.16A(2) If a taxable department and tax exempt department divide the cost of the property, the portion of the sales price paid or reimbursed by each department is presumed to reflect the use by each department.

093.16B If a taxable department and an exempt department make simultaneous and continuous use of property, like duct space, pole space, or meters, 100% of the sales price of the property is taxable. Any charges made between departments for simultaneous and continuous use of property are exempt from sales tax.

093.16C For purposes of this section, "department" means a portion of a governmental unit listed in 093.04 through 094.06 that is responsible for a specific function of the governmental unit whether or not that portion has separate accounting, management, or property.

*(Neb. Rev. Stat. §§ 2-953.01, 77-2704.15, 77-2704.16, 77-2704.17, and 77-2704.20, and 4 U.S.C. section 107 and 29 U.S.C section 103. July 3, 2013.)*