CHAPTER 77
Revenue and Taxation

Article.

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ARTICLE 1

DEFINITIONS

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77-101. Definitions, where found. For purposes of Chapter 77 and any statutes dealing with taxation, unless the context otherwise requires, the definitions found in sections 77-102 to 77-132 shall be used.

Source: Report of 1943 Statute Commission, § 77-101; Laws 1943, c. 115, § 1, p. 401; R.S.1943, § 77-101; Laws 1987, LB508, § 1; Laws 1992, LB1063, § 43; Laws 1992, Second Spec. Sess., LB1, § 42; Laws 1997, LB270, § 2; Laws 1999, LB194, § 5; Laws 2000, LB968, § 22; Laws 2001, LB170, § 2; Laws 2003, LB292, § 3; Laws 2005, LB263, § 2.

77-102. Property, defined. The word property includes every kind of property, tangible or intangible, subject to ownership.

Source: Laws 1903, c. 73, § 3, p. 389; R.S.1913, § 6291; Laws 1921, c. 133, art. I, § 1, p. 545; C.S.1922, § 5808; C.S.1929, § 77-101; R.S.1943, § 77-102.

Annotations

Leasehold interest in buildings on federal air force base was property subject to taxation. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Term property includes intangible property. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Lease for years is property, the subject of an independent assessment as the property of the lessee. North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County, 125 Neb. 841, 252 N.W. 313 (1934).

A cause of action sounding in tort is not property as that term is understood in the revenue law of the state. Seward County v. Jones, 105 Neb. 705, 181 N.W. 652 (1921).

Each station is assessed as independent business, and it may deduct from credits due all debts owing at time of return as regards that particular station, which net amount, if any, is taxed. Nye-Schneider-Fowler Co. v. Boone County, 102 Neb. 742, 169 N.W. 436 (1918).

77-103. Real property, defined. Real property shall mean:

(1) All land;

(2) All buildings, improvements, and fixtures, except trade fixtures;

(3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;

(4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and

(5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

Source: Laws 1903, c. 73, § 1, p. 389; R.S.1913, § 6289; Laws 1921, c. 133, art. I, § 2, p. 545; C.S.1922, § 5809; C.S.1929, § 77-102; R.S.1943, § 77-103; Laws 1951, c. 257, § 1, p. 881; Laws 1961, c. 372, § 1, p. 1147; Laws 1969, c. 638, § 1, p. 2551; Laws 1989, Spec. Sess., LB1, § 1; Laws 1991, LB829, § 5; Laws 1992, LB1063, § 44; Laws 1992, Second Spec. Sess., LB1, § 43; Laws 1997, LB270, § 3; Laws 2007, LB334, § 13.

Annotations

1. Constitutionality

This section as amended by L.B. 1, passed November 17, 1989, violates Neb. Const. Art. VIII, sections 1 and 2, and Neb. Const. Art. III, section 18. MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991).

2. Mineral Interests

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax roles separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax roles. State ex rel. Svoboda v. Weiler, 205 Neb. 799, 290 N.W.2d 456 (1980).

The removal of minerals whether held in solution upon the land or resting in the soil or subsurface, is the removal of a component part of the real estate itself. The severance changes the character of the property, but it remains real estate until detached. Wheelock & Manning OO Ranches, Inc. v. Heath, 201 Neb. 835, 272 N.W.2d 768 (1978).

When a mineral interest is conveyed, unless the instrument provides otherwise, an estate in fee simple or a corporeal hereditament separate from the estate in the overlying land is created. Wheelock & Manning OO Ranches, Inc. v. Heath, 201 Neb. 835, 272 N.W.2d 768 (1978).

Before severance, interest in oil and gas well is taxable as real property. Conway v. County of Adams, 172 Neb. 94, 108 N.W.2d 637 (1961).

Interest in mineral lease is real estate. Fawn Lake Ranch Co. v. Cumbow, 102 Neb. 288, 167 N.W. 75 (1918).

3. Fixtures

Common law rules relating to fixtures are largely codified herein and the term household goods would not normally encompass fixtures. State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 (1974).

Grain elevator erected on leasehold with privilege of removal is real estate as regards insurance on same. Calnon v. Fidelity-Phenix Fire Ins. Co., 114 Neb. 194, 206 N.W. 765 (1925).

Tax on land and a building or other improvement is a single and indivisible tax, even if the building or other improvement is assessed separately from the land. Phelps County v. Anderson, 2 Neb. App. 236, 508 N.W.2d 314 (1993).

4. Miscellaneous

Cited in discussion of taxability of intangible property of foreign corporation. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Existence of lease for years may constitute ownership of interest in land. North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County, 125 Neb. 841, 252 N.W. 313 (1934).

77-103.01. Class or subclass of real property, defined. Class or subclass of real property means a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass.

Source: Laws 2001, LB170, § 3; Laws 2003, LB291, § 1.

Annotations

The Tax Equalization and Review Commission did not err in finding that the market areas as drawn by the county assessor complied with professionally accepted methodology. Vanderheiden v. Cedar Cty. Bd. of Equal., 16 Neb. App. 578, 746 N.W.2d 717 (2008).

77-104. Personal property, defined. The term personal property includes all property other than real property and franchises.

Source: Laws 1903, c. 73, § 2, p. 389; R.S.1913, § 6290; Laws 1921, c. 133, art. I, § 3, p. 545; C.S.1922, § 5810; C.S.1929, § 77-103; R.S.1943, § 77-104.

Annotations

Right to participate in proceeds of sale of oil and gas severed from real estate is taxable as personal property. Conway v. County of Adams, 172 Neb. 94, 108 N.W.2d 637 (1961).

Chattel real was personal property. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Cited in discussion of taxability of intangible property of foreign corporation. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Warrants of city are exempt from taxation. Droll v. Furnas County, 108 Neb. 85, 187 N.W. 876 (1922).

Net credits of corporation are taxable as personal property in counties where it operates. Nye-Schneider-Fowler Co. v. Boone County, 99 Neb. 383, 156 N.W. 773 (1916), affirmed by 102 Neb. 742, 169 N.W. 436 (1918).

77-105. Tangible personal property, intangible personal property, defined. The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased, and all depreciable tangible personal property described in subsection (9) of section 77-202 used in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source. The term intangible personal property includes all other personal property, including money.

Source: Laws 1921, c. 133, art. I, § 4, p. 545; C.S.1922, § 5811; C.S.1929, § 77-104; Laws 1933, c. 156, § 2, p. 592; C.S.Supp.,1941, § 77-104; R.S.1943, § 77-105; Laws 1991, LB829, § 6; Laws 2007, LB334, § 14; Laws 2010, LB1048, § 10; Laws 2011, LB360, § 1; Laws 2015, LB424, § 2.

Operative Date: January 1, 2016

Annotations

In classifying whether a trade fixture should be taxed as personal property, rather than a fixture that should be taxed as real property, where the parcel of land on which the fixture is located is used directly in commercial activities, it is irrelevant whether a taxpayer personally engages in the commercial activities on the land. Vandenberg v. Butler County Bd. of Equal., 281 Neb. 437, 796 N.W.2d 580 (2011).

The three-part test for determining whether an item constitutes a fixture, requiring the court to look at (1) actual annexation to the realty, or something appurtenant thereto, (2) appropriation to use or purpose of that part of the realty with which it is connected, and (3) the intention of the party making the annexation to make the article a permanent accession to the freehold, does not apply to the determination of whether a trade fixture should be classified as a fixture and taxed as real property or a trade fixture and taxed as personal property. Vandenberg v. Butler County Bd. of Equal., 281 Neb. 437, 796 N.W.2d 580 (2011).

Electricity is not tangible personal property for tax purposes. Omaha Pub. Power Dist. v. Nebraska Dept. of Revenue, 248 Neb 518, 537 N.W.2d 312 (1995).

Cited in discussion of taxability of intangible property of foreign corporation. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

In view of change in legislative definition of intangible property, corporation is taxable where it has its principal office or place of business. Joyce Lumber Co. v. Anderson, 125 Neb. 886, 252 N.W. 394 (1934).

77-106. Money, defined. The term money includes all kinds of coin and all kinds of paper, issued by or under authority of the United States, circulating as money.

Source: Laws 1903, c. 73, § 4, p. 389; R.S.1913, § 6292; Laws 1921, c. 133, art. I, § 5, p. 545; C.S.1922, § 5812; C.S.1929, § 77-105; R.S.1943, § 77-106.

77-107. Credits, defined. The word credits includes corporation shares of stock, accounts, contracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, other than real estate mortgages, securities, debentures, bonds, other than those of the United States, annuities, and all other demands for labor or other valuable thing, whether due or to become due.

Source: Laws 1903, c. 73, § 5, p. 389; R.S.1913, § 6293; Laws 1921, c. 133, art. I, § 6, p. 546; C.S.1922, § 6813; C.S.1929, § 77-106; R.S.1943, § 77-107.

Annotations

Credits include open accounts owing by school district. Stephenson School Supply Co. v. County of Lancaster, 172 Neb. 453, 110 N.W.2d 41 (1961).

Debts due are credits and are taxable. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Warrants of city are exempt from taxation. Droll v. Furnas County, 108 Neb. 85, 187 N.W. 876 (1922).

Cause of action in tort is not a right in property within meaning of revenue laws. Seward County v. Jones, 105 Neb. 705, 181 N.W. 652 (1921).

Credits were construed to mean net credits. Nye-Schneider-Fowler Co. v. Boone County, 102 Neb. 742, 169 N.W. 436 (1918).

77-108. County board, defined. The term county board includes both county commissioners and supervisors, as the case may be.

Source: Laws 1903, c. 73, § 6, p. 389; R.S.1913, § 6294; Laws 1921, c. 133, art. I, § 7, p. 546; C.S.1922, § 5814; C.S.1929, § 77-107; R.S.1943, § 77-108.

77-109. County tax, defined. The term county tax includes all taxes due to the county, school districts and other subdivisions of the county, which are levied and collected by the county.

Source: Laws 1903, c. 73, § 7, p. 389; R.S.1913, § 6295; Laws 1921, c. 133, art. I, § 8, p. 546; C.S.1922, § 5815; C.S.1929, § 77-108; R.S.1943, § 77-109.

Annotations

County tax includes taxes levied for school districts. C. R. T. Corp. v. Board of Equalization, 172 Neb. 540, 110 N.W.2d 194 (1961).

77-111. Township, precinct, defined. The words township and precinct shall each include the other, and shall also include towns in counties under township organization.

Source: Laws 1903, c. 73, § 9, p. 390; R.S.1913, § 6297; Laws 1921, c. 133, art. I, § 10, p. 546; C.S.1922, § 5817; C.S.1929, § 77-110; R.S.1943, § 77-111.

77-112. Actual value, defined. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S.1943, § 77-112; Laws 1955, c. 289, § 1, p. 918; Laws 1957, c. 320, § 1, p. 1138; Laws 1967, c. 493, § 1, p. 1684; Laws 1971, LB945, § 1; Laws 1985, LB30, § 1; Laws 1985, LB271, § 1; Laws 1989, LB361, § 3; Laws 1991, LB404, § 1; Laws 1991, LB320, §

1; Laws 1992, LB1063, § 46; Laws 1992, Second Spec. Sess., LB1, § 45; Laws 1996, LB934, § 1; Laws 1997, LB270, § 4; Laws 1997, LB342, § 1; Laws 2000, LB968, § 23; Laws 2003, LB292, § 4; Laws 2003, LB295, § 1.

Annotations

1. Actual value

Real property sold at auction is sold in the ordinary course of trade within the meaning of this section. In re Estate of Craven, 281 Neb. 122, 794 N.W.2d 406 (2011).

Under this section, actual value of real property for purposes of taxation shall mean the market value of real property in the ordinary course of trade. Firethorn Invest. v. Lancaster Cty. Bd. of Equal., 261 Neb. 231, 622 N.W.2d 605 (2001).

The statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade. US Ecology, Inc. v. Boyd Cty. Bd. of Equal., 256 Neb. 7, 588 N.W.2d 575 (1999).

Pursuant to subsection (1) of this section, although differing factors may cause the appraised value of property to be less than its actual value, some relationship exists between appraised and actual value such that the appraised value is relevant evidence of at least the minimum value of the land. First Nat. Bank of York v. Critel, 251 Neb. 128, 555 N.W.2d 773 (1996).

This section, which specifies factors for determining actual value of real estate for tax purposes, does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine the actual value of real estate for tax purposes; actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. First Nat. Bank & Trust of Syracuse v. Otoe Cty., 233 Neb. 412, 445 N.W.2d 880 (1989).

Nothing in the statute requires the county assessor or county board of equalization to use all of the factors set forth therein. Instead, those officials may use such factors or combination thereof which they determine to be applicable in determining actual value under the state constitution. Affiliated Foods Co-op v. County of Madison, 229 Neb. 605, 428 N.W.2d 201 (1988).

Actual value, market value, and fair market value mean exactly the same thing. Xerox Corp. v. Karnes, 217 Neb. 728, 350 N.W.2d 566 (1984); Chudomelka v. Board of Equalization, 187 Neb. 542, 192 N.W.2d 403 (1971).

Nothing in this section requires the county assessor or county board of equalization to take into account all of the elements of the formula contained therein, but only those determined to be applicable. Airport Inn v. County Bd. of Equalization, 215 Neb. 659, 340 N.W.2d 378 (1983).

Board found the actual market value of the property in question to be the same as the purchase price. Potts v. Board of Equalization, 213 Neb. 37, 328 N.W.2d 175 (1982); LaGord Assoc. v. County of Cass, 209 Neb. 99, 306 N.W.2d 578 (1981).

"Actual value" of a development's common areas is not reflected in the increased value of the adjacent lots where the grant of use privileges to lot owners in the common areas lacks sufficient formality, definition, and duration of creation to constitute valid restrictions on the use of the common areas. For the purposes of taxation, the terms actual value, market value, and fair market value mean exactly the same thing. Beaver Lake Assn. v. County Board of Equalization, 210 Neb. 247, 313 N.W.2d 673 (1981).

Items set out by statute as examples to be used in determining value of property subject to taxation are not the only factors which enter into the valuation of property for taxation. Gradoville v. Board of Equalization, 207 Neb. 615, 301 N.W.2d 62 (1981); Nash Finch Co. v. County Board of Equalization, 191 Neb. 645, 217 N.W.2d 170 (1974); Hastings Building Co. v. Board of Equalization, 190 Neb. 63, 206 N.W.2d 338 (1973); County of Gage v. State Board of Equalization & Assessment, 185 Neb. 749, 178 N.W.2d 759 (1970).

Sales-assessment ratios were given consideration in determining actual value of land for taxation. County of Loup v. State Board of Equalization & Assessment, 180 Neb. 478, 143 N.W.2d 890 (1966).

Assessor properly considered all elements of value. Josten-Wilbert Vault Co. v. Board of Equalization, 179 Neb. 415, 138 N.W.2d 641 (1965).

Actual value is to be determined by using the applicable elements set forth in this section. Richards v. Board of Equalization, 178 Neb. 537, 134 N.W.2d 56 (1965); Leech, Inc. v. Board of Equalization of Chase County, 176 Neb. 841, 127 N.W.2d 917 (1964); H/K Company v. Board of Equalization of Lancaster County, 175 Neb. 268, 121 N.W.2d 382 (1963).

Actual value is defined by law. Union P. R.R. Co. v. State Bd. of Equalization & Assessment, 170 Neb. 139, 101 N.W.2d 892 (1960); Chicago & N.W. Ry. Co. v. State Bd. of Equalization & Assessment, 170 Neb. 106, 101 N.W.2d 873 (1960); Chicago, B. & Q. R.R. Co. v. State Bd. of Equalization & Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

There are no yardsticks by which actual value can be determined with complete accuracy. S. S. Kresge Co. v. Jensen, 164 Neb. 833, 83 N.W.2d 569 (1957).

Actual value means value in the market in the ordinary course of trade. LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956); County of Howard v. State Board of Equalization and Assessment, 158 Neb.

339, 63 N.W.2d 441 (1954); County of Douglas v. State Board of Equalization and Assessment, 158 Neb. 325, 63 N.W.2d 449 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954); Novak v. Board of Equalization of Douglas County, 145 Neb. 664, 17 N.W.2d 882 (1945).

In tax valuation cases, actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy. Reynolds v. Keith Cty. Bd. of Equal., 18 Neb. App. 616, 790 N.W.2d 455 (2010).

The purchase price of property, standing alone, is not conclusive of the actual value of the property for assessment purposes; it is only one factor to be considered in determining actual value. Reynolds v. Keith Cty. Bd. of Equal., 18 Neb. App. 616, 790 N.W.2d 455 (2010).

This section requires the use of applicable statutory factors, individually or in combination, to determine the actual value of real estate for tax purposes. Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal., 8 Neb. App. 582, 597 N.W.2d 623 (1999).

The actual value of real property for purposes of taxation may be determined by using professionally accepted mass appraisal techniques, including, but not limited to (1) comparison with sales of real property of known or recognized value, taking into account location, zoning, and current functional use (comparable sales approach), (2) earning capacity of the real property (income approach), and (3) reproduction cost less depreciation (replacement cost approach). Forney v. Box Butte Cty. Bd. of Equal., 7 Neb. App. 417, 582 N.W.2d 631 (1998).

2. Miscellaneous

Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under the compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration. Dowd v. Board of Equalization, 240 Neb. 437, 482 N.W.2d 583 (1992).

Where the evidence shows the assessed value of property has been determined by a formula in substantial compliance with this section, which has been uniformly and impartially applied, such assessed value will not ordinarily be disturbed on appeal on evidence indicating a mere difference of opinion as to the valuation. Greenwood Ranch v. Morrill Cty. Bd. of Equal., 232 Neb. 114, 439 N.W.2d 760 (1989); Lexington Building Co., Inc. v. Board of Equalization, 186 Neb. 821, 187 N.W.2d 94 (1971).

Act held unconstitutional which would establish a method of valuing tangible personal property different from this section. State ex rel. Meyer v. McNeill, 185 Neb. 586, 177 N.W.2d 596 (1970).

Formula prescribed by this section states it should be used where applicable. Rodeo Tel. Membership Corp. v. County of Greeley, 181 Neb. 492, 149 N.W.2d 357 (1967).

State Board of Equalization and Assessment took into consideration the requirements of this section. Carpenter v. State Board of Equalization and Assessment, 178 Neb. 611, 134 N.W.2d 272 (1965).

Formula furnished is applicable to personal property as well as real estate. L. J. Messer Co. v. Board of Equalization, 171 Neb. 393, 106 N.W.2d 478 (1960).

Section applied to stock of foreign corporation. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Where statutory formula was applied fairly and impartially to all similar properties, assessment should be sustained. Newman v. County of Dawson, 167 Neb. 666, 94 N.W.2d 47 (1959).

77-113. Person, defined. The word person includes any number of persons and any partnership, limited liability company, association, joint-stock company, corporation, or other entity that may be the owner of property.

Source: Laws 1903, c. 73, § 10, p. 390; R.S.1913, § 6298; Laws 1921, c. 133, art. I, § 11, p. 546; C.S.1922, § 5818; C.S.1929, § 77-111; R.S.1943, § 77-113; Laws 1993, LB121, § 492.

Annotations

For taxation purposes, a partnership is considered as an entity apart from the individual partners. Svoboda & Hannah v. Board of Equalization, 180 Neb. 215, 142 N.W.2d 328 (1966).

State is an entity that may be adversely affected by action of county boards of equalization, and a person within meaning of revenue act. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

77-114. Gender and number, how construed. The words used in the singular shall include the plural; and in the masculine gender shall include the feminine and neuter genders, and vice versa, as the case may require.

Source: Laws 1903, c. 73, § 11, p. 390; R.S.1913, § 6299; Laws 1921, c. 133, art. I, § 12, p. 546; C.S.1922, § 5819; C.S.1929, § 77-112; R.S.1943, § 77-114.

Cross References

For statute construction, see section 49-802.

Annotations

Singular number often includes the plural in construction of statutes, generally when manifest intention of Legislature requires it. Follmer v. State, 94 Neb. 217, 142 N.W. 908 (1913).

77-115. County assessor, defined. County assessor includes an elected or appointed county assessor or a county clerk who is an ex officio county assessor.

Source: Laws 1987, LB508, § 2; Laws 1990, LB821, § 41; Laws 2000, LB968, § 24; Laws 2003, LB292, § 5; Laws 2008, LB965, § 2; Laws 2015, LB261, § 5.

Operative Date: August 30, 2015

Cross References

County clerk acting as ex officio county assessor, see section 23-3203.

77-116. County official, defined. The term county official shall include any county officer or employee of a county officer who is charged with the duty of valuing, assessing, or equalizing property for property tax purposes.

Source: Laws 1987, LB508, § 3.

77-117. Improvements on leased land, defined. Improvements on leased land shall mean any item of real property defined in subdivisions (2) through (4) of section 77-103 which is located on land owned by a person other than the owner of the item.

Source: Laws 1992, LB1063, § 45; Laws 1992, Second Spec. Sess., LB1, § 44; Laws 1997, LB270, § 5.

77-118. Nebraska adjusted basis, defined. Nebraska adjusted basis shall mean the adjusted basis of property as determined under the Internal Revenue Code increased by the total amount allowed under the code for depreciation or amortization or pursuant to an election to expense depreciable property under section 179 of the code.

Source: Laws 1992, LB1063, § 47; Laws 1992, Second Spec. Sess., LB1, § 46; Laws 1995, LB574, § 63.

Annotations

The basis as defined by section 1012 of the Internal Revenue Code in turn composes the Nebraska adjusted basis under this section, which then composes the net book value under subsection (1) of section 77-120. Mid City Bank, Inc. v. Douglas Cty. Bd. of Equal., 260 Neb. 282, 616 N.W.2d 341 (2000).

Under section 1012 of the Internal Revenue Code, the basis of property is its cost to the taxpayer. Pfizer Inc. v. Lancaster Cty. Bd. of Equal., 260 Neb. 265, 616 N.W.2d 326 (2000).

77-119. Depreciable tangible personal property, defined. Depreciable tangible personal property shall mean 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.

Source: Laws 1992, LB1063, § 48; Laws 1992, LB719A, § 204.

77-120. Net book value of property for taxation, defined. (1) Net book value of property for taxation shall mean that portion of the Nebraska adjusted basis of the property as of the assessment date for the applicable recovery period in the table set forth in this subsection.

NET BOOK VALUE AS A PERCENT OF NEBRASKA ADJUSTED BASIS						
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

Net book value as a percent of Nebraska adjusted basis shall be calculated using the one-hundred-fifty-percent declining balance method, switching to straight line, with a one-half-year convention.

(2) The applicable recovery period for any item of property shall be determined as follows:

(a) Three-year property shall include property with a class life of four years or less;

(b) Five-year property shall include property with a class life of more than four years and less than ten years;

(c) Seven-year property shall include property with a class life of ten years or more but less than sixteen years;

(d) Ten-year property shall include property with a class life of sixteen years or more but less than twenty years;

(e) Fifteen-year property shall include property with a class life of twenty years or more but less than twenty-five years; and

(f) Twenty-year property shall include property with a class life of twenty-five years or more.

(3) Class life shall be based upon the anticipated useful life of a class of property and shall be determined by the Property Tax Administrator under the Internal Revenue Code.

(4) One-half-year convention shall be a convention which treats all property placed in service during any tax year as placed in service on the midpoint of such tax year.

(5) The percent shown for year one shall be the percent used for January 1 of the year following the year the property is placed in service.

Source: Laws 1992, LB1063, § 49; Laws 1992, Second Spec. Sess., LB1, § 47; Laws 1995, LB490, § 27; Laws 1995, LB574, § 64; Laws 2016 LB775.

Annotations

The basis as defined by section 1012 of the Internal Revenue Code in turn composes the Nebraska adjusted basis under section 77-118, which then composes the net book value under subsection (1) of this section. Mid City Bank, Inc. v. Douglas Cty. Bd. of Equal., 260 Neb. 282, 616 N.W.2d 341 (2000).

77-121. Taxable property, defined. Taxable property shall mean any real or tangible personal property subject to tax pursuant to law and not exempt from tax.

Source: Laws 1992, LB1063, § 50; Laws 1992, Second Spec. Sess., LB1, § 48.

77-122. Purchase, defined. Purchase shall include taking by sale, discount, negotiation, or any other transaction for value creating an interest in property except liens. Purchase shall not include transfers for stock or other ownership interests upon creation, dissolution, or any other tax-free reorganization for income tax purposes of any corporation, partnership, limited liability company, trust, or other entity.

Source: Laws 1992, LB1063, § 51; Laws 1992, Second Spec. Sess., LB1, § 49; Laws 1993, LB121, § 493.

Annotations

The step transaction doctrine can be applied to determine if the transaction at issue is a purchase under this section. Mid City Bank, Inc. v. Douglas Cty. Bd. of Equal., 260 Neb. 282, 616 N.W.2d 341 (2000).

77-123. Omitted property, defined. Omitted property means, for the current tax year, (1) any taxable real property that was not assessed on March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, any taxable real property that was not assessed on March 25, and (2) any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property exempt under subdivisions (1)(a) through (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 77-128.

Source: Laws 1997, LB270, § 6; Laws 1998, LB1104, § 5; Laws 1999, LB194, § 6; Laws 1999, LB271, § 3; Laws 2004, LB973, § 5; Laws 2011, LB384, § 2.

77-124. Undervalued and overvalued property, defined. Undervalued and overvalued property means any taxable real property that is assessed by the county assessor but has a taxable value lower or higher than other taxable property with which it is required to be equalized.

Source: Laws 1997, LB270, § 7.

77-125. Tax situs, defined. Tax situs means the tax district wherein taxable real property is located or taxable tangible personal property is located for fifty percent or more of the calendar year. Taxable tangible personal property of a business shall be assessed at the location of the business unless the property has acquired tax situs elsewhere.

Source: Laws 1997, LB270, § 8; Laws 1999, LB194, § 9.

77-126. Assessment, defined. Assessment means the act of listing the description of all real property and taxable tangible personal property, determining its taxability, determining its taxable value, and placing it on the assessment roll.

Source: Laws 1997, LB270, § 9; Laws 2003, LB292, § 6.

77-127. Tax district, defined. Tax district means an area within a county in which all of the taxable property is subject to property taxes at the same consolidated property tax rate.

Source: Laws 1997, LB270, § 10.

77-128. Clerical error, defined. Clerical error means transposition of numbers, mathematical error, computer malfunction causing programming and printing errors, data entry error, items of real property other than land identified on the wrong parcel, incorrect ownership, or certification of an incorrect valuation to political subdivisions.

Source: Laws 1999, LB194, § 7.

77-129. Assessment roll, defined. Assessment roll means a complete and verified list of all real property and the taxable tangible personal property in a county and the associated assessments as defined in section 77-126. The assessment roll is described in section 77-1303.

Source: Laws 1999, LB194, § 8; Laws 2003, LB292, § 7.

77-130. Taxing official, defined. Taxing official means any federal, state, or local government officer or employee who is charged with the duty of auditing, assessing, equalizing, levying, computing, and collecting taxes.

Source: Laws 2000, LB968, § 25.

77-131. Taxable value, defined. Taxable value shall be as described in section 77-201 and shall have the same meaning as assessed value.

Source: Laws 2003, LB292, § 8.

77-132. Parcel, defined. (1) Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land.

(2) If all or several lots in the same block are owned by the same person and are contained in the same subdivision and the same tax district, they may be included in one parcel.

(3) If two or more vacant or unimproved lots in the same subdivision and the same tax district are owned by the same person and are held for sale or resale, such lots shall be included in one parcel if elected to be treated as one parcel by the owner. Such election shall be made annually by filing an application with the county assessor by December 31.

(4) For purposes of this section, subdivision means the common overall plan or approved preliminary plat.

Source: Laws 2005, LB263, § 3; Laws 2014, LB191, § 14.

Annotations

This section does not violate Neb. Const. art. VIII, sec. 1. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

ARTICLE 2
PROPERTY TAXABLE, EXEMPTION, LIENS

77-201. Property taxable; valuation; classification.
77-202. Property taxable; exemptions enumerated.
77-202.01. Property taxable; tax exemptions; application; waiver of deadline; penalty; lien.
77-202.02. Property taxable; exempt status; application; hearing; procedure.
77-202.03. Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.
77-202.04. Property taxable; exempt status; delivery of copy of final decision; appeal; failure to give notice; effect.
77-202.05. Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.
77-202.09. Cemetery organization; exemption; application; procedure; late filing.
77-202.10. Cemetery organization; period of exemption; annual review.
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77-202.23. Disabled or blind honorably discharged veteran; terms, defined.
77-202.24. Disabled or blind veteran; mobile home exempt.
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77-204. Real estate taxes; when delinquent.
77-207. Delinquent taxes; interest.
77-208. General taxes; lien on real estate; priority.
77-209. Special assessments; lien on real estate; priority.
77-211. Hospital which provides office building or office space; rent included in lieu of taxes; payment in lieu of taxes to county treasurer; allocation.
77-212. Hospitals providing for supportive medical services to patients; exempt from in lieu of tax payment..

77-201. Property taxable; valuation; classification. (1) Except as provided in subsections (2) through (4) of this section, all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value.

(2) Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.

(3) Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343.

(4) Historically significant real property which meets the qualifications for historic rehabilitation valuation under sections 77-1385 to 77-1394 shall be valued for taxation as provided in such sections.

(5) Tangible personal property, not including motor vehicles, trailers, and semitrailers registered for operation on the highways of this state, shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal property transferred as a gift or devise or as part of a transaction which is not a purchase shall be subject to taxation based upon the date the property was acquired by the previous owner and at the previous owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation based upon the date the converted

property was acquired and at the Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this subsection, (a) converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or in part, theft, seizure, requisition, or condemnation, or the threat or imminence thereof, and no gain or loss is recognized for federal or state income tax purposes by the holder of the property as a result of the conversion and (b) replacement property means tangible personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which is, except for date of construction or manufacture, substantially the same as the converted property.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S.1943, § 77-201; Laws 1953, c. 265, § 1, p. 877; Laws 1955, c. 289, § 2, p. 918; Laws 1957, c. 320, § 2, p. 1138; Laws 1959, c. 353, § 1, p. 1244; Laws 1979, LB187, § 191; Laws 1985, LB30, § 2; Laws 1985, LB271, § 2; Laws 1986, LB816, § 1; Laws 1989, LB361, § 5; Laws 1991, LB404, § 2; Laws 1991, LB320, § 2; Laws 1992, LB1063, § 52; Laws 1992, Second Spec. Sess., LB1, § 50; Laws 1997, LB269, § 34; Laws 1997, LB270, § 11; Laws 1997, LB271, § 38; Laws 2004, LB973, § 6; Laws 2005, LB66, § 11; Laws 2006, LB808, § 24; Laws 2006, LB968, § 2; Laws 2007, LB166, § 3; Laws 2009, LB166, § 4; Laws 2016 LB775.

Annotations

1. Taxable value

This section requires that all property be taxed at actual value. Chief Indus. v. Hamilton Cty. Bd. of Equal., 228 Neb. 275, 422 N.W.2d 324 (1988).

Uniform valuation of tangible property is required under this section. Fremont Plaza v. Dodge County Bd. of Equal., 225 Neb. 303, 405 N.W.2d 555 (1987).

The statute provides that the uniform method of valuing property for taxation as required by Neb. Const., art. VII, section 1, is valuation at actual value. Xerox Corp. v. Karnes, 217 Neb. 728, 350 N.W.2d 566 (1984).

Taxes must be levied uniformly and proportionately on all tangible property valued at its actual value. Kearney Convention Center v. Board of Equal., 216 Neb. 292, 344 N.W.2d 620 (1984).

Actual value, market value, and fair market value mean exactly the same thing for purposes of taxation. Richman Gordman v. Board of Equalization, 214 Neb. 470, 334 N.W.2d 447 (1983); Hastings Building Co. v. Board of Equalization, 212 Neb. 847, 326 N.W.2d 670 (1982); Riha Farms Inc. v. County of Sarpy, 212 Neb. 385, 322 N.W.2d 797 (1982).

"Actual value" of a development's common areas is not reflected in the increased value of the adjacent lots where the grant of use privileges to lot owners in the common areas lacks sufficient formality, definition, and duration of creation to constitute valid restrictions on the use of the common areas. Beaver Lake Assn. v. County Board of Equalization, 210 Neb. 247, 313 N.W.2d 673 (1981).

All property not exempt is subject to taxation upon its actual value. Rehkopf v. Board of Equalization, 180 Neb. 90, 141 N.W.2d 462 (1966); H/K Company v. Board of Equalization of Lancaster County, 175 Neb. 268, 121 N.W.2d 382 (1963).

Stock of merchandise is valued at actual value. Podewitz v. Gering Nat. Bank, 171 Neb. 383, 106 N.W.2d 497 (1960).

In 1959, all tangible property was required to be assessed at thirty-five percent of its actual value. Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960); Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment, 170 Neb. 106, 101 N.W.2d 873 (1960); Union P. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 139, 101 N.W.2d 892 (1960).

The cost of a stock of merchandise is not its actual value. S. S. Kresge Co. v. Jensen, 164 Neb. 833, 83 N.W.2d 569 (1957).

Actual value means value in the market in the ordinary course of trade. Ahern v. Board of Equalization of Richardson County, 160 Neb. 709, 71 N.W.2d 307 (1955).

Property was valued and assessed at its actual value. Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

State board should value and assess property at its actual value in ordinary course of trade. County of Howard v. State Board of Equalization and Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954); County of Douglas v. State Board of Equalization and Assessment, 158 Neb. 325, 63 N.W.2d 449 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

Property is required to be assessed at its actual value. Laflin v. State Board of Equalization and Assessment, 156 Neb. 427, 56 N.W.2d 469 (1953).

All property of a city of the second class must be assessed at its actual valuation. Thomson v. City of Chadron, 145 Neb. 316, 16 N.W.2d 447 (1944).

Evidence of sale price of other farm lands was not admissible to prove fair market value. Swanson v. Board of Equalization, 142 Neb. 506, 6 N.W.2d 777 (1942).

Witness may express his opinion as to actual value without stating that he has taken each and every element affecting the actual value into consideration. Edgerton v. Board of Equalization, 140 Neb. 493, 300 N.W. 413 (1941).

In determining actual value of farm property, taxing authorities must take into consideration the market value and all other elements. Knox County v. State Board of Equalization & Assessment, 138 Neb. 895, 296 N.W. 157 (1941).

All nonexempt property is subject to taxation on its actual value, which means its value in the ordinary course of trade. Nebraska State Building Corporation v. City of Lincoln, 137 Neb. 535, 290 N.W. 421 (1940); Schulz v. Dixon County, 134 Neb. 549, 279 N.W. 179 (1938), overruling Schmidt v. Saline County, 122 Neb. 56, 239 N.W. 203 (1931).

While evidence may not definitely show a market value of property in ordinary course of trade, values may be fixed from all the evidence. Yellow Cab & Baggage Co. v. Board of Equalization of Douglas County, 119 Neb. 28, 226 N.W. 810 (1929).

Party could not complain that property was not assessed at actual value and at same time claim that tax on intangible property was invalid. Sommerville v. Board of County Commissioners of Douglas County, 116 Neb. 282, 216 N.W. 815 (1927).

Revenue act of 1921 changed the basis of assessment generally from twenty percent of actual value to actual value. State ex rel. Liberty High School District of Sioux County v. Johnson, 116 Neb. 249, 216 N.W. 828 (1927).

Effect of change of taxation of property at its actual rather than assessed valuation was to increase the taxable value of the property fivefold. Drew v. Mumford, 114 Neb. 100, 206 N.W. 159 (1925).

Shares in foreign corporation, owned and possessed by resident, are taxable at actual value. Bute v. Hamilton County, 113 Neb. 230, 202 N.W. 616 (1925).

An assessment will not be set aside merely because all property has not been assessed at its actual value, where the assessment has been made with reasonable uniformity upon all classes of property. Chicago, R. I. & P. Ry. Co. v. State, 111 Neb. 362, 197 N.W. 114 (1923).

This section contemplates that all property be assessed at its true value. Sioux City Bridge Co. v. Dakota County, 105 Neb. 843, 182 N.W. 485 (1921).

Property is to be valued at its taxable value for purpose of making a levy to raise the tax provided for. Cunningham v. Douglas County, 104 Neb. 405, 177 N.W. 742 (1920).

Owner cannot require board to value property at seventy-five percent of actual value on plea that it is custom to make such reduction. Lincoln Telephone & Telegraph Co. v. Johnson County, 102 Neb. 254, 166 N.W. 627 (1918).

Bridge company is denied equal protection of laws by assessment of its property at full value while the other property in the county is assessed at a fraction of its value. Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923).

2. Property taxable

All property not expressly exempt is subject to taxation. K-K Appliance Co. v. Board of Equalization of Phelps County, 165 Neb. 547, 86 N.W.2d 381 (1957).

Leasehold interest in buildings constructed on air force base was taxable. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Shares of stock in foreign corporation owned by resident were taxable. Omaha Nat. Bank v. Jensen, 157 Neb. 22, 58 N.W.2d 582 (1953).

Tangible property of grain broker must be returned and assessed as other tangible personal property. State v. T. W. Jones Grain Co., 156 Neb. 822, 58 N.W.2d 212 (1953).

Exempt or nonexempt character of property arises from the use to which it is put and the purpose thereof at the time the levy is made. American Province of Servants of Mary Real Estate Corp. v. County of Douglas, 147 Neb. 485, 23 N.W.2d 714 (1946).

All property, not exempt, is taxable, and obligation to return property for taxation is a continuing one. In re Estate of Rogers, 147 Neb. 1, 22 N.W.2d 297 (1946).

Legislature has implemented the general provision that all property in this state, not expressly exempt, shall be subject to taxation. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Under former law all property in this state, not expressly exempt therefrom, was subject to taxation and was to be valued and assessed at its actual value. Novak v. Board of Equalization of Douglas County, 145 Neb. 664, 17 N.W.2d 882 (1945).

Intangible property of nonresident owner is not taxable in this state. Massey-Harris Co. v. Douglas County, 143 Neb. 547, 10 N.W.2d 346 (1943).

Laundry owned and used by charitable institution in carrying on its work is exempt from taxation. House of the Good Shepherd of Omaha v. Board of Equalization of Douglas County, 113 Neb. 489, 203 N.W. 632 (1925).

Cause of action in tort is not a right in property and is not taxable. Seward County v. Jones, 105 Neb. 705, 181 N.W. 652 (1921).

Personal property in possession of owner at his place of residence in another state is not subject to taxation in this state. Preston v. Harlan County, 97 Neb. 667, 150 N.W. 1009 (1915).

When certificate is issued entitling company to patents, land is liable to taxation. Elkhorn Land & Town Lot Co. v. Dixon County, 35 Neb. 426, 53 N.W. 382 (1892); White v. Burlington & M. R. R.R. Co., 5 Neb. 393 (1877).

Government bonds are not subject to taxation if held in good faith. Dixon County v. Halstead, 23 Neb. 697, 37 N.W. 621 (1888).

Notes belonging to nonresident, placed in hands of agent in this state for collection and reloaning, are taxable. Finch v. York County, 19 Neb. 50, 26 N.W. 589 (1886).

Homestead may be taxed as soon as owner has right to complete title. Bellinger v. White, 5 Neb. 399 (1877).

3. Miscellaneous

Pursuant to subsection (1) of this section, although differing factors may cause the appraised value of property to be less than its actual value, some relationship exists between appraised and actual value such that the appraised value is relevant evidence of at least the minimum value of the land. First Nat. Bank of York v. Critel, 251 Neb. 128, 555 N.W.2d 773 (1996).

The burden of proof is upon a taxpayer to establish that the value of his property has not been fairly and proportionately equalized with all other property. Lincoln Tel. & Tel. Co. v. County Board of Equalization, 209 Neb. 465, 308 N.W.2d 515 (1981).

Presumption that a board of equalization has faithfully performed its official duties, which obtains only while there is an absence of competent evidence to the contrary, disappears when there is competent evidence on appeal to the contrary, and from that point on the reasonableness of the valuation fixed by the board of equalization becomes one of fact based on the evidence, unaided by presumption, with the burden of showing such value to be unreasonable resting upon the appellant on appeal from the action of the board. Gradoville v. Board of Equalization, 207 Neb. 615, 301 N.W.2d 62 (1981).

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax rolls separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax rolls. State ex rel. Svoboda v. Weiler, 205 Neb. 799, 290 N.W.2d 456 (1980).

Where statute provides a method for valuing tangible property different from that prescribed for other tangible property, it is unconstitutional. Homan v. Board of Equalization, 141 Neb. 400, 3 N.W.2d 650 (1942).

Excessive valuation of nonexempt property may be corrected by proceedings in error to the district court. Eppley Hotels Company v. City of Lincoln, 138 Neb. 347, 293 N.W. 234 (1940).

Whether assessed on interest of mortgagor or mortgagee, taxes must be deemed assessed on land. Matthews v. Guenther, 120 Neb. 742, 235 N.W. 98 (1931).

Amount of assessment of bridge was proper. Meridian Highway Bridge Co. v. Cedar County, 117 Neb. 214, 220 N.W. 241 (1928).

Findings of board of equalization will not be disturbed unless manifestly wrong. Meridian Highway Bridge Co. v. Cedar County, 117 Neb. 214, 220 N.W. 241 (1928); Sioux City Bridge Co. v. Dakota County, 105 Neb. 843, 182 N.W. 485 (1921).

In assessing for taxation stock in domestic corporations, mortgages in which mortgagor agrees to pay tax, should not be deducted. J. B. Kelkenney Realty Co. v. Douglas County, 116 Neb. 796, 219 N.W. 140 (1928).

To secure equal taxation, property undervalued should be raised. Sioux City Bridge Co. v. Dakota County, 105 Neb. 843, 182 N.W. 485 (1921).

77-202. Property taxable; exemptions enumerated. (1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the

site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (B) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include 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;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles, trailers, and semitrailers required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if

owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act shall be exempt from the personal property tax.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property. Any depreciable tangible personal property used directly in the generation of electricity using solar, biomass, or landfill gas as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property if such depreciable tangible personal property was installed on or after January 1, 2016, and has a nameplate capacity of one hundred kilowatts or more. Depreciable tangible personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, solar panels, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, 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, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

(11) For each person who owns property required to be reported to the county assessor under section 77-1201, there shall be allowed an exemption amount as provided in the Personal Property Tax Relief Act. For each person who owns property required to be valued by the state as provided in section 77-601, 77-682, 77-801, or 77-1248, there shall be allowed a compensating exemption factor as provided in the Personal Property Tax Relief Act.

Source: Laws 1903, c. 73, § 13, p. 390; R.S.1913, § 6301; Laws 1921, c. 133, art. II, § 2, p. 547; C.S.1922, § 5821; C.S.1929, § 77-202; R.S.1943, § 77-202; Laws 1955, c. 290, § 1, p. 921; Laws 1965, c. 468, § 1, p. 1514; Laws 1965, c. 469, § 1, p. 1516; Laws 1967, c. 494, § 1, p. 1685; Laws 1967, c. 495, § 1, p. 1686; Laws 1971, LB945, § 2; Laws 1975, LB530, § 3; Laws 1980, LB882, § 1; Laws 1980, LB913, § 1; Laws 1982, LB383, § 5; Laws 1984, LB891, § 1; Laws 1985, LB268, § 1; Laws 1986, LB732, § 1; Laws 1987, LB775, § 13; Laws 1988, LB855, § 3; Laws 1989, Spec. Sess., LB7, § 2; Laws 1991, LB829, § 7; Laws 1992, LB1063, § 53; Laws 1992, Second Spec. Sess., LB1, § 51; Laws 1994, LB961, § 7; Laws 1997, LB271, § 39; Laws 1999, LB271, § 4; Laws 2002, LB994, § 10; Laws 2005, LB312, § 4; Laws 2008, LB1027, § 1; Laws 2010, LB1048, § 11; Laws 2011, LB360, § 2; Laws 2012, LB902, § 1; Laws 2012, LB1080, § 1; Laws 2015, LB259, § 5; Laws 2015, LB414, § 2; Laws 2015, LB424, § 3; Laws 2016 LB775.

Operative Date: January 1, 2016

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB259, section 5, with LB414, section 2, and LB424, section 3, to reflect all amendments.

Cross References

Nebraska Advantage Act, see section 77-5701.

Personal Property Tax Relief Act, see section 77-1237.

Annotations

1. Constitutionality

Subsections (6) through (9) of this section are unconstitutional under Neb. Const. art. VIII, section 1. MAPCO Ammonia Pipeline v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991).

The provision including major appliances either attached or detached to real property is unconstitutional. State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 (1974).

2. Use and ownership of property

In reference to subsection (1)(c) of this section, exclusive use means the primary or dominant use of property, as opposed to incidental use. A parsonage which is furnished to a member of the clergy, which is an essential part of a church, and which is used primarily to promote the objects and purposes of a faith is property used exclusively for religious purposes and is exempt from taxation. Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal., 243 Neb. 412, 499 N.W.2d 543 (1993).

Subsection (1)(c) of this section contains a two-tier approach to property tax exemption: the first tier involves the nature, character, or status of a property owner, and the second tier concerns the use of the property. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

To be tax exempt, property must (1) be owned by an organization designated in subsection (1)(c) of this section; (2) be used exclusively for at least one of the purposes specified in subsection (1)(c); and (3) not be (a) owned or used for financial gain to the property owner or user, (b) used more than 20 hours per week for sale of alcoholic liquors, or (c) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Under subsection (1)(c) of this section, if a property owner is not of a type entitled to property tax exemption, considering the property's use is unnecessary. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Property is not used for financial gain or profit to either the owner or the user if no part of the income from the property is distributed to the owner's or user's members, directors, or officers, or to private individuals. United Way v. Douglas Co. Bd. of Equal., 215 Neb. 1, 337 N.W.2d 103 (1983).

The constitution and statute require that the property be owned for an exempt purpose, but there is no requirement that the ownership and use must be by the same entity. United Way v. Douglas Co. Bd. of Equal., 215 Neb. 1, 337 N.W.2d 103 (1983).

Vacant space in property owned by a charitable organization is exempt from taxation if it is intended for a charitable use, the dominant use of the property as a whole is for exempt purposes, and the conditions under which it is held preclude its use for commercial purposes. United Way v. Douglas Co. Bd. of Equal., 215 Neb. 1, 337 N.W.2d 103 (1983).

Legislature has used the same language as appears in the Constitution in exempting from taxation property owned and used for educational, religious, or charitable purposes. Lincoln Woman's Club v. City of Lincoln, 178 Neb. 357, 133 N.W.2d 455 (1965).

The primary or dominant use, and not an incidental use, is controlling in determining whether property is exempt from taxation. Doane College v. County of Saline, 173 Neb. 8, 112 N.W.2d 248 (1961).

It is the exclusive use of property for religious or educational purposes that determines exemption from taxation. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

Use of property is test to right to exemption. Central Union Conference Assn. v. Lancaster County, 109 Neb. 106, 189 N.W. 982 (1922); St. Elizabeth Hospital v. Lancaster County, 109 Neb. 104, 189 N.W. 981 (1922).

Exemption is based solely on use of premises and not on ownership. Scott v. Society of Russian Israelites, 59 Neb. 571, 81 N.W. 624 (1900); First Christian Church of Beatrice v. City of Beatrice, 39 Neb. 432, 58 N.W. 166 (1894).

3. Procedures

In its appellate review of a question whether property is exempt from taxation pursuant to subsection (1)(c) of this section, the Supreme Court determines tax exemption in an equitable trial of factual questions de novo on the record. Immanuel, Inc. v. Board of Equal., 222 Neb. 405, 384 N.W.2d 266 (1986).

Statutes exempting property from taxation are to be strictly construed, property must come clearly within the statutory provisions granting such exemption, and the burden of proving the right to the exemption is upon the claimant. United Way v. Douglas Co. Bd. of Equal., 215 Neb. 1, 337 N.W.2d 103 (1983).

The burden of proof is upon one claiming property to be exempt from taxation to establish that its predominant use is for one of the purposes set out in this section. OEA Senior Citizens, Inc. v. County of Douglas, 186 Neb. 593, 185 N.W.2d 464 (1971); Berean Fundamental Church Council, Inc. v. Board of Equalization, 186 Neb. 431, 183 N.W.2d 750 (1971).

Party claiming property to be exempt from taxation has the burden of proof of establishing such exemption. Nebraska Conf. Assn. Seventh Day Adventists v. Board of Equalization of Hall County, 179 Neb. 326, 138 N.W.2d 455 (1965).

4. Exemption granted

The lease of property from one exempt organization to another exempt organization does not create a taxable use, so long as the property is used exclusively for exempt purposes. Fort Calhoun Baptist Ch. v. Washington Cty. Bd. of Equal., 277 Neb. 25, 759 N.W.2d 475 (2009).

An industrial park which is created by a city council acting as a community redevelopment authority may serve the purpose of community development, and thus be exempt from taxation as property which serves a public purpose. City of York v. York Cty. Bd. of Equal., 266 Neb. 311, 664 N.W.2d 456 (2003).

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to Neb. Const. art. VIII, sec. 2, or subsection (1)(a) of this section. Airports owned and operated by municipalities are exempt from taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

Pursuant to subsection (1)(a) of this section, real property acquired by the city through enforcement of special assessment liens and offered for sale to the public at a price which does not exceed delinquent special assessments and accrued interest, is used "for a public purpose" and is therefore exempt from real estate taxation. City of Alliance v. Box Butte Cty. Bd. of Equal., 265 Neb. 262, 656 N.W.2d 439 (2003).

Pursuant to the former subsection (1)(c) of this section, an assisted living facility owned and used exclusively for charitable purposes, that is, the primary or dominant use of the property is for charitable purposes, is entitled to a property tax exemption. Bethesda Found. v. Buffalo Cty. Bd. of Equal., 263 Neb. 454, 640 N.W.2d 398 (2002).

Lease of property to a charitable organization by a charitable organization for substantially less than its fair rental value is a use of property for charitable purpose. United Way v. Douglas Co. Bd. of Equal., 215 Neb. 1, 337 N.W.2d 103 (1983).

Where a nursing home's association with two other companies did not result in financial gain or profit to either the owner or user, and the primary or dominant use of the nursing home continued to be for religious or charitable purposes, the property remains exempt from taxation. Bethesda Foundation v. County of Saunders, 200 Neb. 574, 264 N.W.2d 664 (1978).

Property of rest home was exempt from taxation under this section. Evangelical Lutheran Good Samaritan Soc. v. County of Gage, 181 Neb. 831, 151 N.W.2d 446 (1967).

Operation of ranch for boys was such as to require entire ranch to be exempt from taxation. Lariat Boys Ranch v. Board of Equalization of Logan County, 181 Neb. 198, 147 N.W.2d 515 (1966).

Building used by Young Women's Christian Association for low-rent housing was exempt from taxation. Young Women's Christian Assn. v. City of Lincoln, 177 Neb. 136, 128 N.W.2d 600 (1964).

Legislature has exempted from taxation hospitals owned and used exclusively for charitable purposes. Muller v. Nebraska Methodist Hospital, 160 Neb. 279, 70 N.W.2d 86 (1955).

Property of school district is exempt from taxation. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

Scottish Rite temple and grounds are exempted from taxation as property used exclusively for educational, religious or charitable purposes. Scottish Rite of Freemasonry v. Lancaster County Board of Commissioners, 122 Neb. 586, 241 N.W. 93 (1932), 81 A.L.R. 1166 (1932), overruling Scottish Rite Building Co. v. Lancaster County, 106 Neb. 95, 182 N.W. 574 (1921), and Mt. Moriah Lodge No. 57, A.F. & A.M. v. Otoe County, 101 Neb. 274, 162 N.W. 639 (1917).

Laundry owned and used by charitable institution in carrying on its work is exempt. House of the Good Shepherd of Omaha v. Board of Equalization of Douglas County, 113 Neb. 489, 203 N.W. 632 (1925).

Farm and dairy property used for school purposes are exempt. Central Union Conference Assn. v. Lancaster County, 109 Neb. 106, 189 N.W. 982 (1922).

Hospital used exclusively for religious and charitable purposes is exempt. St. Elizabeth Hospital v. Lancaster County, 109 Neb. 104, 189 N.W. 981 (1922).

City of Omaha waterworks is exempt. City of Omaha v. Douglas County, 96 Neb. 865, 148 N.W. 938 (1914).

Property of Masonic lodge was exempt. Plattsmouth Lodge No. 6, A.F. & A.M. v. Cass County, 79 Neb. 463, 113 N.W. 167 (1907).

A contested area within a community hall located on the county fairgrounds, which is used primarily for county fair purposes, is exempt under this section. Brown Cty. Ag. Socy. v. Brown Cty. Bd. of Equal., 11 Neb. App. 642, 660 N.W.2d 518 (2003).

5. Exemption not granted

The intention to use property in the future for an exempt purpose is not a use of the property for exempt purposes under this section. St. Monica's v. Lancaster Cty. Bd. of Equal., 275 Neb. 999, 751 N.W.2d 604 (2008).

The Nebraska State Bar Foundation is not entitled to a tax exemption under subsection (1)(c) of this section as a charitable or educational organization. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Property owned and used primarily for furnishing low-rent housing not entitled to exemption as property owned and used exclusively for charitable purposes. Christian Retirement Homes, Inc. v. Board of

Equalization of Lancaster County, 186 Neb. 11, 180 N.W.2d 136 (1970); County of Douglas v. OEA Senior Citizens, Inc., 172 Neb. 696, 111 N.W.2d 719 (1961).

Industries operated and maintained primarily for purpose of providing student employment are an incidental and not a direct use of property for educational purposes and do not qualify for tax exemption. Union College v. Board of Equalization of Lancaster County, 183 Neb. 579, 162 N.W.2d 772 (1968).

Property of college fraternity was not used exclusively for educational purposes. Iota Benefit Assn. v. County of Douglas, 165 Neb. 330, 85 N.W.2d 726 (1957).

Household goods of the value of $200 exempt from taxation are not exempt from sale for payment of taxes properly assessed on other property of debtor. Ryder, Sheriff v. Livingston, 145 Neb. 862, 18 N.W.2d 507 (1945).

Lodge property encumbered by unpaid real estate mortgages is not owned exclusively for charitable purposes. North Platte Lodge 985, B.P.O.E. v. Board of Equalization of Lincoln County, 125 Neb. 841, 252 N.W. 313 (1934).

Portion of building of charitable institution used for business purposes was not exempt. Y.M.C.A. v. Lancaster County, 106 Neb. 105, 182 N.W. 593 (1921); Y.M.C.A. of Omaha v. Douglas County, 60 Neb. 642, 83 N.W. 924 (1900).

A fraternal beneficiary association is not a charitable association within meaning of section. Royal Highlanders v. State, 77 Neb. 18, 108 N.W. 183 (1906).

Commercial college is a school and part of property not used exclusively for school is liable to taxation. Rohrbough v. Douglas County, 76 Neb. 679, 107 N.W. 1000 (1906).

If building is used at same time for school purposes and as a family residence, it is not exempt. Watson v. Cowles, 61 Neb. 216, 85 N.W. 35 (1901).

6. Effect of exemption

Exempt from taxes means not subject to taxation. Hanson v. City of Omaha, 154 Neb. 72, 46 N.W.2d 896 (1951).

Where a tax is levied upon property as a whole, and a part is exempt under the Constitution and statutes, the assessment, if inseparable, is unauthorized, and the whole tax is void. McDonald v. Masonic Temple Craft, 135 Neb. 48, 280 N.W. 275 (1938)

Tax levied on property that is exempt is void and collection thereof may be enjoined. East Lincoln Lodge No. 210, A. F. & A. M. v. City of Lincoln, 131 Neb. 379, 268 N.W. 91 (1936).

Where two lower floors of building were rented for commercial purposes and two upper floors were used exclusively for religious, charitable and educational purposes, part of the taxable value of the lot could be considered in determining total taxable value of property. Masonic Temple Craft v. Board of Equalization of Lincoln County, 129 Neb. 293, 261 N.W. 569 (1935); modified on rehearing 129 Neb. 827, 263 N.W. 150 (1935).

Section does not exempt from special assessments for improvements. City of Beatrice v. Brethren Church, 41 Neb. 358, 59 N.W. 932 (1894).

Only increased value for tree culture can be exempted. Burlington & M. R. R.R. Co. v. Board of County Commissioners of Seward County, 10 Neb. 211, 4 N.W. 1016 (1880).

7. Miscellaneous

A solid waste landfill operated pursuant to the Integrated Solid Waste Management Act serves a public purpose and may be exempt from property taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 311, 664 N.W.2d 456 (2003).

Regarding "mental" benefit of the public in subsection (1)(c) of this section as one of the requisite purposes of a charitable organization, "mental" means "intellectual," which means, among other things, engaged in creative literary, artistic, or scientific labor. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Relative to a charitable organization, "an indefinite number of persons" in subsection (1)(c) of this section means a group of persons with a common characteristic, that is, a class, uncertain in number and composed from the public at large or a community. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Under subsection (1)(c) of this section, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Under subsection (1)(c) of this section, "operated exclusively," in reference to a charitable organization, means an organization's primary or predominant activity. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

Property, abandoned for religious purposes, is liable to taxation from time of abandonment. Holthaus v. Adams County, 74 Neb. 861, 105 N.W. 632 (1905).

77-202.01. Property taxable; tax exemptions; application; waiver of deadline; penalty; lien. (1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section 77-202 for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before February 1 following. Notice that a list of the applications from organizations seeking tax exemption, descriptions of the property, and recommendations of the county assessor are available in the county assessor's office shall be published in a newspaper of general circulation in the county at least ten days prior to consideration of any application by the county board of equalization.

(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

Source: Laws 1963, c. 441, § 1, p. 1460; Laws 1969, c. 639, § 1, p. 2552; Laws 1980, LB688, § 1; Laws 1984, LB835, § 2; Laws 1986, LB817, § 1; Laws 1993, LB346, § 7; Laws 1993, LB345, § 4; Laws 1995, LB490, § 28; Laws 1996, LB1122, § 1; Laws 1997, LB270, § 12; Laws 1997, LB271, § 40; Laws 1999, LB194, § 10; Laws 1999, LB271, § 5; Laws 2000, LB968, § 26; Laws 2007, LB334, § 15.

Annotations

Sections 77-202.01 through 77-202.07 are clear and comprehensive and constitute a complete and comprehensive act dealing with the matter of tax exemptions. Indian Hills Comm. Ch. v. County Bd. of Equal., 226 Neb. 510, 412 N.W.2d 459 (1987).

A taxpayer who has sought and has been denied exemption under this section and who does not appeal pursuant to section 77-202.04 may not thereafter pay the tax and seek a refund under section 77-1736.10. Campus Lt. Hse. Min. v. Buffalo Cty. Bd. of Equal., 225 Neb. 271, 404 N.W.2d 46 (1987).

The county assessor may recommend taxable or exempt status under this section, but may not appeal from ruling of board of equalization. Bemis v. Board of Equalization of Douglas County, 197 Neb. 175, 247 N.W.2d 447 (1976).

77-202.02. Property taxable; exempt status; application; hearing; procedure. The county board of equalization, between February 1 and June 1 after a hearing on ten days' notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner.

For applications accepted after approval of a waiver pursuant to section 77-202.01, the county board of equalization shall hear and certify its decision on or before August 15.

Source: Laws 1963, c. 441, § 2, p. 1460; Laws 1969, c. 640, § 1, p. 2553; Laws 1980, LB688, § 2; Laws 1995, LB490, § 29; Laws 1997, LB270, § 13; Laws 1997, LB271, § 41; Laws 2000, LB968, § 27; Laws 2003, LB292, § 9; Laws 2005, LB263, § 4; Laws 2007, LB334, § 16.

Annotations

The county assessor may recommend taxable or exempt status under section 77-202.01, but may not appeal from ruling of board of equalization. Bemis v. Board of Equalization of Douglas County, 197 Neb. 175, 247 N.W.2d 447 (1976).

A county board of equalization must give an applicant 10 days' notice before a hearing is held on the application. Washington Cty. Bd. of Equal. v. Rushmore Borglum, 11 Neb. App. 377, 650 N.W.2d 504 (2002).

77-202.03. Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list. (1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.

(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property, except real property used for cemetery purposes, shall file a statement of reaffirmation of exemption with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year. Any organization or society which misses the December 31 deadline for filing the statement of reaffirmation of exemption may file the statement of reaffirmation of exemption by June 30. Such filing shall maintain the tax-exempt status of the property without further action by the county and regardless of any previous action by the county board of equalization to deny the exemption due to late filing of the statement of reaffirmation of exemption. Upon any such late filing, the county assessor shall assess a penalty against the property of ten percent of the tax that would have been assessed had the statement of reaffirmation of exemption not been filed or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the statement of reaffirmation of exemption is late. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

(3)(a) If any organization or society seeks a tax exemption for any real or tangible personal property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year, the organization or society shall make application for exemption on or before July 1 of that year as provided in subsection (1) of section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, except that the exempt use shall be determined as of the date of application and the review by the county board of equalization shall be completed by August 15.

(b) If an organization as described in subdivision (1)(c) or (d) of section 77-202purchases, between July 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before November 15 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.

When personal property which was exempt becomes taxable because of lost exemption status, the owner or his or her agent has thirty days after the date of denial to file a personal property return with the county assessor. Upon the expiration of the thirty days for filing a personal property return pursuant to this subsection, the county assessor shall proceed to list and value the personal property and apply the penalty pursuant to section 77-1233.04.

(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions (1)(c) and (d) of section 77-202. Such list shall be grouped into categories

as provided by the Property Tax Administrator. A copy of the list and proof of publication shall be forwarded to the Property Tax Administrator.

Source: Laws 1963, c. 441, § 3, p. 1460; Laws 1965, c. 470, § 1, p. 1517; Laws 1969, c. 641, § 1, p. 2554; Laws 1973, LB114, § 1; Laws 1973, LB530, § 1; Laws 1976, LB786, § 1; Laws 1979, LB17, § 8; Laws 1980, LB688, § 3; Laws 1981, LB179, § 3; Laws 1983, LB494, § 1; Laws 1986, LB817, § 2; Laws 1989, LB133, § 1; Laws 1990, LB919, § 1; Laws 1993, LB734, § 42; Laws 1995, LB490, § 30; Laws 1996, LB1122, § 2; Laws 1997, LB270, § 14; Laws 1997, LB271, § 42; Laws 1998, LB1104, § 6; Laws 1999, LB194, § 11; Laws 1999, LB271, § 6; Laws 2000, LB968, § 28; Laws 2004, LB973, § 7; Laws 2007, LB166, § 4; Laws 2007, LB334, § 17; Laws 2010, LB708, § 1.

Annotations

If property is tax exempt in any given year, such exemption may continue for 3 successive years after grant of such exemption, if the property owner annually and timely files the specified affidavit. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

An integral part of the process to obtain a tax exemption is reapplication for such exemption. A new application is required before a previously granted exemption has expired, and failure to make reapplication for exemption or to file a new application as required by this section results in cessation of the tax exemption when the current exemption expires. Indian Hills Comm. Ch. v. County Bd. of Equal., 226 Neb. 510, 412 N.W.2d 459 (1987).

This section does not require a board of equalization to review an exemption during the four-year exemption period when there is no evidence of a change in the use of the exempt property. Ross v. Governors of the Knights of Ak-Sar-Ben, 207 Neb. 305, 299 N.W.2d 145 (1980).

77-202.04. Property taxable; exempt status; delivery of copy of final decision; appeal; failure to give notice; effect. (1) Notice of a county board of equalization's decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board's decision. Persons, corporations, or organizations may appeal denial of an application for exemption by a county board of equalization. Only the county assessor, the Tax Commissioner, or the Property Tax Administrator may appeal the granting of such an exemption by a county board of equalization. Appeals pursuant to this section shall be made to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization. The Tax Commissioner or Property Tax Administrator may in his or her discretion intervene in any such appeal pursuant to this section within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section. If the county assessor, Tax Commissioner, or Property Tax Administrator appeals a county board of equalization's final decision granting an exemption from property taxation, the person, corporation, or organization granted such exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed.

(2) A copy of the final decision by a county board of equalization shall be delivered electronically to the Tax Commissioner and the Property Tax Administrator within seven days after the date of the board's decision. The Tax Commissioner or the Property Tax Administrator shall have thirty days after the final decision to appeal the decision.

(3) Any owner may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the taxable status of real property for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in sections 77-202 to 77-202.25.

Source: Laws 1963, c. 441, § 4, p. 1461; Laws 1969, c. 642, § 1, p. 2556; Laws 1995, LB490, § 31; Laws 1997, LB271, § 43; Laws 2000, LB968, § 29; Laws 2004, LB973, § 8; Laws 2005, LB15, § 3; Laws 2007, LB334, § 18; Laws 2010, LB877, § 1; Laws 2011, LB384, § 3.

Annotations

This section delineates who may appeal from the decision of the county board of equalization on a tax exemption determination and applies regardless of whether the appeal was by petition in error. McClellan v. Board of Equal. of Douglas Cty., 275 Neb. 581, 748 N.W.2d 66 (2008).

A taxpayer who has sought and has been denied exemption under section 77-202.01 and who does not appeal pursuant to this section may not thereafter pay the tax and seek a refund under section 77-1736.10. Campus Lt. Hse. Min. v. Buffalo Cty. Bd. of Equal., 225 Neb. 271, 404 N.W.2d 46 (1987).

Giving notice of appeal and filing appeal bond must be completed within twenty days following board decision. United Way of the Midlands v. Douglas County Board of Equalization, 199 Neb. 323, 259 N.W.2d 270 (1977).

An appeal from a tax exemption may be taken pursuant to this section only. Bemis v. Board of Equalization of Douglas County, 197 Neb. 175, 247 N.W.2d 447 (1976).

77-202.05. Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents. The Tax Commissioner shall prescribe forms for distribution to the county assessors on which persons, corporations, and organizations may apply for tax-exempt status for real or tangible personal property. The forms shall include the following information:

(1) Name of owner or owners of the property, and if a corporation, the names of the officers and directors, and place of incorporation;

(2) Legal description of real property and a general description as to class and use of all tangible personal property; and

(3) The precise statutory provision under which exempt status for such property is claimed.

Source: Laws 1963, c. 441, § 5, p. 1461; Laws 1969, c. 643, § 1, p. 2557; Laws 1995, LB490, § 32; Laws 1997, LB271, § 44; Laws 2000, LB968, § 30; Laws 2007, LB334, § 19.

77-202.09. Cemetery organization; exemption; application; procedure; late filing. Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Tax Commissioner. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before February 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before July 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Source: Laws 1997, LB270, § 16; Laws 1999, LB271, § 7; Laws 2007, LB334, § 20; Laws 2010, LB708, § 2.

77-202.10. Cemetery organization; period of exemption; annual review. Any real property exemption granted to a cemetery organization shall remain in effect without reapplication unless disqualified by change of ownership or use. On or before August 1 the county assessor shall annually make a review of the ownership and use of all cemetery real property and report such review to the county board of equalization.

Source: Laws 1997, LB270, § 17.

77-202.11. Leased public property; taxation status; lessee; lien; procedure. (1) Leased public property, other than property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202, shall be taxed or exempted from taxation as if the property was owned by the leaseholder. The value of the property shall be determined as provided under section 77-201.

(2) On or before January 31 each year, the state and each governmental subdivision shall provide to the appropriate county assessor each new lease or preexisting lease which has been materially changed which went into effect during the previous year and a listing of previously reported leases that are still in effect.

(3) Taxes on property assessed to the lessee shall be due and payable in the same manner as other property taxes and shall be a first lien upon the personal property of the person to whom assessed until paid and shall be collected in the same manner as personal property taxes as provided in sections 77-1711 to 77-1724. The state or its governmental subdivisions shall not be obligated to pay the taxes upon failure of the lessee to pay. Notice of delinquent taxes shall be timely sent to the lessee and to the state or the governmental subdivision. No lien or attachment shall be attached to the property of the state or the governmental subdivisions for failure of the lessee to pay the taxes due.

(4) The state or any governmental subdivision may, if it chooses to do so in its discretion, provide the appropriate county assessor a description of the property rather than a copy of the lease; request that the

assessor notify it of the amount of tax which would be assessed to the leaseholder; voluntarily pay that tax; and collect that tax from the leaseholder as part of the rent.
(5) Except as provided in Article VIII, section 11, of the Constitution of Nebraska, no in lieu of tax payments provided for in any other section of law shall be made with respect to any leased public property to which this section applies.

Source: Laws 1999, LB271, § 8; Laws 2000, LB968, § 31; Laws 2003, LB292, § 10.

77-202.12. Public property; taxation status; county assessor; duties; appeal. (1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.
(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.
(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Tax Commissioner in his or her discretion may intervene in an appeal pursuant to this section within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section.

Source: Laws 1999, LB271, § 9; Laws 2000, LB968, § 32; Laws 2005, LB263, § 5; Laws 2007, LB334, § 21; Laws 2011, LB384, § 4.

77-202.23. Disabled or blind honorably discharged veteran; terms, defined. As used in sections 77-202.23 and 77-202.24, unless the context otherwise requires:
(1) Disabled person shall mean a veteran who has lost the use of or has undergone amputation of two or more extremities or has undergone amputation of one or more extremities and has lost the use of one or more extremities; and
(2) Blind shall mean a veteran whose sight is so defective as to seriously limit his ability to engage in the ordinary vocations and activities of life.

Source: Laws 1971, LB990, § 1; Laws 1979, LB273, § 1.

77-202.24. Disabled or blind veteran; mobile home exempt. A mobile home shall be exempt from taxation if it is owned and occupied by a disabled or blind veteran of the United States Armed Forces whose disability or blindness is recognized by the United States Department of Veterans Affairs as service connected and who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions).

Source: Laws 1971, LB990, § 2; Laws 1979, LB273, § 2; Laws 1991, LB2, § 16; Laws 1992, LB719A, § 162; Laws 1997, LB271, § 46; Laws 2005, LB54, § 16.

77-202.25. Disabled or blind honorably discharged veteran; property exemption; application; procedure; appeal. Application for the exemption provided in section 77-202.24 shall be made to the county assessor on or before April 1 of every year. The county assessor shall approve or disapprove such application and shall notify the taxpayer of his or her decision within twenty days of the filing of the application. The taxpayer may appeal the decision of the county assessor to the county board of equalization within twenty days after notice of the decision is mailed by the county assessor.
The taxpayer may appeal any decision of the county board of equalization under this section pursuant to section 77-202.04.

Source: Laws 1984, LB835, § 3; Laws 1995, LB490, § 36; Laws 1997, LB271, § 47.

77-203. Property taxes; when due; first lien. All property taxes levied for any county, city, village, or other political subdivision therein shall be due and payable on December 31 next following the date of levy except as provided in section 77-1214. Commencing on that date taxes on real property shall be a first lien on the property taxed until paid or extinguished as provided by law. Taxes on personal property shall be a first lien upon the personal property of the person to whom assessed until paid.

Source: Laws 1903, c. 73, § 14, p. 390; R.S.1913, § 6302; Laws 1919, c. 163, § 1, p. 367; Laws 1921, c. 133, art. II, § 3, p. 547; C.S.1922, § 5822; C.S.1929, § 77-203; Laws 1933, c. 134, § 1, p. 513; Laws 1935, c. 151, § 1, p. 557; Laws 1937, c. 167, § 2, p. 636; Laws 1939, c. 98, § 2, p. 421; Laws 1941, c. 157, § 2, p. 607; C.S.Supp.,1941, § 77-1959; R.S.1943, § 77-203; Laws 1959, c. 354, § 4, p. 1249; Laws 1969, c. 645, § 1, p. 2559; Laws 1971, LB945, § 3; Laws 1997, LB269, § 35; Laws 1998, LB1104, § 7.

Cross References

Real property taxes, extinguishment, see section 77-1861.

Annotations

1. First lien

All general real property taxes are a first lien. Polenz v. City of Ravenna, 145 Neb. 845, 18 N.W.2d 510 (1945).

Lien of taxes is not satisfied by statutory sale of property, but the sale only operates to transfer the lien to the purchaser. Coffin v. Old Line Life Ins. Co., 138 Neb. 857, 295 N.W. 884 (1941).

Special assessments are subsequent to general taxes in distribution of proceeds of tax foreclosure sale. Douglas County v. Shannon, 125 Neb. 783, 252 N.W. 199 (1934).

Since taxes are required to be paid and are a first lien on land, agreement to pay taxes and highest rate of interest is usurious and invalidates mortgage to extent of usury. Matthews v. Guenther, 120 Neb. 742, 235 N.W. 98 (1931).

Taxes take precedence over all other liens. Merriam v. Goodlett, 36 Neb. 384, 54 N.W. 686 (1893); Mutual Ben. Life Ins. Co. v. Siefken, 1 Neb. Unof. 860, 96 N.W. 603 (1901).

Lien of taxes due to county was inferior to perfected loan of agency of United States. United States v. Hauff, 267 F.Supp. 390 (D. Neb. 1966).

Proceeds of sale of real estate of bankrupt corporation were allocated first to county for real estate taxes. In re Independent Truckers, Inc., 226 F.Supp. 440 (D. Neb. 1963).

2. Miscellaneous

Under this section, property tax liability is not determinable or chargeable until December 31 following the prior year. Under this section, property tax liability is not apportionable between the real estate life tenant and the remaindermen. In re Estate of Olsen, 254 Neb. 809, 579 N.W.2d 529 (1998).

Where right to levy certain taxes is clearly conferred on cities of metropolitan class, such cities may supply the details necessary for full exercise of such power. Chicago & N. W. Ry. Co. v. Bauman, 132 Neb. 67, 271 N.W. 256 (1937).

Life tenant should pay taxes on land during continuance of his estate. Spiech v. Tierney, 56 Neb. 514, 76 N.W. 1090 (1898).

77-204. Real estate taxes; when delinquent. One-half of the taxes due under section 77-203 shall become delinquent on May 1 and the second half on September 1 next following the date the taxes become due, except that in counties having a population of more than one hundred thousand, the first half shall become delinquent April 1 and the second half August 1 next following the date the taxes become due.

Source: Laws 1903, c. 73, § 150, p. 442; R.S.1913, § 6479; C.S.1922, § 6002; Laws 1925, c. 43, § 10, p. 172; C.S.1929, § 77-1907; Laws 1933, c. 134, § 1, p. 513; Laws 1935, c. 151, § 1, p. 557; Laws 1937, c. 167, § 2, p. 636; Laws 1939, c. 98, § 2, p. 421; Laws 1941, c. 157, § 2, p. 607; C.S.Supp.,1941, § 77-1959; R.S.1943, § 77-204; Laws 1961, c. 373, § 1, p. 1148; Laws 1965, c. 471, § 1, p. 1518; Laws 1967, c. 497, § 1, p. 1689; Laws 1987, LB508, § 4.

77-207. Delinquent taxes; interest. All delinquent taxes shall draw interest at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date they become delinquent, and the interest shall be collected the same as the tax upon which the interest accrues.

Source: Laws 1903, c. 73, § 150, p. 442; R.S.1913, § 6479; C.S.1922, § 6002; Laws 1925, c. 43, § 10, p. 172; C.S.1929, § 77-1907; Laws 1933, c. 134, § 1, p. 513; Laws 1935, c. 151, § 1, p. 557; Laws 1937, c. 167, § 2, p. 636; Laws 1939, c. 98, § 2, p. 421; Laws 1941, c. 157, § 2, p. 607; C.S.Supp.,1941, § 77-1959; R.S.1943, § 77-207; Laws 1969, c. 646, § 1, p. 2563; Laws 1979, LB84, § 1; Laws 1980, LB933, § 29; Laws 1981, LB167, § 38.

Annotations

Penalty of interest is that which the Legislature has fixed as an inducement to pay taxes. In re Estate of Rogers, 147 Neb. 1, 22 N.W.2d 297 (1946).

77-208. General taxes; lien on real estate; priority. The first lien upon real estate under section 77-203 shall take priority over all other encumbrances and liens thereon.

Source: Laws 1903, c. 73, § 17, p. 391; R.S.1913, § 6305; Laws 1921, c. 133, art. II, § 6, p. 547; C.S.1922, § 5825; C.S.1929, § 77-206; R.S.1943, § 77-208.

Annotations

Special assessments are inferior to lien of general taxes. Polenz v. City of Ravenna, 145 Neb. 845, 18 N.W.2d 510 (1945); County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945); Douglas County v. Shannon, 125 Neb. 783, 252 N.W. 199 (1934).

Irrigation district assessments are first lien on land, and are prior to existing mortgage lien. Flansburg v. Shumway, 117 Neb. 125, 219 N.W. 956 (1928).

77-209. Special assessments; lien on real estate; priority. All special assessments, regularly assessed and levied as provided by law, shall be a lien on the real estate on which assessed, and shall take priority over all other encumbrances and liens thereon except the first lien of general taxes under section77-203.

Source: Laws 1903, c. 73, § 18, p. 391; R.S.1913, § 6306; Laws 1921, c. 133, art. II, § 7, p. 548; C.S.1922, § 5826; C.S.1929, § 77-207; R.S.1943, § 77-209.

Annotations

All special taxes are a lien, subject to the lien of general taxes, and superior to all other encumbrances and liens. Polenz v. City of Ravenna, 145 Neb. 845, 18 N.W.2d 510 (1945).

Proceeds of tax foreclosure are applied, first, to the payment of costs; second, to the payment of general taxes; and the remainder, if insufficient to pay special assessments, to be prorated equitably upon special assessments due. County of Garden v. Schaaf, 145 Neb. 676, 17 N.W.2d 874 (1945).

Charges for irrigation water sold and delivered are not special assessments for which a lien is given. Union Central Life Ins. Co. v. Cover, 137 Neb. 260, 289 N.W. 331 (1939).

On tax foreclosure, general taxes are superior to special assessments. Douglas County v. Shannon, 125 Neb. 783, 252 N.W. 199 (1934).

Where notice to landowners is not given, lien of special assessments will be held subject to liens of recorded mortgages. Board of Commissioners of Hamilton County v. Northwestern Mut. Life Ins. Co., 114 Neb. 596, 209 N.W. 256 (1926).

Lien for special assessments due to city was inferior to perfected lien of agency of United States. United States v. Hauff, 267 F.Supp. 390 (D. Neb. 1966).

Proceeds of sale of real estate of bankrupt corporation were allocated first to county for real estate taxes. In re Independent Truckers, Inc., 226 F.Supp. 440 (D. Neb. 1963).

77-211. Hospital which provides office building or office space; rent included in lieu of taxes; payment in lieu of taxes to county treasurer; allocation. Any political subdivision, tax-exempt corporation, or proprietorship acting with respect to any hospital and which provides office buildings or office space to tenants who shall be engaged in private enterprise shall charge such tenants a sufficient amount of rent so that a portion of the rent payments shall be in lieu of taxes. Such payments in lieu of taxes shall be paid to the county treasurer to be allocated to the taxing units within which the property is located so that each shall receive, as in lieu of tax payments, the same amount that it would have received from such leased property if it were not exempt from taxation.

Source: Laws 1973, LB294, § 1.

77-212. Hospitals providing for supportive medical services to patients; exempt from in lieu of tax payment. Space provided for supportive medical services to patients in hospitals shall be exempt from section 77-211.

Source: Laws 1973, LB294, § 2.

ARTICLE 3
DEPARTMENT OF REVENUE

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77-360. Department of Revenue; created; Tax Commissioner; chief executive officer. There is hereby created and established a department of state government to be known as the Department of Revenue, of which the chief executive officer shall be the Tax Commissioner.

Source: Laws 1969, c. 630, § 1, p. 2532; R.S.1943, (1976), § 77-340; Laws 1980, LB834, § 1.

77-361. Department of Revenue; functions and goals. The functions and goals of the Department of Revenue shall be to: (1) Execute faithfully the revenue and property tax laws of the State of Nebraska; (2) provide for efficient, updated, and economical methods and systems of revenue accounting, reporting, enforcement, and related activities; and (3) continually seek to improve its system of administration to provide greater efficiency and convenience to this state's taxpayers.

Source: Laws 1980, LB834, § 2; Laws 2007, LB334, § 23.

77-362. Tax Commissioner; powers, duties, functions. The Tax Commissioner, through the Department of Revenue, shall exercise those powers, duties, and functions vested in and administered by the Tax Commissioner.

Source: Laws 1969, c. 630, § 2, p. 2532; R.S.1943, (1976), § 77-341; Laws 1980, LB834, § 3.

77-362.01. Tax amnesty; authorized; when. If a federal tax amnesty law is enacted, the Tax Commissioner shall have the authority to duplicate the federal amnesty program in implementing a Nebraska tax amnesty program for all taxpayers owing any tax imposed by reason of or pursuant to authorization by any law of the State of Nebraska and collected by the Department of Revenue. The Tax Commissioner shall have the authority to waive any and all penalties and any and all interest on all delinquent taxes due and owing from any taxpayer.

Source: Laws 1986, LB1027, § 213.

77-362.02. Department of Motor Vehicles; provide information to Department of Revenue. In order to assist the Department of Revenue in carrying out its duties, the Department of Motor Vehicles shall provide information about individuals holding an operator's or driver's license or a state identification card under the Motor Vehicle Operator's License Act to the Department of Revenue in a manner agreed to by the Department of Revenue and the Department of Motor Vehicles. The information shall include:

(1) The individual's name;
(2) The individual's address of record;
(3) The individual's social security number, if available and permissible under law, and the individual's date of birth;
(4) The type of license, permit, or card held;
(5) The issuance date of the license, permit, or card;
(6) The expiration date of the license, permit, or card; and
(7) The status of the license, permit, or card.

The Department of Revenue may enter into agreements with the Director of Motor Vehicles to carry out this section.

Source: Laws 2010, LB879, § 5.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

77-363. Tax Commissioner; appointment; salary. The Governor shall nominate, and, with the advice and consent of the Legislature, shall appoint a Tax Commissioner and shall fix his or her salary.

Source: Laws 1921, c. 133, art. III, § 1, p. 548; C.S.1922, § 5827; C.S.1929, § 77-301; R.S.1943, § 77-301; Laws 1951, c. 258, § 1, p. 883; Laws 1957, c. 367, § 6, p. 1291; Laws 1963, c. 442, § 1, p. 1462; Laws 1967, c. 612, § 1, p. 2059; R.S.1943, (1976), § 77-301; Laws 1980, LB834, § 4.

Annotations

Chapter 63, Laws 1933, reducing salaries of state officers, was unconstitutional as to heads of departments for failure to comply with section 14, Article III, of the Constitution respecting amendments. State ex rel.

Taylor v. Hall, 129 Neb. 669, 262 N.W. 835 (1935); State ex rel. Day v. Hall, 129 Neb. 699, 262 N.W. 850 (1935).

Sec. 28, Art. IV, of the Constitution is self-executing and, together with this section, constitute a Tax Commissioner and administrative agency which may appeal from orders of county boards of equalization. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

77-364. Tax Commissioner; vacancy; removal by Governor. In case of vacancy in the office of Tax Commissioner by death, resignation, or otherwise, the Governor shall make a temporary appointment until the next session of the Legislature, when the vacancy for the unexpired term shall be filled in the manner provided in section 77-363. The Tax Commissioner may be removed by the Governor, following a public hearing, if requested by the Tax Commissioner.

Source: Laws 1921, c. 133, art. III, § 2, p. 548; C.S.1922, § 5828; C.S.1929, § 77-302; R.S.1943, § 77-302; Laws 1951, c. 258, § 2, p. 883; Laws 1965, c. 459, § 16, p. 1460; R.S.1943, (1976), § 77-302; Laws 1980, LB834, § 5.

77-365. Revenue administration; Tax Commissioner; creation of divisions and bureaus; relationships with taxpayers. The Tax Commissioner shall establish, consistent with the laws of the State of Nebraska, such divisions or bureaus or other subdivisions within the office of the Tax Commissioner as he or she may find necessary or desirable to maintain adequate and effective relationships with taxpayers and to improve the administration of the tax laws of this state.

Source: Laws 1965, c. 459, § 7, p. 1457; R.S.1943, (1976), § 77-326; Laws 1980, LB834, § 6.

77-366. Tax Commissioner; officers and employees; deputies; bond or insurance; powers. (1) The Tax Commissioner shall appoint or employ deputies, investigators, inspectors, agents, security personnel, and other persons as he or she deems necessary to administer and effectively enforce all provisions of the revenue and property tax laws of this state. The appointed personnel shall hold office at the pleasure of the Tax Commissioner. Any appointed or employed personnel shall perform the duties assigned by the Tax Commissioner.

(2) All personnel appointed or employed by the Tax Commissioner shall be bonded or insured as required by section 11-201. As specified by the Tax Commissioner, certain personnel shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101. Such personnel shall be empowered to arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by the Tax Commissioner, collect taxes, and bring an offender before any court with jurisdiction in this state, except that such personnel shall not be authorized to carry weapons or enforce any laws other than laws administered by the Tax Commissioner or the Department of Revenue and sections28-1101 to 28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101.

(3) Subsection (2) of this section shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, revenue or otherwise.

Source: Laws 1980, LB834, § 7; Laws 1990, LB821, § 42; Laws 1993, LB345, § 5; Laws 1995, LB490, § 38; Laws 1999, LB36, § 6; Laws 2004, LB884, § 36; Laws 2007, LB334, § 24; Laws 2007, LB638, § 19.

77-367. Products and services to identify nonfilers of returns, underreporters, nonpayers of taxes, or improper or fraudulent payments; contract authorized; duties; use of proceeds; report. (1) The Department of Revenue may contract to procure products and services to develop, deploy, or administer systems or programs which identify nonfilers of returns, underreporters, or nonpayers of taxes administered by the department or improper or fraudulent payments made through programs administered by the department. The department shall enter into at least one such contract by December 31, 2014, and such contract shall be for the purpose of identifying nonfilers of returns with a tax liability in any amount or underreporters or nonpayers of taxes with an outstanding tax liability of at least five thousand dollars. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, interest, or other recovery actually collected and shall be paid only after the amount is collected. The Legislature intends to appropriate an amount from the tax, penalty, interest, and other recovery actually collected, not to exceed the amount collected, which is sufficient to pay for services,

reimbursements, costs incurred by the department, or other remuneration pursuant to this section. Vendors entering into a contract with the department pursuant to this section are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information.

(2) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to this section shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers, underreporters, nonpayers, and improper or fraudulent payments.

(3) The Tax Commissioner shall submit electronically an annual report to the Revenue Committee of the Legislature and Appropriations Committee of the Legislature on the amount of dollars generated during the previous fiscal year pursuant to this section.

Source: Laws 2011, LB642, § 1; Laws 2012, LB782, § 135; Laws 2014, LB851, § 7.

77-369. Tax Commissioner; rules and regulations; adopt; publish. The Tax Commissioner shall make, adopt, and publish such rules and regulations as he or she may deem necessary and desirable to carry out the powers and duties imposed upon him or her and the Department of Revenue.

Source: Laws 1969, c. 630, § 3, p. 2532; R.S.1943, (1976), § 77-342; Laws 1980, LB834, § 10; Laws 1995, LB490, § 40; Laws 1999, LB36, § 7.

77-370. Department of Revenue; uniform tax books, records, and forms; approval. The form of all schedules, books of instruction, records, and all other forms which may be necessary or expedient for the proper administration of the revenue and property tax laws of the state shall be approved by the Department of Revenue. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable.

Source: Laws 1921, c. 133, art. III, § 3, p. 548; C.S.1922, § 5829; C.S.1929, § 77-303; R.S.1943, § 77-304; Laws 1959, c. 355, § 2, p. 1251; Laws 1969, c. 647, § 1, p. 2565; R.S.1943, (1976), § 77-304; Laws 1980, LB834, § 11; Laws 1997, LB270, § 18; Laws 1999, LB36, § 8; Laws 2007, LB334, § 25.

Annotations

This section requires the Tax Commissioner to approve all forms, schedules, books of instructions, etc., as may be necessary or expedient to the proper administration of the tax laws. Lincoln Tel. & Tel. Co. v. County Board of Equalization, 209 Neb. 465, 308 N.W.2d 515 (1981).

77-372. Revenue administration; implementation of programs; records; statistical information. The Department of Revenue shall develop, operate, and implement systems for the production of records of taxes and other revenue and receipts collected by any agency of the State of Nebraska. Such records shall provide for the collection and recording of such accounting information in such fashion as may be required by the accounting division of the Department of Administrative Services and shall provide in addition for such further statistical information as the Department of Revenue may find necessary for the effective execution of its responsibilities under appropriate laws of this state.

Source: Laws 1965, c. 459, § 4, p. 1456; R.S.1943, (1976), § 77-323; Laws 1980, LB834, § 13.

77-373. Revenue administration; implementation of agreements and working relationships; state and federal agencies. The Department of Revenue may develop and implement such agreements and working relationships which are consistent with the laws of the State of Nebraska with any federal office, state agency, or local subdivision of state government, either within or without the State of Nebraska which it may find necessary or desirable for proper administration of the tax laws of this state.

Source: Laws 1965, c. 459, § 5, p. 1457; R.S.1943, (1976), § 77-324; Laws 1980, LB834, § 14.

77-373.01. Department of Labor and Department of Revenue; statistical compilation; confidentiality; disclosure authorized. (1) The Department of Labor and the Department of Revenue shall use the codes under the North American Industry Classification System for the compilation and publication of statistics rather than codes under the Standard Industrial Classification System.

For the sole purpose of determining or updating the proper code under the appropriate industrial classification system, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be strictly limited to the name, address, and federal employer identification number or numbers of the taxpayer and the code under the industrial classification system.

(2) Notwithstanding sections 77-2711 and 77-27,119 and for the sole purpose of administration of the Contractor Registration Act and the contractor data base provisions of section 48-2117, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be limited to the name, address, and federal employer identification number or numbers of the taxpayer.
(3) The disclosures allowed under this section may be made notwithstanding any other provision of law of this state regarding disclosure of information by either department. Any information received by either department under this section shall be considered confidential by the receiving department, and any employee who discloses such information other than as specifically allowed by this section or other laws of this state shall be subject to the penalties normally imposed on employees who improperly disclose information.

Source: Laws 1997, LB875, § 19; Laws 2009, LB162, § 8.

Cross References

Contractor Registration Act, see section 48-2101.

77-374. Department of Revenue; efficiency recommendations; report; to whom. Where the Department of Revenue shall find that the administration of the revenue and property tax laws of the state might be more efficiently and economically conducted, it shall cause to be prepared recommendations to effect the desired objective. Such recommendations shall be given to the Governor and the chairperson of the appropriate legislative committee when the Legislature is next in regular session following the development of the recommendations. Should the Legislature be in regular session at the time such recommendations are compiled, the recommendations shall be communicated to the Governor and the appropriate committee of the Legislature.

Source: Laws 1965, c. 459, § 13, p. 1459; R.S.1943, (1976), § 77-332; Laws 1980, LB834, § 15; Laws 2007, LB334, § 26.

77-375. Tax Commissioner; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery. (1) The Tax Commissioner or his or her duly authorized representative may administer oaths and compel the attendance of witnesses and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.
(2) Any person shall comply with a written demand of the Tax Commissioner requiring the production of records notwithstanding the confidentiality provisions of section 8-1401. The records and the information contained thereon shall be protected pursuant to the confidentiality provisions applicable to the Tax Commissioner. Any person disclosing information to the Tax Commissioner pursuant to a demand for production of records under this subsection is immune from liability, civil, criminal, or otherwise, that might result from disclosing such information. The Tax Commissioner shall pay the costs of providing such information pursuant to section 8-1402.
(3) The Tax Commissioner may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.
(4) The Tax Commissioner shall have access to the information required to be reported under the New Hire Reporting Act for the purpose of administering taxes he or she has a duty to collect.

Source: Laws 1965, c. 459, § 9, p. 1457; R.S.1943, (1976), § 77-328; Laws 1980, LB834, § 16; Laws 1993, LB345, § 6; Laws 1995, LB490, § 42; Laws 1998, LB1104, § 8; Laws 1999, LB36, § 9; Laws 2007, LB223, § 1.

Cross References

New Hire Reporting Act, see section 48-2301.

77-376. Tax Commissioner; examination of financial records; no release of information; sharing of information. The Tax Commissioner may examine or cause to be examined in his or her behalf, and make memoranda from, any of the financial records of state and local subdivisions, persons, and corporations subject to the tax laws of this state. No information shall be released that is not so authorized by existing statutes. Unless otherwise prohibited by law, the Tax Commissioner may share the information examined with the taxing or law enforcement authorities of this state, other states, and the federal government.

Source: Laws 1965, c. 459, § 10, p. 1458; R.S.1943, (1976), § 77-329; Laws 1980, LB834, § 17; Laws 1995, LB490, § 43; Laws 1999, LB36, § 10; Laws 2015, LB261, § 6.

Operative Date: March 6, 2015

77-377. Proceedings by Attorney General or county attorney; enforcement of revenue laws. The Department of Revenue may request the Attorney General or any county attorney to institute proceedings, actions, and prosecutions as may be required to enforce the laws relating to penalties, liabilities, assessments, collection, and payment of revenue and punishment of public officers, persons, or officers or agents of corporations for failure to comply with or for neglect to comply with the provisions of any revenue or property tax law administered by or subject to the administrative jurisdiction of the department.

Source: Laws 1965, c. 459, § 8, p. 1457; R.S.1943, (1976), § 77-327; Laws 1980, LB834, § 18; Laws 1993, LB345, § 7; Laws 2007, LB334, § 27.

77-377.01. Delinquent tax collection; contract with collection agency; when authorized. The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to the Collection Agency Act, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process.

For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been mailed at least three notices requesting payment. At least one notice shall include a statement that the matter of such taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

Source: Laws 1981, LB170, § 1; Laws 1993, LB261, § 22; Laws 1993, LB161, § 2; Laws 2012, LB727, § 28.

Cross References

Collection Agency Act, see section 45-601.

77-377.02. Delinquent tax collection; collection agency; fees; remit funds. (1) Fees for services, reimbursements, or other remuneration to such collection agency shall be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the Tax Commissioner and the collection agency shall provide for the payment of fees for such services, reimbursements, or other remuneration not in excess of fifty percent of the total amount of delinquent taxes, penalties, and interest actually collected.

(2) All funds collected, less the fees for collection services as provided in the contract, shall be remitted to the Tax Commissioner within forty-five days from the date of collection from a taxpayer. Forms to be used for such remittances shall be prescribed by the Tax Commissioner.

Source: Laws 1981, LB170, § 2.

77-377.03. Delinquent tax collection; collection agency; bond required. Before entering into such a contract, the Tax Commissioner shall require a bond for the collection agency not in excess of one hundred thousand dollars, guaranteeing compliance with the terms of the contract and such bond shall be in addition to any bond required by section 45-608.

Source: Laws 1981, LB170, § 3.

77-377.04. Delinquent tax collection; collection agency; subject to taxation. A collection agency entering into a contract with the Tax Commissioner for the collection of delinquent taxes pursuant to sections 77-377.01 to 77-377.04 agrees that it is receiving income from sources within this state or doing business in this state for purposes of the Nebraska income tax laws pursuant to section 77-2733 or 77-2734.02.

Source: Laws 1981, LB170, § 4; Laws 1984, LB1124, § 1.

77-378. Delinquent taxpayers; Department of Revenue and Department of Labor; prepare, maintain, and publish list; Tax Commissioner and Commissioner of Labor; duties. (1) The Department of Revenue and the Department of Labor shall prepare, maintain, and publish a list of delinquent taxpayers who owe taxes or fees, including interest, penalties, and costs, in excess of twenty thousand dollars for which a notice of lien has been filed with the appropriate filing officer in accordance with the Uniform State Tax Lien Registration and Enforcement Act, except that no such list of delinquent taxpayers shall include any taxpayer

that has not exhausted or waived all rights of appeal from a final balance of tax liability. The list may be posted on the web site of the Department of Revenue or the Department of Labor. The list shall include the name and address of the delinquent taxpayer, the type of tax or fee due, and the amount of tax or fee due, including interest, penalties, and costs.

(2) The Tax Commissioner and Commissioner of Labor shall update the list of delinquent taxpayers on a quarterly basis. The list shall not include (a) the name or related information of any taxpayer who has entered into a payment agreement with the Tax Commissioner or Commissioner of Labor and who is in compliance with that agreement or (b) the name or related information of any person who is protected by a stay that is in effect under the federal bankruptcy law. The name of a taxpayer shall be removed from the list within fifteen days after the payment in full of the debt or within fifteen days after the taxpayer enters into a payment agreement with the Tax Commissioner or Commissioner of Labor. A taxpayer may be placed back on the list if the taxpayer is more than fifteen days delinquent on a payment agreement.

(3) At least thirty days before the disclosure of the name of a delinquent taxpayer pursuant to subsection (1) of this section, the Tax Commissioner or Commissioner of Labor shall mail a written notice to the delinquent taxpayer at the taxpayer's last-known address informing the taxpayer that the failure to cure the tax delinquency could result in the taxpayer's name being included in a list of delinquent taxpayers that is published by the Tax Commissioner or Commissioner of Labor pursuant to this section.

Source: Laws 2010, LB879, § 6.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

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

Source: Laws 1979, LB17, § 1; R.S.Supp.,1979, § 77-353; Laws 1980, LB834, § 20; Laws 1991, LB82, § 1.

77-380. Legislative intent. It is the intent of sections 77-202.03 and 77-379 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.

Source: Laws 1979, LB17, § 2; R.S.Supp.,1979, § 77-354; Laws 1980, LB834, § 21.

77-381. Terms, defined. 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.

Source: Laws 1979, LB17, § 3; R.S.Supp.,1979, § 77-355; Laws 1980, LB834, § 22; Laws 1992, LB1004, § 1; Laws 1994, LB1160, § 121; Laws 1995, LB182, § 65.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-382. Department; tax expenditure report; prepare; contents. (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.

Source: Laws 1979, LB17, § 4; R.S.Supp.,1979, § 77-356; Laws 1980, LB834, § 23; Laws 1991, LB82, § 2; Laws 2012, LB962, § 1; Laws 2013, LB629, § 1; Laws 2014, LB989, § 1.

77-383. Tax expenditure reports; department; access to information. The department may request from any state or local official or agency any information necessary to complete the reports required under section 77-382 and subsection (2) of section 77-385. All state and local officials or agencies shall cooperate with the department with respect to any such request.

Source: Laws 1979, LB17, § 5; R.S.Supp.,1979, § 77-357; Laws 1980, LB834, § 24; Laws 2014, LB989, § 2.

77-385. Tax expenditure report; summary; submission required; joint hearing; supplemental information. (1) The report required under section 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 section 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 section 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 section 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 section 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 section 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.

Source: Laws 1979, LB17, § 7; R.S.Supp.,1979, § 77-359; Laws 1980, LB834, § 26; Laws 1991, LB82, § 3; Laws 2012, LB782, § 136; Laws 2013, LB612, § 1; Laws 2014, LB989, § 3.

77-3,109. Charge for publications; authorized. The Department of Revenue may charge persons and state agencies for the following publications of the Department of Revenue: Department of Revenue Annual Report, Package XN, Department of Revenue Tax Expenditure Report, and the Department of Revenue State Funds Booklet. The Tax Commissioner shall set the price of such publications which shall be the cost of production.

Source: Laws 1986, LB1027, § 211.

77-3,110. Department of Revenue Miscellaneous Receipts Fund; created; use; investment. All funds received pursuant to sections 77-3,109 and 77-3,118 shall be remitted to the State Treasurer for credit to the

Department of Revenue Miscellaneous Receipts Fund which is hereby created. All money in the fund shall be administered by the Department of Revenue and shall be used to defray the cost of production of the publications listed in section 77-3,109 or of the listings described in section 77-3,118, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Department of Revenue Miscellaneous Receipts Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB1027, § 212; Laws 1993, LB345, § 10; Laws 1994, LB1066, § 79; Laws 2009, First Spec. Sess., LB3, § 54.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-3,112. Low-level radioactive waste facility or employment; employment of person removed under immigration and customs enforcement or convicted for certain violations; tax credit or exemption; prohibited. (1) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person or taxpayer any tax credit or exemption for the construction of a facility or the employment of people for the disposal in Nebraska of low-level radioactive waste for which a license is required pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person any tax credit, exemption, or refund for the employment of any person who has been removed from the United States pursuant to proceedings initiated by the United States Immigration and Customs Enforcement, or other competent authority, or who has been convicted in a criminal court proceeding for offenses related to illegal immigration. Any benefits that were received prior to the removal or conviction will be recaptured to the extent the benefits were received based on the employment of such persons.

Source: Laws 1987, LB523, § 46; Laws 2007, LB223, § 2.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

77-3,115. Material for developing tax policy changes; study; contents. The Department of Revenue shall gather, prepare, and study material which shall be used as a basis for developing tax policy changes. The material shall be directed toward providing results which would be useful to a concept of analyzing the impact of taxes on different economic sectors as defined by the Standard Industrial Code in the state and the impact on those sectors of any policy changes in taxes. The study shall be updated to serve as a basis to review future proposed tax policy changes. The study shall include, but not be restricted to, the following:

(1) Compiling an accurate and dependable set of indicators that show the role each economic sector plays in Nebraska's economy and each sector's legal tax incidence by tax types. The purpose is to develop an appropriate share for each economic sector's responsibility for state and local taxes;

(2) The amount of taxes, fees, and other governmental costs imposed on each economic sector which amount shall include those taxes, fees, and other governmental costs imposed on individuals employed in industries in such sector; and

(3) If possible, an estimate of those state and local taxes, fees, and other governmental costs which are exported outside the state or offset by provisions of state and federal tax laws.

Source: Laws 1992, LB719A, § 217.

77-3,116. Study; cooperation with Department of Labor and other state agencies; contracts authorized; reports; department; duty. (1) The Department of Revenue and the Department of Labor shall cooperate and participate in the collection of data for the study described in section 77-3,115. Other state agencies, including the University of Nebraska, shall assist in the study or the update as requested by the Department of Revenue and as any necessary funds are available. Any agency may contract with the Department of Revenue to provide such assistance. The Department of Revenue may also contract with an independent entity for the entity to conduct or assist in conducting such study or update. The department, other state agency, or independent entity preparing the material or study shall utilize and consider, along with other information, the results of any available study relating to the items listed in section 77-3,115 and conducted or contracted for by the Legislature in the year prior to April 16, 1992.

(2) A preliminary report of the initial study's models and initial findings shall be reported by the Department of Revenue to the chairpersons of the Appropriations Committee and Revenue Committee of the Legislature, the Clerk of the Legislature, and the Governor by December 1, 1992. The initial study shall be completed and the department shall report its findings to the same entities by December 1, 1993. The study shall be updated and the update shall be reported to the same entities on November 1, 2013, and every two years thereafter. The study submitted to the Appropriations Committee and Revenue Committee of the Legislature and the Clerk of the Legislature pursuant to this subsection shall be submitted electronically.
(3) Any models developed for the initial study or update shall be electronically shared with the Legislative Fiscal Analyst. The Department of Revenue shall include in its budget request for every other biennium following the 1991-93 biennium sufficient appropriation authority to conduct or contract for the required update.

Source: Laws 1992, LB719A, § 218; Laws 2012, LB727, § 29; Laws 2012, LB782, § 137; Laws 2013, LB612, § 2.

77-3,117. Department of Revenue; computation authorized. (1) When the Department of Revenue finds that the administration of the revenue laws might be more efficiently and economically conducted, the department may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts will be rounded to the nearest dollar, with amounts ending in fifty cents or more rounded to the next highest dollar.
(2) The department may, on an annual basis, eliminate account balances of one dollar or less under uniform procedures developed by the department.
(3) For sales and use tax purposes, the tax computation shall be carried to the third decimal place and rounded down to a whole cent whenever the third decimal place is four or less and rounded up to a whole cent whenever the third decimal place is greater than four.

Source: Laws 1993, LB345, § 8; Laws 2003, LB282, § 5.

77-3,118. Department of Revenue; charge for information; authorized. The Department of Revenue may charge persons and state agencies for any listings made by the department of information that is not confidential. The Tax Commissioner shall set the price of such listings which shall be the cost of production.

Source: Laws 1993, LB345, § 9.

77-3,119. Tax Commissioner; certify population of cities and villages. (1) The Tax Commissioner shall certify the population of cities and villages to be used for purposes of calculations made pursuant to subdivision (4) of section 18-2603, subdivisions (3)(a) and (b) of section 35-1205, subdivision (1) of section 39-2517, and sections 39-2513 and 77-27,139.02. The Tax Commissioner shall transmit copies of such certification to all interested parties upon request.
(2) The Tax Commissioner shall certify the population of each city and village based upon the most recent federal census. The Tax Commissioner shall determine the most recent federal census for each city and village by using the most recent federal census figures available from (a) the most recent federal decennial census, (b) the most recent federal census update or recount certified by the United States Bureau of the Census, or (c) the most recent federal census figure of the city or village plus the population of territory annexed as calculated in sections 18-1753 and 18-1754.
(3) The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB1127, § 1; Laws 1998, LB1120, § 26; Laws 2000, LB968, § 33; Laws 2011, LB383, § 2.

ARTICLE 4
TRAINING AND CERTIFICATION OF COUNTY ASSESSORS

77-414. Educational courses and standards; Tax Commissioner; duties.
77-420. Supplementary seminars; purpose.
77-421. Certification as county assessor; applicants; forms; examination; fee.
77-422. Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect.

77-414. Educational courses and standards; Tax Commissioner; duties. The Property Tax Administrator shall:
(1) Establish, implement, and maintain a required system of educational courses for the certification and recertification of all holders of county assessor certificates; and
(2) Establish the required educational standards and criteria for certification and recertification of all holders of county assessor certificates.
In order to promote compliance with the requirements of this section, the Tax Commissioner shall adopt and promulgate, and from time to time amend or revise, rules and regulations containing the necessary educational standards and criteria for certification and recertification.

Source: Laws 1999, LB194, § 14; Laws 2003, LB443, § 1; Laws 2007, LB334, § 28.

77-420. Supplementary seminars; purpose. In cooperation with the county assessors association, the Property Tax Administrator may arrange and conduct seminars in assessment methods, which seminars shall be supplementary to any educational course required under section77-414.

Source: Laws 1963, c. 439, § 6, p. 1458; Laws 1995, LB490, § 51; Laws 1997, LB270, § 21; Laws 2003, LB443, § 4.

77-421. Certification as county assessor; applicants; forms; examination; fee. (1) The Property Tax Administrator shall, in February, May, August, and November of each year, hold an examination of applicants for certification as county assessor. An applicant for the examination shall, not less than ten days before an examination, present to the Property Tax Administrator a written application on forms provided by the Property Tax Administrator. Such application shall not be considered by the Property Tax Administrator unless accompanied by a payment of a fee to the order of the Tax Commissioner. The fees shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The amount of such fee shall be determined annually by the Tax Commissioner and shall be sufficient to cover the costs of the administration of the examination. Such examination shall be written and shall be of such character as fairly to test and determine the qualifications, fitness, and ability of the person tested actually to perform the duties of county assessor. The Property Tax Administrator shall prepare such examination.
(2) When the office of county assessor is vacant, the county board may for good cause request a certification examination from the Property Tax Administrator at a time different from those set out in subsection (1) of this section. The request shall be in writing and shall state the basis for the certification examination. The Property Tax Administrator shall within ten days after receipt of the request for certification review the request and send notice of approval or disapproval to the county board. If approved, the Property Tax Administrator shall state the date, time, and place of the requested certification examination.

Source: Laws 1969, c. 623, § 1, p. 2520; Laws 1983, LB245, § 1; Laws 1986, LB1105, § 1; Laws 1995, LB490, § 52; Laws 1997, LB270, § 22;Laws 1999, LB36, § 12; Laws 2000, LB968, § 34; Laws 2007, LB334, § 29; Laws 2009, LB166, § 5.

Annotations

This section is not involved in an unconstitutional delegation of legislative power or an unreasonable classification. Shear v. County Board of Commissioners of Rock County, 187 Neb. 849, 195 N.W.2d 151 (1972).

77-422. Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect. (1) Upon the successful completion of the examination by the applicant, a county assessor certificate shall be issued to him or her.

(2) The Tax Commissioner shall establish a system for revocation or suspension of a certificate, including a certificate issued by the Property Tax Administrator, for failure to maintain the educational standards and criteria and shall have the power to revoke the certificate if the certificate holder has not successfully met the educational requirements in section 77-414. A copy of the Tax Commissioner's written order revoking or suspending a certificate shall be mailed to the person within seven days after the date of the order.
(3) Any person whose certificate, including a certificate issued by the Property Tax Administrator, has been revoked or suspended may appeal the written order of the Tax Commissioner, within thirty days after the date of the order, to the Tax Equalization and Review Commission in accordance with section 77-5013.
(4) A person whose certificate has been invalidated by the commission or the Tax Commissioner shall not be eligible to hold a certificate for five years after the date of invalidation.

Source: Laws 1969, c. 623, § 2, p. 2521; Laws 2003, LB443, § 5; Laws 2004, LB973, § 9; Laws 2006, LB808, § 25; Laws 2007, LB334, § 30.

Annotations

This section is not involved in an unconstitutional delegation of legislative power or an unreasonable classification. Shear v. County Board of Commissioners of Rock County, 187 Neb. 849, 195 N.W.2d 151 (1972).

ARTICLE 6
ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

77-601. Railroad operating property; assessment.
77-602. Railroad operating property; duty of Property Tax Administrator; when valued.
77-603. Railroad property; annual statement; contents.
77-603.01. Railroad operating property; sale; report by purchaser; contents; penalty; waiver.
77-604. Railroad property; statement by railroad company not conclusive; taxable value; distribution; valuation per mile; how determined.
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77-690. Taxation; levy; money and credits; surrender to Tax Commissioner.
77-691. Money; disposition.
77-693. Adjustment to value of railroad and car line property; Property Tax Administrator; powers and duties.

77-601. Railroad operating property; assessment. The Property Tax Administrator shall assess all operating property of the railroads and railroad corporations in the State of Nebraska as defined in section 77-602.

Source: Laws 1903, c. 73, § 85, p. 413; Laws 1909, c. 111, § 1, p. 441; R.S.1913, § 6375; Laws 1921, c. 133, art. VI, § 1, p. 554; C.S.1922, § 5839; C.S.1929, § 77-501; R.S.1943, § 77-601; Laws 1969, c. 645, § 3, p. 2559; Laws 1969, c. 658, § 1, p. 2575; Laws 1979, LB105, § 1; Laws 1985, LB268, § 3; Laws 1995, LB490, § 60.

Annotations

1. State taxation

Examples of property subject to valuation by the Tax Commissioner include railroad personal property and public service entities, including pipelines. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

Roundhouse, machine shops and office building should be assessed by State Board of Equalization and Assessment. Missouri P. R.R. Corp. v. Board of Equalization of Richardson County, 114 Neb. 84, 206 N.W. 150 (1925).

Water pipe line owned and operated by railroad company should be assessed by State Board of Equalization and Assessment. Chicago, B. & Q. R.R. Co. v. Webster County, 101 Neb. 311, 163 N.W. 316 (1917).

Section does not exclude property situated more than one hundred feet from center of main track of road. Chicago, B. & Q. R.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915).

State Board of Equalization has exclusive jurisdiction in valuing and assessing railroad property, and mandamus will not lie to correct assessment. State ex rel. Bee Bldg. Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902).

Bridge across navigable stream is assessable by State Board of Equalization. Chicago, B. & Q. R.R. Co. v. Richardson County, 61 Neb. 519, 85 N.W. 532 (1901).

Roundhouse was assessed by state, and repair shops locally. Red Willow County v. Chicago, B. & Q. R.R. Co., 26 Neb. 660, 42 N.W. 879 (1889).

Property, assessable by State Board of Equalization, is not rendered taxable by county through failure of company to list same. Burlington & M. R. R.R. v. Lancaster County, 15 Neb. 251, 18 N.W. 71 (1883).

Judgment of state court, sustaining a tax alleged to be illegal because of unjust discrimination, can be reviewed on constitutional grounds. Ex parte, Williams, Tax Commissioner, 277 U.S. 267 (1928).

2. Local taxation

Property outside of right-of-way is assessable in county where located. Chicago, B. & Q. R.R. Co. v. Cass County, 72 Neb. 489, 101 N.W. 11 (1904); Chicago, B. & Q. R.R. Co. v. Hitchcock County, 40 Neb. 781, 59 N.W. 358 (1894).

Material for building railroad, not so used, but stored for a long time, is subject to local taxation. Chicago, B. & Q. R.R. Co. v. Merrick County, 36 Neb. 176, 54 N.W. 309 (1893).

Right-of-way with no superstructure is assessed locally, and such taxes cannot be enjoined. Repub. Val. & W. Ry. v. Chase County, 33 Neb. 759, 51 N.W. 132 (1892).

3. Miscellaneous

Railroad property is required to be assessed at same percentage of actual value as other tangible property. Union P. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 139, 101 N.W.2d 892 (1960); Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment, 170 Neb. 106, 101 N.W.2d 873 (1960); Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

Construction by enforcing officers, acquiesced in by continued noninterference, is approved unless unconstitutional, or clearly wrong. State ex rel. Village of Dakota City v. Bryan, 112 Neb. 692, 200 N.W. 870 (1924).

Railroad, for purpose of taxation, is considered an entity, and includes all property held and used principally in operation of road. Chicago, B. & Q. R.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915).

It is competent for the Legislature to provide for the valuation and assessment of railroad property as a unit by one assessing body. Chicago, B. & Q. R.R. Co. v. Richardson County, 72 Neb. 482, 100 N.W. 950 (1904); State ex rel. Morton v. Back, 72 Neb. 402, 100 N.W. 952 (1904).

Value of property assessed as means of earning income, should be considered. State ex rel. Bldg. Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902).

77-602. Railroad operating property; duty of Property Tax Administrator; when valued. The Property Tax Administrator in May of each year shall proceed to ascertain all operating property of any railroad company owning, operating, or controlling any railroad or railroad service in this state. Operating property is property that contributes to the operation of a railroad and which for the purpose of this section shall be held to include the main track, sidetrack, spur tracks, warehouse tracks, roadbed, right-of-way and depot grounds, all machine and repair shops, general office buildings, storehouses, and all water and fuel stations, buildings, and superstructures located on any of such property, any manufacturing plant necessary in the operation of such railroad and any property used or held in connection with the manufacturing plant, all machinery, rolling stock, telegraph lines and instruments connected with such lines, all material on hand and supplies provided for operating and carrying on the business of such road, in whole or in part, franchises, all personal property of such railroad company, and all other real property of such railroad company which is adjacent and contiguous to the railroad right-of-way and is used or held for the sole purpose of operating the railroad. Nonoperating property is property owned or leased by a railroad company that does not contribute to the operation of a railroad. The Property Tax Administrator shall value operating property as other real and personal property.

Source: Laws 1903, c. 73, § 86, p. 414; R.S.1913, § 6376; Laws 1921, c. 133, art. VI, § 2, p. 555; C.S.1922, § 5840; C.S.1929, § 77-502; R.S.1943, § 77-602; Laws 1969, c. 659, § 1, p. 2577; Laws 1979, LB105, § 2; Laws 1979, LB103, § 1; Laws 1981, LB486, § 1; Laws 1985, LB268, § 4; Laws 1995, LB490, § 61; Laws 1997, LB270, § 24.

Annotations

Roundhouse, machine shops and office building are not subject to local taxation. Missouri P. R.R. Corp. v. Board of Equalization of Richardson County, 114 Neb. 84, 206 N.W. 150 (1925).

Interpretation by State Board of Equalization of law pertaining to apportioning of value of rolling stock, was proper. State ex rel. Village of Dakota City v. Bryan, 112 Neb. 692, 200 N.W. 870 (1924).

Water pipe line owned and operated by railroad company is not subject to local taxation. Chicago, B. & Q. R.R. Co. v. Webster County, 101 Neb. 311, 163 N.W. 316 (1917).

Railroad for purpose of taxation is considered an entity and includes all property held and used principally in operation of road. Chicago, B. & Q. R.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915).

77-603. Railroad property; annual statement; contents. On or before April 15 each year, the person, company, or corporation owning, operating, or controlling any railroad or railroad service in this state shall, by a duly authorized corporate representative or official, return to the Property Tax Administrator a statement of the property of such company on January 1 preceding. The statement shall be made on forms prescribed by the Tax Commissioner. All information reported by the railroad company, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15. Such statement shall include:

(1) A list of the right-of-way, track, and roadbed, giving the entire length of the main track and sidetrack in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) A schedule showing: (a) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (b) the amount of capital stock paid up; (c) the market value of the stock or, if of no market value, then the true value of the shares of stock; (d) the total amount of all secured and unsecured indebtedness except for current expenses of operating the road; and (e) the taxable valuation of all its operating property in this state that is locally assessed;

(3) A correct return of the value of all materials and supplies used for operating and carrying on the business of such railroad;

(4) The total gross earnings and net earnings of such corporation during the year for which the statement is made, and the total amount expended in the operation and maintenance of the property and the improvements to such property, distinguishing that expended in improvement or betterment from that expended in maintenance and operation, also the dividend last declared upon its shares and the amount thereof, and the date, number, and amount of all dividends declared upon its stock during the year preceding the date of such report; and

(5) Such other necessary information as the Property Tax Administrator may require, all of which shall be taken into consideration in ascertaining and fixing the value of such railroad and the franchise thereof.

Source: Laws 1903, c. 73, § 87, p. 414; R.S.1913, § 6377; Laws 1921, c. 133, art. VI, § 3, p. 555; C.S.1922, § 5841; C.S.1929, § 77-503; R.S.1943, § 77-603; Laws 1979, LB105, § 3; Laws 1979, LB103, § 2; Laws 1981, LB179, § 4; Laws 1985, LB268, § 5; Laws 1992, LB719A, § 163; Laws 1995, LB490, § 62; Laws 1997, LB270, § 25; Laws 2004, LB973, § 10; Laws 2007, LB334, § 31.

Annotations

A railroad is required to make a return of its property for taxation. Union P. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 139, 101 N.W.2d 892 (1960); Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment, 170 Neb. 106, 101 N.W.2d 873 (1960); Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

Roundhouse, machine shops and office building are assessed by State Board of Equalization. Missouri P. R.R. Corp. v. Board of Equalization of Richardson County, 114 Neb. 84, 206 N.W. 150 (1925).

There are no settled or infallible rules for the ascertainment of the actual value of railroad property. Chicago, R. I. & P. Ry. v. State, 111 Neb. 362, 197 N.W. 114 (1923).

Water pipe line owned and operated by railroad company is assessed by State Board of Equalization. Chicago, B. & Q. R.R. Co. v. Webster County, 101 Neb. 311, 163 N.W. 316 (1917).

State Board of Equalization acts in quasi-judicial capacity, and its orders are final and cannot be attacked collaterally. State ex rel. Union P. R.R. Co. v. State Board of Equalization and Assessment, 81 Neb. 139, 115 N.W. 789 (1908).

County taxing officers cannot collect taxes on unused roadbed by distress warrant. Chicago, B. & Q. R.R. Co. v. Custer County, 69 Neb. 429, 95 N.W. 859 (1903).

77-603.01. Railroad operating property; sale; report by purchaser; contents; penalty; waiver. The sale of railroad operating property as defined in section 77-602 shall be reported by the purchaser to the Property Tax Administrator within thirty days after the date of sale. The purchaser shall identify the seller, the date of the sale, any change in the name of the railroad, the main track and sidetrack mileage located in each political subdivision, and the purchase price. If additional information regarding the sale is deemed necessary, the Property Tax Administrator shall make a written request for such information to the purchaser or seller. This requirement shall apply only to a purchaser subject to section 77-603. For each day's failure to furnish the information required to be reported by this section, the Tax Commissioner shall assess a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1997, LB270, § 26; Laws 1999, LB36, § 13; Laws 2007, LB334, § 32.

77-604. Railroad property; statement by railroad company not conclusive; taxable value; distribution; valuation per mile; how determined. The returns of railroad companies or corporations shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, including records of the Public Service Commission or other regulatory body, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

The taxable value of the railroad companies allocated to the state shall be distributed as follows:

(1) Five percent shall be distributed to all taxing subdivisions where the railroad company has investment in general office buildings or machine and repair facilities proportionate to the company's investment in general office buildings and machine and repair facilities in the state; and

(2) The balance shall be distributed to all taxing subdivisions including cities and villages based on a formula in which fifty percent of the valuation is based on miles of main track and sidetrack and fifty percent of the valuation is based on density factor on miles of main track and sidetrack. The value per mile of sidetrack shall equal the value of the line divided by the following quantity: The number of miles of sidetrack plus two times the number of miles of main track. The value per mile of main track shall equal twice the value per mile of sidetrack as computed in this section.

For purposes of Chapter 77, article 6, the reference to sidetrack shall include all track not properly designated as main track and shall include, but not be limited to, passing track, yard track, and track within terminals. Main track shall be defined as that track over which regularly scheduled railroad operations are conducted. Density factor shall be determined by ton-miles traveled over a route, measured by the number of tons of revenue freight moved one mile.

Source: Laws 1903, c. 73, § 89, p. 417; R.S.1913, § 6378; Laws 1921, c. 133, art. VI, § 4, p. 557; C.S.1922, § 5842; C.S.1929, § 77-504; R.S.1943, § 77-604; Laws 1979, LB103, § 3; Laws 1981, LB486, § 2; Laws 1985, LB268, § 6; Laws 1992, LB1063, § 64; Laws 1992, Second Spec. Sess., LB1, § 62; Laws 1995, LB490, § 63.

Annotations

Railroad property is required to be assessed on the same basis as other tangible property. Union P. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 139, 101 N.W.2d 892 (1960); Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment, 170 Neb. 106, 101 N.W.2d 873 (1960); Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

Where State Board of Equalization considers facts and information not contained in railroad report, source of such information should be inserted in records. Chicago, R. I. & P. Ry. v. State, 111 Neb. 362, 197 N.W. 114 (1923).

Railroad for purposes of taxation is considered as entity, and includes all property held and used principally in operation of road. Chicago, B. & Q. R.R. Co. v. Box Butte County, 99 Neb. 208, 155 N.W. 881 (1915).

Valuation of each mile of railroad was properly obtained by dividing the whole value in the state by the number of miles of main track in state. State ex rel. Platte County v. Sheldon, 79 Neb. 455, 113 N.W. 208 (1907).

77-605. Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver. For each day's failure to furnish the statement required by section 77-603 or for each day's failure to furnish the information as required on those statements, the Tax Commissioner shall assess a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment

Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 88, p. 416; R.S.1913, § 6379; Laws 1921, c. 133, art. VI, § 5, p. 557; C.S.1922, § 5843; C.S.1929, § 77-505; R.S.1943, § 77-605; Laws 1977, LB39, § 212; Laws 1979, LB105, § 4; Laws 1979, LB187, § 195; Laws 1980, LB599, § 11; Laws 1985, LB268, § 7; Laws 1986, LB817, § 4; Laws 1995, LB490, § 64; Laws 1997, LB270, § 27;Laws 1999, LB36, § 14; Laws 2007, LB334, § 33.

77-606. Railroad nonoperating property; annual statement by railroad to county assessor; when made. The county assessor shall assess all nonoperating property of any railroad company. A railroad company operating within the State of Nebraska shall, on or before January 1 of each year, report to the county assessor all nonoperating property belonging to such railroad company.

Source: Laws 1903, c. 73, § 90, p. 417; R.S.1913, § 6380; Laws 1921, c. 133, art. VI, § 6, p. 558; C.S.1922, § 5844; C.S.1929, § 77-506; R.S.1943, § 77-606; Laws 1947, c. 251, § 4, p. 808; Laws 1969, c. 658, § 2, p. 2576; Laws 1979, LB105, § 5; Laws 1979, LB103, § 4; Laws 1985, LB268, § 8; Laws 1995, LB490, § 65; Laws 1997, LB270, § 28.

77-607. Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad's officers or agents. The Tax Commissioner shall have power to require any officer, agent, or servant of any railroad or railway company having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1903, c. 73, § 91, p. 417; R.S.1913, § 6381; Laws 1921, c. 133, art. VI, § 7, p. 558; C.S.1922, § 5845; C.S.1929, § 77-507; R.S.1943, § 77-607; Laws 1977, LB39, § 213; Laws 1985, LB268, § 9; Laws 1995, LB490, § 66; Laws 1997, LB270, § 29; Laws 2007, LB334, § 34.

77-609. Railroad operating property; density factor; recalculation. Beginning January 1, 2001, the Property Tax Administrator shall annually calculate the density factor used in distributing value along the line based upon an average of the most recent three years. If a density factor cannot be determined in this manner, the Property Tax Administrator may use other information to develop a fair and reasonable factor in lieu of the density factor.

Source: Laws 1927, c. 174, § 1, p. 509; C.S.1929, § 77-509; R.S.1943, § 77-609; Laws 1979, LB105, § 6; Laws 1985, LB268, § 11; Laws 1995, LB490, § 68; Laws 2000, LB968, § 35.

Annotations

State board is required to set forth the manner in which it arrived at the assessment of a railroad and the several items included in the total assessment. Union P. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 139, 101 N.W.2d 892 (1960); Chicago & N.W. Ry. Co. v. State Board of Equalization and Assessment, 170 Neb. 106, 101 N.W.2d 873 (1960); Chicago, B. & Q. R.R. Co. v. State Board of Equalization and Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

77-612. Railroad property; notice of valuation; appeal. On or before July 1, the Property Tax Administrator shall mail a draft appraisal to each railroad company required to file pursuant to section 77-603. The Property Tax Administrator shall, on or before July 15 of each year, notify by mail each railroad company of the total allocated value of its operating property. If a railroad company feels aggrieved, such railroad company may, on or before August 1, file with the Tax Commissioner an administrative appeal in writing stating that it claims the valuation is unjust or inequitable, the amount which it is claimed the valuation should be, and the excess therein and asking for an adjustment of the valuation by the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1927, c. 174, § 1, p. 510; C.S.1929, § 77-509; R.S.1943, § 77-612; Laws 1985, LB268, § 13; Laws 1988, LB352, § 153; Laws 1995, LB490, § 70; Laws 1997, LB270, § 30; Laws 2004, LB973, § 11; Laws 2007, LB334, § 35; Laws 2012, LB727, § 30.

Annotations

Complaint must state wherein it is claimed that assessment is unjust, supported by specific detail of items. Chicago, B. & Q. R.R. Co. v. State Board of Equalization & Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960).

77-616. Railroad property; levy of taxes; injunction prohibited. No injunction shall be granted restraining the levy of taxes under the assessment made by the Property Tax Administrator.

Source: Laws 1927, c. 174, § 1, p. 511; C.S.1929, § 77-509; R.S.1943, § 77-616; Laws 1985, LB268, § 15; Laws 1995, LB490, § 72.

77-621. Railroad property; valuation; contents of report. On or before August 10, the Property Tax Administrator shall certify to the railroad company and county assessor the railroad company's total taxable equalized value and the distribution of that value determined pursuant to section77-604. The report of distributed value shall include:

(1) The number of miles of main track and sidetrack of each railroad located in each governmental subdivision and the total length of main track and sidetrack in the county;

(2) The assessed valuation per mile of such main track and sidetrack; and

(3) The valuations that shall be placed to the credit of such governmental subdivision in the county.

Source: Laws 1903, c. 73, § 94, p. 418; R.S.1913, § 6384; Laws 1921, c. 133, art. VI, § 10, p. 559; C.S.1922, § 5848; C.S.1929, § 77-510; R.S.1943, § 77-621; Laws 1979, LB105, § 13; Laws 1979, LB103, § 5; Laws 1985, LB268, § 18; Laws 1995, LB490, § 73; Laws 1997, LB270, § 31; Laws 1998, LB306, § 18.

77-623. Railroad operating property; valuation; county assessor; duties; lien. For purposes of certifying values pursuant to section 13-509, the county assessor shall include the railroad company value as certified by the Property Tax Administrator pursuant to section 77-621. The taxes so levied shall be included upon the personal property tax roll and be due and payable in the same manner as personal property taxes pursuant to sections 77-203 and 77-204. From the date the taxes are due and payable, the taxes shall be a first lien upon the personal property of the railroad company to whom assessed until paid. The procedure for the collection of any delinquent tax pursuant to this section shall be that used for the collection of personal property tax.

Source: Laws 1903, c. 73, § 96, p. 418; R.S.1913, § 6386; Laws 1921, c. 133, art. VI, § 12, p. 559; C.S.1922, § 5850; C.S.1929, § 77-512; R.S.1943, § 77-623; Laws 1947, c. 251, § 5, p. 809; Laws 1979, LB105, § 15; Laws 1985, LB268, § 19; Laws 1995, LB490, § 74; Laws 1997, LB270, § 32; Laws 1998, LB306, § 19; Laws 2000, LB968, § 36.

77-679. Car line company, defined. For purposes of sections 77-680 to 77-691, car line company shall mean any person, other than a person operating a railroad, owning or operating any railroad cars through, in, or into the State of Nebraska.

Source: Laws 1992, LB719A, § 205.

77-680. Car line companies; annual statement. The president or other chief officer or owner of every car line company shall, on or before June 1 of each year, furnish to the Property Tax Administrator, on forms prescribed by the Tax Commissioner, a statement showing (1) the aggregate number of miles made by each class of its cars on the several lines of railroad in this state during the preceding year ending December 31, (2) the aggregate number of miles made by each class of its cars on all railroad lines during the preceding year ending December 31, (3) the total number of each type of its cars, (4) the taxable value of its cars, and (5) the number of its cars required to make the total mileage in this state. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement.

Source: Laws 1992, LB1063, § 65; Laws 1992, LB719A, § 206; Laws 1993, LB734, § 47; Laws 1995, LB490, § 75; Laws 2009, LB166, § 6.

77-681. Railroad companies; annual statement. The president or other chief officer of every railroad company which has lines running through, in, or into this state shall, on or before June 1 of each year, furnish to the Property Tax Administrator a statement, verified by the affidavit of the officer or person making the statement, showing the total number of miles traveled by each class of cars of every car line company on their lines, branches, sidings, spurs, and warehouse tracks in this state during the preceding year ending December 31. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed thirty days after June 1.

Source: Laws 1992, LB1063, § 66; Laws 1992, LB719A, § 207; Laws 1993, LB734, § 48; Laws 1995, LB490, § 76; Laws 1997, LB270, § 33.

77-682. Car line companies; value and assessment. The Property Tax Administrator shall ascertain from the statements made under sections 77-680 and 77-681, or from any other information available, the number of cars of each class required to make the total mileage in this state of each car line company within the period of one year. The Property Tax Administrator shall ascertain and fix the value upon each particular class of cars which as nearly as possible shall be the taxable value of such cars, and the number so ascertained shall be assessed to the respective car line company. The method of allocation shall be determined by the Property Tax Administrator. For the purpose of making the assessment, the Property Tax Administrator may base the assessment upon the statements of the railroad companies.

Source: Laws 1992, LB1063, § 67; Laws 1992, LB719A, § 208; Laws 1995, LB490, § 77.

77-683. Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements. (1) For each day's failure to furnish the statement required by section 77-680 or 77-681 or for each day's failure to furnish the information as required on the statement, the company may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

(2) In determining the number of such cars, the Property Tax Administrator, insofar as may be practicable, shall harmonize the statements of the railroad companies and car line companies. Such assessment shall be included in the records of the Property Tax Administrator.

Source: Laws 1992, LB1063, § 68; Laws 1992, LB719A, § 209; Laws 1995, LB490, § 78; Laws 1997, LB270, § 34; Laws 1999, LB36, § 15; Laws 2007, LB334, § 36.

77-684. Tax rate; determination; collection; appeal; distribution. The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in sections 77-682 and 77-683 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each car line company a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that such tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If a car line company feels aggrieved, such company may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013. The Property Tax Administrator shall remit the tax collected, less a three-percent collection fee, to the State Treasurer for distribution among the taxing subdivisions in proportion to all railroad taxes levied by taxing subdivisions. The collection fee shall be remitted to the State Treasurer for credit to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1992, LB1063, § 69; Laws 1992, LB719A, § 210; Laws 1993, LB345, § 11; Laws 1995, LB490, § 79; Laws 1997, LB270, § 35;Laws 1999, LB36, § 16; Laws 2000, LB968, § 37; Laws 2004, LB973, § 12; Laws 2007, LB334, § 37.

77-685. Distress warrant; receipt issued. The Tax Commissioner may issue a distress warrant to compel payment of the tax required by section 77-684 which may be served by any sheriff, any member of the Nebraska State Patrol, or any person specially deputized by the Tax Commissioner to serve such warrant. At the time the tax is paid, the Tax Commissioner shall issue a receipt in duplicate, one of which shall be given to the taxpayer and one filed with the State Treasurer at the time the tax collected is remitted by the Tax Commissioner to the state treasury.

Source: Laws 1992, LB1063, § 70; Laws 1992, Second Spec. Sess., LB1, § 63; Laws 1995, LB490, § 80; Laws 2007, LB334, § 38.

77-686. Certification of levy. The Property Tax Administrator, on or before January 15 of each year, shall certify to the State Treasurer the names of the car line companies and the several amounts of taxes levied under section 77-684.

Source: Laws 1992, LB1063, § 71; Laws 1992, LB719A, § 211; Laws 1995, LB490, § 81; Laws 1998, LB1104, § 9.

77-687. Delinquency in payment of taxes; interest; collection by Tax Commissioner. One-half of the taxes levied as provided in section 77-684 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due and payable. All delinquent taxes shall bear interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date they become delinquent, and the interest shall be collected in the same manner as the tax on which the interest accrues. If such taxes and interest due thereon have not been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the tax and interest by distress and sale of any property belonging to such delinquent car line company in the same manner as is required of county treasurers and county sheriffs in like cases.

Source: Laws 1992, LB1063, § 72; Laws 1992, LB719A, § 212; Laws 1995, LB490, § 82; Laws 1997, LB270, § 36; Laws 2007, LB334, § 39.

77-688. Collection procedures; cumulative. Sections 77-689 to 77-691 shall apply to car line companies taxed under sections 77-680 to 77-691, and the procedure provided in sections 77-689 to 77-691 for collection of such taxes shall be in addition to other procedures available for the collection of such taxes.

Source: Laws 1992, LB1063, § 73; Laws 1992, LB719A, § 213.

77-689. Taxes; delinquent; lien; collection. If any taxes and interest and penalties due on such taxes have not been paid on July 1 following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to the car line companies until the liability therefor is satisfied or otherwise released or discharged. The Tax Commissioner or his or her designated agent may collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such car line companies. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1992, LB1063, § 74; Laws 1992, LB719A, § 214; Laws 1995, LB490, § 83; Laws 2007, LB334, § 40.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-690. Taxation; levy; money and credits; surrender to Tax Commissioner. Any car line company in possession of any money and credits upon which levy has been made shall, upon demand of the Tax Commissioner or his or her designated agent, surrender the same to the Tax Commissioner or his or her designated agent. If any such car line company fails or refuses to surrender the money and credits in accordance with the requirements of this section, such car line company shall be liable to the State of Nebraska in a sum equal to the value of the money and credits not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1992, LB1063, § 75; Laws 1992, LB719A, § 215; Laws 1995, LB490, § 84; Laws 2007, LB334, § 41.

77-691. Money; disposition. The money realized from any levy made pursuant to section 77-689 shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy and next to the payment of such taxes, interest, and penalties. Any balance remaining shall then be paid over to the car line company entitled thereto.

Source: Laws 1992, LB1063, § 76; Laws 1992, LB719A, § 216; Laws 1995, LB490, § 85; Laws 2007, LB334, § 42.

77-693. Adjustment to value of railroad and car line property; Property Tax Administrator; powers and duties. (1) The Property Tax Administrator in determining the taxable value of railroads and car lines shall determine the following ratios involving railroad and car line property and commercial and industrial property:

(a) The ratio of the taxable value of all commercial and industrial personal property in the state actually subjected to property tax divided by the market value of all commercial and industrial personal property in the state;

(b) The ratio of the taxable value of all commercial and industrial real property in the state actually subjected to property tax divided by the market value of all commercial and industrial real property in the state;

(c) The ratio of the taxable value of railroad personal property to the market value of railroad personal property. The numerator of the ratio shall be the taxable value of railroad personal property. The

denominator of the ratio shall be the railroad system value allocated to Nebraska and multiplied by a factor representing the net book value of rail transportation personal property divided by the net book value of total rail transportation property;

(d) The ratio of the taxable value of railroad real property to the market value of railroad real property. The numerator of the ratio shall be the taxable value of railroad real property. The denominator of the ratio shall be the railroad system value allocated to Nebraska and multiplied by a factor representing the net book value of rail transportation real property divided by the net book value of total rail transportation property; and

(e) Similar calculations shall be made for car line taxable properties.

(2) If the ratio of the taxable value of railroad and car line personal or real property exceeds the ratio of the comparable taxable commercial and industrial property by more than five percent, the Property Tax Administrator may adjust the value of such railroad and car line property to the percentage of the comparable taxable commercial and industrial property pursuant to federal statute or Nebraska federal court decisions applicable thereto.

(3) For purposes of this section, commercial and industrial property shall mean all real and personal property which is devoted to commercial or industrial use other than rail transportation property and land used primarily for agricultural purposes.

(4) After the adjustment made pursuant to subsections (1) and (2) of this section, the Property Tax Administrator shall multiply the value of the tangible personal property of each railroad and car line by the compensating exemption factor calculated in section 77-1238.

Source: Laws 1992, LB719A, § 219; Laws 1995, LB490, § 86; Laws 2015, LB259, § 6.

Operative Date: January 1, 2016

ARTICLE 7
PROPERTY ASSESSMENT DIVISION

77-701. Property assessment division; established; Property Tax Administrator; powers and duties; appeal rights.
77-702. Property Tax Administrator; qualifications; duties.
77-705. Uniform tax books, records, and forms; approval.
77-706. Property tax administration; implementation of agreements and working relationships; state and federal agencies.
77-707. Property Tax Administrator; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.
77-709. Property assessment division; annual report; powers and duties.

77-701. Property assessment division; established; Property Tax Administrator; powers and duties; appeal rights. (1) A division of state government to be known as the property assessment division of the Department of Revenue is established. The Property Tax Administrator shall be the chief administrative officer of the division but shall be under the general supervision of the Tax Commissioner.
(2) The goals and functions of the division shall be to: (a) Execute faithfully the property tax laws of the State of Nebraska; (b) provide for efficient, updated methods and systems of property tax reporting, enforcement, and related activities; and (c) continually seek to improve its system of administration.
(3) All employees, budget requirements, appropriations, encumbrances, and assets and liabilities of the Department of Property Assessment and Taxation for the administration of property valuation and equalization shall be transferred and delivered to the division. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Act.
(4) The Tax Commissioner or Property Tax Administrator may appeal any final decision of a county board of equalization relating to the granting or denying of an exemption of real or personal property to the Tax Equalization and Review Commission. If the Tax Commissioner or Property Tax Administrator files such an appeal, the person, corporation, or organization granted or denied the exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed. The Tax Commissioner or Property Tax Administrator may appeal any final decision of the Tax Equalization and Review Commission relating to the granting or denying of an exemption of real or personal property or relating to the valuation or equalization of real property.

Source: Laws 1999, LB36, § 21; Laws 2007, LB334, § 43; Laws 2010, LB877, § 2.

Cross References

State Employees Retirement Act, see section 84-1331.

77-702. Property Tax Administrator; qualifications; duties. (1) The Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) of section 77-5004. The Property Tax Administrator shall adopt and promulgate rules and regulations to carry out his or her duties through June 30, 2007. Rules, regulations, and forms of the Property Tax Administrator in effect on July 1, 2007, shall be valid rules, regulations, and forms of the Department of Revenue beginning on July 1, 2007.
(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Source: Laws 1999, LB36, § 22; Laws 2001, LB465, § 1; Laws 2007, LB334, § 44; Laws 2011, LB210, § 4; Laws 2011, LB384, § 5.

77-705. Uniform tax books, records, and forms; approval. The form of all schedules, books of instruction, assessment and tax books, records, and other forms which may be necessary or expedient for the proper administration of the property tax laws of the state shall be approved by the Tax Commissioner. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable. The Department of Revenue may provide forms on a reimbursement basis. Alterations to any prescribed form may be made only upon written application to and written approval from the Tax Commissioner.

Source: Laws 1999, LB36, § 25; Laws 2007, LB334, § 45.

77-706. Property tax administration; implementation of agreements and working relationships; state and federal agencies. The Department of Revenue may develop and implement such agreements and working relationships which are consistent with the laws of the State of Nebraska with any federal office, state agency, or local subdivision of state government, either within or without the State of Nebraska, which it may find necessary or desirable for proper administration of the property tax laws of this state.

Source: Laws 1999, LB36, § 26; Laws 2007, LB334, § 46.

77-707. Property Tax Administrator; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery. (1) The Property Tax Administrator or his or her duly authorized representative may administer oaths, compel the attendance of witnesses, and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.

(2) The Property Tax Administrator may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.

Source: Laws 1999, LB36, § 27.

77-709. Property assessment division; annual report; powers and duties. The property assessment division of the Department of Revenue shall publish an annual report detailing property tax valuations, taxes levied, and property tax rates throughout the state. The annual report shall display information by political subdivision and by property type within each county and also include statewide summarizations. The department shall submit the report electronically to the Clerk of the Legislature. The department may charge a fee for copies of the annual report. The Tax Commissioner shall set the fee, based on the reasonable cost of production.

Source: Laws 2001, LB170, § 4; Laws 2007, LB334, § 47; Laws 2013, LB222, § 30.

ARTICLE 8
PUBLIC SERVICE ENTITIES

77-801. Public service entity; furnish information; confidentiality.
77-801.01. Terms, defined.
77-801.02. Tax Commissioner; powers.
77-802. Property Tax Administrator; valuation; apportionment of tax.
77-802.01. County assessor; duties; lien.
77-802.02. Public service entity; appeals. .
77-803. Public service entity; failure to furnish statement or information; penalty; waiver.
77-804. Sale of entity; report required; penalty; waiver.

77-801. Public service entity; furnish information; confidentiality; Property Tax Administrator; duties. (1) All public service entities shall, on or before April 15 of each year, furnish a statement specifying such information as may be required by the Property Tax Administrator on forms prescribed by the Tax Commissioner to determine and distribute the entity's total taxable value including the franchise value. All information reported by the public service entities, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15.

(2) The returns of public service entities shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

(3) The county assessor shall assess all nonoperating property of any public service entity. A public service entity operating within the State of Nebraska shall, on or before January 1 of each year, report to the county assessor of each county in which it has situs all nonoperating property belonging to such entity which is not subject to assessment and assessed by the Property Tax Administrator under section 77-802.

(4) The Property Tax Administrator shall multiply the value of the tangible personal property of each public service entity by the compensating exemption factor calculated in section 77-1238.

Source: Laws 1903, c. 73, § 68, p. 408; Laws 1903, c. 73, § 76, p. 411; Laws 1903, c. 73, § 80, p. 412; Laws 1911, c. 104, § 6, p. 373; R.S.1913, §§ 6358, 6366, 6370; Laws 1921, c. 133, art. IX, § 1, p. 586; C.S.1922, § 5890; C.S.1929, § 77-801; R.S.1943, § 77-801; Laws 1981, LB179, § 8; Laws 1983, LB353, § 1; Laws 1985, LB269, § 2; Laws 1995, LB490, § 87; Laws 1997, LB270, § 37; Laws 2000, LB968, § 38; Laws 2004, LB973, § 13; Laws 2009, LB166, § 7; Laws 2015, LB259, § 7.

Operative Date: January 1, 2016

Annotations

Examples of property subject to valuation by the Tax Commissioner include railroad personal property and public service entities, including pipelines. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

Corporation owning and operating hydro-electric power plant, selling electric energy at its generator, is subject to franchise tax hereunder. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

Occupation tax and tax upon gross receipts are not double taxation. Nebraska Tel. Co. v. City of Lincoln, 82 Neb. 59, 117 N.W. 284 (1908).

Value of whole property of telegraph company as an entirety should be considered, and the relation which the value of the property in the taxing district bears to the value of the entire property. Western U. T. Co. v. Dodge County, 80 Neb. 18, 113 N.W. 805 (1907).

All items taken together going to make up value of business as going concern should be considered. Nebraska Tel. Co. v. Hall County, 75 Neb. 405, 106 N.W. 471 (1906).

Taxation of franchises must be by valuation and in proportion to value, and gross receipts alone are not proper measure of value. Western U. T. Co. v. City of Omaha, 73 Neb. 527, 103 N.W. 84 (1905).

Gross receipts refers only to gross receipts for business within state. State ex rel. Breckenridge v. Fleming, 70 Neb. 529, 97 N.W. 1063 (1903).

State statute imposing franchise tax on corporation's intangible property in state is not invalid for failure to prescribe method of assessment and taxation, and corporate taxpayer could not object that it failed to provide for allocation and distribution of tax to counties. Western Union Telegraph Co. v. Weaver, 5 F.Supp. 493 (D. Neb. 1932).

77-801.01. Terms, defined. As used in sections 77-801 to 77-804:
(1) Nonoperating property means property owned or leased by a public service entity that does not contribute to the entity's function;
(2) Operating property means property owned or leased that contributes to a public service entity's function; and
(3) Public service entity means any person as defined in section 49-801 or entity, organized for profit under the laws of this state or any other state or government and engaged in the business of waterworks, electrical power, gas works, natural gas, telecommunications, pipelines used for the transmission of oil, heat, steam, or any substance to be used for lighting, heating, or power, and pipelines used for the transmission of articles by pneumatic or other power and all other similar or like entities.

Source: Laws 1985, LB269, § 1; Laws 1986, LB732, § 2; Laws 1997, LB270, § 38; Laws 2000, LB968, § 39; Laws 2006, LB808, § 26.

77-801.02. Tax Commissioner; powers. The Tax Commissioner shall have power to require any officer, agent, or servant of any public service entity having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1997, LB270, § 39; Laws 2007, LB334, § 48.

77-802. Property Tax Administrator; valuation; apportionment of tax. The Property Tax Administrator shall apportion the total taxable value including the franchise value to all taxing subdivisions in proportion to the ratio of the original cost of all operating real and tangible personal property of that public service entity having a situs in that taxing subdivision to the original cost of all operating real and tangible personal property of that public service entity having a situs in the state.
If the apportionment in accordance with this section does not fairly represent the proportion of the taxable value, including franchise value properly allocable to the county, the taxpayer may petition for or the Property Tax Administrator may require the inclusion of any other method to effectuate an equitable allocation of the value of the public service entity for purposes of taxation.
On or before July 25, the Property Tax Administrator shall mail a draft appraisal to each public service entity as defined in section 77-801.01. On or before August 10, the Property Tax Administrator shall, by mail, notify each public service entity of its taxable value and the distribution of that value to the taxing subdivisions in which the entity has situs. On or before August 10, the Property Tax Administrator shall also certify to the county assessors the taxable value so determined.

Source: Laws 1921, c. 133, art. IX, § 2, p. 587; C.S.1922, § 5891; C.S.1929, § 77-802; R.S.1943, § 77-802; Laws 1983, LB353, § 2; Laws 1984, LB835, § 6; Laws 1985, LB269, § 3; Laws 1987, LB508, § 26; Laws 1995, LB490, § 88; Laws 1997, LB270, § 40; Laws 1998, LB306, § 20; Laws 2004, LB973, § 14; Laws 2012, LB727, § 31.

Annotations

Personal notice to taxpayer is not necessary where, on taxpayer's failure to make return, assessing board meets at time and place fixed by statute and makes original assessment. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

77-802.01. County assessor; duties; lien. For purposes of certifying values pursuant to section 13-509, the county assessor shall include the public service entity value as certified by the Property Tax Administrator pursuant to section 77-802. The taxes so levied shall be included upon the personal property tax roll and be due and payable in the same manner as personal property taxes pursuant to sections 77-203 and 77-204. From the date the taxes are due and payable, the taxes shall be a first lien upon the personal property of the public service entity to whom assessed until paid. The procedure for the collection of any delinquent tax pursuant to this section shall be that used for the collection of personal property tax.

Source: Laws 1997, LB270, § 41; Laws 1998, LB306, § 21; Laws 2000, LB968, § 40.

77-802.02. Public service entity; appeals. On or before September 10, if a public service entity feels aggrieved, such public service entity may file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the entity within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1997, LB270, § 42; Laws 2000, LB968, § 41; Laws 2004, LB973, § 15; Laws 2007, LB334, § 49.

77-803. Public service entity; failure to furnish statement or information; penalty; waiver. For each day's failure to furnish the statement required by section 77-801 or for each day's failure to furnish the information as required on those statements, the public service entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 77, p. 411; Laws 1903, c. 73, § 81, p. 412; Laws 1911, c. 104, § 9, p. 375; R.S.1913, §§ 6367, 6371; Laws 1921, c. 133, art. IX, § 3, p. 587; C.S.1922, § 5892; C.S.1929, § 77-803; R.S.1943, § 77-803; Laws 1986, LB732, § 3; Laws 1986, LB817, § 6; Laws 1995, LB490, § 89; Laws 1997, LB270, § 43; Laws 1999, LB36, § 17; Laws 2007, LB334, § 50.

77-804. Sale of entity; report required; penalty; waiver. Any sale of a public service entity as defined in section 77-801.01 shall be reported by the purchaser to the Property Tax Administrator within thirty days from the date of the sale. The purchaser shall identify the seller, the date of the sale, any change in name of the entity, and the purchase price of the entity. If additional information regarding the sale is needed by the Property Tax Administrator, a specific written request shall be made. For each day's failure to furnish the information, an entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1987, LB508, § 27; Laws 1995, LB490, § 90; Laws 1997, LB270, § 44; Laws 1999, LB36, § 18; Laws 2007, LB334, § 51.

ARTICLE 12
PERSONAL PROPERTY, WHERE AND HOW LISTED

77-1201. Tangible personal property; assessment date; listing.
77-1202. Tangible personal property; where listed and assessed.
77-1202.01. Tax lists; how prepared.
77-1210. Taxable tangible personal property in transit; where listed and assessed.
77-1211. Tangible personal property brought into state after December 31 and prior to July 1; where listed and assessed.
77-1214. Taxable tangible personal property; attempted sale, levy, or removal; notice to treasurer; collection of taxes due; acceleration of due date; issuance of distress warrants.
77-1219. Taxable tangible personal property; assessment certificate; county assessor; duties.
77-1229. Tangible personal property; form of return; time of filing; exemption; procedure.
77-1229.01. Personal property; return; filing improperly signed; procedure.
77-1230. Taxable tangible personal property; amended listing; when required; county assessor; duties; refund; additional tax due.
77-1232. Personal property; failure to list; false listing; evasion of tax; penalty.
77-1233. Personal property; statement required on return; signature by taxpayer.
77-1233.02. Taxable tangible personal property tax returns; county assessor; duties.
77-1233.03. Assessment of taxable tangible personal property; county assessor; duties.
77-1233.04. Taxable tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties.
77-1233.06. Taxable tangible personal property tax valuation or penalty; appeal; procedure; collection procedures.
77-1234. Violations; duty of officers upon discovery.
77-1236. Personal property; taxpayer; inspection by county assessor; authorized; subpoena; disobedience; contempt proceedings; confidentiality.
77-1237. Personal Property Tax Relief Act; act, how cited.
77-1238. Exemption from taxation; Property Tax Administrator; duties.
77-1239. Reimbursement for tax revenue lost because of exemption; calculation.
77-1244. Taxation of air carriers; definitions.
77-1245. Taxation of air carriers; assessment; collection; disbursement; allocation to this state; petition to Property Tax Administrator, when.
77-1246. Taxation of air carriers; real and personal property other than flight equipment.
77-1247. Taxation of air carriers; annual report; contents; failure to furnish report or information; penalty; waiver.
77-1248. Taxation of air carriers; taxable value; allocation.
77-1249. Taxation of air carriers; tax rate; appeal.
77-1249.01. Taxation of air carriers; delinquency; interest; collection.
77-1250. Taxation of air carriers; when due; lien; distribution to counties; collection fee.
77-1250.02. Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty.
77-1250.03. Taxation of air carriers; taxes; delinquent; lien; collection.
77-1250.04. Taxation of air carriers; money and credits; surrender to Tax Commissioner.
77-1250.05. Taxation of air carriers; disposition of funds collected.

77-1201. Tangible personal property; assessment date; listing. All tangible personal property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment. A complete list of all taxable tangible personal property held or owned on the assessment date shall be made as follows:

(1) Every person shall list all his or her taxable tangible personal property as defined in section 77-105 having tax situs in the State of Nebraska;

(2) The taxable tangible personal property of a minor child shall be listed by the following: (a) His or her guardian; (b) if he or she has no guardian, by his or her parent, if living; and (c) if neither parent is living, by the person having such property in charge;

(3) The taxable tangible personal property of any other person under guardianship, by his or her guardian or, if he or she has no guardian, by the person having charge of such property;

(4) The taxable tangible personal property of a person for whose benefit it is held in trust, by the trustee, and of the estate of a deceased person, by the personal representative or administrator;

(5) The taxable tangible personal property of corporations the assets of which are in the hands of a receiver, by such a receiver;

(6) The taxable tangible personal property of corporations, by the president or the proper agent or officer thereof;

(7) The taxable tangible personal property of a firm or company, by a partner, limited liability company member, or agent thereof;

(8) The taxable tangible personal property of manufacturers and others in the hands of an agent, by and in the name of such agent; and

(9) All leased taxable tangible personal property shall be reported, by itemizing each article, by lessor as owner or lessee as agent.

Source: Laws 1903, c. 73, § 28, p. 394; R.S.1913, § 6313; C.S.1922, § 5914; C.S.1929, § 77-1401; Laws 1935, c. 133, § 1, p. 479; Laws 1935, Spec. Sess., c. 14, § 1, p. 89; C.S.Supp.,1941, § 77-1401; R.S.1943, § 77-1201; Laws 1945, c. 186, § 1, p. 577; Laws 1947, c. 251, § 18, p. 815; Laws 1955, c. 288, § 10, p. 906; Laws 1957, c. 327, § 12, p. 1155; Laws 1959, c. 355, § 9, p. 1255; Laws 1959, c. 365, § 1, p. 1284; Laws 1961, c. 377, § 4, p. 1157; Laws 1961, c. 379, § 1, p. 1163; Laws 1965, c. 483, § 1, p. 1559; Laws 1967, c. 501, § 1, p. 1695; Laws 1969, c. 663, § 1, p. 2583; Laws 1979, LB80, § 110; Laws 1987, LB508, § 28; Laws 1992, LB1063, § 92; Laws 1992, Second Spec. Sess., LB1, § 65; Laws 1993, LB121, § 494; Laws 1994, LB884, § 89; Laws 1997, LB270, § 45; Laws 1997, LB271, § 48; Laws 2008, LB965, § 3.

Annotations

1. Property to be listed

Motor vehicles were excepted from general requirements for listing of property for taxation. Peterson v. Hancock, 166 Neb. 637, 90 N.W.2d 298 (1958).

Leasehold interest in public land is required to be listed. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Grain in elevator on tax date was taxable although under contract of sale. State v. T. W. Jones Grain Co., 156 Neb. 822, 58 N.W.2d 212 (1953).

Intangible property of foreign corporation in hands of agent is required to be listed. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Holder of shares in domestic corporation is not required to list the same when capital stock is assessed in state. City Trust Co. of Omaha v. Douglas County, 101 Neb. 792, 165 N.W. 155 (1917).

One, who takes stock to feed for nonresident of county, has control of same within meaning of section, and should list same for taxation. Allen v. Dawson County, 92 Neb. 862, 139 N.W. 682 (1913).

Shares of capital stock of a domestic corporation should be listed by holder when not assessed in this state. Bressler v. County of Wayne, 84 Neb. 774, 122 N.W. 23 (1909).

2. Miscellaneous

This section, and others cited by plaintiffs, provide rules to determine situs for taxation of personal property and do not provide for transfer of tax funds from one school district to another. Sesemann v. Howell, 195 Neb. 798, 241 N.W.2d 119 (1976).

In the year 1959, timely filing of tax schedules of personal property was impossible. Misle v. Miller, 176 Neb. 113, 125 N.W.2d 512 (1963).

Wheat outside the state was taxable at domicile of owner in this state where it had not acquired permanent situs elsewhere. Ainsworth v. County of Fillmore, 166 Neb. 779, 90 N.W.2d 360 (1958).

Requirement of filing of personal tax schedule at future date did not create present actual controversy for adjudication under Declaratory Judgments Act. Miller v. Stolinski, 149 Neb. 679, 32 N.W.2d 199 (1948).

A conditional sales contract executed before November 1 is superior to statutory tax liens of prior years but inferior to such tax liens for subsequent years. Landis Machine Co. v. Omaha Merchants Transfer Co., 142 Neb. 389, 9 N.W.2d 198 (1943).

If information as to amount and character of his personal property is refused by taxpayer, his appeal from valuation fixed by board should be dismissed. Hatcher & Co. v. Gosper County, 95 Neb. 543, 145 N.W. 993 (1914).

The word credits means net credits. Indebtedness may be deducted from gross credits to find true value for assessment. Scandinavian Mut. Aid Assn. v. Kearney County, 81 Neb. 468, 116 N.W. 155 (1908); Oleson v. Cuming County, 81 Neb. 209, 115 N.W. 783 (1908); Royal Highlanders v. State, 77 Neb. 18, 108 N.W. 183 (1906).

Expression money deposited in bank includes money on general deposit. Critchfield v. Nance County, 77 Neb. 807, 110 N.W. 538 (1906).

The other items named in schedule are not to be considered as credits. Lancaster County v. McDonald, 73 Neb. 453, 103 N.W. 78 (1905).

77-1202. Tangible personal property; where listed and assessed. Taxable tangible personal property shall be listed and assessed where it has acquired tax situs as defined in section 77-125.

Source: Laws 1903, c. 73, § 29, p. 395; R.S.1913, § 6314; Laws 1917, c. 117, § 1, p. 291; C.S.1922, § 5915; C.S.1929, § 77-1402; R.S.1943, § 77-1202; Laws 1961, c. 380, § 1, p. 1168; Laws 1965, c. 483, § 2, p. 1561; Laws 1969, c. 664, § 1, p. 2585; Laws 1972, LB1100, § 2; Laws 1987, LB508, § 29; Laws 1992, LB1063, § 93; Laws 1992, Second Spec. Sess., LB1, § 66; Laws 1997, LB270, § 46; Laws 1997, LB271, § 49.

Annotations

This section, and others cited by plaintiffs, provide rules to determine situs for taxation of personal property and do not provide for transfer of tax funds from one school district to another. Sesemann v. Howell, 195 Neb. 798, 241 N.W.2d 119 (1976).

This section states the general rule where personal property shall be listed and assessed. Svoboda & Hannah v. Board of Equalization of Perkins County, 180 Neb. 215, 142 N.W.2d 328 (1966).

Personal property is assessed where owner resides, except that property having a local situs is assessed at that situs. Ramm v. County of Holt, 172 Neb. 88, 108 N.W.2d 808 (1961); Goebel v. County of Holt, 172 Neb. 81, 108 N.W.2d 406 (1961).

Cited in discussion of taxability of intangible property of foreign corporation. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

This section does not apply to listing of intangible property. Joyce Lumber Co. v. Anderson, 125 Neb. 886, 252 N.W. 394 (1934).

Where a corporation operates lumber stations in several counties, each station is assessed as an independent business. Nye-Schneider-Fowler Co. v. Boone County, 102 Neb. 742, 169 N.W. 436 (1918); Nye-Schneider-Fowler Co. v. Boone County, 99 Neb. 383, 156 N.W. 773 (1916).

Levy of tax by Sarpy County upon personal property in Douglas County was illegal. Hydraulic Press Brick Co. v. Douglas County, 95 Neb. 87, 144 N.W. 1058 (1914).

Credits of a partnership, which maintains but one office in Nebraska, are subject to taxation where office is located. Clay, Robinson & Co. v. Douglas County, 88 Neb. 363, 129 N.W. 548 (1911).

The owner of personal property, within meaning of tax laws, is the person who has legal title thereto. Union Stock Yards Nat. Bank v. Board of Thurston County, 65 Neb. 410, 92 N.W. 1022 (1902).

77-1202.01. Tax lists; how prepared. In preparing the tax list, each county assessor shall enter in a separate column, opposite the name of each person, the person's post office address and the number of the school and road districts in which the taxable tangible personal property of such person is assessable.

Source: Laws 1903, c. 73, § 26, p. 393; R.S.1913, § 6311; Laws 1921, c. 133, art. IV, § 5, p. 552; C.S.1922, § 5837; C.S.1929, § 77-405; R.S.1943, § 77-406; R.S.1943, (1986), § 77-406; Laws 1990, LB821, § 44; Laws 2008, LB965, § 4.

77-1210. Taxable tangible personal property in transit; where listed and assessed. Taxable tangible personal property in transit shall be listed and assessed in the tax district where the owner resides, but if such property is intended for a business, it shall be listed and assessed in the tax district where the property of such business is required to be listed.

Source: Laws 1903, c. 73, § 36, p. 396; R.S.1913, § 6321; C.S.1922, § 5922; C.S.1929, § 77-1409; R.S.1943, § 77-1210; Laws 2000, LB968, § 42; Laws 2008, LB965, § 5.

Annotations

Legislature has provided that situs of personal property of kind described in this section shall control over residence and domicile of owner. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

77-1211. Tangible personal property brought into state after December 31 and prior to July 1; where listed and assessed. When any person brings taxable tangible personal property into this state or into one county thereof from another county after 12:01 a.m. on January 1 and prior to July 1 in any year, it shall be the duty of the owner, within thirty days after July 1, to list and return such property for taxation for the current tax year unless he or she shows to the county assessor under oath and by producing a copy of the listing or assessment duly certified to by the proper officer of the state or county that the property was listed for taxation for the current tax year in some other county in this state or in some other state or territory of the United States or that such property has been received by him or her in exchange for money or property already listed for taxation for the current tax year. The county assessor shall at once assess such property and shall enter the same on the tax roll.

Source: Laws 1903, c. 73, § 37, p. 397; R.S.1913, § 6322; C.S.1922, § 5923; C.S.1929, § 77-1410; R.S.1943, § 77-1211; Laws 1947, c. 250, § 14, p. 792; Laws 1947, c. 251, § 20, p. 817; Laws 1955, c. 288, § 13, p. 908; Laws 1959, c. 355, § 12, p. 1257; Laws 1961, c. 381, § 5, p. 1172; Laws 1986, LB817, § 7; Laws 1992, LB1063, § 96; Laws 1992, Second Spec. Sess., LB1, § 69; Laws 1997, LB270, § 47.

Annotations

Colonies of honeybees which were not in existence on January 1, which are brought into Nebraska from another state before July 1, are not subject to assessment in Nebraska where their progenitors were taxed for that year in another state. Knoefler Honey Farms v. County of Sherman, 196 Neb. 435, 243 N.W.2d 760 (1976).

Industrial Development Act of 1961 did not subject property to taxation to same extent as this section. State ex rel. Meyer v. County of Lancaster, 173 Neb. 195, 113 N.W.2d 63 (1962).

This section has no application to the listing and assessing of motor vehicles. Peterson v. Hancock, 166 Neb. 637, 90 N.W.2d 298 (1958).

Under former act to avoid assessment of property found in possession of party between April 1 and July 1, showing must be made that property has been already assessed or obtained in exchange for property listed. Courtright v. Dodge County, 94 Neb. 669, 144 N.W. 241 (1913).

77-1214. Taxable tangible personal property; attempted sale, levy, or removal; notice to treasurer; collection of taxes due; acceleration of due date; issuance of distress warrants. It shall be the duty of any county assessor, sheriff, constable, city council member, and village trustee to at once inform the county treasurer of the making or attempted making of any sale, levy of attachment, or removal of taxable tangible personal property known to him or her. It shall be the duty of the county treasurer to forthwith proceed with the collection of the tax when such acts become known to him or her in any manner. Any personal property tax shall be due and collectible, including all taxable tangible personal property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to sell all or a substantial part of his or her taxable tangible personal property, (2) a levy of attachment is made upon taxable tangible personal property, or (3) a person attempts to remove or removes taxable tangible personal property from the county.

Source: Laws 1903, c. 73, § 39, p. 397; R.S.1913, § 6324; C.S.1922, § 5925; C.S.1929, § 77-1412; R.S.1943, § 77-1214; Laws 1957, c. 321, § 2, p. 1141; Laws 1959, c. 365, § 5, p. 1286; Laws 1997, LB270, § 48; Laws 2008, LB965, § 6.

77-1219. Taxable tangible personal property; assessment certificate; county assessor; duties. It shall be the duty of the county assessor, when required by any person, to give a certificate of assessment of taxable tangible personal property showing the amount, kind, location, and net book value of the property assessed, and such certificate shall be evidence of the legal assessment of such property for the year.

Source: Laws 1903, c. 73, § 45, p. 399; R.S.1913, § 6330; C.S.1922, § 5931; C.S.1929, § 77-1418; R.S.1943, § 77-1219; Laws 1947, c. 250, § 15, p. 793; Laws 1947, c. 251, § 22, p. 818; Laws 1977, LB39, § 215; Laws 1987, LB508, § 34; Laws 1992, LB1063, § 97; Laws 1992, Second Spec. Sess., LB1, § 70; Laws 1997, LB270, § 49; Laws 2008, LB965, § 7.

77-1229. Tangible personal property; form of return; time of filing; exemption; procedure. (1) Every person required by section 77-1201 to list and value taxable tangible personal property shall list such property upon the forms prescribed by the Tax Commissioner. The forms shall be available from the county assessor and when completed shall be signed by each person or his or her agent and be filed with the county assessor. The forms shall be filed on or before May 1 of each year.

(2) Any person seeking a personal property exemption pursuant to subsection (2) of section 77-4105 or the Nebraska Advantage Act shall annually file a copy of the forms required pursuant to section 77-4105 or the act with the county assessor in each county in which the person is requesting exemption. The copy shall be filed on or before May 1. Failure to timely file the required forms shall cause the forfeiture of the exemption for the tax year. If a taxpayer pursuant to this subsection also has taxable tangible personal property, such property shall be listed and valued as required under subsection (1) of this section.

Source: Laws 1903, c. 73, § 49, p. 399; Laws 1909, c. 111, § 1, p. 437; R.S.1913, § 6336; C.S.1922, § 5938; C.S.1929, § 77-1425; R.S.1943, § 77-1229; Laws 1947, c. 250, § 16, p. 793; Laws 1947, c. 251, § 26, p. 819; Laws 1959, c. 355, § 16, p. 1260; Laws 1959, c. 365, § 8, p. 1289; Laws 1959, c. 367, § 1, p. 1296; Laws 1969, c. 665, § 1, p. 2587; Laws 1987, LB508, § 35; Laws 1992, LB1063, § 98; Laws 1992, Second Spec. Sess., LB1, § 71; Laws 1995, LB490, § 92; Laws 1997, LB270, § 50; Laws 2000, LB968, § 43; Laws 2005, LB312, § 5; Laws 2007, LB334, § 52.

Cross References

Nebraska Advantage Act, see section 77-5701.

Annotations

Timely filing of tax return in the year 1959 was precluded by legislative changing during year of time to file tax return. Misle v. Miller, 176 Neb. 113, 125 N.W.2d 512 (1963).

Lessee of improvements placed on public land is required to list property. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Agent required to list property is treated as taxpayer. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Oath should be administered to everyone listing property, but failure so to do will not render assessment void. Lynam v. Anderson, 9 Neb. 367, 2 N.W. 732 (1879).

77-1229.01. Personal property; return; filing improperly signed; procedure. If any listing of personal property required to be filed under section 77-1229 is filed by or on behalf of any person and is not signed as required by law, the county assessor shall notify the person in writing of the fact of such filing and that he or she is required, on or before the last date for filing the statement or within ten days from the date of such notice, whichever is later, to appear and sign such statement or to file a properly signed corrected statement and that, upon failure to do so, the unsigned statement shall be presumed to be correct.

Source: Laws 1963, c. 437, § 1, p. 1454; Laws 1992, LB1063, § 99; Laws 1992, Second Spec. Sess., LB1, § 72.

77-1230. Taxable tangible personal property; amended listing; when required; county assessor; duties; refund; additional tax due. (1) Whenever a person files an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority and the amendment, change, or correction affects the Nebraska adjusted basis of the person's taxable tangible personal property, such person shall file an amended list of taxable tangible personal property subject to taxation with the county assessor. The person shall file the amended list within ninety days after the filing of the amended federal return or within ninety days after the date the change or correction becomes final.

(2) Within the same tax year or the three previous tax years, a person may file an amended list of taxable tangible personal property subject to taxation upon discovery of errors or omissions on his or her filed list.

(3) If an amended list of taxable tangible personal property subject to taxation is filed, the county assessor shall accept or reject the proposed amendment within fifteen days after filing. The county assessor shall notify the person, on a form prescribed by the Property Tax Administrator, of the action taken, the penalty, if any, and the rate of interest. The notice shall also state the person's appeal rights and appeal procedures, which shall be the same as provided in section 77-1233.06. Such notice shall be given by first-class mail addressed to such person's last-known address.

(4) Whenever changes are made to a taxable tangible personal property return pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes.

(5) If the amendment, change, or correction results in taxable tangible personal property becoming exempt or reduces the net book value of the property for an income tax year, a refund shall be paid pursuant to section 77-1734.01.
(6) If the amendment, change, or correction results in an increase in the net book value of the taxable tangible personal property or makes other tangible personal property taxable, the county assessor shall compute the additional tax due, along with interest, based on the amended listing. Interest shall be computed from the dates the tax would have been delinquent if the property had been listed on or before May 1 of the appropriate year. If the amended listing is filed within the ninety-day period, no additional penalties shall be added. If the listing is not filed within the ninety-day period, the property shall be subject to a penalty pursuant to subsection (4) of section 77-1233.04.

Source: Laws 1992, LB1063, § 95; Laws 1992, Second Spec. Sess., LB1, § 68; Laws 1997, LB270, § 51; Laws 2008, LB965, § 8.

77-1232. Personal property; failure to list; false listing; evasion of tax; penalty. Any person who makes a false or fraudulent list, schedule, or statement required by law or willfully fails or refuses to deliver to the assessor a list of the taxable tangible personal property which by law is required to be listed, or temporarily converts any part of such property into property not taxable, for the fraudulent purpose of preventing such property from being listed and of evading the payment of taxes thereon, or transfers or transmits any property to any person with such intent, shall be guilty of a Class IV misdemeanor for any such offense committed for any tax year prior to tax year 1993 and a Class II misdemeanor for any such offense committed for tax year 1993 or thereafter.

Source: Laws 1903, c. 73, § 53, p. 402; R.S.1913, § 6340; C.S.1922, § 5942; C.S.1929, § 77-1429; R.S.1943, § 77-1232; Laws 1947, c. 250, § 17, p. 793; Laws 1959, c. 365, § 9, p. 1289; Laws 1977, LB39, § 219; Laws 1992, LB1063, § 100; Laws 1992, Second Spec. Sess., LB1, § 73.

Annotations

Failure to comply with this section cannot be excused by an unsupported assertion of the constitutional privilege against self-incrimination. State v. Soester, 199 Neb. 477, 259 N.W.2d 921 (1977).

Two separate criminal penalties were provided for falsely and willfully failing to return intangible property for taxation. Bachus v. Swanson, 179 Neb. 1, 136 N.W.2d 189 (1965).

False oath, administered by assessor who has not taken oath or given bond, constitutes false swearing. Brunke v. State, 105 Neb. 343, 180 N.W. 560 (1920).

77-1233. Personal property; statement required on return; signature by taxpayer. Each schedule or statement required by law to be filed with respect to taxation of personal property shall have the following printed thereon and signed by the taxpayer or his agent:
Taxpayer or Agent—I declare that this (schedule or return) and any accompanying schedule and statements have been examined by me and to the best of my knowledge and belief are a true, correct, and complete return.

Source: Laws 1903, c. 73, § 53, p. 402; R.S.1913, § 6340; C.S.1922, § 5942; C.S.1929, § 77-1429; R.S.1943, § 77-1233; Laws 1959, c. 365, § 10, p. 1289; Laws 1961, c. 377, § 5, p. 1158.

77-1233.02. Taxable tangible personal property tax returns; county assessor; duties. The county assessor with the aid of his or her deputy and assistants shall carefully examine, check, and verify all taxable tangible personal property tax returns. The assessor may make such investigation, examination, and inspection of the property set out in a return and examine under oath the person making the return as to his or her books, records, and papers in order to enable the assessor to determine that all taxable tangible personal property of the taxpayer is listed for taxation at its net book value.

Source: Laws 1947, c. 250, § 39, p. 804; Laws 1987, LB508, § 9; R.S.Supp.,1988, § 77-409; Laws 1990, LB821, § 45; Laws 1992, LB1063, § 101; Laws 1992, Second Spec. Sess., LB1, § 74; Laws 1997, LB270, § 52; Laws 2008, LB965, § 9.

77-1233.03. Assessment of taxable tangible personal property; county assessor; duties. The county assessor shall have general supervision over and direction of the assessment of all personal property in his or her county. He or she shall advise and instruct all deputies and assistants as to their duties and shall require of them that the assessment of property be uniform throughout the county and that property be assessed as directed by law.

The county assessor may, in extending a value on any item of taxable tangible personal property, reject all values that fall below two dollars and fifty cents and extend all values of two dollars and fifty cents or more to the next higher five dollars or multiples thereof, making all valuations end in zero or five.

Source: Laws 1947, c. 250, § 40, p. 804; Laws 1987, LB508, § 10; R.S.Supp.,1988, § 77-410; Laws 1990, LB821, § 46; Laws 2008, LB965, § 10.

77-1233.04. Taxable tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties. (1) The county assessor shall list and value at net book value any item of taxable tangible personal property omitted from a personal property return of any taxpayer. The county assessor shall change the reported valuation of any item of taxable tangible personal property listed on the return to conform the valuation to net book value. If a taxpayer fails or refuses to file a personal property return, the assessor shall, on behalf of the taxpayer, file a personal property return which shall list and value all of the taxpayer's taxable tangible personal property at net book value. The county assessor shall list or change the valuation of any item of taxable tangible personal property for the current taxing period and the three previous taxing periods or any taxing period included therein.

(2) The taxable tangible personal property so listed and valued shall be taxed at the same rate as would have been imposed upon the property in the tax district in which the property should have been returned for taxation.

(3) Any valuation added to a personal property return or added through the filing of a personal property return, after May 1 and on or before June 30 of the year the property is required to be reported, shall be subject to a penalty of ten percent of the tax due on the value added.

(4) Any valuation added to a personal property return or added through the filing of a personal property return, on or after July 1 of the year the property is required to be reported, shall be subject to a penalty of twenty-five percent of the tax due on the value added.

(5) Interest shall be assessed upon both the tax and the penalty at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid.

(6) Whenever valuation changes are made to a personal property return or a personal property return is filed pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes. Such corrections shall be made for the current taxing period and the three previous taxing periods or any taxing period included therein. If the change results in a decreased taxable valuation on the personal property return and the personal property tax has been paid prior to a correction pursuant to this section, the taxpayer may request a refund of the tax in the same manner prescribed in section77-1734.01, except that such request shall be made within three years after the date the tax was due.

Source: Laws 1947, c. 250, § 42, p. 805; Laws 1965, c. 474, § 1, p. 1526; Laws 1965, c. 475, § 2, p. 1530; Laws 1967, c. 499, § 1, p. 1692; Laws 1980, LB834, § 59; Laws 1981, LB167, § 39; Laws 1984, LB835, § 4; Laws 1987, LB508, § 11; R.S.Supp.,1988, § 77-412; Laws 1990, LB821, § 47; Laws 1992, LB1063, § 102; Laws 1992, Second Spec. Sess., LB1, § 75; Laws 1995, LB490, § 93; Laws 1997, LB270, § 53; Laws 1999, LB194, § 12; Laws 2000, LB968, § 44; Laws 2007, LB166, § 5; Laws 2008, LB965, § 11; Laws 2013, LB28, § 1.

Annotations

This section and section 77-1233.06 control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. Prime Alliance Bank v. Lincoln Cty. Bd. of Equal., 283 Neb. 732, 811 N.W.2d 690 (2012).

To sustain an addition to a tax return as omitted property, it must appear that specific items were added, not just revalued. Sealtest Central Division-Omaha, Kraftco Corp. v. Douglas County Board of Equalization, 193 Neb. 809, 229 N.W.2d 545 (1975).

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 855 (1975).

77-1233.06. Taxable tangible personal property tax valuation or penalty; appeal; procedure; collection procedures. For purposes of section 77-1233.04:

(1) The county assessor shall notify the taxpayer, on a form prescribed by the Tax Commissioner, of the action taken, the penalty, and the rate of interest. The notice shall also state the taxpayer's appeal rights and

the appeal procedures. Such notice shall be given by first-class mail addressed to such taxpayer's last-known address. The entire penalty and interest shall be waived if the omission or failure to report any item of taxable tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(2) The taxpayer may appeal the action of the county assessor, either as to the valuation or the penalties imposed, to the county board of equalization within thirty days after the date of notice. The taxpayer shall preserve his or her appeal by filing a written appeal with the county clerk in the same manner as prescribed for protests in section 77-1502. The action of the county assessor shall become final unless a written appeal is filed within the time prescribed;

(3) The action of the county board of equalization, in an appeal of the penalties imposed, shall be limited to correcting penalties which were wrongly imposed or incorrectly calculated. The county board of equalization shall have no authority to waive or reduce any penalty which was correctly imposed and calculated. The entire penalty and interest on the penalty shall be waived if the omission or failure to report any item of taxable tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(4) Upon ten days' notice to the taxpayer, the county board of equalization shall set a date for hearing the appeal of the taxpayer. The county board of equalization shall make its determination on the appeal within thirty days after the date of hearing. The county clerk shall, within seven days after the determination of the county board, send notice to the taxpayer and the county assessor, on forms prescribed by the Tax Commissioner, of the action of the county board. Appeal may be taken within thirty days after the decision of the county board of equalization to the Tax Equalization and Review Commission; and

(5) Taxes and penalties assessed for the current year, if not delinquent, shall be certified to the county treasurer and collected as if the property had been properly reported for taxation, except that separate tax statements may be mailed. Taxes and penalties assessed for the current year, if delinquent, and taxes and penalties assessed for prior years shall be certified to the county treasurer, and the taxes, penalties, and interest thereon shall be due and collectible immediately upon certification. Collection procedures shall be started immediately regardless of the provisions of any other statute to the contrary.

Source: Laws 1997, LB270, § 55; Laws 1999, LB194, § 13; Laws 2007, LB334, § 53; Laws 2008, LB965, § 12.

Annotations

Section 77-1233.04 and this section control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. Prime Alliance Bank v. Lincoln Cty. Bd. of Equal., 283 Neb. 732, 811 N.W.2d 690 (2012).

The assignee of certain interests in ethanol manufacturing equipment had 30 days from the date of the decision under subsection (4) of this section, and not until the August 24 deadline under section 77-1510, to appeal to the Tax Equalization and Review Commission from a county board of equalization's decision in a case where the assignor had filed a personal property return with the value of zero dollars for the equipment and had not filed a protest of the valuation. Republic Bank v. Lincoln Cty. Bd. of Equal., 283 Neb. 721, 811 N.W.2d 682 (2012).

77-1234. Violations; duty of officers upon discovery. It shall be the duty of the county boards and county assessors to notify the county attorney of the proper county of all willful violations of the provisions with respect to listing of taxable tangible personal property for taxation known to them or any of them.

Source: Laws 1903, c. 73, § 54, p. 403; Laws 1909, c. 111, § 1, p. 439; R.S.1913, § 6341; C.S.1922, § 5943; C.S.1929, § 77-1430; R.S.1943, § 77-1234; Laws 1947, c. 250, § 18, p. 794; Laws 1997, LB397, § 11; Laws 2004, LB973, § 16; Laws 2008, LB965, § 13.

77-1236. Personal property; taxpayer; inspection by county assessor; authorized; subpoena; disobedience; contempt proceedings; confidentiality. For the purpose of determining the net book value of any property, the county assessor shall have the right to demand of the owner or his or her agent or employee an inspection of the following for the year preceding assessment: Inventories; all books of accounts; depreciation schedules filed with the Internal Revenue Service; and workpapers, worksheets, or any other item prepared by or for a taxpayer and not filed with the Internal Revenue Service. If the owner, agent, or employee refuses such demand, the county assessor shall have authority to issue subpoenas to compel the appearance of such owner or agent and employee, together with such papers, books, accounts, and documents as the county assessor may deem necessary, and at such time the county assessor may administer

oaths and take testimony. In case of disobedience on the part of any person to comply with any subpoena issued by or on behalf of the county assessor or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the district court for any county or of the judge thereof, on application by the county assessor, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

All documentation provided by the owner or owner's agent or employee pursuant to this section shall be confidential and available to taxing officials only.

Source: Laws 1903, c. 73, § 57, p. 404; R.S.1913, § 6344; C.S.1922, § 5945; C.S.1929, § 77-1432; R.S.1943, § 77-1236; Laws 1959, c. 365, § 12, p. 1290; Laws 1992, LB1063, § 104; Laws 1992, Second Spec. Sess., LB1, § 77; Laws 1997, LB270, § 56.

Annotations

Inventory of merchant may be considered in determining value of personal property. L. J. Messer Co. v. Board of Equalization of Jefferson County, 171 Neb. 393, 106 N.W.2d 478 (1960).

77-1237. Personal Property Tax Relief Act; act, how cited. Sections 77-1237 to 77-1239 shall be known and may be cited as the Personal Property Tax Relief Act.

Source: Laws 2015, LB259, § 1.

Operative Date: January 1, 2016

77-1238. Exemption from taxation; Property Tax Administrator; duties. (1) Every person who is required to list his or her taxable tangible personal property as defined in section 77-105, as required under section 77-1229, shall receive an exemption from taxation for the first ten thousand dollars of valuation of his or her tangible personal property in each tax district as defined in section 77-127 in which a personal property return is required to be filed. Failure to report tangible personal property on the personal property return required by section 77-1229 shall result in a forfeiture of the exemption for any tangible personal property not timely reported for that year.

(2) The Property Tax Administrator shall reduce the value of the tangible personal property owned by each railroad, car line company, public service entity, and air carrier by a compensating exemption factor to reflect the exemption allowed in subsection (1) of this section for all other personal property taxpayers. The compensating exemption factor is calculated by multiplying the value of the tangible personal property of the railroad, car line company, public service entity, or air carrier by a fraction, the numerator of which is the total amount of locally assessed tangible personal property that is actually subjected to property tax after the exemption allowed in subsection (1) of this section, and the denominator of which is the net book value of locally assessed tangible personal property prior to the exemptions allowed in subsection (1) of this section.

Source: Laws 2015, LB259, § 2.

Operative Date: January 1, 2016

77-1239. Reimbursement for tax revenue lost because of exemption; calculation. (1) Reimbursement to taxing subdivisions for tax revenue that will be lost because of the personal property tax exemptions allowed in subsection (1) of section 77-1238 shall be as provided in this subsection. The county assessor and county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner, on forms prescribed by the Tax Commissioner, the total tax revenue that will be lost to all taxing subdivisions within his or her county from taxes levied and assessed in that year because of the personal property tax exemptions allowed in subsection (1) of section 77-1238. The county assessor and county treasurer may amend the certification to show any change or correction in the total tax revenue that will be lost until May 30 of the next succeeding year. The Tax Commissioner shall, on or before January 1 next following the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the tax revenue lost shall be made to each county according to the certification and shall be distributed in two approximately equal installments on the last business day of February and the last business day of June. The State Treasurer shall, on the business day preceding the last business day of February and the last business day of June, notify the Director of Administrative Services of the amount of funds available in the General Fund to pay the reimbursement. The Director of Administrative Services shall, on the last business day of February and the last business day of June, draw warrants against funds appropriated. Out of the amount received, the county treasurer shall distribute to each of the taxing

subdivisions within his or her county the full tax revenue lost by each subdivision, except that one percent of such amount shall be deposited in the county general fund.

(2) Reimbursement to taxing subdivisions for tax revenue that will be lost because of the compensating exemption factor in subsection (2) of section 77-1238 shall be as provided in this subsection. The Property Tax Administrator shall establish the average tax rate that will be used for purposes of reimbursing taxing subdivisions pursuant to this subsection. The average tax rate shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The Tax Commissioner shall certify, on or before January 30 of each year, to the Director of Administrative Services the total valuation that will be lost to all taxing subdivisions within each county because of the compensating exemption factor in subsection (2) of section 77-1238. Such amount, multiplied by the average tax rate calculated pursuant to this subsection, shall be the tax revenue to be reimbursed to the taxing subdivisions by the state. Reimbursement of the tax revenue lost for public service entities shall be made to each county according to the certification and shall be distributed among the taxing subdivisions within each county in the same proportion as all public service entity taxes levied by the taxing subdivisions. Reimbursement of the tax revenue lost for railroads shall be made to each county according to the certification and shall be distributed among the taxing subdivisions within each county in the same proportion as all railroad taxes levied by taxing subdivisions. Reimbursement of the tax revenue lost for car line companies shall be distributed in the same manner as the taxes collected pursuant to section 77-684. Reimbursement of the tax revenue lost for air carriers shall be distributed in the same manner as the taxes collected pursuant to section 77-1250.

(3) Each taxing subdivision shall, in preparing its annual or biennial budget, take into account the amounts to be received under this section.

Source: Laws 2015, LB259, § 3.

Operative Date: January 1, 2016

77-1244. Taxation of air carriers; definitions. As used in sections 77-1244 to 77-1246:

(1) The term air carrier means any person, firm, partnership, limited liability company, corporation, association, trustee, receiver, or assignee and all other persons, whether or not in a representative capacity, undertaking to engage in the carriage of persons or cargo for hire by aircraft. Any air carrier as herein defined engaged solely in intrastate transportation, whose flight equipment is based at only one airport within the state, shall be excepted from taxation under this section, but shall be subject to taxation in the same manner as other locally assessed property;

(2) The term aircraft arrivals and departures means (a) the number of scheduled landings and takeoffs of the aircraft of an air carrier, (b) the number of scheduled air pickups and deliveries by the aircraft of such carrier, and (c) in the case of nonscheduled operations, shall include all landings and takeoffs, pickups, and deliveries;

(3) The term flight equipment means aircraft fully equipped for flight and used within the continental limits of the United States;

(4) The term originating revenue means revenue to an air carrier from the transportation of revenue passengers and revenue cargo exclusive of the revenue derived from the transportation of express or mail; and

(5) The term revenue tons handled by an air carrier means the weight in tons of revenue passengers and revenue cargo received and discharged as originating or terminating traffic.

Source: Laws 1947, c. 266, § 1, p. 858; Laws 1949, c. 231, § 5, p. 641; Laws 1993, LB121, § 495.

Annotations

Tax on flight equipment did not violate federal Constitution. Mid-Continent Airlines v. State Board of Equalization & Assessment, 157 Neb. 425, 59 N.W.2d 746 (1953).

Validity of tax on airplane flight equipment challenged, but appeal dismissed on other grounds. Mid-Continent Airlines, Inc. v. State Board of Equalization and Assessment, 154 Neb. 371, 48 N.W.2d 81 (1951).

Flight equipment used in interstate commerce was not immune from tax. Braniff Airways v. Nebraska State Board of Equalization & Assessment, 347 U.S. 590 (1954).

Federal court would not enjoin payment of tax where adequate state remedy to test validity of statute existed. Mid-Continent Airlines v. Nebraska State Board of Equalization, 105 F.Supp. 188 (D. Neb. 1952).

77-1245. Taxation of air carriers; assessment; collection; disbursement; allocation to this state; petition to Property Tax Administrator, when. Any tax upon or measured by the value of flight equipment of air carriers incorporated or doing business in this state shall be assessed, collected by the Property Tax Administrator, and disbursed as provided in section 77-1250. The proportion of flight equipment allocated to this state for purposes of taxation shall be the arithmetical average of the following three ratios: (1) The ratio which the aircraft arrivals and departures within this state scheduled by such air carrier during the preceding calendar year bears to the total aircraft arrivals and departures within and without this state scheduled by such carrier during the same period, except that in the case of nonscheduled operations all arrivals and departures shall be substituted for scheduled arrivals and departures; (2) the ratio which the revenue tons handled by such air carrier at airports within this state during the preceding calendar year bears to the total revenue tons handled by such carrier at airports within and without this state during the same period; and (3) the ratio which such air carrier's originating revenue within this state for the preceding calendar year bears to the total originating revenue of such carrier within and without this state for the same period.

If allocation in accordance with the provisions of this section does not fairly represent the proportion of flight equipment properly allocable to this state, the taxpayer may petition for, or the Property Tax Administrator may require, the inclusion of one or more additional ratios or the employment of any other method to effectuate an equitable allocation of the taxpayer's flight equipment for purposes of taxation.

Source: Laws 1947, c. 266, § 2, p. 859; Laws 1965, c. 478, § 9, p. 1543; Laws 1972, LB625, § 1; Laws 1995, LB490, § 99.

Annotations

Levy of tax on allocation basis was constitutional. Mid-Continent Airlines v. State Board of Equalization & Assessment, 157 Neb. 425, 59 N.W.2d 746 (1953).

This section sets out basis of valuation upon which tax is laid. Mid-Continent Airlines v. Nebraska State Board of Equalization, 105 F.Supp. 188 (D. Neb. 1952).

77-1246. Taxation of air carriers; real and personal property other than flight equipment. Real property and personal property, except flight equipment, of an air carrier shall be taxed in the political subdivisions of the state in accordance with the applicable laws of this state.

Source: Laws 1947, c. 266, § 3, p. 860; Laws 1965, c. 478, § 10, p. 1544.

77-1247. Taxation of air carriers; annual report; contents; failure to furnish report or information; penalty; waiver. (1) Each air carrier, as defined in section 77-1244, shall on or before June 1 in each year make to the Property Tax Administrator a report, in such form as may be prescribed by the Tax Commissioner, containing the information necessary to determine the value of its flight equipment and the proportion allocated to this state for purposes of taxation as provided in section 77-1246. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such report. Such extension shall not exceed thirty days after June 1.

(2) For each day's failure to furnish the report required by subsection (1) of this section or for each day's failure to furnish the information as required on the report, the air carrier may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1949, c. 231, § 1, p. 641; Laws 1965, c. 478, § 11, p. 1544; Laws 1986, LB817, § 8; Laws 1995, LB490, § 100; Laws 1997, LB270, § 59; Laws 1999, LB36, § 19; Laws 2007, LB334, § 54.

Annotations

Each affected carrier is required to make report. Mid-Continent Airlines v. Nebraska State Board of Equalization, 105 F.Supp. 188 (D. Neb. 1952).

77-1248. Taxation of air carriers; taxable value; allocation; Property Tax Administrator; duties. (1) The Property Tax Administrator shall ascertain from the reports made and from any other information obtained by him or her the taxable value of the flight equipment of air carriers and the proportion allocated to this state for the purposes of taxation as provided in section 77-1245.

(2)(a) In determining the taxable value of the flight equipment of air carriers pursuant to subsection (1) of this section, the Property Tax Administrator shall determine the following ratios:

(i) The ratio of the taxable value of all commercial and industrial depreciable tangible personal property in the state actually subjected to property tax to the market value of all commercial and industrial depreciable tangible personal property in the state; and
(ii) The ratio of the taxable value of flight equipment of air carriers to the market value of flight equipment of air carriers.
(b) If the ratio of the taxable value of flight equipment of air carriers exceeds the ratio of the taxable value of commercial and industrial depreciable tangible personal property by more than five percent, the Property Tax Administrator may adjust the value of such flight equipment of air carriers to the percentage of the taxable commercial and industrial depreciable tangible personal property pursuant to federal law applicable to air carrier transportation property or Nebraska federal court decisions applicable thereto.
(c) For purposes of this subsection, commercial and industrial depreciable tangible personal property means all personal property which is devoted to commercial or industrial use other than flight equipment of air carriers.
(3) The Property Tax Administrator shall multiply the valuation of each air carrier by the compensating exemption factor calculated in section 77-1238.

Source: Laws 1949, c. 231, § 2, p. 641; Laws 1969, c. 669, § 1, p. 2591; Laws 1992, LB1063, § 109; Laws 1992, Second Spec. Sess., LB1, § 82; Laws 1995, LB490, § 101; Laws 2015, LB259, § 8; Laws 2015, LB261, § 7.
Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB259, section 8, with LB261, section 7, to reflect all amendments.
Note: Changes made by LB261 became operative January 1, 2015. Changes made by LB259 became operative January 1, 2016.

77-1249. Taxation of air carriers; tax rate; appeal. The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in section 77-1248 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each air carrier a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that the tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If an air carrier feels aggrieved, such carrier may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the carrier within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1949, c. 231, § 3, p. 641; Laws 1965, c. 478, § 12, p. 1544; Laws 1969, c. 669, § 2, p. 2591; Laws 1983, LB193, § 9; Laws 1992, LB1063, § 110; Laws 1992, Second Spec. Sess., LB1, § 83; Laws 1995, LB490, § 102; Laws 1997, LB270, § 60; Laws 2000, LB968, § 45; Laws 2004, LB973, § 17; Laws 2007, LB334, § 55.

77-1249.01. Taxation of air carriers; delinquency; interest; collection. One-half of the taxes levied and due under sections 77-1249 and 77-1250 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due.
All delinquent taxes shall draw interest from the date they become delinquent at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the interest shall be collected and distributed the same as the tax on which the interest accrues. If such taxes and interest due thereon shall not have been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the same by distress and sale of any property belonging to such delinquent person in like manner as required of county treasurers and county sheriffs in like cases.

Source: Laws 1983, LB193, § 11; Laws 1989, Spec. Sess., LB7, § 4; Laws 1995, LB490, § 103; Laws 1997, LB270, § 61; Laws 2007, LB334, § 56.

77-1250. Taxation of air carriers; when due; lien; distribution to counties; collection fee. The tax levied pursuant to section 77-1249 shall, on January 31 next following the date of levy, be a first lien from that date on the personal property, both tangible and intangible, of the person assessed until the liability is satisfied or otherwise released or discharged. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act. The Property Tax Administrator shall remit the tax paid to the State

Treasurer, and the tax collected, less a three percent collection fee, shall be distributed to the counties to the credit of the county general fund proportionate to the amount the total property taxes levied in the county bears to the total property taxes levied in the state as a whole, as certified pursuant to section 77-1613.01. The collection fee shall be credited by the State Treasurer to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1949, c. 231, § 4, p. 641; Laws 1965, c. 478, § 13, p. 1544; Laws 1973, LB132, § 3; Laws 1979, LB159, § 4; Laws 1979, LB187, § 203; Laws 1980, LB599, § 13; Laws 1983, LB193, § 10; Laws 1986, LB1027, § 202; Laws 1995, LB490, § 104; Laws 1997, LB270, § 62; Laws 1999, LB36, § 20; Laws 2007, LB334, § 57.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.02. Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty. The owner, lessee, or manager of any aircraft hangar or land upon which is parked or located any aircraft as defined by section 3-101 shall report by February 1 of each year to the county assessor in the county in which such aircraft hangar or land is located all aircraft as defined by section 3-101 located thereon in such hangar or on such land as of January 1 of each year on a form prescribed by the Tax Commissioner. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than fifty dollars.

Source: Laws 1971, LB26, § 2; Laws 1995, LB490, § 105; Laws 2007, LB334, § 58.

77-1250.03. Taxation of air carriers; taxes; delinquent; lien; collection. If any taxes levied on air carriers as defined in section 77-1244 and interest and penalties due thereon shall not have been paid on July 1, following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to such air carriers until the liability therefor is satisfied or otherwise released or discharged, and it shall be lawful for the Tax Commissioner or his or her designated agent to collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such air carriers. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1959, c. 360, § 2, p. 1277; Laws 1983, LB193, § 8; Laws 1986, LB1027, § 201; R.S.1943, (1986), § 77-631.02; Laws 1989, Spec. Sess., LB7, § 5; Laws 1995, LB490, § 106; Laws 2007, LB334, § 59.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.04. Taxation of air carriers; money and credits; surrender to Tax Commissioner. Any person or corporation in possession of any such money and credits belonging to air carriers as defined in section 77-1244 upon which levy has been made shall, upon demand of the Tax Commissioner or his or her agent, surrender the same to the Tax Commissioner or his or her agent. If any person or corporation fails or refuses to surrender the same in accordance with the requirements of this section, such person shall be liable to the State of Nebraska in a sum equal to the value of the property or rights not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1959, c. 360, § 3, p. 1277; R.S.1943, (1986), § 77-631.03; Laws 1989, Spec. Sess., LB7, § 6; Laws 1995, LB490, § 107; Laws 2007, LB334, § 60.

77-1250.05. Taxation of air carriers; disposition of funds collected. The money realized from any levy under sections 77-1250.03 and 77-1250.04shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy and next to the payment of such taxes, interest, and penalties, and any balance remaining shall then be paid over to the person entitled thereto.

Source: Laws 1959, c. 360, § 4, p. 1277; R.S.1943, (1986), § 77-631.04; Laws 1989, Spec. Sess., LB7, § 7; Laws 1995, LB490, § 108; Laws 2007, LB334, § 61.

ARTICLE 13
ASSESSMENT OF PROPERTY

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77-1340.04 Property Tax Administrator; relinquish property tax function; employees; transfer of property; appointment of county assessor; allocation of costs; contracts. Repealed. Laws 2015, LB 261, § 18. Operative Date: August 30, 2015

77-1340.05 Transfer of assessment function to county; transferred employee; retirement rights. Repealed. Laws 2015, LB 261, § 18. Operative Date: August 30, 2015

77-1340.06 Transfer of assessment function to county; transferred employee; leave and insurance rights. Repealed. Laws 2015, LB 261, § 18. Operative Date: August 30, 2015

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77-1393. Historically significant real property; State Historic Preservation Officer; rules and regulations.

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77-1301. Real property; assessment date; notice of preliminary valuation. (1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment.

(2) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall provide notice of preliminary valuations to real property owners on or before January 15 of each year. Such notice shall be (a) mailed to the taxpayer or (b) published on a web site maintained by the county assessor or by the county.

(3) The county assessor shall complete the assessment of real property on or before March 19 of each year, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall complete the assessment of real property on or before March 25 of each year.

Source: Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p. 439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB742, § 1; Laws 1984, LB833, § 1; Laws 1987, LB508, § 36; Laws 1992, LB1063, § 114; Laws 1992, Second Spec. Sess., LB1, § 87; Laws 1997, LB270, § 63; Laws 1999, LB194, § 15; Laws 2004, LB973, § 18; Laws 2011, LB384, § 6.

Annotations

1. Classification and reappraisal committee

Objective of this section and succeeding sections is a comprehensive and uniform system of scientific reappraisal of real estate. Carpenter v. State Board of Equalization & Assessment, 178 Neb. 611, 134 N.W.2d 272 (1965).

Real estate and classification committee merely makes recommendations to county assessor. Collier v. County of Logan, 169 Neb. 1, 97 N.W.2d 879 (1959); LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956).

County board may establish real estate classification and reappraisal committee. Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

Tax Appraisal Board Act sustained as constitutional. Midwest Popcorn Co. v. Johnson, 152 Neb. 867, 43 N.W.2d 174 (1950).

2. Determination of value

While on the date for determining assessed value, the conditions of a use permit had not been carried out, the mere rezoning and issuance of the conditional use permit were sufficient with other factors to justify the reappraisal. Nash Finch Co. v. County Board of Equalization of Hall County, 191 Neb. 645, 217 N.W.2d 170 (1974).

A county reappraisal, state approved, was not conclusive as to value for tax purposes. Hanna v. State Board of Equalization & Assessment, 181 Neb. 725, 150 N.W.2d 878 (1967).

Legislature used terms liable to taxation, subject to taxation, and taxable as generally meaning one and the same thing. Hanson v. City of Omaha, 154 Neb. 72, 46 N.W.2d 896 (1951).

Decree fixing value of property under prior assessment is not admissible to prove value under subsequent assessment. DeVore v. Board of Equalization, 144 Neb. 351, 13 N.W.2d 451 (1944).

Farm lands, for the purpose of taxation, should be valued and assessed at their actual cash value, which is their value in the market in the ordinary course of trade. Schulz v. Dixon County, 134 Neb. 549, 279 N.W. 179 (1938).

Taxpayer complaining that real property is assessed too high should first apply for relief to board of equalization and, if denied relief, should appeal to courts. Power v. Jones, 126 Neb. 529, 253 N.W. 867 (1934).

3. Miscellaneous

A mineral interest severed from the surface ownership remains real estate but may be listed on the tax roles separate from the surface rights. If the owner of the surface rights so requests, severed mineral interests must be separately listed on the tax roles. State ex rel. Svoboda v. Weiler, 205 Neb. 799, 290 N.W.2d 456 (1980).

Current professional reappraisals under statutes and rules of State Tax Commissioner, and approved by him, may be relied on by State Board of Equalization and Assessment in absence of clear evidence they are erroneous or fail to establish equality and uniformity. County of Sioux v. State Board of Equalization & Assessment, 190 Neb. 198, 207 N.W.2d 219 (1973).

Assessment date is fixed by this section as to real estate. H/K Company v. Board of Equalization of Lancaster County, 175 Neb. 268, 121 N.W.2d 382 (1963).

Status of real estate as being exempt is determined by when the tax is levied and not when it is valued by the assessor. American Province of Servants of Mary Real Estate Corp. v. County of Douglas, 147 Neb. 485, 23 N.W.2d 714 (1946).

77-1301.01. Appraisal; standards; establishment by Tax Commissioner; contracts; approval. The Tax Commissioner shall adopt and promulgate rules and regulations to establish standards for the appraisal of classes or subclasses of real property in a county. The standards established shall require that the appraisal shall be based upon the use of manuals developed pursuant to section 77-1330 and shall arrive at a determination of taxable value on a consistent basis in accordance with the methods prescribed in sections 77-112 and 77-201. The Tax Commissioner shall also establish standards for appraisal contracts which shall, among other provisions, require that all such contracts shall require the use of manuals developed pursuant to section 77-1330. No appraisal contract shall be valid until approved in writing by the Tax Commissioner.

Source: Laws 1963, c. 450, § 2, p. 1474; Laws 1969, c. 672, § 1, p. 2594; Laws 1979, LB159, § 5; Laws 1985, LB30, § 3; Laws 1986, LB817, § 9; Laws 1989, LB361, § 7; Laws 1991, LB320, § 3; Laws 1992, LB1063, § 115; Laws 1992, Second Spec. Sess., LB1, § 88; Laws 1995, LB490, § 109; Laws 1997, LB270, § 64; Laws 2007, LB334, § 62.

Annotations

Application of Department of Revenue guidelines for allowance of economic depreciation raises a presumption that the resulting assessment is correct; however, the guidelines must give way to evidence showing that such application will violate the constitutional requirement of uniform and proportionate taxation or the statutory requirement of taxation at actual value. Farmers Co-op Assn. v. Boone County, 213 Neb. 763, 332 N.W.2d 32 (1983).

77-1303. Assessment roll. (1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county on or before March 25.

(2) The county assessor or county clerk shall enter in the proper column, opposite each respective parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands and the value and owner thereof and such other columns as may be required.

Source: Laws 1903, c. 73, § 106, p. 422; Laws 1905, c. 111, § 1, p. 510; R.S.1913, § 6421; Laws 1919, c. 137, § 1, p. 314; C.S.1922, § 5956; C.S.1929, § 77-1602; Laws 1943, c. 175, § 1, p. 609; R.S.1943, § 77-1303; Laws 1945, c. 189, § 1, p. 583; Laws 1947, c. 250, § 22, p. 795; Laws 1947, c. 251, § 32, p. 824; Laws 1951, c. 264, § 1, p. 892; Laws 1953, c. 270, § 2, p. 893; Laws 1955, c. 288, § 20, p. 915; Laws 1959, c. 355, § 21, p. 1265; Laws 1979, LB187, § 204; Laws 1981, LB179, § 10; Laws 1987, LB508, § 42; Laws 1988, LB842, § 1; Laws 1992, LB1063, § 118; Laws 1992, Second Spec. Sess., LB1, § 91; Laws 1997, LB270, § 65; Laws 1999, LB194, § 16; Laws 2004, LB973, § 19; Laws 2005, LB263, § 7; Laws 2011, LB384, § 7.

Annotations

County assessor is required annually to supply a list of the taxable lands and lots in the county. County of Douglas v. OEA Senior Citizens, Inc., 172 Neb. 696, 111 N.W.2d 719 (1961).

Continued assessment of portion of tract of land under contract of sale, in the name of vendor, along with other land in tract at one aggregate amount, does not render entire tax based thereon void. Haarmann Vinegar & Pickle Co. v. Douglas County, 122 Neb. 643, 241 N.W. 117 (1932).

The presumption of law is that officer making assessment performed his full duty. Pettibone v. Fitzgerald, 62 Neb. 869, 88 N.W. 143 (1901).

Assessment of real estate in name of rightful owner is not essential to validity of tax. Carman v. Harris, 61 Neb. 635, 85 N.W. 848 (1901).

Tax is void for uncertainty which is assessed and levied against an entire city lot under the description part of lot 5, in block 41. Spiech v. Tierney, 56 Neb. 514, 76 N.W. 1090 (1898).

Description is sufficient if it affords notice and protects owner's rights, and it need not refer to plat in city. Kershaw v. Jansen, 49 Neb. 467, 68 N.W. 616 (1896).

A county assessor shall prepare a list, ledger, or computer file of all taxable lands in the county. This list shall include in one description all contiguous lots in the same tract or block which belong to one owner. The real estate tax list shall show the name of the owner and shall contain columns in which may be shown the number of acres, the value of the land, the improvements, and the total value. The tax list must be under the separate owner's name, and after the levy is made, the list must show delinquent taxes. County of Sarpy v. Jansen Real Estate Co., 7 Neb. App. 676, 584 N.W.2d 824 (1998).

77-1305. Certificate of assessment; contents; effect. The county assessor, when requested by any person, shall give a certificate of assessment of real property showing the amount, kind, location, and taxable value of property assessed, and such certificate shall be evidence of the legal assessment of such property for the year.

Source: Laws 1997, LB270, § 66.

77-1306.01. Lands adjacent to rivers and streams; survey; report. In all counties where land ownership may from time to time be altered to add new lands to the tax rolls due to the activity of any river, stream, or other body of water along or bordering state lines, whether by accretion or avulsion, it shall be the duty of the

county surveyor prior to June 1, 1960, and at least once within each five-year period thereafter either to cause to be surveyed any lands believed to have been altered in such manner or to certify in writing that it is his or her opinion that no alteration of ownership of any land in the county from that shown by the then current tax rolls has occurred due to the action of any river, stream, or other body of water along or bordering state lines. A report of such survey or surveys, showing the extent of any probable alteration of ownership due to the action of a river, stream, or other body of water along or bordering state lines, or a certificate of no change as provided shall be filed with the county assessor within the periods hereinbefore stated. In any county where there is no regularly elected or appointed county surveyor the county board shall appoint a qualified surveyor to carry out the provisions of this section. In the event of a failure of county officials to act as directed by this section, within the periods stated, the Property Tax Administrator may appoint a qualified surveyor to act as provided by this section, and all costs incurred shall be paid by the county. In all counties where land ownership may from time to time be altered due to the activity of any river, stream, or other body of water not along or bordering state lines, whether by accretion or avulsion, it shall be the duty of the county surveyor to cause to be surveyed any lands believed to have been altered when directed by the county board of equalization or when requested by the Property Tax Administrator. If such a survey is ordered by the county board of equalization or requested by the Property Tax Administrator, the county surveyor shall perform the same duties as when a river, stream, or other body of water is along or borders state lines.

Source: Laws 1959, c. 370, § 5, p. 1305; Laws 1995, LB490, § 120.

77-1311. County assessor; duties. The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

(1) Annually revise the real property assessment for the correction of errors;

(2) When a parcel has been assessed and thereafter part or parts are transferred to a different ownership, set off and apportion to each its just and equitable portion of the assessment;

(3) Obey all rules and regulations made under Chapter 77 and the instructions and orders sent out by the Tax Commissioner and the Tax Equalization and Review Commission;

(4) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether the property described in producing mineral leases, contracts, and bills of sale, have been fully and correctly listed and add to the assessment roll any property which has been omitted;

(5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303; and

(6) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, provide, between January 15 and March 1 of each year, the opportunity to real property owners to meet in person with the county assessor or the county assessor's designated representative. If the real property owner does not notify the county assessor or the county assessor's designated representative by February 1 of the real property owner's intent to meet in person, the real property owner waives the opportunity to meet in person with the county assessor or the county assessor's designated representative. During such meetings, the county assessor or the county assessor's designated representative shall provide a basis for the property valuation contained in the notice of preliminary valuation sent pursuant to section 77-1301and accept any information the property owner provides relevant to the property value.

Source: Laws 1903, c. 73, § 113, p. 425; Laws 1905, c. 111, § 3, p. 512; Laws 1909, c. 111, § 1, p. 442; Laws 1911, c. 104, § 12, p. 377; R.S.1913, § 6428; Laws 1921, c. 137, § 1, p. 602; C.S.1922, § 5963; C.S.1929, § 77-1609; Laws 1935, c. 133, § 4, p. 481; Laws 1935, Spec. Sess., c. 14, § 5, p. 91; Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1311; Laws 1947, c. 250, § 24, p. 796; Laws 1951, c. 257, § 2, p. 882; Laws 1959, c. 370, § 2, p. 1303; Laws 1972, LB1069, § 3; Laws 1979, LB187, § 205; Laws 1986, LB1177, § 33; Laws 1990, LB821, § 49; Laws 1992, LB719A, § 165; Laws 1994, LB1275, § 10; Laws 1995, LB490, § 121; Laws 1997, LB270, § 67; Laws 1997, LB397, § 13; Laws 2001, LB170, § 5; Laws 2003, LB292, § 11; Laws 2005, LB263, § 8; Laws 2007, LB334, § 63; Laws 2011, LB384, § 8.

Annotations

Under this section, the county assessor has authority to correct valuations which have become erroneous by reason of a judicial declaration of invalidity of an increase ordered by the State Board of Equalization and Assessment. Hansen v. County of Lincoln, 188 Neb. 461, 197 N.W.2d 651 (1972).

County assessor has the duty of assessing real estate. LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956).

County assessor is given direct charge and full control over assessment of property in county, and is competent witness to value of real estate. Beebe & Runyan Furniture Co. v. Board of Equalization, 139 Neb. 158, 296 N.W. 764 (1941).

County assessor, upon due notice to taxpayer, is authorized to change schedule of a taxpayer by adding thereto taxable property omitted. Bankers Life Ins. Co. v. Bd. of Equalization of Lancaster County, 89 Neb. 469, 131 N.W. 1034 (1911).

77-1311.01. Valuation of property; rounding numbers. The county assessor may, in extending a value on any item of real property, reject all values that fall below two dollars and fifty cents and extend all values of two dollars and fifty cents or more to the next higher five dollars or multiples thereof, making all valuations end in zero or five.

Source: Laws 1987, LB508, § 14; R.S.Supp.,1988, § 77-430; Laws 1990, LB821, § 50; Laws 1992, LB1063, § 119; Laws 1992, Second Spec. Sess., LB1, § 92.

77-1311.02. Plan of assessment; preparation. The county assessor shall, on or before June 15 each year, prepare a plan of assessment which shall describe the assessment actions the county assessor plans to make for the next assessment year and two years thereafter. The plan shall indicate the classes or subclasses of real property that the county assessor plans to examine during the years contained in the plan of assessment. The plan shall describe all the assessment actions necessary to achieve the levels of value and quality of assessment practices required by law and the resources necessary to complete those actions. The plan shall be presented to the county board of equalization on or before July 31 each year. The county assessor may amend the plan, if necessary, after the budget is approved by the county board. A copy of the plan and any amendments thereto shall be mailed to the Department of Revenue on or before October 31 each year.

Source: Laws 2005, LB263, § 9; Laws 2007, LB334, § 64.

77-1311.03. County assessor; systematic inspection and review; adjustment required. On or before March 19 of each year, each county assessor shall conduct a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for the purpose of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the inspection and review shall be conducted on or before March 25. The county assessor shall adjust the value of all other taxable real property parcels by class or subclass in the county so that the value of all real property is uniform and proportionate. The county assessor shall determine the portion to be inspected and reviewed each year to assure that all parcels of real property in the county have been inspected and reviewed no less frequently than every six years.

Source: Laws 2007, LB334, § 100; Laws 2011, LB384, § 9.

77-1312. County assessor; duty to file annual inventory of county personal property. The county assessor shall prepare and file the annual inventory statement with the county board of his county with respect to all the county personal property in his custody or possession as provided in sections 23-346 to 23-350.

Source: Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1312.

77-1313. Property; assessment; duty of county officer to assist; penalty. It shall be the duty of the register of deeds, county clerk, county judge, clerk of the district court and all other county officers to assist the county assessor, in the examination of the records of their respective offices, and they shall give to the county assessor any information in their possession that will assist him in the assessment of property. Any county officer, who shall fail, neglect or refuse to perform any of the duties imposed upon him by this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of not less than fifty dollars nor more than five hundred dollars for each offense.

Source: Laws 1903, c. 73, § 144, p. 427; R.S.1913, § 6429; C.S.1922, § 5964; C.S.1929, § 77-1610; R.S.1943, § 77-1313.

77-1314. County assessor; use of income approach; when; duties; petition Tax Equalization and Review Commission; hearing; order. (1) When determining the actual value of two or more vacant or unimproved lots in the same subdivision and the same tax district that are owned by the same person and are held for sale or resale and that were elected to be treated as one parcel pursuant to subsection (3) of section 77-132, the county assessor shall utilize the income approach, including the use of a discounted cash-flow analysis.

(2) If a county assessor, based on the facts and circumstances, believes that the income approach, including the use of a discounted cash-flow analysis, does not result in a valuation at actual value, then the county assessor shall present such facts and circumstances to the county board of equalization. If the county board of equalization, based on such facts and circumstances, concurs with the county assessor, then the county board of equalization shall petition the Tax Equalization and Review Commission to consider the county assessor's utilization of another professionally accepted mass appraisal technique that, based on the facts and circumstances presented by a county board of equalization, would result in a substantially different determination of actual value. Petitions must be filed within thirty days after the property is assessed. Hearings held pursuant to this section may be held by means of videoconference or telephone conference. The burden of proof is on the petitioning county board of equalization to show that failure to make an adjustment to the professionally accepted mass appraisal technique utilized would result in a value that is not equitable and in accordance with the law. At the hearing, the commission may receive testimony from any interested person. After a hearing, the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing.

Source: Laws 2014, LB191, § 16.

77-1315. Adjustment to real property assessment roll; county assessor; duties; publication. (1) The county assessor shall, after March 19 and on or before June 1, implement adjustments to the real property assessment roll for actions of the Tax Equalization and Review Commission, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the adjustments shall be implemented after March 25 and on or before June 1.

(2) On or before June 1, in addition to the notice of preliminary valuation sent pursuant to section 77-1301, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, and the dates for filing a protest.

(3) Immediately upon completion of the assessment roll, the county assessor shall cause to be published in a newspaper of general circulation in the county a certification that the assessment roll is complete and notices of valuation changes have been mailed and provide the final date for filing valuation protests with the county board of equalization.

(4) The county assessor shall annually, on or before June 6, post in his or her office and, as designated by the county board, mail to a newspaper of general circulation and to licensed broadcast media in the county the assessment ratios as found in his or her county as determined by the Tax Equalization and Review Commission and any other statistical measures, including, but not limited to, the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

Source: Laws 1903, c. 73, § 116, p. 427; Laws 1909, c. 111, § 1, p. 444; R.S.1913, § 6431; C.S.1922, § 5966; Laws 1927, c. 179, § 1, p. 519; C.S.1929, § 77-1612; R.S.1943, § 77-1315; Laws 1947, c. 250, § 26, p. 798; Laws 1947, c. 251, § 34, p. 825; Laws 1953, c. 271, § 1, p. 896; Laws 1953, c. 270, § 4, p. 894; Laws 1953, c. 272, § 1, p. 897; Laws 1959, c. 355, § 22, p. 1266; Laws 1959, c. 370, § 4, p. 1305; Laws 1971, LB209, § 1; Laws 1979, LB187, § 206; Laws 1984, LB660, § 1; Laws 1992, LB1063, § 120; Laws 1992, Second Spec. Sess., LB1, § 93; Laws 1994, LB902, § 16; Laws 1995, LB452, § 18; Laws 1997, LB270, § 68; Laws 1999, LB194, § 17; Laws 2001, LB156, § 1; Laws 2001, LB170, § 6; Laws 2002, LB994, § 12; Laws 2004, LB973, § 20; Laws 2005, LB261, § 2; Laws 2011, LB384, § 10; Laws 2012, LB822, § 1.

Cross References

For date of convening the county board of equalization, see section 77-1502.

Annotations

1. Notice

Increased assessment of property held void where notice requirement not met. Reed v. County of Hall, 199 Neb. 134, 256 N.W.2d 861 (1977).

Notice to landowner by an assessor of an increase in assessment of property for taxation is required. Keller v. Keith County, 179 Neb. 111, 136 N.W.2d 441 (1965).

Requirement of notice to landowner of any increase in value of realty is mandatory. Babin v. County of Madison, 161 Neb. 536, 73 N.W.2d 807 (1955); Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

Where improvements are added to realty and assessed in a year when real estate is not required to be assessed, notice under this section is not required. Watson Bros. Realty Co. v. County of Douglas, 149 Neb. 799, 32 N.W.2d 763 (1948).

Provision requiring notice to landowner of any increase in assessed value of his realty over last previous assessment is mandatory. Tax levied on such increase, made without notice to owner, is void, and collection may be enjoined. Rosenbery v. Douglas County, 123 Neb. 803, 244 N.W. 398 (1932).

County board of equalization cannot raise the assessed valuation of an individual taxpayer without a complaint and without notice to taxpayer. Brown v. Douglas County, 98 Neb. 299, 152 N.W. 545 (1915).

2. Miscellaneous

When a county board of equalization exercises its direct authority under section 77-1502 to add omitted property or to increase the assessment of undervalued property, the April 1 notice deadline under this section is not applicable, and the board may meet at any time. Farmers Co-op Assn. v. Boone County, 213 Neb. 763, 332 N.W.2d 32 (1983).

This section does not apply to increases in valuation ordered by the State Board of Equalization and Assessment under section 77-508.01, R.R.S.1943. Hansen v. County of Lincoln, 188 Neb. 461, 197 N.W.2d 651 (1972).

State Board of Equalization and Assessment has authority to make rules and regulations. County of Brown v. State Board of Equalization and Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Kimball v. State Board of Equalization and Assessment, 180 Neb. 482, 143 N.W.2d 893 (1966); County of Blaine v. State Board of Equalization and Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

County assessor must prepare and forward revision of returns filed with him. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

Procedure when real estate is assessed at a higher figure than at last previous assessment stated. Radium Hospital v. Greenleaf, 118 Neb. 136, 223 N.W. 667 (1929).

77-1315.01. Overvaluation or undervaluation; county assessor; report. After March 19 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the county assessor shall report to the county board of equalization any overvaluation or undervaluation of any real property, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the report shall be made after March 25 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502. The county board of equalization shall consider the report in accordance with section 77-1504.

The current year's assessed valuation of any real property shall not be changed by the county assessor after March 19 except by action of the Tax Equalization and Review Commission or the county board of equalization, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the current year's assessed valuation of any real property shall not be changed after March 25 except by action of the commission or the county board of equalization.

Source: Laws 1997, LB270, § 69; Laws 1999, LB194, § 18; Laws 2004, LB973, § 21; Laws 2005, LB261, § 3; Laws 2005, LB283, § 1; Laws 2011, LB384, § 11.

77-1316.01. Correction of tax rolls. The county assessor of any county shall, at any time, correct the tax rolls as provided in section 77-1613.02 for any real property listed on the assessment roll but omitted from the tax roll.

Source: Laws 1921, c. 133, art. XI, § 6, p. 592; C.S.1922, § 5903; C.S.1929, § 77-1006; Laws 1939, c. 100, § 1, p. 457; C.S.Supp.,1941, § 77-1006; R.S.1943, § 77-518; Laws 1947, c. 250, § 11, p. 791; Laws 1949, c. 226, § 1, p. 631; R.S.1943, (1986), § 77-518; Laws 1997, LB270, § 70.

Annotations

County board may equalize assessments of omitted property. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

Under this section, county assessors are authorized to add omitted property to the tax rolls for the current year. In re Estate of Rogers, 147 Neb. 1, 22 N.W.2d 297 (1946).

77-1317. Real property; assessment; omitted lands; correction; exceptions. It shall be the duty of the county assessor to report to the county board of equalization all real property in his or her county that, for any reason, was omitted from the assessment roll for the current year, after the date specified in section 77-123, or any former year. The assessment shall be made by the county board of equalization in accordance with sections 77-1504 and 77-1507. After county board of equalization action pursuant to section 77-1504 or 77-1507, the county assessor shall correct the assessment and tax rolls as provided in section 77-1613.02. No real property shall be assessed for any prior year under this section when such real property has changed ownership otherwise than by will, inheritance, or gift.

Source: Laws 1903, c. 73, § 118, p. 428; R.S.1913, § 6433; C.S.1922, § 5968; C.S.1929, § 77-1614; R.S.1943, § 77-1317; Laws 1947, c. 250, § 28, p. 798; Laws 1949, c. 232, § 1, p. 643; Laws 1992, LB1063, § 121; Laws 1992, Second Spec. Sess., LB1, § 94; Laws 1997, LB270, § 71;Laws 1999, LB194, § 19; Laws 2004, LB973, § 22; Laws 2011, LB384, § 12.

Annotations

This section does not require formal notice from the county assessor to the landowner that valuation of real estate has been changed as a result of improvements undisclosed at the time of a previous assessment. Ganser v. County of Lancaster, 215 Neb. 313, 338 N.W.2d 609 (1983).

Question raised but not decided as to whether notice was required under this section. Keller v. Keith County, 179 Neb. 111, 136 N.W.2d 441 (1965).

Legislature used terms liable to taxation, subject to taxation, and taxable as generally meaning one and the same thing. Hanson v. City of Omaha, 154 Neb. 72, 46 N.W.2d 896 (1951).

Under former law, it was duty of county clerk to assess lands which had not been assessed or had escaped taxation. Radium Hospital v. Greenleaf, 118 Neb. 136, 223 N.W. 667 (1929); Elkhorn Land & Town Lot Co. v. Dixon County, 35 Neb. 426, 53 N.W. 382 (1892).

77-1318. Real property taxes; back interest and penalties; when; appeal. All taxes charged under section 77-1317 shall be exempt from any back interest or penalty and shall be collected in the same manner as other taxes levied upon real estate, except for taxes charged on improvements to real property made after September 1, 1980. Interest at the rate provided in section 77-207 and the following penalties and interest on penalties for late reporting or failure to report such improvements pursuant to section 77-1318.01 shall be collected in the same manner as other taxes levied upon real property. The penalty for late reporting or failure to report improvements made to real property after September 1, 1980, shall be as follows: (1) A penalty of twelve percent of the tax due on the improvements for each taxing period for improvements voluntarily filed or reported after March 19 has passed, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, after March 25 has passed; and (2) a penalty of twenty percent of the tax due on improvements for each taxing period for improvements not voluntarily reported for taxation purposes after March 19 has passed, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, after March 25 has passed. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be assessed upon such penalty from the date of delinquency of the tax until paid. No penalty excluding interest shall be charged in excess of one thousand dollars per year. For purposes of this section, improvement shall mean any new construction of or change to an item of real property as defined in section 77-103.

Any additional taxes, penalties, or interest on penalties imposed pursuant to this section may be appealed in the same manner as appeals are made under section 77-1233.06.

Source: Laws 1903, c. 73, § 119, p. 428; R.S.1913, § 6434; C.S.1922, § 5969; C.S.1929, § 77-1615; R.S.1943, § 77-1318; Laws 1980, LB689, § 2; Laws 1984, LB835, § 7; Laws 1987, LB508, § 43; Laws 1990, LB821, § 51; Laws 1997, LB270, § 72; Laws 1999, LB194, § 20; Laws 2004, LB973, § 23; Laws 2011, LB384, § 13.

77-1318.01. Improvements to real property; information statement filed with county assessor; forms; contents. (1) In order that improvements to real property are properly assessed for property tax purposes, no building amounting to a value of two thousand five hundred dollars or more shall hereafter be erected, or structurally altered or repaired, and no electrical, heating, plumbing, or other installation or connection, or other improvement to real property, amounting to a value of two thousand five hundred dollars or more, shall hereafter be made until an information statement has been filed with the county assessor in the county in

which the improvement is to be made. Common carriers and public utilities regulated either by the State of Nebraska or the federal government, or owned, operated, or leased by a political subdivision thereof, shall not be required to file an information statement for the structural alteration, or repair of a building, or for the electrical, heating, plumbing, or other installation or connection, or other improvement to real property owned by it or pursuant to a contract or a service agreement. Any building permit required and issued by a county or municipal officer shall fulfill the requirements of this section if it contains the information required by this section and if a copy is provided to the county assessor by the officer.

(2) If the county or municipality does not require a permit under its zoning laws, the information statement shall be filed with the county assessor. The form for the information statement shall be provided by the county assessor and shall be filed on or before December 31 of the year of construction, repair, alteration, or improvement.

(3) The information statement shall show the following: (a) Name and address of the owner of the property; (b) name and address of the applicant, if different than owner; (c) name of prime contractor for the project, if there is one; (d) location of the property, size, nature, intended use, and approximate material cost of the improvement; and (e) the estimated period of construction.

Source: Laws 1969, c. 624, § 1, p. 2522; Laws 1997, LB270, § 73; Laws 2002, LB994, § 13.

77-1322. Assessment of property; Board of Equalization; special assessments; invalid assessments for want of adequate notice; reassessment and relevy authorized. The governing body of all cities, including cities which have adopted or which hereafter adopt a home rule charter under and pursuant to sections 2 to 5, inclusive, of Article XI of the Constitution of this state, villages, public corporations, and political subdivisions of the State of Nebraska, sitting as a board of equalization and assessment shall have power in all cases where special assessments heretofore made or which may hereafter be made for any purpose have been or may be declared void or invalid, for want of adequate notice, to reassess and relevy a new assessment equal to the special benefits and not exceeding the cost of the improvement for which the assessment was made upon the property originally assessed, and such reassessment and relevy shall be made substantially in the manner provided for making original assessments of like nature, and when so made shall constitute a lien upon the property prior and superior to all other liens except liens for taxes or other special assessments, and taxes so reassessed shall be enforced and collected as other special taxes; and in making such reassessment the governing body sitting as a board of equalization and assessment shall take into consideration payments, if any, made on behalf of the property reassessed, under such prior void assessment; and if such prior payments exceed the special assessment on the given property as finally determined, the excess, with lawful interest thereon, shall be refunded to the party paying the same.

Source: Laws 1957, c. 332, § 1, p. 1165.

77-1323. Public improvement; furnishing labor or material; certificate that equipment has been assessed. Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Source: Laws 1963, c. 436, § 1, p. 1453; Laws 1993, LB121, § 496.

77-1324. Public improvement; furnishing labor or material; falsifying certificate that equipment has been assessed; violation; penalty. Any person, partnership, limited liability company, association, or corporation falsifying any statement required by section 77-1323 shall be guilty of a Class IV misdemeanor.

Source: Laws 1963, c. 436, § 2, p. 1453; Laws 1977, LB39, § 223; Laws 1993, LB121, § 497.

77-1327. Legislative intent; Property Tax Administrator; sales file; studies; powers and duties. (1) It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement required in section76-214 is filed shall be available for development of a sales file by the Property Tax Administrator. All transactions with stated

consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.

(4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.

(5) County assessors and other taxing officials shall electronically report data on the assessed valuation and other features of the property assessment process for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts and other political subdivisions, as well as intercounty comparisons of assessed valuation, including school districts and other political subdivisions. The Property Tax Administrator shall include analysis of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.

Source: Laws 1969, c. 622, § 3, p. 2513; Laws 1979, LB187, § 207; Laws 1980, LB834, § 61; Laws 1992, LB719A, § 166; Laws 1994, LB1275, § 11; Laws 1995, LB452, § 19; Laws 1995, LB490, § 124; Laws 1999, LB36, § 29; Laws 1999, LB194, § 21; Laws 2001, LB170, § 7; Laws 2002, LB994, § 14; Laws 2005, LB40, § 8; Laws 2007, LB334, § 65; Laws 2009, LB166, § 8; Laws 2011, LB210, § 5.

Annotations

The real property transactions eligible for inclusion in the sales file are those transactions for which the statement required by section 76-214 is filed. For those transactions initially eligible for inclusion in the sales file, the price to be included in the sales file is the total consideration paid as listed on the statement described in subsection (1) of section 76-214. Section 77-1371 does not pertain to a compilation of a sales file under subsection (2) of this section. Shaul v. Lang, 263 Neb. 499, 640 N.W.2d 668 (2002).

77-1329. Tax maps; county assessor; maintain. The Property Tax Administrator shall require each county assessor to maintain tax maps in accordance with standards specified by the Property Tax Administrator. Whenever necessary to correct mapping deficiencies, the Property Tax Administrator shall install standard maps or approve mapping plans and supervise map production. The Property Tax Administrator may require the county to reimburse the state for tax maps installed.

Source: Laws 1969, c. 622, § 5, p. 2514; Laws 1995, LB490, § 125.

77-1330. Property Tax Administrator and Tax Commissioner; guides for assessors; prepare; issue; failure to implement guide; corrective measures; procedures; cost; payment; State Treasurer; duties; removal of county assessor or deputy from office; appeal. (1) The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the

materials in the performance of their duties. The standards shall not require the implementation of a specific computer software or hardware system if the existing software or system produces data and reports in compliance with the standards.

(2) The Property Tax Administrator, or his or her agent or representative, may examine or cause to have examined any books, papers, records, or memoranda of any county relating to the assessment of property to determine compliance with the laws, rules, regulations, manuals, and directives described in subsection (1) of this section. Such production of records shall not include the photocopying of records between January 1 and April 1. Failure to provide such records to the Property Tax Administrator may constitute grounds for the suspension of the assessor's certificate of any county assessor who willfully fails to make requested records available to the Property Tax Administrator.

(3) After an examination the Property Tax Administrator shall provide a written report of the results to the county assessor and county board. If the examination indicates a failure to meet the standards contained in the laws, rules, regulations, manuals, and directives, the Property Tax Administrator shall, in the report, set forth the facts and cause of such failures as well as corrective measures the county or county assessor may implement to correct those failures.

(4) After the issuance of the report of the results of the examination, the Property Tax Administrator may seek to order a county or county assessor to take corrective measures to remedy any failure to comply with the materials described in subsection (1) of this section. Such corrective orders may only be issued after written notice and a hearing before the Tax Commissioner conducted at least ten days after the issuance of the written notice of hearing. The performance of such corrective measures shall be implemented by the county to which the order is issued. If the county fails to implement such corrective measures, the Property Tax Administrator may seek to suspend the assessment function of the county under the terms of subsection (5) of this section and shall implement the corrective measures pursuant to subsection (6) of this section. The performance of such corrective measures shall be a charge on the county, and upon completion, the Property Tax Administrator shall notify the county board of the cost and make demand for such cost. If payment is not received within one hundred twenty days after the start of the next fiscal year, the Tax Commissioner shall report such fact to the State Treasurer. The State Treasurer shall immediately make payment to the Department of Revenue for the costs incurred by the department for such corrective measures. The payment shall be made out of any money to which such county may be entitled under the Compressed Fuel Tax Act, Chapter 77, articles 27 and 35, and sections 66-482 to 66-4,149.

(5) If, within one year from the service of the order, the measures in the corrective order have not been taken, the Tax Commissioner (a) may, at any time during the continuance of such failure, issue an order requiring the county assessor and county board to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, (b) shall set a time and place at which the Tax Commissioner or his or her representative shall hear the county assessor and county board on the question of compliance by the county assessor or county with the laws, rules, regulations, manuals, directives, or corrective orders described in this section, and (c) after such hearing shall determine whether and to what extent the assessment function of the county shall be so suspended. Such hearing shall be held at least ten days after the issuance of such notice in the county.

(6) During the continuance of a suspension pursuant to subsection (5) of this section, the Property Tax Administrator shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the Tax Commissioner finds that the conditions responsible for the failure to meet the minimum standards contained in the laws, rules, regulations, manuals, and directives have been corrected.

(7) The Property Tax Administrator, subject to rules and regulations to be published and furnished to every county assessor and county board, shall have the power to petition the Tax Commissioner to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his or her duties in accordance with the laws, rules, regulations, manuals, and orders issued by the Tax Commissioner governing the assessment of property and the duties of each assessor and deputy assessor. No certificate shall be revoked or suspended except after notice and a hearing before the Tax Commissioner or his or her designee. Such hearing shall be held at least ten days after the issuance of such notice in the county. Prior to revocation, a one-year probationary period, subject to oversight by the Tax Commissioner, shall be imposed. At the end of the one-year probationary period, a second hearing shall be held. If assessment practices have

improved, the probationary period shall end and no revocation shall be made. If assessment practices have not improved, the assessor certificate shall be revoked. If during the probationary period, the assessor continues to willfully fail or refuse to diligently perform his or her duties, the Tax Commissioner may immediately hold the second hearing. If the county assessor certificate of a person serving as assessor or deputy assessor is revoked, such person shall be removed from office by the Tax Commissioner, the office shall be declared vacant, and such person shall not be eligible to hold that office for a period of five years after the date of removal. The Tax Commissioner shall mail a copy of his or her written order to the affected party within seven days after the date of the order.

(8) All hearings described in this section shall be governed by the Administrative Procedure Act. Any county aggrieved by a determination of the Tax Commissioner after a hearing pursuant to subsections (4) and (5) of this section or alleging that its suspension is no longer justified or any assessor or deputy assessor whose county assessor certificate has been revoked may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1969, c. 622, § 6, p. 2514; Laws 1979, LB159, § 7; Laws 1981, LB479, § 1; Laws 1984, LB833, § 3; Laws 1985, LB271, § 14; Laws 1995, LB490, § 126; Laws 1999, LB36, § 30; Laws 1999, LB194, § 22; Laws 2004, LB973, § 24; Laws 2007, LB334, § 66; Laws 2011, LB289, § 38.

Cross References

Administrative Procedure Act, see section 84-920.

Compressed Fuel Tax Act, see section 66-697.

Annotations

The guides referred to herein are necessarily no more than guidelines to be employed in arriving at an ultimate assessment against a particular taxable unit which meets the constitutional and statutory requirements that property be taxed uniformly and proportionately, at an amount which does not exceed actual value; the same is true of all things except constitutionally valid property tax laws per se. Beynon Farm Products v. Bd. of Equalization, 213 Neb. 815, 331 N.W.2d 531 (1983).

Application of Department of Revenue guidelines for allowance of economic depreciation raises a presumption that the resulting assessment is correct; however, the guidelines must give way to evidence showing that such application will violate the constitutional requirement of uniform and proportionate taxation or the statutory requirement of taxation at actual value. Farmers Co-op Assn. v. Boone County, 213 Neb. 763, 332 N.W.2d 32 (1983).

77-1331. Property Tax Administrator; tax records; duties. Pursuant to rules and regulations, the Property Tax Administrator shall, on or before July 1, 2007, develop, maintain, and enforce a uniform statewide structure for record identification codes, property record cards, property record files, and other administrative reports required for the administration of the property assessment process. The Property Tax Administrator shall not require the use of specific computer software or hardware if an existing system produces data and reports in compliance with the rules and regulations of the Tax Commissioner.

Source: Laws 1969, c. 622, § 7, p. 2514; Laws 1971, LB155, § 1; Laws 1995, LB490, § 127; Laws 2000, LB968, § 46; Laws 2005, LB263, § 10; Laws 2007, LB334, § 67.

77-1332. Appraisal of commercial or industrial property; Property Tax Administrator; powers. Whenever a county by or pursuant to action of its county board requests the Property Tax Administrator to provide engineering, professional, or technical services for the appraisal of major commercial or industrial properties, the Property Tax Administrator may, within his or her available resources, provide such services. The county shall pay to the Property Tax Administrator the actual cost of such services.

Source: Laws 1969, c. 622, § 8, p. 2514; Laws 1995, LB490, § 128;Laws 2000, LB968, § 47.

77-1333. Rent-restricted housing projects; county assessor; perform income-approach calculation; owner; duties; Rent-Restricted Housing Projects Valuation Committee; created; members; meetings; report; county board of equalization; filing; hearing; Tax Commissioner; powers; petition; hearing. (1) For purposes of this section, rent-restricted housing project means a project consisting of five or more houses or residential units that has received an allocation of federal low-income housing tax credits under section 42 of the Internal Revenue Code from the Nebraska Investment Finance Authority or its successor agency and, for the year of assessment, is a project as defined in section 58-219 involving rental housing as defined in section 58-220.

(2) The Legislature finds that:
(a) The provision of safe, decent, and affordable housing to all residents of the State of Nebraska is a matter of public concern and represents a legitimate and compelling state need, affecting the general welfare of all residents;
(b) Rent-restricted housing projects effectively provide safe, decent, and affordable housing for residents of Nebraska;
(c) Such projects are restricted by federal law as to the rents paid by the tenants thereof;
(d) Of all the professionally accepted mass appraisal methodologies, which include the sales comparison approach, the income approach, and the cost approach, the utilization of the income-approach methodology results in the most accurate determination of the actual value of such projects; and
(e) This section is intended to (i) further the provision of safe, decent, and affordable housing to all residents of Nebraska and (ii) comply with Article VIII, section 1, of the Constitution of Nebraska, which empowers the Legislature to prescribe standards and methods for the determination of value of real property at uniform and proportionate values.
(3) Except as otherwise provided in this section, the county assessor shall utilize an income-approach calculation to determine the actual value of a rent-restricted housing project when determining the assessed valuation to place on the property for each assessment year. The income-approach calculation shall be consistent with this section and any rules and regulations adopted and promulgated by the Tax Commissioner and shall comply with professionally accepted mass appraisal techniques.
(4) The Rent-Restricted Housing Projects Valuation Committee is created. For administrative purposes only, the committee shall be within the Department of Revenue. The committee's purpose shall be to develop a market-derived capitalization rate to be used by county assessors in determining the assessed valuation for rent-restricted housing projects. The committee shall consist of the following four persons:
(a) A representative of county assessors appointed by the Tax Commissioner. Such representative shall be skilled in the valuation of property and shall hold a certificate issued under section 77-422;
(b) A representative of the low-income housing industry appointed by the Tax Commissioner. The appointment shall be based on a recommendation made by the Nebraska Commission on Housing and Homelessness;
(c) The Property Tax Administrator or a designee of the Property Tax Administrator who holds a certificate issued under section 77-422. Such person shall serve as the chairperson of the committee; and
(d) An appraiser from the private sector appointed by the Tax Commissioner. Such appraiser must hold either a valid credential as a certified general real property appraiser under the Real Property Appraiser Act or an MAI designation from the Appraisal Institute.
(5) The owner of a rent-restricted housing project shall file a statement with the Rent-Restricted Housing Projects Valuation Committee and the county assessor on or before October 1 of each year that details actual income and actual expense data for the prior year, a description of any land-use restrictions, a description of the terms of any mortgage loans, including loan amount, interest rate, and amortization period, and such other information as the committee or the county assessor may require for purposes of this section.
(6) The Rent-Restricted Housing Projects Valuation Committee shall meet annually in November to examine the information on rent-restricted housing projects that was provided pursuant to subsection (5) of this section. The Department of Revenue shall electronically publish notice of such meeting no less than thirty days in advance. The committee shall also solicit information on the sale of any such rent-restricted housing projects and information on the yields generated to investors in rent-restricted housing projects. The committee shall, after reviewing all such information, calculate a market-derived capitalization rate on an annual basis using the band-of-investment technique or other generally accepted technique used to derive capitalization rates depending upon the data available. The capitalization rate shall be a composite rate weighted by the proportions of total property investment represented by equity and debt, with equity weighted at eighty percent and debt weighted at twenty percent unless a substantially different market capital structure can be verified to the county assessor. The yield for equity shall be calculated using the data on investor returns gathered by the committee. The yield for debt shall be calculated using the data provided to the committee pursuant to subsection (5) of this section. If the committee determines that a particular county or group of counties requires a different capitalization rate than that calculated for the rest of the state pursuant to this subsection, then the committee may calculate an additional capitalization rate that will apply only to such county or group of counties.

(7) After the Rent-Restricted Housing Projects Valuation Committee has calculated the capitalization rate or rates under subsection (6) of this section, the committee shall provide such rate or rates and the information reviewed by the committee in calculating such rate or rates in an annual report. Such report shall be forwarded by the Property Tax Administrator to each county assessor in Nebraska no later than December 1 of each year for his or her use in determining the valuation of rent-restricted housing projects. The Department of Revenue shall publish the annual report electronically but may charge a fee for paper copies. The Tax Commissioner shall set the fee based on the reasonable cost of producing the report.

(8) Except as provided in subsections (9) through (11) of this section, each county assessor shall use the capitalization rate or rates contained in the report received under subsection (7) of this section and the actual income and actual expense data filed by owners of rent-restricted housing projects under subsection (5) of this section in the county assessor's income-approach calculation. Any low-income housing tax credits authorized under section 42 of the Internal Revenue Code that were granted to owners of the project shall not be considered income for purposes of the calculation.

(9) If the actual income and actual expense data required to be filed for a rent-restricted housing project under subsection (5) of this section is not filed in a timely manner, the county assessor may use any method for determining actual value for such rent-restricted housing project that is consistent with professionally accepted mass appraisal methods described in section 77-112.

(10) If a county assessor, based on the facts and circumstances, believes that the income-approach calculation does not result in a valuation of a rent-restricted housing project at actual value, then the county assessor shall present such facts and circumstances to the county board of equalization. If the county board of equalization, based on such facts and circumstances, concurs with the county assessor, then the county board of equalization shall petition the Tax Equalization and Review Commission to consider the county assessor's utilization of another professionally accepted mass appraisal technique that, based on the facts and circumstances presented by a county board of equalization, would result in a substantially different determination of actual value of the rent-restricted housing project. Petitions must be filed no later than January 31. The burden of proof is on the petitioning county board of equalization to show that failure to make a determination that a different methodology should be used would result in a value that is not equitable and in accordance with the law. At the hearing, the commission may receive testimony from any interested person. After a hearing, the commission shall, within the powers granted in section 77-5007, enter its order based on evidence presented to it at such hearing.

(11) If the Tax Commissioner, based on the facts and circumstances, believes that the applicable capitalization rate set by the Rent-Restricted Housing Projects Valuation Committee to value a rent-restricted housing project does not result in a valuation at actual value for such rent-restricted housing project, then the Tax Commissioner shall petition the Tax Equalization and Review Commission to consider an adjustment to the capitalization rate of such rent-restricted housing project. Petitions must be filed no later than January 31. The burden of proof is on the Tax Commissioner to show that failure to make an adjustment to the capitalization rate employed would result in a value that is not equal to the rent-restricted housing project's actual value. At the hearing, the commission may receive testimony from any interested person. After a hearing, the commission shall, within the powers granted in section 77-5007, enter its order based on evidence presented to it at such hearing.

Source: Laws 2005, LB263, § 6; Laws 2007, LB334, § 68; Laws 2015, LB356, § 1.

Effective Date: August 30, 2015

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

Real Property Appraiser Act, see section 76-2201.

77-1334. Property Tax Administrator; inspections, investigations, and studies; administration of tax laws. The Property Tax Administrator may make such inspections, investigations, and studies as may be necessary for the adequate administration of his or her responsibilities pursuant to the provisions of sections 77-701 to 77-706 and 77-1327 to 77-1342. Such inspections, investigations, and studies may be made in cooperation with other state agencies, and, in connection therewith, the Property Tax Administrator may utilize reports and data of other state agencies.

Source: Laws 1969, c. 622, § 10, p. 2515; Laws 1995, LB490, § 130;Laws 1999, LB36, § 31; Laws 2007, LB334, § 69.

77-1335. Property valued by Property Tax Administrator; error; Property Tax Administrator; powers. Upon the discovery of any error affecting the value of property valued by the Property Tax Administrator, within three years after the date value was certified to any county or three years after the date tax was distributed to any county, the Property Tax Administrator may recertify such value or redistribute such tax to the affected county.

Source: Laws 2015, LB260, § 1.

Effective Date: March 6, 2015

77-1338. Values established; effect. The county and all political subdivisions within the county shall be bound by the values established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission for all property subject to its taxing power.

Source: Laws 1969, c. 622, § 14, p. 2517; Laws 1979, LB187, § 208; Laws 1992, LB1063, § 122; Laws 1992, Second Spec. Sess., LB1, § 95; Laws 1994, LB902, § 17; Laws 1997, LB397, § 15; Laws 2005, LB261, § 4.

77-1339. Joint or cooperative performance of assessment function; two or more counties; agreement; contents; approval by Tax Commissioner. (1) Any two or more counties may enter into an agreement for joint or cooperative performance of the assessment function.

(2) Such agreement shall provide for:

(a) The division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(b) The financing of the joint or cooperative undertaking;

(c) The rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(d) The duration of the agreement and procedures for amendment or termination thereof; and

(e) Any other necessary or appropriate matters.

(3) The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

(4) Unless the agreement provides for the performance of the assessment function by the assessor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe the manner of electing the assessor, and the employees of the office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing such assessor. No person shall be appointed assessor pursuant to an agreement who could not be so appointed for a single county. Except to the extent made necessary by the multicounty character of the assessment agency, qualifications for employment as assessor or in the assessment agency and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an assessor serving pursuant to an agreement made under this section and the employees of the assessment agency. As nearly as practicable, such inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(5) No agreement made pursuant to the provisions of this section shall take effect until it has been approved in writing by the Tax Commissioner.

(6) Copies of any agreement made pursuant to the provisions of this section, and of any amendment thereto, shall be filed in the office of the Tax Commissioner and county board of the counties involved.

Source: Laws 1969, c. 622, § 15, p. 2517; Laws 1995, LB490, § 132;Laws 2007, LB334, § 70; Laws 2009, LB121, § 5.

77-1340.04. Repealed. Laws 2015, LB261, § 18.
Operative Date: August 30, 2015

77-1340.05. Repealed. Laws 2015, LB261, § 18.
Operative Date: August 30, 2015

77-1340.06. Repealed. Laws 2015, LB261, § 18.
Operative Date: August 30, 2015

77-1342. Department of Revenue Property Assessment Division Cash Fund; created; use; investment. There is hereby created a fund to be known as the Department of Revenue Property Assessment Division Cash Fund to which shall be credited all money received by the Department of Revenue for services performed for county and multicounty assessment districts, for charges for publications, manuals, and lists, as an assessor's examination fee authorized by section 77-421, and under the provisions of sections 60-3,202, 77-684, and 77-1250. The fund shall be used to carry out any duties and responsibilities of the department, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the department shall be credited to the Department of Revenue Property Assessment Division Cash Fund, and expenditures therefrom shall be made only when such funds are available. The department shall only bill for the actual amount expended in performing the service.

The fund shall not, at the close of each year, be lapsed to the General Fund. Any money in the Department of Revenue Property Assessment Division Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 622, § 18, p. 2519; Laws 1971, LB53, § 8; Laws 1971, LB158, § 1; Laws 1973, LB132, § 4; Laws 1985, LB273, § 38; Laws 1989, Spec. Sess., LB7, § 8; Laws 1992, LB1063, § 123; Laws 1992, Second Spec. Sess., LB1, § 96; Laws 1994, LB1066, § 82; Laws 1995, LB490, § 134; Laws 1997, LB270, § 75; Laws 1997, LB271, § 50;Laws 1999, LB36, § 32; Laws 2001, LB170, § 8; Laws 2002, LB1310, § 9; Laws 2003, LB563, § 42; Laws 2005, LB274, § 272; Laws 2007, LB334, § 72; Laws 2009, LB121, § 7; Laws 2009, First Spec. Sess., LB3, § 55; Laws 2015, LB261, § 8.

Operative Date: August 30, 2015

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-1343. Agricultural or horticultural land; terms, defined. The purpose of sections 77-1343 to 77-1347.01 is to provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value that the land would have without regard to the value the land would have for other purposes or uses. For purposes of sections 77-1343 to 77-1347.01:

(1) Agricultural or horticultural land means that land as defined in section 77-1359;

(2) Applicant means an owner or lessee;

(3) Lessee means a person leasing agricultural or horticultural land from a state or governmental subdivision which is an owner that is subject to taxation under section 77-202.11;

(4) Owner means an owner of record of agricultural or horticultural land or the purchaser of agricultural or horticultural land under a contract for sale; and

(5) Special valuation means the value that the land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.

Source: Laws 1974, LB359, § 1; Laws 1983, LB26, § 1; Laws 1985, LB271, § 15; Laws 1989, LB361, § 9; Laws 2000, LB968, § 48; Laws 2001, LB170, § 9; Laws 2002, LB994, § 16; Laws 2004, LB973, § 25; Laws 2006, LB808, § 27; Laws 2009, LB166, § 9.

77-1344. Agricultural or horticultural land; special valuation; when applicable. (1) Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land.

(2) Special valuation may be applicable to agricultural or horticultural land included within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement.

(3) The eligibility of land for the special valuation provisions of this section shall be determined each year as of January 1. If the land so qualified becomes disqualified on or before December 31 of that year, it shall continue to receive the special valuation until January 1 of the year following.
(4) The special valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

Source: Laws 1974, LB359, § 2; Laws 1983, LB26, § 2; Laws 1985, LB271, § 16; Laws 1989, LB361, § 10; Laws 1991, LB320, § 5; Laws 1996, LB934, § 2; Laws 1996, LB1039, § 1; Laws 1997, LB270, § 76; Laws 1998, LB611, § 3; Laws 2000, LB968, § 49; Laws 2001, LB170, § 10; Laws 2004, LB973, § 26; Laws 2005, LB261, § 5; Laws 2006, LB808, § 28; Laws 2007, LB166, § 6; Laws 2009, LB166, § 10.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1345. Agricultural or horticultural lands; special valuation; application. (1) An applicant seeking special valuation under section 77-1344 shall make application to the county assessor on or before June 30 of the first year in which such valuation is requested.
(2)(a) The application shall be made upon forms prescribed by the Tax Commissioner and available from the county assessor and shall include such information as may reasonably be required to determine the eligibility of the applicant and the land.
(b) The application shall be signed by any one of the following:
(i) The applicant;
(ii) Any person of legal age duly authorized in writing to sign an application on behalf of the applicant; or
(iii) The guardian or conservator of the applicant or the executor or administrator of the applicant's estate.
(c) The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record in the county unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney, lease, or other appropriate instrument evidencing the signer's qualification pursuant to subdivision (2)(b) of this section.
(3) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507, the applicant may file an application for special valuation within thirty days after the mailing of the valuation notice issued by the county board of equalization pursuant to section 77-1504 or 77-1507.

Source: Laws 1974, LB359, § 3; Laws 1983, LB26, § 3; Laws 1985, LB271, § 17; Laws 1997, LB397, § 16; Laws 2000, LB968, § 50; Laws 2002, LB994, § 17; Laws 2004, LB973, § 27; Laws 2006, LB808, § 29; Laws 2007, LB334, § 73.

77-1345.01. Agricultural or horticultural lands; special valuation; approval or denial; protest; appeal; failure to give notice; effect. (1) On or before July 15 in the year of application, the county assessor shall approve or deny the application for special valuation filed pursuant to section 77-1345. On or before July 22, the county assessor shall issue notice of approval or denial.
(2) If the application is approved by the county assessor, the land shall be valued as provided in section 77-1344 and, on or before July 22, the county board of equalization shall send a property valuation notice for special value to the owner and, if not the same, the applicant. Within thirty days after the mailing of the notice, a written protest of the special value may be filed.
(3)(a) If the application is denied by the assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial.
(b) If the denial of an application for special valuation is reversed on appeal and the application is approved, the land shall be valued as provided in section 77-1344 and the county board of equalization shall send the property valuation notice for special value to the owner and, if not the same, the applicant or his or her successor in interest, within fourteen days after the date of the final order. Within thirty days after the mailing of the notice, a written protest of the special value may be filed.
(4) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507 and the applicant filed an application for special valuation pursuant to subsection (3) of section 77-1345, the county assessor shall approve or deny the application within fifteen days after the filing of the application and issue notice of the approval or denial as prescribed in subsection (1) of this section. If the application is denied by the county assessor, a written protest of the denial may be filed within thirty days of the mailing of the denial.
(5) The assessor shall mail notice of any action taken by him or her on an application to the owner and the applicant if different than the owner.

(6) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section.
(7) The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest.
(8) The clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the owner and the applicant if different than the owner within seven days after the board's decision.
(9) Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision.
(10) If a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section, any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the land will receive special valuation for that year or to determine special value for that year.

Source: Laws 2000, LB968, § 51; Laws 2004, LB973, § 28; Laws 2005, LB15, § 4; Laws 2005, LB263, § 11; Laws 2006, LB808, § 30; Laws 2008, LB965, § 14; Laws 2009, LB166, § 11.

77-1346. Agricultural or horticultural lands; eligibility for special valuation; rules and regulations. The Tax Commissioner shall adopt and promulgate rules and regulations to be used by county assessors in determining eligibility for special valuation under section 77-1344 and in determining the special valuation of such land for agricultural or horticultural purposes under section 77-1344.

Source: Laws 1974, LB359, § 4; Laws 1985, LB271, § 18; Laws 1989, LB361, § 11; Laws 1995, LB490, § 135; Laws 2000, LB968, § 52; Laws 2007, LB334, § 74.

77-1347. Agricultural or horticultural lands; special valuation; disqualification. Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:
(1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;
(2) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or
(3) The land no longer qualifying as agricultural or horticultural land.

Source: Laws 1974, LB359, § 5; Laws 1983, LB26, § 4; Laws 1985, LB271, § 19; Laws 1989, LB361, § 12; Laws 2000, LB968, § 53; Laws 2001, LB170, § 11; Laws 2002, LB994, § 18; Laws 2005, LB263, § 12; Laws 2006, LB808, § 31; Laws 2010, LB806, § 1.

77-1347.01. Agricultural or horticultural lands; special valuation; disqualification; procedure; protest; decision; appeal. At any time, the county assessor may determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. If land is deemed disqualified, the county assessor shall send a written notice of the determination to the applicant or owner within fifteen days after his or her determination, including the reason for the disqualification. A protest of the county assessor's determination may be filed with the county board of equalization within thirty days after the mailing of the notice. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of equalization's final decision, mail to the protester written notification of the board's decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision. The valuation notice relating to the land subject to the county assessor's disqualification notice shall be sent in accordance with subsection (2) of section 77-1315 and the valuation may be protested pursuant to section 77-1502.

Source: Laws 2006, LB808, § 32; Laws 2007, LB166, § 7.

77-1359. Agricultural and horticultural land; legislative findings; terms, defined. The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be

uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of this section and section 77-1363:

(1) Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;

(2) Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production;

(3) Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

Source: Laws 1985, LB271, § 4; Laws 1986, LB817, § 11; Laws 1988, LB1207, § 3; Laws 1989, LB361, § 14; Laws 1991, LB320, § 7; Laws 1996, LB934, § 3; Laws 1997, LB270, § 77; Laws 2000, LB419, § 1; Laws 2006, LB808, § 35; Laws 2008, LB777, § 1; Laws 2012, LB750, § 1.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

Annotations

The inclusion of the term "parcel" requires a county assessor to consider the use of an entire tract of land, including any homesite, to determine whether that property qualifies as agricultural. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

This section does not violate Neb. Const. art. VIII, sec. 1. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

77-1363. Agricultural and horticultural land; classes and subclasses. Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.

Source: Laws 1985, LB271, § 8; Laws 1988, LB1207, § 5; Laws 1989, LB361, § 17; Laws 1991, LB320, § 9; Laws 1994, LB902, § 19; Laws 1995, LB490, § 139; Laws 1997, LB270, § 81; Laws 1999, LB403, § 7; Laws 2001, LB170, § 15; Laws 2004, LB973, § 30; Laws 2006, LB808, § 36; Laws 2006, LB1115, § 31; Laws 2010, LB877, § 3.

Annotations

A "market area" does not constitute a class or subclass of agricultural land as defined by this section. Bartlett v. Dawes Cty. Bd. of Equal., 259 Neb. 954, 613 N.W.2d 810 (2000).

Neb. Const. art. VIII requires uniform and proportionate assessment within the class of agricultural land; agricultural land is then divided into "categories" such as irrigated cropland, dry cropland, and grassland. Schmidt v. Thayer Cty. Bd. of Equal., 10 Neb. App. 10, 624 N.W.2d 63 (2001).

77-1371. Comparable sales; use; guidelines. Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their

contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale:

(1) Whether the sale was financed by the seller and included any special financing considerations or the value of improvements;

(2) Whether zoning affected the sale price of the property;

(3) For sales of agricultural land or horticultural land as defined in section 77-1359, whether a premium was paid to acquire property. A premium may be paid when proximity or tax consequences cause the buyer to pay more than actual value for agricultural land or horticultural land;

(4) Whether sales or transfers made in connection with foreclosure, bankruptcy, or condemnations, in lieu of foreclosure, or in consideration of other legal actions should be excluded from comparable sales analysis as not reflecting current market value;

(5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;

(6) Whether sales to or from federal or state agencies or local political subdivisions reflect current market value;

(7) Whether sales of undivided interests in real property or parcels less than forty acres or sales conveying only a portion of the unit assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other real estate, stocks, bonds, or other personal property reflect current market value;

(9) Whether deeds recorded for transfers of convenience, transfers of title to cemetery lots, mineral rights, and rights of easement reflect current market value;

(10) Whether sales or transfers of property involving railroads or other public utility corporations reflect current market value;

(11) Whether sales of property substantially improved subsequent to assessment and prior to sale should be adjusted to reflect current market value or eliminated from such analysis;

(12) For agricultural land or horticultural land as defined in section 77-1359which is or has been receiving the special valuation pursuant to sections 77-1343 to 77-1347.01, whether the sale price reflects a value which the land has for purposes or uses other than as agricultural land or horticultural land and therefor does not reflect current market value of other agricultural land or horticultural land;

(13) Whether sales or transfers of property are in a similar market area and have similar characteristics to the property being assessed; and

(14) For agricultural land and horticultural land as defined in section 77-1359which is within a class or subclass of irrigated cropland pursuant to section 77-1363, whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale price of the property. If data on current well capacity or current water availability is not available from a federal, state, or local government entity, this subdivision shall not be used to determine what constitutes a comparable sale.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.

Source: Laws 1989, LB361, § 4; Laws 1995, LB490, § 142; Laws 2000, LB968, § 56; Laws 2001, LB170, § 16; Laws 2003, LB295, § 3; Laws 2009, LB166, § 13; Laws 2012, LB750, § 2; Laws 2014, LB1098, § 17.

Annotations

Subsection (3) of this section does not pertain to a compilation of a sales file under subsection (2) of section 77-1327. Shaul v. Lang, 263 Neb. 499, 640 N.W.2d 668 (2002).

77-1374. Improvements on leased public lands; assessment; change of ownership; filing required; collection of tax. Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property. On or before March 1, following any construction thereof or any change in the improvements made on or before January 1, the owner of the improvements shall file with the county assessor an assessment application on a form prescribed by the Tax Commissioner. An assessment application shall also be filed with the county assessor at the time a change of ownership occurs, and such assessment application shall be signed by the owner of the improvements. The taxes imposed on the improvements shall be collected in the same manner as in all other cases of collection of taxes on real property.

Source: Laws 1903, c. 73, § 35, p. 396; R.S.1913, § 6320; C.S.1922, § 5921; C.S.1929, § 77-1408; R.S.1943, § 77-1209; Laws 1963, c. 447, § 1, p. 1471; Laws 1974, LB969, § 1; Laws 1987, LB508, § 30; R.S.1943, (1990), § 77-1209; Laws 1992, LB1063, § 111; Laws 1992, Second Spec. Sess., LB1, § 84; Laws 1997, LB270, § 82; Laws 2007, LB334, § 76; Laws 2012, LB1106, § 1.

Annotations

Cited in background discussion relating to ownership of improvements on school lands. State v. Rosenberger, 187 Neb. 726, 193 N.W.2d 769 (1972).

Under facts in this case improvements on Missouri River port and terminal area held to be owned by city of Omaha and not taxable. Sioux City & New Orleans Barge Lines, Inc. v. Board of Equalization of Douglas County, 186 Neb. 690, 185 N.W.2d 866 (1971).

Improvements placed on leased public land are assessed to owner of the improvements. Banks v. State, 181 Neb. 106, 147 N.W.2d 132 (1966).

Leased public lands means lands belonging to public which have been leased as authorized by law. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Property of this description is to be listed in the locality where it is found. Nye-Schneider-Fowler Co. v. Boone County, 102 Neb. 742, 169 N.W. 436 (1918); Nye-Schneider-Fowler Co. v. Boone County, 99 Neb. 383, 156 N.W. 773 (1916).

Real and personal property of the state and its governmental subdivisions that is leased to a private party for any purpose other than a public purpose shall be subject to property taxes as if the property were owned by the lessee. Reynolds v. Keith Cty. Bd. of Equal., 18 Neb. App. 616, 790 N.W.2d 455 (2010).

Lessee's interest in housing project constructed on land owned by federal government was subject to taxation. Offutt Housing Co. v. County of Sarpy, 351 U.S. 253 (1956).

77-1375. Improvements on leased lands; how assessed; apportionment. (1) If improvements on leased land are to be assessed separately to the owner of the improvements, the actual value of the real property shall be determined without regard to the fact that the owner of the improvements is not the owner of the land upon which such improvements have been placed.

(2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by reason of uncertainty in the term of his or her tenancy or because of the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by mail on the owner of the land before January 1 and shall at the same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land.

(3) If the county assessor finds, on the basis of the evidence submitted, that the claim is valid, he or she shall proceed to apportion the total value of the real property between the owner of the improvements and the owner of the land as their respective interests appear.

(4) The county assessor shall give notice to the parties of his or her findings by mail on or before June 1.

(5) The proportions so established shall continue from year to year unless changed by the county assessor after notice on or before June 1 or a claim is filed by either the owner of the improvements or the owner of the land in accordance with the procedure provided in this section.

Source: Laws 1959, c. 365, § 4, p. 1286; Laws 1979, LB187, § 199; Laws 1987, LB508, § 31; R.S.1943, (1990), § 77-1209.02; Laws 1992, LB1063, § 112; Laws 1992, Second Spec. Sess., LB1, § 85; Laws 1997, LB270, § 83; Laws 2012, LB727, § 32.

77-1376. Improvements on leased lands; how assessed; notice. Improvements on leased lands, other than leased public lands, shall be assessed to the owner of the leased lands unless before March 1, following any construction thereof or change in the improvements made on or before January 1, the owner of the leased lands or the lessee thereof files with the county assessor, on a form prescribed by the Tax Commissioner, a request stating that specifically designated improvements on such leased lands are the property of the lessee. The improvements shall be assessed as real property, and the taxes imposed on the improvements shall be collected by levy and sale of the interest of the owner in the same manner as in all other cases of the collection of taxes on real property. When the request is filed by the owner of the leased lands, notice shall be given by the county assessor to the lessee at the address on the request.

Source: Laws 1963, c. 434, § 1, p. 1451; Laws 1985, LB268, § 27; Laws 1987, LB508, § 32; R.S.1943, (1990), § 77-1209.03; Laws 1992, LB1063, § 113; Laws 1992, Second Spec. Sess., LB1, § 86; Laws 1995, LB490, § 143; Laws 1997, LB270, § 84; Laws 2007, LB334, § 77.

77-1377. Statewide file of real property sales; creation; use. The Property Tax Administrator shall create a statewide file of real property sales to provide information regarding hard-to-assess property, including situations in which a local property may have few available comparable sales. The Property Tax Administrator shall make the file available to county assessors.

Source: Laws 1992, LB734, § 1; Laws 1995, LB490, § 144; Laws 2001, LB170, § 17.

77-1385. Historically significant real property; qualification. The following real property shall qualify as historically significant real property for purposes of the historic rehabilitation valuation authorized by section 77-1391 pursuant to the authority granted to the Legislature under subdivision (12) of Article VIII, section 2, of the Constitution of Nebraska:

(1) Real property individually listed in the National Register of Historic Places;

(2) Real property within a district listed in the National Register of Historic Places that is historically significant as determined by the State Historic Preservation Officer and approved under section 77-1387;

(3) Real property individually designated pursuant to a landmark ordinance or resolution that has been approved by the State Historic Preservation Officer pursuant to section 77-1386; and

(4) Real property within a district designated pursuant to a landmark ordinance or resolution that has been approved by the State Historic Preservation Officer pursuant to section 77-1386 that is historically significant as determined by the State Historic Preservation Officer and approved under section 77-1387.

Source: Laws 2005, LB66, § 1.

77-1386. Historically significant real property; landmark ordinance or resolution; approval. (1) A city, village, or county shall request the State Historic Preservation Officer's approval of any landmark ordinance or resolution which designates individual properties or districts before any such individual properties or historically significant properties within such districts receive historic rehabilitation valuation authorized by section 77-1391. The following documentation shall accompany the request:

(a) A copy of the ordinance or resolution for which approval is requested;

(b) A list, including the common addresses and common written boundary descriptions of all individual properties and historic districts designated or proposed to be designated under the ordinance or resolution;

(c) A description and statement of historical significance for all designated individual properties and historic districts, which includes representative photographic views; and

(d) A map indicating the location of individual landmarks and historic districts.

(2) Within forty-five days after receipt of the request and documentation, the State Historic Preservation Officer shall approve the ordinance or resolution if the documentation indicates compliance with the criteria for designation of landmarks and historic districts established by the United States Department of the Interior for the inclusion of properties in the National Register of Historic Places, 36 C.F.R. 60, as such regulation existed on January 1, 2005, and if the ordinance or resolution contains provisions for the following:

(a) Authorization for historic preservation under section 19-903;

(b) A statement of purpose;

(c) Establishment of a historic review commission which:

(i) Has no fewer than five members;

(ii) Has demonstrated expertise in the disciplines of history, architectural history, historic architecture, architecture, community planning, real estate, neighborhood conservation, historic preservation, or related fields;

(iii) Has staggered terms of office for members; and

(iv) Holds meetings at regular intervals at least four times a year;

(d) A process and criteria for designation of landmarks and historic districts that are consistent with those established by the United States Department of the Interior for the inclusion of properties in the National Register of Historic Places, 36 C.F.R. 60, as such regulation existed on January 1, 2005;

(e) A definition of actions that merit review by the historic review commission, which shall include demolitions and major alterations;

(f) Standards and criteria for review of actions within the jurisdiction of the historic review commission; and

(g) Procedural due process, such as notification, a hearing, and an appeal procedure.

Source: Laws 2005, LB66, § 2.

77-1387. Historically significant real property; application by property owner; approval. (1) A property owner or the legally designated representative of the property owner may submit an application to the State Historic Preservation Officer for a determination of whether the property owner's real property is qualified to receive historic rehabilitation valuation authorized by section 77-1391 on a form prescribed by the State Historic Preservation Officer. The application shall contain at least the following information:
(a) The address and location of the property;
(b) A map showing the location of the property;
(c) Clear, current black and white or color photographs showing principal views of the property;
(d) Designation authority, whether under the National Register of Historic Places or a landmark ordinance or resolution; and
(e) If it is historically significant and located within a district listed in the National Register of Historic Places or designated under an ordinance or resolution that has been approved by the State Historic Preservation Officer under section 77-1386, the name of the district and a statement describing the contribution of the property to the significance of the district.
(2) Within thirty days after the receipt of an application, the State Historic Preservation Officer shall determine whether an individual property is eligible to be listed in the National Register of Historic Places and is therefor eligible for historic rehabilitation valuation. The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary.
(3) Within thirty days after the receipt of an application, the State Historic Preservation Officer shall determine whether a property located within a district on the National Register of Historic Places or designated under an ordinance or resolution that has been approved by the State Historic Preservation Officer under section 77-1386 is of historic significance to the district pursuant to the criteria in 36 C.F.R. 67.5, as such regulation existed on January 1, 2005, and inform the applicant of the decision in writing. The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary.
(4) Property shall not be eligible for historic rehabilitation valuation if the property has received a final certificate of rehabilitation within the twelve years prior to application.

Source: Laws 2005, LB66, § 3.

77-1388. Historically significant real property; preliminary certificate of rehabilitation; filing with State Historic Preservation Officer. (1) The owner of historically significant real property described in section 77-1385 may apply for a preliminary certificate of rehabilitation on a form prescribed by the State Historic Preservation Officer. The application shall be filed with the State Historic Preservation Officer prior to beginning rehabilitation. The application shall contain at least the following information:
(a) The address or location of the historically significant real property;
(b) Documentation of the cost of the rehabilitation, including estimated cost of architectural fees if applicable;
(c) A certification from the county assessor stating the assessed valuation of the historically significant real property that was last certified by the county assessor pursuant to section 13-509 or as finally determined if appealed;
(d) A description of the historic condition of the historically significant real property, when possible, and condition of the historically significant real property immediately prior to the rehabilitation; and
(e) A detailed description of the proposed rehabilitation work, including plans and specifications, if applicable.
(2) Within thirty days after receipt of an application for a preliminary certificate of rehabilitation, the State Historic Preservation Officer shall issue a preliminary certificate of rehabilitation to the applicant and transmit a copy to the county assessor if he or she determines that:
(a) The proposed work meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005; and
(b) The work is a substantial rehabilitation.
(3) The State Historic Preservation Officer may extend the deadline up to an additional forty-five days if he or she determines that a site inspection is necessary. The State Historic Preservation Officer shall determine the length of the rehabilitation period, which shall not exceed two years unless the State Historic Preservation Officer finds (a) it is economically infeasible to complete the rehabilitation in two years or (b) the magnitude

of the project is such that a good faith attempt to complete the rehabilitation in two years would not succeed. The certificate shall identify the rehabilitation period.

(4) The State Historic Preservation Officer shall issue a preliminary certificate of rehabilitation to the owner if (a) the property was determined to be qualified for historic preservation valuation pursuant to subsection (2) of section 77-1387, (b) the proposed rehabilitation meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, and (c) the proposed rehabilitation is a substantial rehabilitation. The State Historic Preservation Officer shall transmit a copy of the preliminary certificate of rehabilitation to the county assessor within seven days after issuance of the certificate to the owner.

(5) For purposes of this section, substantial rehabilitation means interior or exterior rehabilitation work that preserves the historically significant real property in a manner that significantly improves its condition and that costs an amount equal to or greater than twenty-five percent of the assessed valuation certified by the county assessor and contained in the application.

Source: Laws 2005, LB66, § 4.

77-1389. Historically significant real property; preliminary certificate of rehabilitation; filing with city, village, or county. (1) A city, village, or county may receive and recommend approval of applications for preliminary certificates of rehabilitation within its corporate boundaries pursuant to subsection (4) of this section.

(2) Prior to exercising authority under subsection (1) of this section, a city, village, or county shall request the approval of the State Historic Preservation Officer. The request shall be accompanied by assurances that the city, village, or county:

(a) Enforces laws for the designation of historically significant real property;

(b) Has a landmark ordinance or resolution that has been approved under section 77-1386;

(c) Maintains a historic review commission which has been approved by the State Historic Preservation Officer;

(d) Maintains a system for the survey and inventory of historically significant real property; and

(e) Maintains a system for reviewing applications for certifications of rehabilitations substantially the same as that provided in section 77-1388.

(3) Within forty-five days after the receipt of the request and the assurances, the State Historic Preservation Officer shall approve the city, village, or county to exercise authority under subsection (1) of this section.

(4)(a) The owner of historically significant real property described in section77-1385 may apply for a preliminary certificate of rehabilitation on a form prescribed by the State Historic Preservation Officer. The application shall be filed with the city, village, or county prior to beginning rehabilitation, and the city, village, or county shall forward the application to the State Historic Preservation Officer with the following information:

(i) Certification that the real property is designated pursuant to a landmark ordinance or resolution or is in a district so designated; and

(ii) Any comments or recommendations on the application.

(b) The State Historic Preservation Officer shall process the application in accordance with subsection (4) of section 77-1388.

Source: Laws 2005, LB66, § 5.

77-1390. Historically significant real property; final certificate of rehabilitation; issuance. Upon completion of the rehabilitation the owner shall provide the following information to the State Historic Preservation Officer to obtain a final certificate of rehabilitation:

(1) Documentation of the dates on which construction commenced and was completed;

(2) Clear, current black and white or color photographs showing the completed rehabilitation work, the appearance of the structure immediately prior to the rehabilitation, and, if possible, the historic appearance of the historically significant real property;

(3) A written description of the original condition of the historically significant real property;

(4) A written description of the present condition of the historically significant real property; and

(5) A written description and, if applicable, final plans and specifications of the rehabilitation.

The State Historic Preservation Officer shall issue a final certificate of rehabilitation to the owner if the rehabilitation meets the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation

existed on January 1, 2005, and transmit a copy to the county assessor within seven days after issuance of the certificate to the owner.

Source: Laws 2005, LB66, § 6.

77-1391. Historically significant real property; valuation. (1) Commencing January 1, 2006, for all real property for which a final certificate of rehabilitation has been issued, the valuation for purposes of assessment shall be no more than the base-year valuation for eight years following issuance of the final certificate of rehabilitation.

(2) For the four years following the expiration of the eight-year period specified in subsection (1) of this section, the valuation for purposes of the assessment shall be as follows:

(a) For the first year, the base-year valuation plus twenty-five percent of the difference in the base-year valuation and the current year actual value;

(b) For the second year, the base-year valuation plus fifty percent of the difference in the base-year valuation and the current year actual value;

(c) For the third year, the base-year valuation plus seventy-five percent of the difference in the base-year valuation and the current year actual value; and

(d) For the fourth year, the current year actual value.

(3) For purposes of sections 77-1385 to 77-1394, base-year valuation means the assessed valuation of the historically significant real property in the assessment year the preliminary certificate of rehabilitation was issued as certified in subdivision (1)(c) of section 77-1388 or as finally determined if appealed.

(4) If, during the eight-year period and the four-year period specified in subsections (1) and (2) of this section, the State Historic Preservation Officer determines that historically significant real property for which a final certificate of rehabilitation has been issued (a) has been the subject of repair, renovation, remodeling, or improvement but not in accordance with the Standards for Rehabilitation as described in 36 C.F.R. 67.7, as such regulation existed on January 1, 2005, (b) is no longer of historical significance to a qualified historic district, or (c) no longer possesses the qualifications for listing in the National Register of Historic Places, he or she shall revoke the final certificate of rehabilitation by written notice to the owner and transmit a copy of the revocation to the county assessor.

(5) Upon disqualification of any real property receiving base-year valuation under sections 77-1385 to 77-1394, the county assessor shall change the value of such property to its actual value in the assessment year following the revocation of the final certificate of rehabilitation.

Source: Laws 2005, LB66, § 7.

77-1392. Historically significant real property; Tax Commissioner; rules and regulations. The Tax Commissioner may adopt and promulgate rules and regulations regarding the base-year valuation of historically significant real property.

Source: Laws 2005, LB66, § 8; Laws 2007, LB334, § 78.

77-1393. Historically significant real property; State Historic Preservation Officer; rules and regulations. The State Historic Preservation Officer may adopt and promulgate rules and regulations to carry out sections 77-1385 to 77-1394, including, but not limited to, provisions that:

(1) Preclude the issuance of a conditional, preliminary, or final certificate of rehabilitation for any owner-occupied single family residence if thirty percent or more of the dwelling space is new construction outside the existing structure;

(2) Specify what costs are eligible to meet the twenty-five percent minimum specified costs and make ineligible those costs attributable to new construction outside the existing structure; and

(3) Allow the issuance of a certificate of rehabilitation for a condominium.

Source: Laws 2005, LB66, § 9.

77-1394. Historically significant real property; protests; procedure; appeal. (1) Any decision of the State Historic Preservation Officer under sections 77-1385 to 77-1394 may be protested to the State Historic Preservation Officer within thirty days after the mailing of the written notice. If a protest is not filed, the action of the State Historic Preservation Officer shall be final. If a protest is filed, the State Historic Preservation Officer shall hear the protest within fourteen days after receipt of the protest.

(2) The State Historic Preservation Officer, within seven days after his or her final decision, shall mail written notice of his or her final decision to the owner and the county assessor of the county in which the real property is located.

(3) Any owner aggrieved by a final decision of the State Historic Preservation Officer may appeal the final decision to the district court within thirty days after mailing of the final decision by the State Historic Preservation Officer. The county assessor may appeal a final decision of the State Historic Preservation Officer to the district court within thirty days after mailing of the final decision by the State Historic Preservation Officer. The thirty-day period for filing such an appeal commences to run from the date of the mailing of the final decision. Upon receiving a copy of the final order on an appeal filed with the district court, the State Historic Preservation Officer shall mail a copy of the final order to the county assessor of the county in which the real property is located.

Source: Laws 2005, LB66, § 10.

ARTICLE 15
EQUALIZATION BY COUNTY BOARD

77-1501. County board of equalization; who constitutes; meetings; county officials; duties.
77-1502. Board; protests; report; notification.
77-1502.01. Board; referee; appointment; compensation; duties.
77-1503.01. Property exempt from equalization.
77-1504. Equalization of property; board; powers and duties; protest; procedure; notice of decision.
77-1504.01. Adjustment to class or subclass of real property; procedure.
77-1506.01. Application for reduction in value; waiver of notice.
77-1507. Board; duties; addition of omitted property; clerical errors; protest; procedure.
77-1507.01. Failure to give notice; effect.
77-1508. Board; examination of persons; production and inspection of records.
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77-1510. Board; appeals, how taken.
77-1510.01. Board; powers; costs and fees.
77-1514. Abstracts of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

77-1501. County board of equalization; who constitutes; meetings; county officials; duties. The county board shall constitute the county board of equalization. The county board of equalization shall fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately.

The county assessor or his or her designee shall attend all meetings of the county board of equalization when such meetings pertain to the assessment or exemption of real and personal property. The county treasurer shall attend all meetings of the county board of equalization involving the exemption of motor vehicles from the motor vehicle tax. All records of the county assessor's office shall be available for the inspection and consideration of the county board of equalization. The county clerk, deputy, or designee pursuant to section 23-1302shall attend all meetings of the county board of equalization and shall make a record of the proceedings of the county board of equalization.

Source: Laws 1903, c. 73, § 120, p. 428; R.S.1913, § 6436; C.S.1922, § 5971; C.S.1929, § 77-1701; R.S.1943, § 77-1501; Laws 1953, c. 273, § 1, p. 898; Laws 1997, LB270, § 85; Laws 1999, LB194, § 23; Laws 2005, LB762, § 2; Laws 2009, LB166, § 14; Laws 2012, LB801, § 97.

Annotations

A complete and adequate remedy is provided for relief from an overassessment of property. Scudder v. County of Buffalo, 170 Neb. 293, 102 N.W.2d 447 (1960).

Individual discrepancies and inequalities in valuation are corrected and equalized by county board of equalization. LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956).

County board of equalization is an administrative agency of the county. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943).

This article prescribes duties of county board of equalization. Peterson v. Brunzell, 103 Neb. 250, 170 N.W. 905 (1919).

Board possesses no powers save those conferred by statute. Brown v. Douglas County, 98 Neb. 299, 152 N.W. 545 (1915).

Abolishment of office of county assessor does not oust county board and county clerk of their jurisdiction as board of equalization. Hatcher & Co. v. Gosper County, 95 Neb. 543, 145 N.W. 993 (1914).

The county board constitutes the board of equalization, and thus, the two boards have the same membership. But because each board has its own well-defined public duties and functions, the two boards are separate and distinct bodies. Wolf v. Grubbs, 17 Neb. App. 292, 759 N.W.2d 499 (2009).

This section and Neb. Const. art. VIII, sec. 1, read together, require a county board of equalization to value comparable properties similarly, even where separate protests are heard in the first instance by referees who recommend greatly disparate property valuations. Zabawa v. Douglas Cty. Bd. of Equal., 17 Neb. App. 221, 757 N.W.2d 522 (2008).

77-1502. Board; protests; report; notification. (1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description adequate to identify each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the applicable description of the property, the protest shall be dismissed by the county board of equalization.

(3) Beginning January 1, 2014, in counties with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, for a protest regarding real property, each protester shall be afforded the opportunity to meet in person with the county board of equalization or a referee appointed under section 77-1502.01 to provide information relevant to the protested property value.

(4) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(5) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description adequate to identify the real property or a physical description of the tangible personal property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

(6) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S.1943, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c. 355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB1342, § 1; Laws 1975, LB312, § 1; Laws 1984, LB660, § 2; Laws 1986, LB174, § 1; Laws 1986, LB817, § 13; Laws 1987, LB508, § 44; Laws 1992, LB1063, § 124; Laws 1992, Second Spec. Sess., LB1, § 97; Laws 1994, LB902, § 21; Laws 1995, LB452, § 23; Laws 1995, LB490, § 147; Laws 1997, LB270, § 86; Laws 2003, LB292, § 12; Laws 2004, LB973, § 33; Laws 2005, LB283, § 2; Laws 2005, LB299, § 1; Laws 2006, LB808, § 37; Laws 2008, LB965, § 15; Laws 2009, LB166, § 15; Laws 2010, LB877, § 4; Laws 2011, LB384, § 14.

Annotations

1. Time of meeting

Power of county board of equalization to rectify returns and change assessments is limited to a set number of circumscribed days each year. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

When a county board of equalization exercises its direct authority under this section to add omitted property or to increase the assessment of undervalued property, the April 1 notice deadline under section 77-1315 is not applicable, and the board may meet at any time. This section contains no requirement for a hearing when a county board of equalization equalizes assessments of omitted or undervalued property, and due process is satisfied by the de novo review and opportunity to offer evidence available upon review by the district court. Farmers Co-op Assn. v. Boone County, 213 Neb. 763, 332 N.W.2d 32 (1983).

County board of equalization may meet at any time to equalize assessments of omitted or undervalued property. Peter Kiewit Sons' Co. v. County of Douglas, 161 Neb. 93, 72 N.W.2d 415 (1955); Ewert Implement Co. v. Board of Equalization, 160 Neb. 445, 70 N.W.2d 397 (1955).

Meeting date of county board of equalization is fixed by statute. Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

Session of county board of equalization is continuous during period specified. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

2. Power of county board

A property owner's exclusive remedy for relief from overvaluation of property for tax purposes is by protest to the county board of equalization, and appeal therefrom to the district court. Olson v. County of Dakota, 224 Neb. 516, 398 N.W.2d 727 (1987).

The county board of equalization has never been given authority to impose or waive penalties. Bachus v. Swanson, 179 Neb. 1, 136 N.W.2d 189 (1965).

There is an omission to return property for taxation where a person reports property but does not list it for taxation. Peter Kiewit Sons', Inc. v. County of Douglas, 172 Neb. 710, 111 N.W.2d 734 (1961).

Assessment by county board of equalization should not be disturbed on appeal unless clearly erroneous. LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956).

Power of board to equalize is limited to time of sitting as board of equalization. Sumner & Co. v. Colfax County, 14 Neb. 524, 16 N.W. 756 (1883).

3. Miscellaneous

This section and section 77-1510 do not control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. Prime Alliance Bank v. Lincoln Cty. Bd. of Equal., 283 Neb. 732, 811 N.W.2d 690 (2012).

Failure by the county clerk to give notice to the taxpayer in strict accordance with this section is fatal to the tax levied on the increase in valuation of the property. Falotico v. Grant Cty. Bd. of Equal., 262 Neb. 292, 631 N.W.2d 492 (2001).

A taxpayer who has not first filed a protest with the county board of equalization may not appeal to the district court a claimed overassessment of his or her own property. JEMCO, Inc. v. Board of Equal. of Box Butte Cty., 242 Neb. 361, 495 N.W.2d 44 (1993).

This section and section 77-1504 were not repealed by section 77-1358. Banner County v. State Bd. of Equal., 226 Neb. 236, 411 N.W.2d 35 (1987).

For protests of real property to a county board of equalization, a protest shall be filed for each parcel. Widtfeldt v. Tax Equal. & Rev. Comm., 15 Neb. App. 410, 728 N.W.2d 295 (2007).

Although the county board's procedures for holding protest hearings pursuant to this section were found unreasonable and arbitrary in this case, the court failed to set forth a blanket condemnation of the board's regular protest and hearing procedures in general. J.C. Penney Co., Inc. v. Lancaster Cty. Bd. of Equal., 6 Neb. App. 838, 578 N.W.2d 465 (1998).

77-1502.01. Board; referee; appointment; compensation; duties. In all counties the county board of equalization may appoint one or more suitable persons to act as referees. The compensation of a referee shall be fixed by the county board and shall be payable from the general fund of the county. The county board of equalization may direct that any protest filed in accordance with section 77-1502, shall be heard in the first instance by the referee in the manner provided for the hearing of protests by the county board of equalization. Upon the conclusion of the hearing in each case, the referee shall transmit to the county board of equalization all papers relating to the case, together with his or her findings and recommendations in writing. The county board of equalization, after considering all papers relating to the protest and the findings and recommendations of the referee, may make the order recommended by the referee or any other order in the judgment of the board of equalization required by the findings of the referee, or may hear additional testimony, or may set aside such findings and hear the protest anew.

Source: Laws 1969, c. 626, § 1, p. 2525; Laws 1980, LB658, § 1.

Annotations

The ultimate responsibility to equalize valuations rests upon the county board of equalization, and it cannot avoid this duty by using the power to appoint referees. Zabawa v. Douglas Cty. Bd. of Equal., 17 Neb. App. 221, 757 N.W.2d 522 (2008).

77-1503.01. Property exempt from equalization. Any property valued by the state shall not be subject to the jurisdiction of the county board of equalization.

Source: Laws 1971, LB945, § 4; Laws 1984, LB835, § 10; Laws 1987, LB508, § 45; Laws 1992, LB1063, § 125; Laws 1992, Second Spec. Sess., LB1, § 98; Laws 1995, LB452, § 24; Laws 1995, LB490, § 148; Laws 1997, LB270, § 87; Laws 1999, LB194, § 24.

Annotations

County board of equalization is statutorily empowered and authorized to equalize only those assessments of countywide property of which the county has the authority to assess the value. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

77-1504. Equalization of property; board; powers and duties; protest; procedure; notice of decision. The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, to consider and correct the current year's assessment of any real property which has been undervalued or overvalued. The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may only consider the report of the county assessor pursuant to section 77-1315.01.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15 or on or before September 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk's or county assessor's office, whichever is appropriate.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission on or before October 15 or on or before October 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S.1943, § 77-1504; Laws 1947, c. 251, § 37, p. 826; Laws 1979, LB187, § 210; Laws 1984, LB835, § 11; Laws 1987, LB508, § 46; Laws 1988, LB1207, § 8; Laws 1989, LB361, § 21; Laws 1991, LB320, § 11; Laws 1992, LB1063, § 126; Laws 1992, Second Spec. Sess., LB1, § 99; Laws 1994, LB902, § 22; Laws 1995, LB452, § 25; Laws 1995, LB490, § 149; Laws 1997, LB270, § 88; Laws 1998, LB1104, § 10; Laws 1999, LB194, § 25; Laws 2005, LB263, § 13; Laws 2005, LB283, § 3; Laws 2006, LB808, § 38; Laws 2007, LB167, § 2; Laws 2011, LB384, § 15.

Annotations

1. Power of county board

Power of county board of equalization to rectify returns and change assessments is limited to a set number of circumscribed days each year. County board of equalization does not have jurisdiction to decrease the challenged assessed personal property values. County board of equalization is statutorily empowered and authorized to equalize only those assessments of countywide property of which the county has the authority to assess the value. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization. AT&T Information Sys. v. State Bd. of Equal., 237 Neb. 591, 467 N.W.2d 55 (1991).

This section provides for equalizing value of real estate of individual taxpayer. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

County boards of equalization deal with assessments of individuals and between townships, precincts or districts within county. Scotts Bluff County v. State Board of Equalization and Assessment, 143 Neb. 837, 11 N.W.2d 453 (1943).

County board of equalization has no authority to increase the valuation of an assessment of all the real estate in a precinct in the absence of a finding that the valuation of such real estate does not bear a just relation to the valuation of the real estate in all townships, precincts or districts in the county. Peterson v. Brunzell, 103 Neb. 250, 170 N.W. 905 (1919).

2. Procedures

Notice to owner of intention to raise valuation is required. Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

When taxpayer claims that real estate is assessed too high, he should first apply for relief to board of equalization, and, if denied, should appeal to the courts. Power v. Jones, 126 Neb. 529, 253 N.W. 867 (1934).

The several owners of different tracts of land may unite in petition for relief. State ex rel. Mellor v. Grow, 74 Neb. 850, 105 N.W. 898 (1905).

3. Miscellaneous

This section and section 77-1502 were not repealed by section 77-1358. Banner County v. State Bd. of Equal., 226 Neb. 236, 411 N.W.2d 35 (1987).

A decree of court fixing the value of real estate on a previous assessment is not competent evidence in a further suit affecting the assessment value of the property in a subsequent year. DeVore v. Board of Equalization, 144 Neb. 351, 13 N.W.2d 451 (1944).

Lands, city and village lots, and personal property are considered as separate classes for equalization. State ex rel. Lincoln Land Co. v. Edwards, 31 Neb. 369, 47 N.W. 1048 (1891).

77-1504.01. Adjustment to class or subclass of real property; procedure. (1) Unless the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502, after completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference or telephone conference. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law. At the hearing the commission may receive testimony from any interested person.

(3) After a hearing the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, an additional adjustment may be made so that total adjustments made are equal to the commission's ordered adjustment and no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Source: Laws 1995, LB452, § 26; Laws 1997, LB397, § 22; Laws 1998, LB306, § 22; Laws 1999, LB140, § 1; Laws 1999, LB194, § 26; Laws 2000, LB968, § 58; Laws 2003, LB291, § 2; Laws 2004, LB973, § 34; Laws 2005, LB283, § 4; Laws 2008, LB965, § 16; Laws 2011, LB384, § 16.

Annotations

Pursuant to this section, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of property. Bartlett v. Dawes Cty. Bd. of Equal., 259 Neb. 954, 613 N.W.2d 810 (2000).

Pursuant to subsection (2) of section 77-5019, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to this section or section 77-5023, the commission is not a proper party to a proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

A claim brought pursuant to this section and which was denied by the Nebraska Tax Equalization and Review Commission was not entitled to judicial review because no statutory right of appeal exists for such claims. The Nebraska Court of Appeals did not have jurisdiction under subsection (1) of section 77-5019 to hear county's appeal of a claim brought pursuant to this section because the claim was not a decision appealed to the Nebraska Tax Equalization and Review Commission and was not brought pursuant to section 77-5028. Boone Cty. Bd. of Equal. v. Nebraska Tax Equal. and Rev. Comm., 9 Neb. App. 298, 611 N.W.2d 119 (2000).

77-1506.01. Application for reduction in value; waiver of notice. Whenever any owner of real or personal property applies to the county board of equalization for a reduction in the taxable value of any such property, the owner shall be deemed to have waived notice of increase in the taxable value of such property which is found undervalued by the county board of equalization notwithstanding the provisions of any other statutes to the contrary.

Source: Laws 1969, c. 673, § 3, p. 2598; Laws 1979, LB187, § 211; Laws 1992, LB719A, § 167.

77-1507. Board; duties; addition of omitted property; clerical errors; protest; procedure. (1) The county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 and for correction of clerical errors as defined in section 77-128 that result in a change of assessed value. The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address. For real property which has been omitted in the current year, the county board of equalization shall not send notice pursuant to this section on or before June 1.

Protests of the assessed value proposed for omitted real property pursuant to this section or a correction for clerical errors shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall issue its decision on the protest within thirty days after the filing of the protest.

(2) The county clerk shall, within seven days after the board's final decision, send:

(a) For protested action, a notification to the protester of the board's final action advising the protester that a report of the board's final decision is available at the county clerk's or county assessor's office, whichever is appropriate; and

(b) For protested and nonprotested action, a report to the Property Tax Administrator which shall state a description adequate to identify the property, the reason such property was not assessed pursuant to section 77-1301, and a statement of the board's justification for its action. A copy of the report shall be available for public inspection in the office of the county clerk.

(3) The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.

(4) Improvements to real property which were properly reported to the county assessor pursuant to section 77-1318.01 for the current year and were not added to the assessment roll by the county assessor on or before March 19 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, such improvements which were not added to the assessment roll on or before March 25 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25. In counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the deadline of July 25 shall be extended to August 10.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S.1943, § 77-1507; Laws

1987, LB508, § 48; Laws 1995, LB490, § 150; Laws 1997, LB270, § 89; Laws 1999, LB194, § 27; Laws 2005, LB263, § 14; Laws 2005, LB283, § 5; Laws 2006, LB808, § 39; Laws 2010, LB877, § 5; Laws 2011, LB384, § 17.

Annotations

County board of equalization may equalize omitted property subsequent to regular time. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

County board of equalization may assess omitted or unassessed real property without previous notice to owner. Radium Hospital v. Greenleaf, 118 Neb. 136, 223 N.W. 667 (1929).

County board of equalization must give notice when assessing omitted personal property. Farmers Co-op. Creamery & Supply Co. v. McDonald, 100 Neb. 33, 158 N.W. 369 (1916); Farmers Co-op. Creamery & Supply v. McDonald, 97 Neb. 510, 150 N.W. 640 (1915), on rehearing 97 Neb. 512, 150 N.W. 656 (1915).

It is the duty of county board of equalization to assess the value of omitted property, and its action in that regard cannot be controlled by state board. State ex rel. Mickey v. Drexel, 75 Neb. 751, 107 N.W. 110 (1906).

Omission made in the belief that the property is not taxable does not invalidate tax upon other property. Burlington & M. R. R. Co. v. Seward County, 10 Neb. 211, 4 N.W. 1016 (1880).

77-1507.01. Failure to give notice; effect. Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value or special value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.

Source: Laws 2005, LB15, § 5; Laws 2007, LB167, § 3; Laws 2009, LB166, § 16.

77-1508. Board; examination of persons; production and inspection of records. Whenever any county board of equalization shall have reason to believe that any person, company or corporation has not listed all of his or its property for taxation, or that any property has not been fairly valued and assessed, it shall be lawful for such board to call before it any such person, or any agent or officer of any such corporation, and require the production of any books, records or papers. The person so called shall be sworn, and shall answer under oath, and give all information which he may possess, touching the existence, location and value of any property sought to be listed, valued and assessed, and no person so called shall be excused from answering any question put to him on the ground that his answer might tend to criminate him, but no answer he shall make or testimony he may give shall be used against him in any criminal prosecution.

Source: Laws 1903, c. 73, § 122, p. 430; R.S.1913, § 6438; C.S.1922, § 5973; C.S.1929, § 77-1703; R.S.1943, § 77-1508.

Annotations

Power conferred by this section is not exclusive. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943), vacating 143 Neb. 300, 9 N.W.2d 306 (1943).

77-1509. Board; compelling attendance of witnesses; penalties; fees. The county board of equalization may issue process to compel the attendance before it of any person with books, records and papers, if necessary, which process shall be served by the sheriff the same as a summons from the district court, and he shall receive the same fees therefor. Any person who shall fail to respond to such process, or who shall refuse to answer any proper question put to him by the board, shall forfeit the sum of five hundred dollars, to be recovered in a civil action in the name of the county. Witnesses shall receive the same fees as witnesses in the district court to be paid by the person, the valuation of whose property is being investigated, in case the board finds that such person has willfully concealed or undervalued his property; otherwise, by the county.

Source: Laws 1903, c. 73, § 123, p. 430; R.S.1913, § 6439; C.S.1922, § 5974; C.S.1929, § 77-1704; R.S.1943, § 77-1509.

Annotations

This section is a statute imposing a penalty or forfeiture. Such statutes are strictly construed and will not be construed to include anything beyond their letter even though it may be within their spirit. County of Merrick v. Beck, 205 Neb. 829, 290 N.W.2d 642 (1980).

This and preceding section apply to the power to review and correct individual assessments. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943), vacating 143 Neb. 300, 9 N.W.2d 306 (1943).

77-1510. Board; appeals, how taken. Any action of the county board of equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 124, p. 430; R.S.1913, § 6440; C.S.1922, § 5975; C.S.1929, § 77-1705; R.S.1943, § 77-1510; Laws 1947, c. 251, § 38, p. 827; Laws 1959, c. 371, § 2, p. 1308; Laws 1969, c. 673, § 1, p. 2597; Laws 1979, LB187, § 213; Laws 1986, LB174, § 2; Laws 1988, LB1207, § 10; Laws 1989, LB653, § 3; Laws 1989, LB762, § 1; Laws 1991, LB732, § 141; Laws 1991, LB829, § 9; Laws 1992, LB360, § 35; Laws 1992, LB1063, § 128; Laws 1992, Second Spec. Sess., LB1, § 101; Laws 1992, Fourth Spec. Sess., LB1, § 15; Laws 1995, LB452, § 27; Laws 1995, LB490, § 151; Laws 1996, LB1040, § 4; Laws 1997, LB270, § 90; Laws 1997, LB397, § 23; Laws 2001, LB170, § 18; Laws 2001, LB465, § 2; Laws 2003, LB291, § 3; Laws 2004, LB973, § 35; Laws 2005, LB283, § 6.

Annotations

1. Rebuttable presumption

There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board. Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal., 231 Neb. 653, 437 N.W.2d 501 (1989).

2. Right of appeal

A taxpayer who has not first filed a protest with the county board of equalization may not appeal to the district court a claimed overassessment of his or her own property. JEMCO, Inc. v. Board of Equal. of Box Butte Cty., 242 Neb. 361, 495 N.W.2d 44 (1993).

One aggrieved by the action of a county board of equalization may appeal to the district court pursuant to this section. A taxpayer who fails to pursue this remedy may not object to the valuation of his separate property for taxation purposes, and a collateral attack may not be made thereon unless the assessment is void, willfully discriminatory, or the result of fraud. AT&T Information Sys. v. State Bd. of Equal., 237 Neb. 591, 467 N.W.2d 55 (1991).

An appeal from a decision by a county board of equalization is authorized by this section and controlled by section 77-1511. Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal., 237 Neb. 1, 465 N.W.2d 111 (1991).

A property owner's exclusive remedy for relief from overvaluation of property for tax purposes is by protest to the county board of equalization, and appeal therefrom to the district court. Olson v. County of Dakota, 224 Neb. 516, 398 N.W.2d 727 (1987); Power v. Jones, 126 Neb. 529, 253 N.W. 867 (1934).

An appeal from a tax exemption may be taken pursuant to section 77-202.04 only. Bemis v. Board of Equalization of Douglas County, 197 Neb. 175, 247 N.W.2d 447 (1976).

Cited in appeal from county board of equalization regarding valuation. Boss Hotels Co. v. County of Hall, 183 Neb. 19, 157 N.W.2d 868 (1968).

Taxpayer may appeal from county board of equalization to district court. L. J. Messer Co. v. Board of Equalization, 171 Neb. 393, 106 N.W.2d 478 (1960); Collier v. County of Logan, 169 Neb. 1, 97 N.W.2d 879 (1959); LeDioyt v. County of Keith, 161 Neb. 615, 74 N.W.2d 455 (1956); Scotts Bluff County v. State Board of Equalization and Assessment, 143 Neb. 837, 11 N.W.2d 453 (1943).

Appeal lies from assessment of omitted or undervalued property. Ewert Implement Co. v. Board of Equalization, 160 Neb. 445, 70 N.W.2d 397 (1955).

Remedy of appeal is provided for owners who appeared before county board of equalization. Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

State Board of Equalization has right to appeal from action of county board of equalization in exempting property. State v. Odd Fellows Hall Assn., 123 Neb. 440, 243 N.W. 616 (1932).

A taxpayer may appeal from order, sustaining another's complaint that his property is assessed too high, without appearance before board of equalization. In re assessment of Bankers Life Ins. Co., 88 Neb. 43, 128 N.W. 661 (1910).

3. Appellate procedures

Section 77-1502 and this section do not control a taxpayer's appeal from a decision of a county board of equalization to the Tax Equalization and Review Commission when a county assessor changes a taxpayer's reported valuation of personal property to conform to net book value. Prime Alliance Bank v. Lincoln Cty. Bd. of Equal., 283 Neb. 732, 811 N.W.2d 690 (2012).

The assignee of certain interests in ethanol manufacturing equipment had 30 days from the date of the decision under section 77-1233.06(4), and not until the August 24 deadline under this section, to appeal to the Tax Equalization and Review Commission from a county board of equalization's decision in a case where the assignor had filed a personal property return with the value of zero dollars for the equipment and had not filed a protest of the valuation. Republic Bank v. Lincoln Cty. Bd. of Equal., 283 Neb. 721, 811 N.W.2d 682 (2012).

The Tax Equalization and Review Commission's jurisdiction is limited to those appeals filed within the statutory 30-day period, and it does not have the authority to adopt the mailbox rule or the doctrine of unique circumstances because such rules and doctrines would expand its jurisdiction beyond what the Legislature provided in this section. Falotico v. Grant Cty. Bd. of Equal., 262 Neb. 292, 631 N.W.2d 492 (2001).

In an appeal made pursuant to this section, it is the responsibility of the taxpayer to file in the district court a transcript of the proceedings held before the county board of equalization. No proceedings on appeal to the district court shall be held in the absence of the transcript of the proceedings held before the county board of equalization. Future Motels, Inc. v. Custer Cty. Bd. of Equal., 247 Neb. 436, 527 N.W.2d 861 (1995).

Declaratory judgment action held not the appropriate remedy to attack action by county board of equalization. Ryan v. Douglas County Board of Equalization, 199 Neb. 291, 258 N.W.2d 626 (1977).

In order to perfect an appeal to the district court from a county board of equalization, all activities necessary, including the filing of notice of appeal, must be carried out within forty-five days of the adjournment of the board. Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 855 (1975).

Procedure for appeal is that prescribed for an appeal from a judgment of a justice of the peace to the district court. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

Taxpayer having direct interest must give notice of appeal within twenty days, and one having indirect interest must give notice within ten days. Sommerville v. Board of Commissioners of Douglas County, 117 Neb. 507, 221 N.W. 433 (1928).

To perfect an appeal to the Tax Equalization and Review Commission, one must file his or her notice of appeal within 30 days of a board of equalization's final order. Washington Cty. Bd. of Equal. v. Rushmore Borglum, 11 Neb. App. 377, 650 N.W.2d 504 (2002).

4. Standard of review

On appeal to the Supreme Court, an equity case involving an action by a county board of equalization is a trial of factual questions de novo on the record, requiring the Supreme Court to reach a conclusion independent of the findings of the trial court. Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal., 231 Neb. 653, 437 N.W.2d 501 (1989).

5. Equitable remedies

Resort cannot be had to injunction when appeal will afford plain and direct remedy at law. Radium Hospital v. Greenleaf, 118 Neb. 136, 223 N.W. 667 (1929).

Suit in equity will not lie to correct assessment as appeal affords remedy for excessive valuation. Hahn System v. Stroud, 109 Neb. 181, 190 N.W. 572 (1922); Western Union Tel. Co. v. Douglas County, 76 Neb. 666, 107 N.W. 985 (1906).

Where assessment is increased without jurisdiction of board of equalization, its collection may be enjoined. Farmers Co-op. Creamery & Supply Co. v. McDonald, 100 Neb. 33, 158 N.W. 369 (1916).

Mandamus will not lie to correct errors of board of equalization. State ex rel. Mickey v. Drexel, 75 Neb. 751, 107 N.W. 110 (1906).

77-1510.01. Board; powers; costs and fees. After the Tax Equalization and Review Commission obtains exclusive jurisdiction of an appeal from a decision, order, determination, or action of a county board of equalization pursuant to section 77-5013, the board shall have no power or authority to compromise, settle, or otherwise change the decision, order, determination, or action it has taken. The board may, with approval of the Tax Equalization and Review Commission, offer to confess judgment for part of the value claimed or part of the causes involved in the action. If (1) the appellant is present and refuses to accept such confession of judgment in full of the appellant's demands against the board in such action or the appellant fails to attend having had reasonable notice that the offer would be made, its terms, and the time of making it and (2) at hearing the appellant does not obtain more relief than was offered to be confessed, the appellant shall pay all the costs and fees the board incurred after making the offer. The offer shall not be deemed to be an admission of the cause of action or relief to which the appellant is entitled, and the offer shall not be given in evidence at the hearing.

Source: Laws 1989, LB653, § 4; Laws 1995, LB490, § 152; Laws 2004, LB973, § 36.

77-1514. Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator. (1) The county assessor shall prepare an abstract of the property assessment rolls of locally assessed real property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the abstract with the Property Tax Administrator on or before March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the real property abstract shall be filed on or before

March 25. The abstract shall show the taxable value of real property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the abstract and the statutory deadlines provided in section 77-5027. The Property Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county. Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall request an extension of the final filing due date by March 22.

(2) The county assessor shall prepare an abstract of the property assessment rolls of locally assessed personal property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall electronically file the abstract with the Property Tax Administrator on or before July 20.

Source: Laws 1903, c. 73, § 125, p. 431; R.S.1913, § 6442; C.S.1922, § 5977; C.S.1929, § 77-1707; R.S.1943, § 77-1514; Laws 1945, c. 190, § 1, p. 590; Laws 1947, c. 251, § 39, p. 827; Laws 1959, c. 371, § 4, p. 1309; Laws 1987, LB508, § 49; Laws 1992, LB1063, § 129; Laws 1992, Second Spec. Sess., LB1, § 102; Laws 1994, LB902, § 24; Laws 1995, LB452, § 28; Laws 1995, LB490, § 155; Laws 1997, LB270, § 91; Laws 1999, LB194, § 28; Laws 2000, LB968, § 59; Laws 2004, LB973, § 37; Laws 2005, LB15, § 6; Laws 2005, LB261, § 7; Laws 2007, LB334, § 79; Laws 2011, LB162, § 1; Laws 2011, LB384, § 18; Laws 2015, LB259, § 9.

Operative Date: January 1, 2016

Annotations

Power of county board of equalization to rectify returns and change assessments is limited to a set number of circumscribed days each year. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

County assessor should forward abstract of assessment rolls by July 1. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954); County of Howard v. State Board of Equalization and Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954); County of Douglas v. State Board of Equalization and Assessment, 158 Neb. 325, 63 N.W.2d 449 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

County assessor is required to prepare abstract of assessment and forward to state board. Adair v. Miller, 109 Neb. 295, 190 N.W. 865 (1922).

Actual levy of taxes cannot occur until after completion of the work of State Board of Equalization and Assessment. United States v. Thurston County, 54 F.Supp. 201 (D. Neb. 1944).

ARTICLE 16
LEVY AND TAX LIST

77-1601. County tax levy; by whom made; when; what included; correction of clerical error; procedure.
77-1601.02. Property tax request; procedure.
77-1606. County tax levy; appeal by taxpayer; when taken; does not suspend collection.
77-1608. County tax levy; appeal by taxpayer; proceedings.
77-1610. Return of taxes paid; correction of tax rolls.
77-1613. Tax list; preparation; when and by whom; form and contents.
77-1613.01. Certification by county official to Property Tax Administrator; contents.
77-1613.02. Tax list; corrections; prohibited acts; violation; penalty.
77-1613.04. Assessment roll and tax list; corrections.
77-1614. Tax list; consolidated tax; how entered.
77-1615.01. Tax list; use of electronic data processing equipment; levy and collection of taxes.
77-1616. Tax list; delivery to county treasurer; when; warrant for collection.
77-1617. Tax list; property of county; form.
77-1618. Tax list; entry of amount.
77-1619. Judgments against public corporations; payment by tax levy.
77-1620. Judgments against public corporations; payment by levy in addition to levy for ordinary purposes.
77-1621. Judgments against public corporations; special tax levy; how collected.
77-1622. Judgments against public corporations; duty of corporate authorities to make levy.
77-1623. Judgments against public corporations; failure or refusal of corporate authorities to levy; action against officers; mandamus.
77-1624. Taxes delinquent five or more years; collection; receipts; proration; remittance of state taxes to State Treasurer; how credited.

77-1601. County tax levy; by whom made; when; what included; correction of clerical error; procedure. (1) The county board of equalization shall each year, on or before October 15, levy the necessary taxes for the current year if within the limit of the law. The levy shall include an amount for operation of all functions of county government and shall also include all levies necessary to fund tax requests certified under section 77-1601.02 that are authorized as provided in sections 77-3442 to 77-3444.

(2) On or before November 5, the county board of equalization upon its own motion may act to correct a clerical error which has resulted in the calculation of an incorrect levy by any entity otherwise authorized to certify a tax request under section 77-1601.02. The county board of equalization shall hold a public hearing to determine what adjustment to the levy is proper, legal, or necessary. Notice shall be provided to the governing body of each political subdivision affected by the error. Notice of the hearing as required by section 84-1411 shall include the following: (a) The time and place of the hearing, (b) the dollar amount at issue, and (c) a statement setting forth the nature of the error.

(3) Upon the conclusion of the hearing, the county board of equalization shall issue a corrected levy if it determines that an error was made in the original levy which warrants correction. The county board of equalization shall then order (a) the county assessor, county clerk, and county treasurer to revise assessment books, unit valuation ledgers, tax statements, and any other tax records to reflect the correction made and (b) the recertification of the information provided to the Property Tax Administrator pursuant to section 77-1613.01.

Source: Laws 1903, c. 73, § 136, p. 436; Laws 1905, c. 111, § 4, p. 513; Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 257; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-

1601; Laws 1947, c. 250, § 30, p. 799; Laws 1947, c. 251, § 40, p. 828; Laws 1949, c. 234, § 1, p. 645; Laws 1953, c. 275, § 1, p. 900; Laws 1965, c. 470, § 1, p. 1517; Laws 1965, c. 477, § 2, p. 1538; Laws 1969, c. 656, § 2, p. 2574; Laws 1980, LB766, § 1; Laws 1992, LB1063, § 130; Laws 1992, Second Spec. Sess., LB1, § 103; Laws 1993, LB734, § 49; Laws 1995, LB167, § 1; Laws 1995, LB452, § 29; Laws 1995, LB490, § 157; Laws 1996, LB693, § 11; Laws 1996, LB1085, § 56; Laws 1997, LB269, § 41; Laws 1998, LB306, § 23; Laws 2003, LB191, § 1.

Annotations

1. Levy by board

County board of equalization is by-passed in making levy of taxes for educational service units. Frye v. Haas, 182 Neb. 73, 152 N.W.2d 121 (1967).

The duties of a county board of equalization in making a tax levy for a home rule charter city under this section are ministerial. State ex rel. City of Omaha v. Lynch, 181 Neb. 810, 151 N.W.2d 278 (1967).

Levy of taxes is not made by school district, but is made by the county board of equalization. C. R. T. Corp. v. Board of Equalization of Douglas County, 172 Neb. 540, 110 N.W.2d 194 (1961).

Effect of failure to make levy on or before August 10 raised but not decided. State ex rel. School Dist. v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

County board of equalization levies taxes between August 2 and August 10. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

County is required to levy the taxes certified to the county clerk by cities of first class, townships, school districts and road districts, and is the political subdivision against which action to recover money paid for void tax sale certificate lies. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

County board is required to levy the amount of taxes adopted by the several school districts of the county. Schulz v. Dixon County, 134 Neb. 549, 279 N.W. 179 (1938).

Irregularity in levy not a valid objection to tax. Hull v. Kearney County, 13 Neb. 539, 14 N.W. 529 (1882).

Informality in the levy does not invalidate school taxes. Burlington & M. R. R. Co. v. Lancaster County, 12 Neb. 324, 11 N.W. 332 (1882).

County commissioners who in good faith but by mistake levy a less tax than that voted are not personally liable to school district. School Dist. No. 80 of Nemaha County v. Burress, 2 Neb. Unof. 554, 89 N.W. 609 (1902).

Levy is made ordinarily after first of August. United States v. Thurston County, 54 F.Supp. 201 (D. Neb. 1944).

2. Miscellaneous

This section contained no limitations on the amount that could be levied. Chicago, B. & Q. R.R. Co. v. County of Box Butte, 166 Neb. 603, 90 N.W.2d 72 (1958).

Medical, surgical, and hospital care of poor person should be provided by the county. Marshall v. County of Nance, 163 Neb. 252, 79 N.W.2d 417 (1956).

Property is taxed when the tax is levied and not when it is valued by the assessor. American Province of Servants of Mary Real Estate Corp. v. County of Douglas, 147 Neb. 485, 23 N.W.2d 714 (1946).

County board of equalization may adopt such means as, in its judgment, is necessary to carry out duties imposed. Speer v. Kratzenstein, 143 Neb. 310, 12 N.W.2d 360 (1943), vacating 143 Neb. 300, 9 N.W.2d 306 (1943).

Appropriation bill of municipality should in order of time precede levy of municipal tax. LeBarron v. City of Harvard, 129 Neb. 460, 262 N.W. 26 (1935).

County clerk has no power to make levy for additionally certified taxes after he has completed main tax list and delivered same to county treasurer, writ of mandamus is denied. State ex rel. Long v. Barstler, 122 Neb. 167, 240 N.W. 273 (1931).

City and village taxes, levied after usual time, are valid and afford no ground for injunction. Hallo v. Helmer, 12 Neb. 87, 10 N.W. 568 (1881).

77-1601.02. Property tax request; procedure. (1) The property tax request for the prior year shall be the property tax request for the current year for purposes of the levy set by the county board of equalization in section 77-1601 unless the governing body of the county, municipality, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college passes by a majority vote a resolution or ordinance setting the tax request at a different amount. Such resolution or ordinance shall only be passed after a special public hearing called for such purpose is held and after notice is published in a newspaper of general circulation in the area of the political subdivision at least five days prior to the hearing. The hearing notice shall contain the following information: The dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request; the property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation; and the proposed dollar amount of the tax request for the current year and the property tax rate that

will be necessary to fund that tax request. Any resolution setting a tax request under this section shall be certified and forwarded to the county clerk on or before October 13 of the year for which the tax request is to apply.

(2) Any levy which is not in compliance with this section and section 77-1601shall be construed as an unauthorized levy under section 77-1606.

Source: Laws 1996, LB693, § 10; Laws 1996, LB1085, § 55; Laws 1997, LB269, § 43; Laws 1998, LB306, § 24; Laws 2001, LB797, § 3; Laws 2006, LB1024, § 5.

77-1606. County tax levy; appeal by taxpayer; when taken; does not suspend collection. Any taxpayer may appeal from the action of the county board of equalization in making the levy, if in the judgment of such taxpayer the levy is for an unlawful or unnecessary purpose or in excess of the requirements of a political subdivision, to the Tax Equalization and Review Commission in accordance with section 77-5013within thirty days after the county board of equalization's action. The appeal shall set forth the levy appealed from and the amount or extent to which the appellant claims the levy is for an unlawful or unnecessary purpose or in excess of the requirements of a political subdivision, and to that extent and no further shall such levy be affected by such appeal. It shall not be necessary for such taxpayer to appear before the county board of equalization at the time of the making of the levy or prior thereto in order to entitle him or her to such appeal. No appeal shall in any manner suspend the collection of any tax, nor the duties of the officers relating thereto during the pendency of the appeal, however, all taxes received based on the appealed levy or portion thereof appealed shall be kept by the treasurer in a special fund without distribution. The commission shall give notice of the appeal to the county board of equalization, county clerk, county assessor, and county treasurer of each county in which the tax is levied. The county board of equalization, county clerk, county assessor, or county treasurer shall not be charged with notice of the appeal until notice is served by the commission.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1606; Laws 1947, c. 250, § 34, p. 801; Laws 1995, LB490, § 158; Laws 1997, LB269, § 44; Laws 2004, LB973, § 38.

Annotations

This section is a general statute which prescribes a procedure for taking an appeal from a levy made by the county board. In re 1983-84 County Tax Levy, 220 Neb. 897, 374 N.W.2d 235 (1985).

A taxpayer objecting to the setting of a nonresident high school tuition levy must give notice of appeal within ten days after the setting of the levy by the county board of equalization pursuant to section 79-436. In re 1981-82 County Tax Levy, 214 Neb. 624, 335 N.W.2d 299 (1983).

A plaintiff taxpayer appealing under the provisions of this section has the burden of proving that the levy complained of is in fact excessive and illegal. Werth v. Buffalo County Board of Equalization, 187 Neb. 119, 188 N.W.2d 442 (1971).

Levy and collection of tax for educational service unit may be tested by appeal but collection of tax may not be impeded. Frye v. Haas, 182 Neb. 73, 152 N.W.2d 121 (1967).

Individual taxpayer may appeal from action of county board of equalization in making levy of taxes on behalf of school district. C. R. T. Corp. v. Board of Equalization of Douglas County, 172 Neb. 540, 110 N.W.2d 194 (1961).

Question of proper boundaries of cemetery district could not be raised on appeal under this section. Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961).

77-1608. County tax levy; appeal by taxpayer; proceedings. The Tax Equalization and Review Commission shall hear the appeal and determine whether or not the levy appealed from or any part thereof is for an unlawful or unnecessary purpose or in excess of the requirements of the political subdivision. The decision of the commission shall be certified to the county assessor, county clerk, and county treasurer of each county in which the tax was levied to revise all tax records to reflect the corrected levy.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1608; Laws 1947, c. 250, § 35, p. 802; Laws 1997, LB269, § 46; Laws 2004, LB973, § 39.

Annotations

Question as to power of court to determine amount of levy, and to change levy accordingly, raised but not decided. C. R. T. Corp. v. Board of Equalization of Douglas County, 172 Neb. 540, 110 N.W.2d 194 (1961).

77-1610. Return of taxes paid; correction of tax rolls. If the tax books have been delivered to the county treasurer for collection of the taxes before the determination of the appeal by the Tax Equalization and Review Commission, then the county treasurer shall, upon receipt of the certified final decision of the commission, distribute or return to the taxpayers in accordance with such decision the appropriate amount of taxes paid and held pursuant to section 77-1606 and, if necessary, correct the tax rolls in his or her office to conform to such decision unless a further appeal is taken, in which case the county treasurer shall hold the taxes until the final determination of the appeal and thereupon distribute or return the same in conformity to such decision and, if necessary, correct the tax rolls.

Source: Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 256; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1610; Laws 1991, LB732, § 143; Laws 1992, LB360, § 37; Laws 1997, LB269, § 48; Laws 1998, LB306, § 26; Laws 2004, LB973, § 40.

77-1613. Tax list; preparation; when and by whom; form and contents. After the levy of taxes has been made and before November 20, the county assessor shall transcribe the assessments into a suitable book to be provided at the expense of the county, properly ruled and headed with the distinct columns in which shall be entered the description of the lands, number of acres and value, number of city and village lots and their value, taxable value of taxable personal property, delinquent taxes of previous years, the amount of taxes due on the day the first installment becomes due, and the amount of delinquent taxes due on the day the second installment thereof becomes due, as provided by law, in the event the taxpayer elects to pay taxes in two equal semiannual installments.

Source: Laws 1903, c. 73, § 139, p. 437; R.S.1913, § 6459; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5982; C.S.1929, § 77-1804; Laws 1931, c. 65, § 10, p. 184; Laws 1933, c. 136, § 1, p. 516; C.S.Supp.,1941, § 77-1804; Laws 1943, c. 175, § 2, p. 610; R.S.1943, § 77-1613; Laws 1945, c. 191, § 1, p. 591; Laws 1945, c. 189, § 2, p. 584; Laws 1947, c. 250, § 36, p. 802; Laws 1992, LB1063, § 132; Laws 1992, Second Spec. Sess., LB1, § 105; Laws 1997, LB269, § 49; Laws 1997, LB270, § 92; Laws 1998, LB306, § 27.

Annotations

As to precincts, taxation is matter of allocation by the supervisor or county clerk, after equalization by the county and state boards of equalization, and after levy has been made by the county board. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

After the levy is made, the county assessor shall transcribe the assessment into a suitable book which shall contain several specific columns for delinquent taxes of previous years. County of Sarpy v. Jansen Real Estate Co., 7 Neb. App. 676, 584 N.W.2d 824 (1998).

77-1613.01. Certification by county official to Property Tax Administrator; contents. The county assessor or county clerk shall certify to the Property Tax Administrator, on or before December 1 of each year, the total taxable valuation and the Certificate of Taxes Levied. The certificate shall be used for statistical purposes and shall specify the information necessary to determine the total taxable value, tax levies, and total property taxes requested by the political subdivisions for the current year on forms prescribed and furnished by the Tax Commissioner. The certificate shall include for each political subdivision a statement of the amount of property taxes sought and the tax levy made for (1) the payment of principal or interest on bonds issued by the political subdivision and (2) all other purposes.

Source: Laws 1913, c. 173, § 1, p. 525; R.S.1913, § 6389; Laws 1921, c. 133, art. VI, § 15, p. 560; C.S.1922, § 5853; C.S.1929, § 77-515; R.S.1943, § 77-628; Laws 1949, c. 227, § 3, p. 632; Laws 1951, c. 259, § 2, p. 885; Laws 1965, c. 478, § 4, p. 1541; Laws 1983, LB193, § 3; Laws 1985, LB268, § 24; R.S.1943, (1986), § 77-628; Laws 1989, Spec. Sess., LB7, § 3; Laws 1991, LB829, § 10; Laws 1992, LB719A, § 172; Laws 1995, LB490, § 159; Laws 1996, LB1362, § 7; Laws 1997, LB269, § 50; Laws 1998, LB306, § 28; Laws 2001, LB275, § 1; Laws 2007, LB334, § 80.

77-1613.02. Tax list; corrections; prohibited acts; violation; penalty. The county assessor or county clerk shall correct the assessment and tax rolls after action of the county board of equalization. Each correction shall be made in triplicate, each set of triplicate forms being consecutively numbered, and there shall be

entered upon such form all data pertaining to the assessment which is to be corrected. The correction shall show all additions and reductions, the amount of tax added or reduced, with the reason therefor, and the page or pages of the tax rolls upon which such change is to be made. The original copy shall be delivered to the county treasurer, the duplicate copy to the county clerk, and the triplicate copy shall remain in the office of the county assessor. The county assessor or county clerk shall provide upon demand a listing showing each entry and sorted by tax year. The county treasurer shall thereupon correct the tax roll to conform to the correction copy and all changes shall be made in red ink, drawing a line through the original or erroneous figures, but not erasing the same. No county assessor shall reduce or increase the valuation of any property, real or personal, without the approval of the county board of equalization. Any county assessor who shall willfully reduce or increase the valuation of any property, without the approval of the county board of equalization, as provided in this section, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty dollars nor more than one hundred dollars.

Source: Laws 1921, c. 133, art. XI, § 6, p. 592; C.S.1922, § 5903; C.S.1929, § 77-1006; Laws 1939, c. 100, § 1, p. 457; C.S.Supp.,1941, § 77-1006; R.S.1943, § 77-519; Laws 1947, c. 250, § 12, p. 791; Laws 1951, c. 261, § 1, p. 887; R.S.1943, (1986), § 77-519; Laws 1995, LB490, § 160; Laws 1997, LB270, § 93; Laws 2007, LB166, § 10.

Annotations

The purpose of this statute is to permit the county assessor to correct clerical errors in the tax list, not to correct alleged errors in valuation of property. Olson v. County of Dakota, 224 Neb. 516, 398 N.W.2d 727 (1987).

77-1613.04. Assessment roll and tax list; corrections. The county assessor after July 25, or after August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, and with approval of the county board of equalization shall correct the assessment roll and the tax list, if necessary, in the case of a clerical error as defined in section 77-128 that results in a change in the value of the real property. Clerical errors that do not result in a change of value on the assessment roll may be corrected at any time by the county assessor. All corrections to the tax list shall be made as provided in section 77-1613.02.

Source: Laws 1999, LB194, § 30; Laws 2005, LB283, § 7.

77-1614. Tax list; consolidated tax; how entered. All taxes which are uniform, throughout any precinct, township, school district, learning community, village, city, county, or other taxing subdivision of a county, shall be formed into a single tax, be entered upon the tax list in a double column, and be denominated a consolidated tax.

Source: Laws 1903, c. 73, § 140, p. 438; R.S.1913, § 6460; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5983; C.S.1929, § 77-1805; Laws 1933, c. 136, § 2, p. 517; C.S.Supp.,1941, § 77-1805; Laws 1943, c. 175, § 3(1), p. 611; R.S.1943, § 77-1614; Laws 1957, c. 334, § 1, p. 1168; Laws 1997, LB270, § 94; Laws 2006, LB1024, § 6.

Annotations

As to precincts, taxation is matter of allocation by the supervisor or county clerk, after equalization by the county and state boards of equalization, and after levy has been made by the county board. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

77-1615.01. Tax list; use of electronic data processing equipment; levy and collection of taxes. The county board of any county is authorized to direct that for all purposes of assessment of property, and for the levy and collection of taxes and special assessments, there shall be used tax records or random access devices suitable for use in connection with electronic data processing equipment or other mechanical office equipment, in accordance with procedures to be approved by the Property Tax Administrator. Such county board is also authorized to direct that a statement of taxes and special assessments be mailed or otherwise delivered to the person, firm, association, or corporation against whom such taxes are assessed. Failure to receive such statement shall not relieve the taxpayer from any liability to pay such taxes or assessments and penalties accrued thereon.

Source: Laws 1965, c. 464, § 1, p. 1475; Laws 1969, c. 676, § 1, p. 2601; Laws 1995, LB490, § 161.

77-1616. Tax list; delivery to county treasurer; when; warrant for collection. The tax list shall be completed by the county assessor and delivered to the county treasurer on or before November 22. At the same time the county assessor or county clerk shall transmit a warrant, which warrant shall be signed by the county assessor or county clerk and shall in general terms command the treasurer to collect taxes therein

mentioned according to law. No informality therein, and no delay in the transmitting of the same after the time above specified, shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this chapter. Whenever it shall be discovered that the warrant provided for in this section was not at the proper time attached to any tax list, or was not transmitted as herein provided for any preceding year or years, in the hands of the county treasurer, the county assessor shall forthwith attach or transmit such warrant, which shall be in the same form and have the same force and effect as if it had been attached to such tax list, or transmitted as herein provided, before the delivery thereof to the county treasurer.

Source: Laws 1903, c. 73, § 141, p. 438; R.S.1913, § 6461; C.S.1922, § 5984; C.S.1929, § 77-1806; Laws 1943, c. 175, § 4, p. 612; R.S.1943, § 77-1616; Laws 1945, c. 189, § 4, p. 586; Laws 1951, c. 265, § 1, p. 893; Laws 1969, c. 677, § 1, p. 2602; Laws 1997, LB269, § 52; Laws 1997, LB270, § 96; Laws 1998, LB306, § 29; Laws 2013, LB29, § 1.

Annotations

Informality in certificate of clerk to tax list could be supplied upon discovery of deficiency. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

County clerk has no power to make levy for additionally certified taxes after he has completed main tax list and delivered same to county treasurer. State ex rel. Long v. Barstler, 122 Neb. 167, 240 N.W. 273 (1931).

Collection of taxes on real estate cannot be enforced until May 1 following the time the tax list is placed in the hands of the county treasurer. Cornell v. Maverick Loan & Trust Co., 95 Neb. 9, 144 N.W. 1072 (1914).

Warrant is necessary to create a lien upon personal property. Platte Valley Milling Co. v. Malmsten, 79 Neb. 730, 113 N.W. 229 (1907).

Warrant must be attached to give treasurer jurisdiction to seize personal property, but is not essential to sale of real estate for taxes. Grant v. Bartholomew, 57 Neb. 673, 78 N.W. 314 (1899); Reynolds v. Fisher, 43 Neb. 172, 61 N.W. 695 (1895).

77-1617 Image

77-1617. Tax list; property of county; form. The tax list shall be the property of the county and shall be substantially in the form set forth in this section, with such additions and amendments thereto as may be necessary to make it conform to law.

Owners' Names
Description of Lands or Town Lots
Part of section or part of town
Section or lot
Town or block
Improvements on leased lands
Range
Acres
Value
No. School District
No. Road District
State and County Consolidated Tax
County and District Taxes
Road Tax
Sch. Dist. Tax
Sch. Dist. Bond Tax
Precinct Tax
Advertising
Total
No. of Receipt
Remarks

Source: Laws 1903, c. 73, § 142, p. 438; R.S.1913, § 6462; C.S.1922, § 5985; C.S.1929, § 77-1807; Laws 1943, c. 175, § 5, p. 612; R.S.1943, § 77-1617; Laws 1945, c. 189, § 5, p. 587; Laws 1949, c. 238, § 1, p. 650; Laws 1957, c. 334, § 2, p. 1169; Laws 1992, LB1063, § 133; Laws 1992, Second Spec. Sess., LB1, § 106; Laws 1997, LB270, § 97.

Annotations

Tax list made in conformity with statute is prima facie evidence that levy is as made, and conclusive as against claim of irregularities in making such levy. Holthaus v. Adams County, 74 Neb. 861, 105 N.W. 632 (1905).

Assessments being regularly entered, presumption is that officers did their duty and corrected errors and irregularities in manner provided by law. Chamberlain Banking House v. Woolsey, 60 Neb. 516, 83 N.W. 729 (1900).

77-1618. Tax list; entry of amount. As soon as the county treasurer receives the tax lists of the county, he or she shall enter in the column opposite the description of the property the amount of unpaid taxes with the year or years in which such taxes were due and the date of unredeemed sales, if any, for previous years on such property.

Source: Laws 1903, c. 73, § 143, p. 439; R.S.1913, § 6463; C.S.1922, § 5986; C.S.1929, § 77-1808; R.S.1943, § 77-1618; Laws 1992, LB1063, § 134; Laws 1992, Second Spec. Sess., LB1, § 107.

Annotations

Failure to enter delinquent taxes will not invalidate sale for taxes assessed for subsequent year. Carman v. Harris, 61 Neb. 635, 85 N.W. 848 (1901).

As soon as the county treasurer receives the tax lists, the treasurer shall enter the amount of unpaid taxes opposite each description. County of Sarpy v. Jansen Real Estate Co., 7 Neb. App. 676, 584 N.W.2d 824 (1998).

77-1619. Judgments against public corporations; payment by tax levy. Whenever any judgment shall be obtained in any court of competent jurisdiction in this state for the payment of a sum of money against any county, township, school district, road district, town or city board of education, or against any municipal corporation, or when any such judgment has been recovered and now remains unpaid, it shall be the duty of the county board, school district board of education, city council or other corporate officers, as the case may require, to make provision for the prompt payment of the same.

Source: Laws 1867 (Ter.), § 1, p. 13; R.S.1913, § 6464; C.S.1922, § 5987; C.S.1929, § 77-1809; R.S.1943, § 77-1619.

Annotations

Irrigation district is not a municipal corporation, and levy of taxes to pay judgment against it could not be made under this section. Loup County v. Rumbaugh, 151 Neb. 563, 38 N.W.2d 745 (1949).

Remedy is furnished to compel payment of judgments secured against governmental subdivisions. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

By providing a method of payment of judgment against county, policy of state is shown that judgment should not be a lien on specific county property. Fremont Foundry & Machine Co. v. Saunders County, 136 Neb. 101, 285 N.W. 115 (1939).

This section is not repealed by Omaha charter. Benner v. County Board of Douglas County, 121 Neb. 773, 238 N.W. 735 (1931).

Judgment for damages for breach of contract with school teacher must be collected from special levy. State ex rel. Hadsell v. Putnam, 103 Neb. 846, 174 N.W. 609 (1919).

Judgment becomes dormant after five years, if no levy is made and no proceedings begun to compel levy. Levy of tax to pay judgment will not revive it. Alter v. State of Nebraska, ex rel. Kountze Bros., 62 Neb. 239, 86 N.W. 1080 (1901).

Where judgments are rendered subsequent to general levy, it is duty of county board to make special levy. Jackson v. Washington County, 34 Neb. 680, 52 N.W. 169 (1892).

77-1620. Judgments against public corporations; payment by levy in addition to levy for ordinary purposes. If the amount of revenue derived from taxes levied and collected for ordinary purposes shall be insufficient to meet and pay the current expenses for the year in which the levy is made, and also to pay the judgments remaining unpaid, it shall be the duty of the proper officers of the corporation, against which any such judgments shall have been obtained and remain unsatisfied, to at once proceed and levy and collect a sufficient amount of money to pay off and discharge such judgments.

Source: Laws 1867 (Ter.), § 2, p. 13; R.S.1913, § 6465; C.S.1922, § 5988; C.S.1929, § 77-1810; R.S.1943, § 77-1620.

Annotations

A levy of tax for payment of judgment is unauthorized if no judgment exists at time of levy. Custer County v. Chicago, B. & Q. R. R. Co., 62 Neb. 657, 87 N.W. 341 (1901).

Board of equalization has power to levy tax on village or city of less than 5,000 inhabitants in excess of maximum rate for general purposes, to pay judgment, but not in school district. Dawson County v. Clark, 58 Neb. 756, 79 N.W. 822 (1899).

This section does not permit levy to pay judgment against county in excess of constitutional limit. Chase County v. Chicago, B. & Q. R. R. Co., 58 Neb. 274, 78 N.W. 502 (1899).

Courts will not control action of board of equalization in levying taxes to pay judgment where constitutional limit has been levied. State of Nebraska ex rel. Rock County v. Sheldon, 53 Neb. 365, 73 N.W. 694 (1898).

Municipality is required to levy tax to pay judgment for cost of utility plants in excess of bond issue, notwithstanding limitation of tax for general purposes. Village of Oshkosh v. State, 20 F.2d 621 (8th Cir. 1927).

77-1621. Judgments against public corporations; special tax levy; how collected. The tax shall be levied upon all the taxable property in the district, county, township, town or city bound by the judgment, and shall be collected in the same manner and at the same time provided by law for the collection of other taxes.

Source: Laws 1867 (Ter.), § 3, p. 13; R.S.1913, § 6466; C.S.1922, § 5989; C.S.1929, § 77-1811; R.S.1943, § 77-1621.

77-1622. Judgments against public corporations; duty of corporate authorities to make levy. The corporate officers whose duty it is to levy and collect taxes for the payment of the current expenses of any such corporation, against which a judgment may be so obtained, shall also be required to levy and collect the special tax herein provided for, for the payment of judgments.

Source: Laws 1867 (Ter.), § 4, p. 13; R.S.1913, § 6467; C.S.1922, § 5990; C.S.1929, § 77-1812; R.S.1943, § 77-1622.

Annotations

Mandamus will not lie to compel school officers to report amount of taxes necessary to pay judgment, while dormant. State of Nebraska ex rel. Craig v. School Dist. No. 2 of Phelps County, 25 Neb. 301, 41 N.W. 155 (1888).

Municipality is required to levy tax to pay judgment for cost of utility plants in excess of bond issue. Village of Oshkosh v. State, 20 F.2d 621 (8th Cir. 1927).

77-1623. Judgments against public corporations; failure or refusal of corporate authorities to levy; action against officers; mandamus. If any such corporate authorities, whose duty it is, under the provisions of sections 77-1601 to 77-1624, to so levy and collect the tax necessary to pay off any such judgment, fail, refuse, or neglect to make provision for the immediate payment of such judgments, after request made by the owner or any person having an interest therein, such officers shall become personally liable to pay such judgments, and the party or parties interested may have an action against such defaulting officers to recover the money due on the judgment, or he, she, or they having such interest may apply to the district court of the county in which the judgment is obtained, or to the judge thereof in vacation, for a writ of mandamus to compel the proper officers to proceed to collect the necessary amount of money to pay off such indebtedness, as provided in such sections. When a proper showing is made by the applicant for the writ, it shall be the duty of the district court or judge, as the case may be, to grant and issue the writ to the delinquents, and the proceedings to be had in the premises shall conform to the rules and practice of the court, and the laws in such cases made and provided.

Source: Laws 1867 (Ter.), § 5, p. 13; R.S.1913, § 6468; C.S.1922, § 5991; C.S.1929, § 77-1813; R.S.1943, § 77-1623; Laws 1995, LB490, § 162; Laws 2004, LB973, § 41.

Annotations

Mandamus will not lie to compel the issuance of a warrant upon the current funds of a school district to pay judgment for breach of contract with a school teacher. State ex rel. Hadsell v. Putnam, 103 Neb. 846, 174 N.W. 609 (1919).

Mandamus will not lie to enforce the levy of a tax in excess of constitutional or statutory limit. State of Nebraska ex rel. Young v. Royse, 71 Neb. 1, 98 N.W. 459 (1904).

Payment of judgment is by warrant. Mandamus will lie to enforce payment. State of Nebraska ex rel. Clark & Leonard Investment Co. v. Scotts Bluff County, 64 Neb. 419, 89 N.W. 1063 (1902).

Where county board has over a period of years failed to include judgments in annual estimate and levy, mandamus lies to compel performance. State ex rel. State Journal Co. v. Knievel, 5 Neb. Unof. 219, 97 N.W. 798 (1903).

Mandamus will lie to compel village to levy tax to pay judgment against village. Village of Oshkosh v. State of Nebraska, 20 F.2d 621 (8th Cir. 1927).

No demand upon the officers of a municipality to levy a tax is necessary before instituting proceedings for mandamus. United States ex rel. Masslich v. Saunders, 124 F. 124 (8th Cir. 1903).

Federal courts may issue writs of mandamus to compel the levy of a tax to pay judgments. Deuel County v. First National Bank of Buchanan County, Mo., 86 F. 264 (8th Cir. 1898).

77-1624. Taxes delinquent five or more years; collection; receipts; proration; remittance of state taxes to State Treasurer; how credited. It shall be the duty of the county treasurer for each and every county, when collecting personal and real estate taxes being delinquent five years or more, to receipt for such taxes on a receipt for the fifth delinquent year. Such taxes so collected shall be prorated in proportion to the levies applicable for the year levied. All state taxes when collected shall be remitted to the State Treasurer and by him or her credited to the fund or funds for which the levy or levies were made, and all county funds when collected shall be placed to the credit of the county general fund; all municipal, school district, learning community, township, precinct, and special funds shall be entered in separate columns. All taxes so consolidated shall be paid in order of priority of delinquency.

Source: Laws 1913, c. 235, § 1, p. 738; R.S.1913, § 6469; C.S.1922, § 5992; C.S.1929, § 77-1814; R.S.1943, § 77-1624; Laws 1963, c. 454, § 1, p. 1480; Laws 2006, LB1024, § 7.

ARTICLE 17
COLLECTION OF TAXES

77-1701. Collection of taxes; county treasurer tax collector; statements; contents; special assessments; de minimis amount; how treated.
77-1702. Collection of taxes; medium of payment.
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77-1701. Collection of taxes; county treasurer tax collector; statements; contents; special assessments; de minimis amount; how treated. (1) The county treasurer shall be ex officio county collector of all taxes levied within the county. The county board shall designate a county official to mail or otherwise deliver a statement of the amount of taxes due and a notice that special assessments are due, to the last-known address of the person, firm, association, or corporation against whom such taxes or special assessments are assessed or to the lending institution or other party responsible for paying such taxes or special assessments. Such statement shall clearly indicate, for each political subdivision, the levy rate and the amount of taxes due as the result of principal or interest payments on bonds issued by the political subdivision and shall show such rate and amount separate from any other levy. Beginning with tax year 2000, when taxes on real property are delinquent for a prior year, the county treasurer shall indicate this information on the current year tax statement in bold letters. The information provided shall inform the taxpayer that delinquent taxes and interest are due for the prior year or years and shall indicate the specific year or years for which such taxes and interest remain unpaid. The language shall read "Back Taxes and Interest Due For", followed by numbers to indicate each year for which back taxes and interest are due. Failure to receive such statement or notice shall not relieve the taxpayer from any liability to pay such taxes or special assessments and any interest or penalties accrued thereon. In any county in which a city of the metropolitan class is located, all statements of taxes shall also include notice that special assessments for cutting weeds, removing litter, and demolishing buildings are due.

(2) Notice that special assessments are due shall not be required for special assessments levied by sanitary and improvement districts organized under Chapter 31, article 7, except that such notice may be provided by the county at the discretion of the county board or by the sanitary and improvement district with the approval of the county board.

(3) A statement of the amount of taxes due and a notice that special assessments are due shall not be required to be mailed or otherwise delivered pursuant to subsection (1) of this section if the total amount of the taxes and special assessments due is less than two dollars. Failure to receive the statement or notice shall not relieve the taxpayer from any liability to pay the taxes or special assessments but shall relieve the taxpayer from any liability for interest or penalties. Taxes and special assessments of less than two dollars shall be added to the amount of taxes and special assessments due in subsequent years and shall not be considered delinquent until the total amount is two dollars or more.

Source: Laws 1903, c. 73, § 144, p. 439; R.S.1913, § 6473; C.S.1922, § 5996; C.S.1929, § 77-1901; R.S.1943, § 77-1701; Laws 1969, c. 678, § 1, p. 2604; Laws 1979, LB150, § 1; Laws 1981, LB179, § 12; Laws 1983, LB391, § 4; Laws 1995, LB412, § 1; Laws 1996, LB1362, § 8; Laws 1999, LB194, § 31; Laws 1999, LB881, § 7; Laws 2000, LB968, § 60.

Annotations

A valid claim for personal taxes is a lien against the assets of an estate and has priority over the preferred claims provided for under the decedent act. In re Estate of Badberg, 130 Neb. 216, 264 N.W. 467 (1936).

Notice to county treasurer is not demand on treasurer of district required as condition precedent to bringing suit for refund of school taxes. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

State, county, and municipal taxes are a first lien upon the assets of an insolvent state bank in hands of receiver and claim need not be filed as ordinary claims of creditor. State ex rel. Spillman v. Ord State Bank, 117 Neb. 189, 220 N.W. 265 (1928).

Taxes due to new county if paid to treasurer of old county, may be recovered back. Fremont, E. & M. V. R. R. Co. v. Holt County, 28 Neb. 742, 45 N.W. 163 (1890).

Taxes, levied and not due in unorganized county, are to be paid to treasurer of new county upon organization. Morse v. Hitchcock County, 19 Neb. 566, 27 N.W. 637 (1886).

Upon organization of a new county, all taxes due to it are to be paid to its treasurer. Fremont, E. & M. V. R. R. Co. v. Brown County, 18 Neb. 516, 26 N.W. 194 (1886).

77-1702. Collection of taxes; medium of payment. State warrants are receivable for the amount payable into the state treasury on account of tax levied for general state purposes. County warrants are receivable for the amount payable into the county treasury for general purposes. City warrants shall be received for the city general tax, village warrants for the village general tax, and town warrants for the town general tax. State, city, village, or township taxes, levied for other special purposes, may be paid by warrants drawn and payable out of the particular fund on account of which they are tendered. Lawful money of the United States, checks, drafts, credit cards, charge cards, debit cards, money orders, electronic funds transfers, or other bills of exchange may be accepted in payment of any state, county, village, township, school district, learning community, or other governmental subdivision tax, levy, excise, duty, custom, toll, penalty, fine, license, fee, or assessment of whatever kind or nature, whether general or special.

Source: Laws 1903, c. 73, § 145, p. 440; R.S.1913, § 6474; C.S.1922, § 5997; C.S.1929, § 77-1902; R.S.1943, § 77-1702; Laws 1959, c. 353, § 3, p. 1245; Laws 1965, c. 492, § 1, p. 1578; Laws 1997, LB70, § 5; Laws 2002, LB994, § 21; Laws 2006, LB1024, § 8.

Annotations

Treasurer has no authority to receive anything but lawful money, and may refuse check or draft, but, if accepted and paid, will operate as payment. Richards v. Hatfield, 40 Neb. 879, 59 N.W. 777 (1894).

77-1703. Collection of taxes; separate payments; special assessments. The treasurer shall receive taxes on part of any real property charged with taxes when a particular specification of the part is furnished. If the tax on the remainder of such real property remains unpaid, the treasurer shall enter such specification in his or her return so that the part on which the tax remains unpaid may be clearly known.

The tax may be paid on an undivided share of real property. In such case the treasurer shall designate on the record upon whose undivided share the tax has been paid.

The treasurer shall receive from any taxpayer at any time the amount due on account of special assessments of any kind including those levied for the use of any irrigation district whether other taxes on the same real property are paid or not. In such case, the tax receipt shall plainly show exactly what assessments have been paid and that no other tax on the real property has been received by the treasurer.

Source: Laws 1903, c. 73, § 146, p. 440; R.S.1913, § 6475; C.S.1922, § 5998; Laws 1927, c. 181, § 1, p. 522; C.S.1929, § 77-1903; Laws 1937, c. 167, § 31, p. 660; Laws 1939, c. 98, § 31, p. 447; Laws 1941, c. 157, § 31, p. 631; C.S.Supp.,1941, § 77-1903; R.S.1943, § 77-1703; Laws 1992, LB1063, § 135; Laws 1992, Second Spec. Sess., LB1, § 108.

Annotations

This section gives proper parties right to redeem in part, and right of county treasurer to accept the amount due on special assessments of any kind, but does not determine the right to reapportionment of special assessments. Village of Winside v. Brune, 133 Neb. 80, 274 N.W. 212 (1937).

Amendment made in 1927 indicated legislative intent in the matter of payment of special assessments. State ex rel. Todd v. Thomas, 127 Neb. 891, 257 N.W. 265 (1934).

Continued assessment of portion of tract of land under contract of sale in name of vendor, along with other land in tract, at one aggregate amount, does not render entire tax based thereon void. Haarmann Vinegar & Pickle Co. v. Douglas County, 122 Neb. 643, 241 N.W. 117 (1932).

Opportunity is preserved to taxpayer to pay and discharge taxes justly assessable on undivided share in land. Matthews v. Guenther, 120 Neb. 742, 235 N.W. 98 (1931).

77-1704. Collection of taxes; entry of payment; receipt. Whenever any person pays some or all of the taxes charged on any property, the treasurer shall enter such payment in his or her books and may give a receipt therefor specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the tax was paid, according to its description in the treasurer's books, in whole or in part of such description as the case may be.

If requested by the payor, the treasurer shall provide a receipt indicating payment. Such entry and receipts shall bear the county name and the name of the treasurer or his or her deputy receiving the payment. Whenever it appears that any receipt for the payment of taxes is lost or destroyed, the entry so made may be read in evidence in lieu thereof. The treasurer shall enter the name of the owner or of the person paying the tax opposite each tract or lot of land when he or she collects the tax thereon and the post office address of the person paying the tax. A statement shall be entered by the treasurer on such receipt showing the amount of unpaid taxes and the date of unredeemed tax sales, if any, for the previous year or years upon such land or town lot. If the treasurer fails or neglects to note on such receipt the unpaid taxes or the date of unredeemed

tax sales as provided in this section, he or she shall be liable on his or her bond to the person injured thereby in the amount of the tax so omitted.

Source: Laws 1903, c. 73, § 147, p. 440; R.S.1913, § 6476; C.S.1922, § 5999; C.S.1929, § 77-1904; Laws 1937, c. 167, § 32, p. 660; Laws 1939, c. 98, § 32, p. 447; Laws 1941, c. 157, § 32, p. 631; C.S.Supp.,1941, § 77-1904; R.S.1943, § 77-1704; Laws 1992, LB1063, § 136; Laws 1992, Second Spec. Sess., LB1, § 109; Laws 1993, LB346, § 18; Laws 2000, LB968, § 61; Laws 2012, LB851, § 1.

Annotations

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Mistake of collector in not collecting all that is due does not release balance of tax. Johnson v. Finley, 54 Neb. 733, 74 N.W. 1080 (1898).

Demand upon officers to keep the books in lawful manner must be made before mandamus will lie to compel performance. State ex rel. Tutton v. Eberhardt, 14 Neb. 201, 15 N.W. 320 (1883).

77-1704.01. Collection of taxes; notice; receipt; statement; contents. (1) The county treasurer shall include with each tax notice to every taxpayer and with each receipt provided to a taxpayer the following information:

(a) The total amount of aid from state sources appropriated to the county and each city, village, and school district in the county;

(b) The net amount of property taxes to be levied by the county and each city, village, school district, and learning community in the county;

(c) For real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, learning community, and other subdivisions for the tax year and for the immediately past year on the same parcel; and

(d) For taxes levied for fiscal year 2017-18 on real property within a learning community, statements explaining that the school district levies for learning community member districts are increasing, in part, as a result of the expiration of the learning community common levies, the proceeds of which were distributed directly to school districts, and that the remaining learning community levies fund activities of the learning community.

(2) The necessary form for furnishing the information required by subdivisions (1)(a), (b), and (d) of this section shall be prescribed by the Department of Revenue. The necessary information required by subdivision (1)(a) of this section shall be furnished to the county treasurer by the Department of Revenue prior to October 1 of each year. The form prescribed by the Department of Revenue shall contain the following statement:

THE AMOUNT OF STATE FUNDS SHOWN ABOVE WOULD HAVE BEEN ADDITIONAL PROPERTY TAXES IF NOT ALLOCATED TO THE COUNTY, CITY, VILLAGE, AND SCHOOL DISTRICT BY THE LEGISLATURE.

Source: Laws 1972, LB 674, § 1; Laws 1995, LB 490, § 163; Laws 1997, LB 270, § 98; Laws 1999, LB 881, § 8; Laws 2006, LB 1024, § 9; Laws 2012, LB851, § 2; Laws 2016, LB1067, § 8.

77-1704.02. Collection of taxes; partial payments; when authorized. (1) Any county board may pass a resolution to allow payments for the discharge of current or delinquent real property taxes, personal property taxes, or both or any charges for interest, publication, penalties, or other charges by reason of the delinquency of such taxes to be held in escrow by the county treasurer or may contract with another party to hold such payments in escrow. Upon passage of such a resolution or such other effective date as the resolution may provide, the county treasurer shall accept payments in accordance with the resolution or any subsequent amendments thereto and hold such amounts until the accumulated payments are sufficient to pay at least one-half the taxes currently due on the property or the full amount of delinquency and any interest, penalties, or other charges due to the delinquency. The resolution of the county board may require a minimum, limited, or periodic payment amount as a condition for acceptance of payments to be held in escrow. The resolution may also require that an escrow agreement be executed between the person making payment and the county treasurer as a condition for accepting payments.

(2) Payments held in escrow under this section may be held in a designated bank account or may be commingled with other county funds. Such amounts are the property of the person making payment and shall be held in trust for the benefit of such person and be accounted for with respect to the property for which the current or delinquent taxes are to be paid. The county may pay interest on amounts held in escrow at a rate to

be determined by the county board or may retain any interest received. Upon sale of the property, any amounts held in escrow with respect to that property shall be returned to the person that made the payment or applied as directed by such person.
(3) Payments held in escrow for payment of delinquent taxes shall be applied to the oldest delinquencies first. Payments held in escrow for payment of delinquent taxes shall not affect any collection procedure that is underway or available to the county until the delinquency is fully satisfied.

Source: Laws 2000, LB968, § 62.

77-1705. Collection of taxes; tax receipt; form; required information. The tax receipt shall be substantially in the following form, with such additions and amendments thereto as may be necessary to make it conform to law:
$..... Treasurer's Office ..... County, Nebraska ..... 20....
Received of .....
In full or in part the taxes for the year 20.... on the following described property:
.....
..... Deputy ..... Treasurer.
If the tax is paid upon real property or personal property, the receipt shall describe the same as described in the tax list and give the valuation thereof.

Source: Laws 1903, c. 73, § 148, p. 441; R.S.1913, § 6477; C.S.1922, § 6000; Laws 1929, c. 167, § 1, p. 576; C.S.1929, § 77-1905; R.S.1943, § 77-1705; Laws 1957, c. 334, § 3, p. 1170; Laws 1995, LB490, § 164;Laws 2000, LB968, § 63.

77-1706. Collection of taxes; receipts; how numbered. All receipts issued by the county treasurer for taxes paid to him or her shall be numbered consecutively.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(1), p. 607; R.S.1943, § 77-1706; Laws 1945, c. 189, § 6, p. 589; Laws 1993, LB346, § 19; Laws 1997, LB269, § 53; Laws 1997, LB270, § 99; Laws 2003, LB292, § 13; Laws 2012, LB851, § 3.

Annotations

Tax receipt alone is not sufficient to establish fact of levy or assessment. Adams v. Osgood, 55 Neb. 766, 76 N.W. 446 (1898).

77-1707. Collection of taxes; receipts; accountability of county treasurer. The county treasurer shall be held strictly accountable for all receipts, including receipts found missing at regular settlement, and also for all detached receipts. All irregularities in the issuance of receipts that render them worthless must be shown on the face of the receipt.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(2), p. 608; R.S.1943, § 77-1707; Laws 2003, LB292, § 14; Laws 2012, LB851, § 4.

77-1708. Collection of taxes; county treasurer; cash book. The county treasurer is required to keep a cash book in which he or she shall enter an account of all money received, specifying in proper columns provided for that purpose the date of payment, the number of the receipt issued therefor, and on account of what fund or funds the same was paid, whether state, county, school, learning community, road, sinking fund or otherwise, each in separate columns, and the total amount for which the receipt was given in another column. The treasurer shall keep the account of money received for and on account of taxes separate and distinct from money received on any other account. He or she shall also keep the account of money received for and on account of taxes levied and assessed for any one year separate and distinct from those levied and assessed for any other year. All entries in the cash book of money received for taxes shall be in the numerical order of the receipts issued therefor.

Source: Laws 1903, c. 73, § 151, p. 443; Laws 1913, c. 185, § 1, p. 561; R.S.1913, § 6480; C.S.1922, § 6003; C.S.1929, § 77-1908; Laws 1937, c. 167, § 33, p. 661; Laws 1937, c. 171, § 1, p. 678; Laws 1939, c. 98, § 33, p. 448; Laws 1941, c. 157, § 33, p. 632; C.S.Supp.,1941, § 77-1908; R.S.1943, § 77-1708; Laws 2006, LB1024, § 10.

77-1710. Collection of taxes; payments; how indicated on tax lists; county treasurer; duties. Whenever any taxes are paid, the county treasurer shall enter on the tax lists, opposite the description of real estate or personal property whereon the same was levied, the word "paid", together with the date of such payment, and

the name of the person paying the same, which entry shall be prima facie evidence of such payment. The county treasurer shall maintain a record of the total tax assessed and monthly total tax collections.

Source: Laws 1903, c. 73, § 152, p. 443; R.S.1913, § 6481; C.S.1922, § 6004; C.S.1929, § 77-1909; R.S.1943, § 77-1710; Laws 2002, LB994, § 22; Laws 2013, LB29, § 2.

77-1711. Collection of taxes; personal property; chargeable to county treasurer; liability for collection. Upon delivery to the county treasurer of the tax list, as herein provided, all personal taxes levied in the county shall be charged to him, and he and his bondsmen shall be liable therefor, unless the same are collected or he shall show a compliance with the duties imposed upon him by law for the collection thereof.

Source: Laws 1903, c. 73, § 153, p. 443; R.S.1913, § 6482; C.S.1922, § 6005; C.S.1929, § 77-1910; Laws 1937, c. 167, § 6, p. 640; Laws 1939, c. 98, § 6, p. 425; Laws 1941, c. 157, § 6, p. 611; C.S.Supp.,1941, § 77-1910; R.S.1943, § 77-1711.

Annotations

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

77-1715. Collection of taxes; personal tax roll; publication fees. Payment for publication of the personal tax roll shall be made in the same manner as the publication of commissioners' proceedings; *Provided*, the total charge for publication shall not exceed the rate paid for publishing commissioners' proceedings.

Source: Laws 1915, c. 226, § 4, p. 527; C.S.1922, § 6009; C.S.1929, § 77-1914; R.S.1943, § 77-1715; Laws 1959, c. 353, § 4, p. 1245; Laws 1961, c. 377, § 8, p. 1161.

Cross References

For legal rate for publications, see section 33-141.

77-1716. Collection of taxes; notice to taxpayer. The county treasurer shall, at any time prior to January 1 of each year, send a notice to each person on the personal tax roll and each person owing real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, advising such taxpayer of the amount of such taxes owed for that year.

Source: Laws 1903, c. 73, § 154, p. 443; R.S.1913, § 6483; C.S.1922, § 6010; C.S.1929, § 77-1915; Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1716; Laws 1995, LB452, § 31; Laws 1995, LB490, § 165; Laws 1998, LB306, § 30; Laws 2000, LB968, § 64; Laws 2010, LB873, § 1.

77-1717. Collection of taxes; procedure. After September 1 of each year next after the personal taxes and real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land for the last preceding year have become delinquent, the county treasurer shall collect the same, together with interest and costs of collection, by distress and sale of personal property, mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land belonging to the person against whom levied, in the manner provided by law, for the levy and sale of personal property on execution.

Source: Laws 1903, c. 73, § 154, p. 443; R.S.1913, § 6483; C.S.1922, § 6010; C.S.1929, § 77-1915; Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1717; Laws 1998, LB306, § 31; Laws 2000, LB968, § 65.

Annotations

1. Collection by distress warrant

Property in possession of vendee under conditional sale contract is subject to distraint for unpaid personal taxes of vendee. Landis Machine Co. v. Omaha Merchants Transfer Co., 142 Neb. 389, 9 N.W.2d 198 (1943).

Issuance of distress warrants for collection of taxes is a summary remedy provided by statute. Krug v. Hopkins, 132 Neb. 768, 273 N.W. 221 (1937).

Local officers cannot enforce collection of taxes on unused roadbed by distress warrant. Chicago, B. & Q. R. R. Co. v. Custer County, 69 Neb. 429, 95 N.W. 859 (1903).

When statute provides remedy for collection of taxes, that remedy is exclusive. Chamberlain v. Woolsey, 66 Neb. 141, 92 N.W. 181 (1902), affirmed on rehearing 66 Neb. 149, 95 N.W. 38 (1903); County Board of Dawes County v. Furay, 5 Neb. Unof. 507, 99 N.W. 271 (1904).

Sale of property under distress warrant, upon which valid mortgage exists, is wrongful to extent and for the years that mortgage lien is superior to tax lien. Chamberlain Banking House v. Woolsey, 60 Neb. 516, 83 N.W. 729 (1900).

Statute of limitations is not applicable to the collection of delinquent taxes by distress. Price v. Lancaster County, 18 Neb. 199, 24 N.W. 705 (1885).

2. Miscellaneous

A valid claim for personal taxes is a lien against the assets of an estate derived from sale of personal property. In re Estate of Badberg, 130 Neb. 216, 264 N.W. 467 (1936).

Personal taxes may be paid in two equal installments, and if first installment is paid before delinquency, payment of second installment is deferred. Lincoln Tel. & Tel. Co. v. Albers, 126 Neb. 329, 253 N.W. 429 (1934).

Treasurer may maintain action of replevin to gain possession of property on which taxes are lien. Reynolds v. Fisher, 43 Neb. 172, 61 N.W. 695 (1895).

Local officers have no right to seize or sell personal property for real estate taxes. State ex rel. Kinzer v. Cain, 18 Neb. 631, 26 N.W. 371 (1886).

Tax upon personalty of decedent is claim against estate and should be filed with county judge. Millett v. Early, 16 Neb. 266, 20 N.W. 352 (1884).

77-1718. Collection of taxes; notice; issuance of distress warrant; affidavit of poverty; interest. On or before November 1 of each year, the county treasurer shall issue and deliver to the sheriff of the county distress warrants against all persons having delinquent personal tax or real estate tax on a mobile home, cabin trailer, manufactured home, or similar property assessed and taxed as improvements to leased land for that year (1) unless such a person shall have paid such delinquent taxes in full, on or before September 1, with interest at the rate specified in section45-104.01, as such rate may from time to time be adjusted by the Legislature, or (2) unless such person shall, on or before September 1, file with the treasurer an affidavit that he or she is unable by reason of poverty to pay any such tax, in which case a distress warrant shall not be issued until ordered by the county board. At least twenty days prior to the issuance of a distress warrant, the county treasurer shall mail a notice to the delinquent taxpayer that, unless payment of the delinquent tax is made within twenty days, a distress warrant will be issued. Each such distress warrant shall include all delinquent taxes of the person against whom issued. When distress warrants have been issued and turned over to the sheriff, the county treasurer shall report and certify to the county board the total number of distress warrants issued and the total amount of money involved.

Source: Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1718; Laws 1947, c. 259, § 1, p. 846; Laws 1969, c. 646, § 2, p. 2564; Laws 1980, LB689, § 3; Laws 1981, LB167, § 43; Laws 1986, LB817, § 14; Laws 1998, LB306, § 32; Laws 2000, LB968, § 66.

77-1719. Collection of taxes, personal; service and return of distress warrants; time allowed. All distress warrants issued by the treasurer for the collection of taxes shall be served by the sheriff of the county in the same manner as an execution issued by the district court. Within nine months, except in counties having a population over one hundred thousand inhabitants and in those counties two years, after receiving the current distress warrants from the county treasurer, the sheriff shall make return of the distress warrants to the treasurer of the county. Such distress warrants shall bear an endorsement of the sheriff showing that (1) the taxes therein described have been collected, (2) upon diligent search no property could be found on which to levy, or (3) the delinquent taxpayer has filed an affidavit with the sheriff before making of return of such distress warrant that such taxpayer is unable by reason of poverty to pay such tax and the sheriff shall certify that the property, if any, of the delinquent taxpayer is not worth in value the cost of advertising such property for sale.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(1), p. 847; Laws 1963, c. 455, § 1, p. 1481; Laws 1991, LB59, § 1.

Annotations

Sheriff proceeds in same manner as upon execution from justice court, and there is a legal presumption that his official acts in selling personal property under a distress warrant are properly and rightfully done. Krug v. Hopkins, 132 Neb. 768, 273 N.W. 221 (1937).

77-1719.01. Collection of taxes, personal; sheriff; report. On or before August 1 of each year, the sheriff shall report to the county board showing the total amount collected on current distress warrants and the amount remaining uncollected.

Source: Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(2), p. 847; Laws 1984, LB835, § 14; Laws 1998, LB306, § 33.

77-1719.02. Collection of taxes, personal; report of sheriff; county treasurer; verify; false return; notice; hearing; finding; penalty. On or before October 1 of each year, the county treasurer shall verify this report to the county board, and shall make an itemized report covering the amount uncollected. Such itemized report shall include the number of the distress warrant, the name and address of the taxpayer, the amount involved, and the reason for failure to collect same, or the failure of the sheriff to make a legal return on same. If such report of the county treasurer to the county board shows any false return by the sheriff, or failure to make legal return, the county board shall direct the sheriff to appear at a public hearing at a time to be fixed by such board. Notice of the hearing shall be given to the sheriff at least ten days prior thereto. At such hearing, the board shall hear evidence and make its findings as to whether there has been willful neglect of duty on the part of the sheriff. If the board shall find that there has not been willful neglect of duty it shall enter an order finding that the sheriff should be absolved from any liability for failure to collect such distress warrants. If the board shall find there has been willful neglect of duty, it shall cause proceedings to be instituted under sections 23-2001 to 23-2009 to remove such sheriff from office. Failure of the sheriff to comply with the requirements of sections 77-1719 and 77-1719.01 shall be prima facie evidence of willful neglect of duty and willful maladministration in office. The failure or refusal of any member of the county board to carry out the provisions of sections 77-1718 to 77-1719.04 shall be deemed a Class III misdemeanor.

Source: Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(3), p. 847; Laws 1977, LB39, § 224; Laws 1998, LB306, § 34.

77-1719.03. Collection of taxes, personal; distress warrant; acceptance of partial payment. In any case where any distress warrant includes taxes for one year or more, the sheriff may, in his or her discretion, accept partial payment and shall pay the same, as received, to the county treasurer, who shall accept the same and receipt the sheriff therefor. Pursuant to section 77-1704.02, the county treasurer may accept the partial payment and hold such amounts until the accumulated payments are sufficient to pay the full amount of the delinquency for one year and any interest, penalties, or other charges due to the delinquency. Notwithstanding any partial payment, the sheriff shall make levy and return thereof, on the distress warrant, as required by law.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(4), p. 848; Laws 1963, c. 456, § 1, p. 1482; Laws 2005, LB18, § 1.

77-1719.04. Collection of taxes, personal; false return; damages. For knowingly making a false return, the officer shall be liable for double the amount of taxes, with interest and costs, to be recovered in the name of the county.

Source: Laws 1903, c. 73, § 155, p. 444; Laws 1911, c. 106, § 1, p. 385; R.S.1913, § 6484; C.S.1922, § 6011; C.S.1929, § 77-1916; Laws 1943, c. 181, § 2, p. 628; R.S.1943, § 77-1719; Laws 1947, c. 259, § 2(5), p. 848.

77-1719.05. Collection of taxes, personal; distress warrant; forwarding to another county. When the sheriff of the county in which a distress warrant has been issued is unable to serve the same because the taxpayer has moved from the county he shall, if the taxpayer is known to him to be actually residing in some other county in this state, forward such distress warrant to the sheriff of such county. Such sheriff shall serve and return it in the same manner in all respects as though it had originated in his county, except that the return thereof shall be made to the sheriff of the originating county on or before June 1 next following its issuance. The sheriff actually serving such warrant shall be allowed the fees and mileage allowed by section 77-1720.

Source: Laws 1957, c. 335, § 1, p. 1172.

77-1720. Collection of taxes, personal; levy and return of distress warrants; fees and commissions; mileage. All fees allowed for issuing distress warrants, levy, and return of the warrants, in the cases above provided, shall be two dollars for issuing each warrant, one dollar for levy, and mileage at the rate provided in section 33-117 for county sheriffs for each mile actually and necessarily traveled by such officer on each

warrant. When the officer has more than one warrant in his or her hands for service, he or she shall charge only for the mileage actually and necessarily traveled in serving all of the warrants, in which case the mileage so charged shall be prorated among such warrants. Commission shall be allowed in addition on all taxes collected by distress and sale as follows: On all sums not exceeding one hundred dollars, ten cents on each dollar; and on all sums exceeding one hundred dollars, eight cents on each dollar. All fees, mileage, and commissions shall be taxed to the parties against whom the distress warrants run and shall be collected as the original tax. When the taxes are not collected by distress and sale, the mileage shall be paid as provided in section 33-117. When mileage has been paid as provided in section 33-117 and the tax, together with all fees, mileage, and commission are collected, then the amount collected as mileage shall be paid to the county treasurer with the fees and commission and credited by the county treasurer to the general fund of the county.

Source: Laws 1903, c. 73, § 156, p. 444; R.S.1913, § 6485; C.S.1922, § 6012; C.S.1929, § 77-1917; R.S.1943, § 77-1720; Laws 1947, c. 123, § 2, p. 361; Laws 1951, c. 266, § 2, p. 897; Laws 1957, c. 70, § 7, p. 300; Laws 1959, c. 84, § 4, p. 387; Laws 1965, c. 493, § 1, p. 1579; Laws 1981, LB204, § 151; Laws 1989, LB324, § 1.

Annotations

Under former law, sheriff could not charge fee for a return upon distress warrant, "No property found". Red Willow County v. Smith, 67 Neb. 213, 93 N.W. 151 (1903).

Collector has no right to charge commission unless he has made distress and sale. Kane v. Union P. R. R. Co., 5 Neb. 105 (1876).

77-1721. Collection of taxes; distress warrants; record of county treasurer; exoneration from liability on bond. The county treasurer shall, in a book containing the personal tax list and the list of all delinquent taxes levied on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land in columns provided therefor, keep a record of the date of issue of each distress warrant, and of the return thereon, showing in detail the amount collected, or the fact that no personal property, mobile home, cabin trailer, manufactured home, or similar property assessed and taxed as improvements to leased land belonging to the tax delinquent was found. All distress warrants shall upon their return be filed and kept by the treasurer as a part of the records of his or her office. The collection of any item of taxes, the showing by affidavit of poverty, duly approved, or the return of a distress warrant showing no property found shall relieve him or her and his or her bondsperson from responsibility of that item of taxes.

Source: Laws 1903, c. 73, § 157, p. 445; R.S.1913, § 6486; C.S.1922, § 6013; C.S.1929, § 77-1918; R.S.1943, § 77-1721; Laws 2000, LB968, § 67.

77-1722. Collection of taxes, personal; distress warrant uncollected; suit by county treasurer. Upon the return of any distress warrant uncollected it shall be the duty of the treasurer, when directed so to do by the county board, to commence suit and prosecute the same to judgment, and no property whatever shall be exempt from levy and sale upon process issued on such judgment.

Source: Laws 1903, c. 73, § 157, p. 445; R.S.1913, § 6486; C.S.1922, § 6013; C.S.1929, § 77-1918; R.S.1943, § 77-1722.

77-1723. Collection of taxes, personal; distress warrant; removal from county of taxpayer; alias distress warrants. It shall be the duty of the sheriff or his deputy in making return of the distress warrant to note in such return the county to which any such delinquent taxpayer may have removed, with the date of his removal, if he shall be able to ascertain such fact, and it is made his duty to make diligent inquiry therefor. It shall be the duty of the several county treasurers in the state, immediately after the return of such distress warrant, to issue an alias distress warrant to the sheriff of any county in this state into which such taxpayer may have removed, or may reside, or in which his personal property may be found, who shall proceed to collect such taxes the same as upon execution, together with his costs, and after so collecting to forward the same with such warrant, and his return thereon, to the treasurer of the county wherein such distress warrant was issued.

Source: Laws 1903, c. 73, § 158, p. 445; Laws 1913, c. 225, § 1, p. 655; R.S.1913, § 6487; C.S.1922, § 6014; C.S.1929, § 77-1919; R.S.1943, § 77-1723.

77-1724. Collection of taxes, personal; return of property to owner upon payment; sale; notice. When any goods and chattels have been taken on any distress warrants, they shall be returned to the owner by the officer having distrained them immediately upon payment of the taxes due with interest and costs, but upon

such owner's refusal or neglect to make such payment or to give a good and sufficient bond for the delivery of the goods and chattels, the officer distraining shall keep them at the expense of the owner and shall give notice of the time and place of their sale not less than twice prior to the date of the sale in the same manner as provided in section 25-1525 with the first notice given within nine days after the date of the taking. The time of sale shall not be more than twenty days from the date of taking, but the officer may adjourn the sale from time to time not exceeding five days in all. In case of adjournment he or she shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping the property, and fees for sale shall be returned to the owner, and the county treasurer shall on demand render an account in writing of the sale and charges.

Source: Laws 1903, c. 73, § 159, p. 446; R.S.1913, § 6488; C.S.1922, § 6015; C.S.1929, § 77-1920; R.S.1943, § 77-1724; Laws 1990, LB844, § 1.

Annotations

If sheriff receives no bid which, in his judgment, is adequate, he may either postpone the sale or make a return and secure an alias distress warrant. Krug v. Hopkins, 132 Neb. 768, 273 N.W. 221 (1937).

77-1725.01. Collection of taxes; real property; removal or demolition; public officials; duties; lien on personal property. Except in any city or village that has adopted a building code with provisions for demolition of unsafe buildings or structures, it shall be the duty of any assessor, sheriff, constable, city council member, and village trustee to at once inform the county treasurer of the removal or demolition of or a levy of attachment upon any item of real property known to him or her. It shall be the duty of the county treasurer to immediately proceed with the collection of any delinquent or current taxes when such acts become known to him or her in any manner. The taxes shall be due and collectible, which taxes shall include taxes on all real property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to remove or demolish all or a substantial portion of his or her real property or (2) a levy of attachment is made upon the real property. From the date the taxes are due and collectible, the taxes shall be a first lien upon the personal property of the person to whom assessed until paid.

Source: Laws 1992, LB1063, § 137; Laws 1992, Second Spec. Sess., LB1, § 110.

77-1727. Collection of taxes; injunction and replevin prohibited; exceptions. No injunction shall be granted by any court or judge in this state (1) to restrain the collection of any tax, or any part thereof, or (2) to restrain the sale of any property for the nonpayment of any such tax.

No person shall be permitted to recover by replevin, or other process, any property taken or restrained by the county treasurer for the nonpayment of any tax, except such tax or the part thereof enjoined in case of injunction, levied or assessed for illegal or unauthorized purpose.

No injunction shall be granted or recovery by replevin shall be permitted unless the person has first successfully argued before a court of competent jurisdiction that the tax levied or collected was levied or assessed for illegal or unauthorized purpose.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1727; Laws 1991, LB829, § 11.

Annotations

1. Injunction proper

Injunctive relief is only available where a tax is void or levied for an illegal or unauthorized purpose. Ganser v. County of Lancaster, 215 Neb. 313, 338 N.W.2d 609 (1983).

Injunction was proper where land sought to be assessed did not derive any benefit from new water main. Wiborg v. City of Norfolk, 176 Neb. 825, 127 N.W.2d 499 (1964).

Where value of property is increased without notice to owner, collection of tax on increase may be enjoined. Babin v. County of Madison, 161 Neb. 536, 73 N.W.2d 807 (1955).

Where tax is void for want of jurisdiction, injunction is proper. Offutt Housing Co. v. County of Sarpy, 160 Neb. 320, 70 N.W.2d 382 (1955).

Where special assessments against railroad right-of-way were illegal, injunction would lie. Chicago & N. W. Ry. Co. v. City of Omaha, 156 Neb. 705, 57 N.W.2d 753 (1953).

Injunction can issue against void occupation tax. Best & Co. Inc. v. City of Omaha, 149 Neb. 868, 33 N.W.2d 150 (1948).

Where tax is illegal, injunction will lie. State Bank of Omaha v. Endres, 109 Neb. 753, 192 N.W. 322 (1923).

Injunction will lie where tax is levied and assessed for an unauthorized purpose. Union Pac. R. R. Co. v. Troupe, 99 Neb. 73, 155 N.W. 230 (1915).

Taxes levied on property outside taxing district are for unauthorized purpose, and collection may be restrained. Hemple v. City of Hastings, 79 Neb. 723, 113 N.W. 187 (1907); Chicago, B. & Q. R. R. Co. v. Cass County, 51 Neb. 369, 70 N.W. 955 (1897).

Taxes designedly levied to be transferred to another fund are illegal and may be enjoined. Chicago, B. & Q. R. R. Co. v. Lincoln County, 66 Neb. 228, 92 N.W. 208 (1902).

When the assessment was without jurisdiction, injunction is proper. Rothwell v. Knox County, 62 Neb. 50, 86 N.W. 903 (1901).

Where tax is void, injunction is proper. Grand I. & W. C. R. R. Co. v. Dawes County, 62 Neb. 44, 86 N.W. 934 (1901).

Sale of land for void special assessment may be enjoined. Ives v. Irey, 51 Neb. 136, 70 N.W. 961 (1897).

2. Injunction not proper

Injunctive relief is available only where a tax is void, that is, where the taxing body does not have jurisdiction or power to impose the tax. Jones v. State, 248 Neb. 158, 532 N.W.2d 636 (1995).

Payment of taxes on land assessed by board of equalization cannot be avoided without showing land was exempt or other valid reason. Radium Hospital v. Greenleaf, 118 Neb. 136, 223 N.W. 667 (1929).

Injunction will not lie to restrain collection of taxes on cattle in county in which they were being fed. Delatour v. Smith, 116 Neb. 695, 218 N.W. 731 (1928).

Injunction to restrain treasurer from refunding tax paid under protest was not proper when petition did not show county board was acting without jurisdiction. School Dist. No. 25 of Brown County v. DeLong, 80 Neb. 667, 114 N.W. 934 (1908).

Injunction will not lie to restrain collection of taxes unless levied for unauthorized or illegal purpose, or when assessment is void. Union P. R. R. Co. v. Cheyenne County, 64 Neb. 777, 90 N.W. 917 (1902); Philadelphia M. & T. Co. v. City of Omaha, 63 Neb. 280, 88 N.W. 523 (1901).

Taxes, assessed for sidewalk, are not for illegal or unauthorized purpose, and injunction will not lie. Wilson v. City of Auburn, 27 Neb. 435, 43 N.W. 257 (1889).

Injunction will not be granted unless tax is void or inequitable. South Platte Land Co. v. City of Crete, 11 Neb. 344, 7 N.W. 859 (1881).

If legal tax can be separated from illegal, collection of entire tax will not be restrained. Burlington & M. R. R. Co. v. York County, 7 Neb. 487 (1878).

Special assessment levied against railroad was a tax which federal court would not enjoin. Chicago, St. P., M. & O. Ry. Co. v. City of Randolph, 122 F.Supp. 302 (D. Neb. 1954).

3. Miscellaneous

This section governs suits by taxpayers who seek to restrain the collection of any tax. Rawson v. Harlan County, 247 Neb. 944, 530 N.W.2d 923 (1995).

Tax levied by district which had been merged with city was within exception. Abernathy v. City of Omaha, 183 Neb. 660, 163 N.W.2d 579 (1968).

The prohibition against use of remedy of replevin has no application to strangers to the tax whose property has been distrained for the taxes of another. Landis Machine Company v. Omaha Merchants Transfer Co., 142 Neb. 389, 9 N.W.2d 198 (1943).

Action to quiet title and remove cloud, directed against apparent lien of tax, is only maintainable when tax is void. Philadelphia M. & T. Co. v. Omaha, 65 Neb. 93, 90 N.W. 1005 (1902).

Validity of statute imposing tax on air-flight equipment could be tested by injunction. Mid-Continent Airlines v. Nebraska State Board of Equalization, 105 F.Supp. 188 (D. Neb. 1952).

77-1734. Collection of taxes; entry on tax list of refunds. When the county treasurer refunds taxes pursuant to authority provided by law, he or she shall enter opposite such taxes in the tax list the words Erroneously taxed —refunded.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1734; Laws 1955, c. 297, § 1, p. 931; Laws 2002, LB994, § 23.

77-1734.01. Refund of tax paid; claim; verification required; county board approval. (1) In the case of an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority that decreases the Nebraska adjusted basis of the person's taxable tangible personal property, the county treasurer shall refund that portion of the tax paid that is in excess of the amount due after the amendment or correction.

(2) In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political

subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding. A claim for a refund pursuant to this section shall be made in writing to the county treasurer to whom the tax was paid within three years after the date the tax was due or within ninety days after filing the amended return or the correction becomes final.

(3) Before the refund is made, the county treasurer shall receive verification from the county assessor or other taxing official that such error or mistake was made or the amended return was filed or the correction made, and the claim for refund shall be submitted to the county board. Upon verification, the county board shall approve the claim. The refund shall be made in the manner prescribed in section 77-1736.06. Such refund shall not have a dispositional effect on any similar refund for another taxpayer. This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

Source: Laws 1957, c. 336, § 1, p. 1173; Laws 1959, c. 373, § 1, p. 1312; Laws 1961, c. 385, § 1, p. 1179; Laws 1977, LB245, § 1; Laws 1988, LB819, § 1; Laws 1989, LB762, § 2; Laws 1991, LB829, § 12; Laws 1992, LB719A, § 174; Laws 1999, LB194, § 32; Laws 2008, LB965, § 17.

Annotations

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county board acts quasi-judicially, and upon request for declaratory relief on ground resolution for refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. Svoboda v. Hahn, 196 Neb. 21, 241 N.W.2d 499 (1976).

The term clerical error herein is not restricted to a clerical error made by a taxpayer on the face of a personal property tax return. School Dist. of Minatare v. County of Scotts Bluff, 189 Neb. 395, 202 N.W.2d 825 (1972).

77-1735. Illegal or unconstitutional tax paid; claim for refund; procedure. (1) Except as provided in subsection (2) of this section, if a person makes a payment to any county or other political subdivision of any property tax or any payment in lieu of tax with respect to property and claims the tax or any part thereof is illegal or unconstitutional for any reason other than the valuation or equalization of the property, he or she may, at any time within thirty days after such payment, make a written claim for refund of the payment from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is not refunded within ninety days thereafter, the claimant may sue the county board for the amount so claimed. Upon the trial, if it is determined that such tax or any part thereof was illegal or unconstitutional, judgment shall be rendered therefor and such judgment shall be collected in the manner prescribed in section 77-1736.06. If the tax so claimed to be illegal or unconstitutional was not collected for all political subdivisions in a consolidated tax district and if a suit is brought to recover the tax paid or a part thereof, the plaintiff in such action shall join as defendants in a single suit as many of the political subdivisions as he or she seeks recovery from by stating in the petition a claim against each such political subdivision as a separate cause of action. For purposes of this section, illegal shall mean a tax levied for an unauthorized purpose or as a result of fraudulent conduct on the part of the taxing officials. A person shall not be entitled to a refund pursuant to this section of any property tax paid or any payment in lieu of tax unless the person has filed a claim with the county treasurer or prevailed in an action against the county. If a county refuses to make a refund, a person shall not be entitled to a refund unless he or she prevails in an action against the county on such claim even if another person has successfully challenged a similar tax or payment.

(2) For property valued by the state, for purposes of a claim for refund pursuant to this section, the Tax Commissioner shall perform the functions of the county treasurer and county board. Upon approval of the claim by the Tax Commissioner or a court of competent jurisdiction, the Tax Commissioner shall certify the amount of the refund to the county treasurer to whom this tax was paid or distributed. The refund shall be made in the manner prescribed in section 77-1736.06.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1735; Laws 1955, c. 297, § 2, p. 931; Laws 1967, c. 505, § 1, p. 1702; Laws 1977, LB245, § 2; Laws 1984, LB835, § 15; Laws 1989, LB762, § 3; Laws 1991, LB829, § 13; Laws 1992, Fourth Spec. Sess., LB1, § 16; Laws 1995, LB490, § 166;Laws 2007, LB334, § 81; Laws 2014, LB558, § 2.

Annotations

1. Illegal or unauthorized purpose

An unconstitutional tax is not an “"illegal"” tax that can be recovered under subsection (1) of this section; therefore, a district court does not have jurisdiction under subsection (1) of this section to hear a constitutional challenge to a tax statute. Trumble v. Sarpy County Board, 283 Neb. 486, 810 N.W.2d 732 (2012).

An exclusive remedy is provided for recovery of taxes paid where the tax was levied or assessed for an illegal or unauthorized purpose. Scudder v. County of Buffalo, 170 Neb. 293, 102 N.W.2d 447 (1960).

Railroad company could enjoin illegal special assessment against right-of-way. Chicago & N. W. Ry. Co. v. City of Omaha, 156 Neb. 705, 57 N.W.2d 753 (1953).

This section authorizes the bringing of an original action to recover taxes paid, where the taxpayer claims that the tax was levied or assessed for an illegal or unauthorized purpose. Loup River Public Power District v. County of Platte, 144 Neb. 600, 14 N.W.2d 210 (1944).

In absence of statute, taxes voluntarily paid cannot be recovered back, but, when tax imposed is illegal and unauthorized, an original action may be brought to recover the tax by virtue of statutory authority. Riggs-Orr Inv. Co. v. City of Omaha, 130 Neb. 697, 266 N.W. 430 (1936).

Action to recover taxes paid on ground they were levied for an unauthorized purpose must be brought under this section. Lennemann v. Harlan County, 110 Neb. 742, 194 N.W. 814 (1923).

When taxes levied by a county exceed the maximum permitted by the Constitution, the excess is levied for an illegal and unauthorized purpose. Chase County v. Chicago, B. & Q. R. R. Co., 58 Neb. 274, 78 N.W. 502 (1899).

2. Void tax

Where petition alleges facts showing tax assessed by officer without authority, and proper refund is demanded, petition for refund states a cause of action under this section. Western Public Service Co. v. Wheeler County, 126 Neb. 120, 252 N.W. 609 (1934).

When taxpayer fails to demand repayment within thirty days after payment of void tax, he cannot maintain action. Monteith v. Alpha High School District of Chase County, 125 Neb. 665, 251 N.W. 661 (1933).

Where amount of money on hand returned by taxpayer for taxation was changed without notice to him, his remedy was under this section. Darr v. Dawson County, 93 Neb. 93, 139 N.W. 852 (1913).

Taxes in excess of constitutional limit are void, and may be recovered in action at law. Dakota County v. Chicago, St. P., M. & O. Ry. Co., 63 Neb. 405, 88 N.W. 663 (1902).

3. Demand for refund

When a taxpayer fails to substantially comply with the 30-day claim requirement and has voluntarily paid a tax, that taxpayer will not be allowed to complain about the tax at a later point in time. Rauert v. School Dist. 1-R of Hall Cty., 251 Neb. 135, 555 N.W.2d 763 (1996).

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county board acts quasi-judicially, and upon request for declaratory relief on ground resolution for refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. Svoboda v. Hahn, 196 Neb. 21, 241 N.W.2d 499 (1976).

Request for refund of special assessments was properly refused. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 662, 90 N.W.2d 282 (1958).

To recover taxes illegally imposed, demand in writing for repayment must be made within 30 days after payment of tax. Satterfield v. Britton, 163 Neb. 161, 78 N.W.2d 817 (1956).

Claim for refund, based upon contention that intangible property of foreign corporation was not subject to taxation, could not be maintained under this section. International Harvester Co. v. County of Douglas, 146 Neb. 555, 20 N.W.2d 620 (1945).

Notice to county treasurer is not a demand on treasurer of school district required by this section as condition precedent to bringing suit for refund of school taxes. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

No formal protest is required under this section, and demand for return is sufficient if it specifies the taxes sought to be recovered and the ground upon which their return is demanded. Custer County v. Chicago, B. & Q. R. R. Co., 62 Neb. 657, 87 N.W. 341 (1901).

Protest must state grounds specifically, and burden of proof is on pleader. Davis v. Otoe County, 55 Neb. 677, 76 N.W. 465 (1898).

Demand is necessary to base action for recovery of illegal taxes paid under protest. City of Omaha v. Kountze, 25 Neb. 60, 40 N.W. 597 (1888); B. & M. Ry. Co. v. Buffalo County, 14 Neb. 51, 14 N.W. 539 (1883).

4. Miscellaneous

This section provides an exclusive statutory remedy under which a taxpayer may seek relief. Rawson v. Harlan County, 247 Neb. 944, 530 N.W.2d 923 (1995).

Plaintiff's petition to recover taxes stated cause of action under this section. First Data Resources v. Howell, 242 Neb. 248, 494 N.W.2d 542 (1993).

A person, as the term is used in this section, is one with an ownership interest in the property in question. First Nat. Bank, Stromsburg v. Heiden, 241 Neb. 893, 491 N.W.2d 699 (1992).

This section is not exclusive and proper claim may be allowed under section 77-1734.01. School Dist. of Minatare v. County of Scotts Bluff, 189 Neb. 395, 202 N.W.2d 825 (1972).

This section creates a direct cause of action by which a taxpayer may test the validity for any reason of a tax on any part thereof. Frye v. Haas, 182 Neb. 73, 152 N.W.2d 121 (1967).

A remedy is provided for the recovery of penalties as well as taxes which have been illegally imposed. Misle v. Miller, 176 Neb. 113, 125 N.W.2d 512 (1963).

Claim by railroad for refund of special assessments was properly disallowed. Chicago & N. W. Ry. Co. v. City of Seward, 166 Neb. 123, 88 N.W.2d 175 (1958).

Limitation under this section does not apply to action for recovery of money paid for void tax sale certificate against county. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

Where propriety of removal to federal court of proceedings to recover taxes paid under protest is not challenged, subsequent suit in state court will be dismissed. Chicago, St. P., M. & O. Ry. Co. v. Bauman, 132 Neb. 67, 271 N.W. 256 (1937).

In action by taxpayer to recover special assessments voluntarily paid, statute of limitations begins to run from time of payment of the assessments. Dorland v. City of Humboldt, 129 Neb. 477, 262 N.W. 22 (1935).

A metropolitan city is not required to refund money received from purchaser at tax sale, taxes being levied on illegal special assessments. McCague v. City of Omaha, 58 Neb. 37, 78 N.W. 463 (1899).

Taxes paid to officer, whose authority to collect has ceased, may be recovered back. Fremont, E. & M. V. Ry. Co. v. Holt County, 28 Neb. 742, 45 N.W. 163 (1890).

Right to recover taxes paid under protest applies to business tax assessed under void ordinance. Caldwell v. City of Lincoln, 19 Neb. 569, 27 N.W. 647 (1886).

County is not liable for school tax collected and paid to district, even though illegally levied. Price v. Lancaster County, 18 Neb. 199, 24 N.W. 705 (1885).

Above statute does not provide adequate remedy at law to railroad so as to preclude equitable relief, where railroad, to recover taxes paid, would be required to sue county treasurers in thirty-two different counties through which its line of railroad runs, thus involving multiplicity of suits. Chicago & N. W. Ry. Co. v. Bauman, 69 F.2d 171 (8th Cir. 1934).

Suit is not authorized against state to recover taxes paid on air-flight equipment. Mid-Continent Airlines v. Nebraska State Board of Equalization, 105 F.Supp. 188 (D. Neb. 1952).

77-1736.06. Property tax refund; procedure. The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision, including any school district receiving a distribution pursuant to section 79-1073 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 19-5211, of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision, including any school district receiving a distribution pursuant to section 79-1073 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 19-5211, which received any part of the tax or penalty being refunded. If sufficient funds are not available or the political subdivision, within thirty days of the mailing of the notice by the county treasurer if applicable, certifies to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund of the tax or penalty is paid, the county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim. The certification by a political subdivision declaring a hardship shall be binding upon the county treasurer;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable and in no event later than five years from the date the final order or other action approving a refund is entered. The governing body of the political subdivision shall make provisions in its budget for the amount of any refund or claim to be satisfied pursuant to this section. If a receipt for the registration of a claim is given:

(a) Such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision next falling due from the person holding the receipt after the sixth next succeeding levy is made on behalf of the political subdivision following the final order or other action approving the refund; and
(b) To the extent the amount of such receipt exceeds the amount of such tax liability, the unsatisfied balance of the receipt shall be paid and satisfied within the five-year period prescribed in this subdivision from a combination of a credit against taxes anticipated to be due to the political subdivision during such period and cash payment from any funds expected to accrue to the political subdivision pursuant to a written plan to be filed by the political subdivision with the county treasurer no later than thirty days after the claim against the political subdivision is first reduced by operation of a credit against taxes due to such political subdivision.
If a political subdivision fails to fully satisfy the refund or claim prior to the sixth next succeeding levy following the entry of a final nonappealable order or other action approving a refund, interest shall accrue on the unpaid balance commencing on the sixth next succeeding levy following such entry or action at the rate set forth in section 45-103;
(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund or credit. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;
(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;
(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof; and
(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund.

Source: Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, Second Spec. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB334, § 82; Laws 2008, LB965, § 18; Laws 2010, LB1070, § 3; Laws 2013, LB97, § 19; Laws 2016, LB1067, § 9.

77-1736.07. Property tax refund; procedure; applicability. Section 77-1736.06 is expressly intended to apply to all claims for refund of any property taxes pending on June 11, 1991.

Source: Laws 1991, LB829, § 16; Laws 1992, Fourth Spec. Sess., LB1, § 17.

77-1737. Collection of taxes; no power to release or commute; recovery from public officials. No county or township board, city council, or village trustees shall have the power to release, discharge, remit, or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever. Any taxes, so discharged, released, remitted, or commuted, may be recovered by civil action from the members of any such board, council, or trustees, and the sureties on their official bonds at the suit of any citizen of the county, township, city, or village, as the case may be, and when collected shall be paid into the proper treasury. The provisions of this section shall not be construed to prevent the proper authority from refunding taxes paid, as provided in section 77-1735, nor to interfere with the powers of any officers or board sitting as a board for the equalization of taxes.

Source: Laws 1903, c. 73, § 164, p. 449; R.S.1913, § 6493; C.S.1922, § 6020; C.S.1929, § 77-1925; R.S.1943, § 77-1737; Laws 1955, c. 297, § 4, p. 932.

Annotations

Taxes are not prevented from merging in the fee simple title on conveyances of land to a governmental entity when only the governmental entity acquiring the land holds a tax lien. City of Omaha v. Morello, 257 Neb. 869, 602 N.W.2d. 1 (1999).

A request for refund of invalid tax or one paid as a result of clerical error must be by a written claim upon which the county board acts quasi-judicially, and upon request for declaratory relief on ground resolution for

refund was invalid, refusal thereof was within discretion of district court where there was no showing such claim had not been filed. Svoboda v. Hahn, 196 Neb. 21, 241 N.W.2d 499 (1976).

This section does not prevent the proper authority from refunding taxes as authorized by any specific tax refund statute. School Dist. of Minatare v. County of Scotts Bluff, 189 Neb. 395, 202 N.W.2d 825 (1972).

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Receipt of money under court decree was not a commutation of tax. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

Lien of tax on property acquired by school district was not thereby dissolved. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

Provision for refunding of taxes applies to refunding of occupation tax by village. Shue v. Village of Silver Creek, 98 Neb. 551, 153 N.W. 562 (1915).

77-1738. Collection of taxes; when stricken from tax list. The county board shall cause delinquent taxes on personalty, mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land to be stricken from the tax list. Such delinquent taxes shall only be stricken if (1) at least two years have expired, (2) the treasurer has used due diligence to collect such taxes, and (3)(a) it appears from the return of the treasurer that any person charged with the taxes has removed out of the county or has died and left no property out of which the taxes can be paid or (b) it appears impossible to collect such taxes.

Source: Laws 1903, c. 73, § 165, p. 450; R.S.1913, § 6494; Laws 1915, c. 110, § 1, p. 259; C.S.1922, § 6021; C.S.1929, § 77-1926; R.S.1943, § 77-1738; Laws 1947, c. 260, § 1, p. 849; Laws 1995, LB490, § 168; Laws 2000, LB968, § 68.

77-1739. Collection of taxes; taxes delinquent for ten years; cancellation of interest on payment of principal. All personal property taxes or real estate taxes levied on a mobile home, cabin trailer, manufactured home, or similar property assessed and taxed as improvements to leased land of any taxpayer, delinquent for more than ten years, shall be canceled upon the payment of the principal of such taxes, without interest, if all other taxes of such taxpayer in that county, due subsequent thereto, have been paid in full.

Source: Laws 1921, c. 218, § 1, p. 793; C.S.1922, § 6022; C.S.1929, § 77-1927; Laws 1943, c. 177, § 1, p. 621; R.S.1943, § 77-1739; Laws 2000, LB968, § 69.

77-1740. Collection of taxes; county treasurer's warrant book; entries. Each county treasurer is required to keep a book, called the Warrant Book, in which he shall enter every state, county or other warrant or order by him paid, or received in payment of taxes from any person, specifying the date on which the same was received and canceled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was drawn, the sum for which it was received, and the interest due thereon, and the treasurer shall keep the account of warrants and orders, by him received for and on account of taxes, separate and distinct from such as are by him paid in cash.

Source: Laws 1903, c. 73, § 167, p. 450; R.S.1913, § 6495; C.S.1922, § 6023; C.S.1929, § 77-1928; R.S.1943, § 77-1740.

77-1741. Collection of taxes; contract for or purchase of warrants or orders at discount by treasurer, forbidden; penalty. No county, city, township or village treasurer shall either directly or indirectly contract for or purchase any warrant or order or orders issued by the county of which he is treasurer at any discount whatever upon the sum due on such warrant or order or orders. If any county, city, township or village treasurer shall so contract for or purchase any such order or warrant, he shall not be allowed in settlement the amount of the order or warrant, or any part thereof, and shall also forfeit the whole amount due on such order or warrant, to be recovered by civil action, at the suit of the State of Nebraska, for the use of the school fund of the county.

Source: Laws 1903, c. 73, § 168, p. 451; R.S.1913, § 6496; C.S.1922, § 6024; C.S.1929, § 77-1929; R.S.1943, § 77-1741.

77-1742. Collection of taxes, personal; statement of uncollected taxes filed by county treasurer; list of assessment errors. On or before November 1 annually, and at such other times as the county board may

direct, the county treasurer shall make out and file with the county clerk a statement in writing, setting forth in detail the name of each person charged with personal property tax which the county treasurer and his or her deputies have been unable to collect by reason of the removal or insolvency of the person charged with such tax, the value of the property and the amount of tax, the cause of inability to collect such tax in each separate case, in a column provided in the list for that purpose. The treasurer shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate, and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of the several taxes and special assessments, and cause of error. The truth of the statement contained in such lists shall be verified by affidavit of the county treasurer.

Source: Laws 1903, c. 73, § 169, p. 451; R.S.1913, § 6497; C.S.1922, § 6025; C.S.1929, § 77-1930; R.S.1943, § 77-1742; Laws 1998, LB306, § 35.

77-1743. Collection of taxes; county treasurer; credit on settlement for delinquent real property taxes and special assessments. If any lands or lots shall be delinquent for taxes or special assessments, the treasurer shall be entitled to a credit in his final settlement for the amount of the several assessments thereon, the county to allow the amount of printer's fees thereon, and be entitled to the fees when collected.

Source: Laws 1903, c. 73, § 170, p. 452; R.S.1913, § 6498; C.S.1922, § 6026; C.S.1929, § 77-1931; Laws 1937, c. 167, § 9, p. 642; Laws 1939, c. 98, § 9, p. 427; Laws 1941, c. 157, § 9, p. 613; C.S.Supp.,1941, § 77-1931; R.S.1943, § 77-1743.

77-1744. Collection of taxes; county treasurer; credit on settlement for delinquent personal property taxes. The county treasurer shall not be entitled to credit on the final settlement for delinquent personal property tax until he or she has filed with the clerk an affidavit that he or she has fully complied with the provisions of sections 77-1715 to 77-1725.01 relating to the giving of notice and issuing of distress warrants and been unable to collect the tax due thereon by reason of a want of personal property of the owner thereof and that to the best of his or her knowledge and belief no personal property of any such owner is in the county.

Source: Laws 1903, c. 73, § 170, p. 452; R.S.1913, § 6498; C.S.1922, § 6026; C.S.1929, § 77-1931; Laws 1937, c. 167, § 9, p. 642; Laws 1939, c. 98, § 9, p. 427; Laws 1941, c. 157, § 9, p. 613; C.S.Supp.,1941, § 77-1931; R.S.1943, § 77-1744; Laws 2015, LB408, § 1.

Effective Date: August 30, 2015

77-1745. Collection of taxes; settlement of county treasurer; made with county board; when made. The county treasurer shall settle with the county board within thirty days after the first Tuesday in January, and on the first Monday in July in each year, and at such other times as the county board may direct, at which times the county treasurer shall file with the county clerk a statement showing the amount of money collected since last settlement, from what source derived, amount of money paid out, and for what purpose, together with the vouchers for the same, the amount of taxes due and unpaid and the amount of money on hand belonging to the several funds.

Source: Laws 1903, c. 73, § 170, p. 452; R.S.1913, § 6498; C.S.1922, § 6026; C.S.1929, § 77-1931; Laws 1937, c. 167, § 9, p. 642; Laws 1939, c. 98, § 9, p. 427; Laws 1941, c. 157, § 9, p. 613; C.S.Supp.,1941, § 77-1931; R.S.1943, § 77-1745; Laws 1969, c. 681, § 1, p. 2608.

Annotations

Action of board of equalization in making settlements is not a judicial determination. Treasurer is an insurer of funds collected. Bush v. Johnson County, 48 Neb. 1, 66 N.W. 1023 (1896).

77-1746. Collection of taxes; settlement of county treasurer; with county clerk when board not in session. If there be no session of the county board held at the proper time for settling and adjusting the accounts of the county treasurer, it shall be the duty of the treasurer to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as the board is required to do. The county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessment returned, for which the treasurer is entitled to credit.

Source: Laws 1903, c. 73, § 171, p. 452; R.S.1913, § 6499; C.S.1922, § 6027; C.S.1929, § 77-1932; R.S.1943, § 77-1746.

77-1748. Collection of taxes; settlement of county treasurer; certificate to local authorities. The county clerk shall also at the same time certify to the several authorities or persons with whom the county treasurer is to make settlement, showing the valuation of property and the amount of taxes and special assessments due thereon allowable to the treasurer in the settlement of his several accounts.

Source: Laws 1903, c. 73, § 173, p. 453; R.S.1913, § 6501; C.S.1922, § 6029; C.S.1929, § 77-1934; R.S.1943, § 77-1748.

77-1749. Collection of taxes; settlement of county treasurer; credit for delinquent taxes; audit of treasurer's books. The Tax Commissioner and other proper authority or person shall in his or her final settlement with the treasurer allow him or her credit for the amount so certified, but if the Tax Commissioner or other proper authority or person shall have reason to believe that the amount stated in the certificate is not correct, or that the allowance was illegally made, he or she shall return the same for correction. When it appears to be necessary in the opinion of the Tax Commissioner or other proper authority or person, he or she shall designate and appoint some competent person to examine the treasurer's books and statement of settlement, and the person so designated and appointed shall have access to the treasurer's books and papers appertaining to such treasurer's office or settlement for the purpose of making such examination.

Source: Laws 1903, c. 73, § 174, p. 453; R.S.1913, § 6502; C.S.1922, § 6030; C.S.1929, § 77-1935; R.S.1943, § 77-1749; Laws 1995, LB490, § 169; Laws 2007, LB334, § 83.

Annotations

County board of equalization is sole judge as to when necessity for examination of accounts of treasurer exists. Kearney County v. Tuttle, 16 Neb. 34, 19 N.W. 637 (1884).

Board of equalization has authority under this section to employ competent person to examine accounts of treasurer. Laws v. Harlan County, 12 Neb. 637, 12 N.W. 114 (1882).

77-1750. Collection of taxes; settlement of county treasurer; adjustment with county clerk; order by county board. In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settlement and if found correct shall enter an order to that effect. If any omission or error is found, the board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the Tax Commissioner and other proper authority or person who shall correct and adjust the treasurer's accounts accordingly.

Source: Laws 1903, c. 73, § 175, p. 453; R.S.1913, § 6503; C.S.1922, § 6031; C.S.1929, § 77-1936; R.S.1943, § 77-1750; Laws 1995, LB490, § 170; Laws 2007, LB334, § 84.

77-1759. Collection of taxes; report to and payment of taxes and special assessments; when required. The county treasurer shall report and pay over the amount of tax and special assessments due to towns, districts, cities, villages, all other taxing units, corporations, persons, and land banks, collected by him or her, when demanded by the proper authorities or persons. Upon a demand, one payment shall be for the funds collected or received during the previous calendar month and shall be paid not later than the fifteenth of the following month. A second demand may be made prior to the fifteenth of the month on taxes and special assessments collected or received, during the first fifteen days of the month. The second demand shall be paid not later than the last day of the month.

Source: Laws 1903, c. 73, § 183, p. 456; R.S.1913, § 6511; C.S.1922, § 6039; C.S.1929, § 77-1944; R.S.1943, § 77-1759; Laws 1998, LB1104, § 11; Laws 1999, LB287, § 2; Laws 2013, LB97, § 20.

Annotations

The plain language of this section authorizes a taxing authority to make demand for payment of its tax revenues which have been collected by the county treasurer. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

The plain language of this section provides that the county treasurer shall pay over the amount of tax collected when demanded by the proper authorities or persons. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

This section and section 23-1601(4) can be read so as to give effect to the plain language of each. State ex rel. City of Elkhorn v. Haney, 252 Neb. 788, 566 N.W.2d 771 (1997).

It is the duty of county treasurer to collect taxes and pay over to school district. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

Mandamus will lie to compel county treasurer to pay to city treasurer city taxes collected by him. State of Neb. ex rel. Grable v. Roderick, 23 Neb. 505, 37 N.W. 77 (1888).

77-1760. Collection of taxes; failure to report and pay taxes collected by county treasurer; suit on bond. If any county treasurer fails to make reports and payments required by section 77-1759 for five days after demand made the proper authority or person may bring suit upon his or her bond.

Source: Laws 1903, c. 73, § 184, p. 456; R.S.1913, § 6512; C.S.1922, § 6040; C.S.1929, § 77-1945; R.S.1943, § 77-1760; Laws 1995, LB490, § 171.

Annotations

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Notice to county treasurer is not demand on district treasurer required as condition precedent to suit for refund of school taxes. City Nat. Bank of Lincoln v. School Dist. of City of Lincoln, 121 Neb. 213, 236 N.W. 616 (1931).

State taxes in hands of county treasurer, if lost without fault of county, are property of state, and county is not liable to state. Lancaster County v. State, 74 Neb. 211, 104 N.W. 187 (1905), affirmed on rehearing 74 Neb. 215, 107 N.W. 388 (1906).

77-1761. Collection of taxes; failure to report and pay taxes collected by county treasurer; removal from office. If any county treasurer fails to account for and settle as required in section 77-1760, his office may be declared vacant by the county board, and the vacancy filled as hereinbefore provided.

Source: Laws 1903, c. 73, § 185, p. 456; R.S.1913, § 6513; C.S.1922, § 6041; C.S.1929, § 77-1946; R.S.1943, § 77-1761.

77-1762. Collection of taxes; failure to pay taxes collected by county treasurer; liability on bond. The bond of every county treasurer shall be held to be security for the payment by such treasurer to the State Treasurer and the several cities, towns, villages, and the proper authorities and persons, respectively, of all taxes and special assessments which may be collected or received by him on their behalf, by virtue of any law in force at the time of giving such bond, or that may be passed or take effect thereafter.

Source: Laws 1903, c. 73, § 186, p. 456; R.S.1913, § 6514; C.S.1922, § 6042; C.S.1929, § 77-1947; R.S.1943, § 77-1762.

Annotations

Payment of funds in hands of county treasurer to successor is effectuated only by delivery of money. Lancaster County v. State, 74 Neb. 211, 104 N.W. 187 (1905), affirmed on rehearing 74 Neb. 215, 107 N.W. 388 (1906); Cedar County v. Jenal, 14 Neb. 254, 15 N.W. 369 (1883).

77-1763. Collection of taxes; failure to make settlement with state; suit by Tax Commissioner. Upon the failure of any county treasurer to make settlement with the Tax Commissioner, the Tax Commissioner shall sue the treasurer and his or her surety upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interest of the state.

Source: Laws 1903, c. 73, § 187, p. 457; R.S.1913, § 6515; C.S.1922, § 6043; C.S.1929, § 77-1948; R.S.1943, § 77-1763; Laws 1995, LB490, § 172; Laws 2007, LB334, § 85.

77-1764. Collection of taxes; suit on behalf of state; where brought. Suit shall be brought in behalf of the state in the district court of the county in which the treasurer holds office or resides, and process may be directed to any county in the state.

Source: Laws 1903, c. 73, § 188, p. 457; R.S.1913, § 6516; C.S.1922, § 6044; C.S.1929, § 77-1949; R.S.1943, § 77-1764.

77-1765. Collection of taxes; suit on behalf of state; power of court to require disclosure; entry of judgment. If any proceedings against any officer or person, whose duty it is to collect, receive, settle for or pay over any of the revenue of the state, whether the proceeding be by suit on the bond of such officer or person or otherwise, the court in which the proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit on oath a full and fair statement of all money by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case, and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law to pay. If in any suit upon the bonds of any such officer or person, he or his sureties, or any of them, shall not for any reason be liable upon the bond, the court

may, nevertheless, give judgment against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to the form of the action or pleadings.

Source: Laws 1903, c. 73, § 188, p. 457; R.S.1913, § 6516; C.S.1922, § 6044; C.S.1929, § 77-1949; R.S.1943, § 77-1765.

Annotations

Suit is proper when duty to deliver money is purely ministerial. State v. Ure, 102 Neb. 648, 168 N.W. 644 (1918); State ex rel Hall v. Ure, 99 Neb. 486, 156 N.W. 1053 (1916).

77-1766. Collection of taxes; suit by aggrieved municipal corporations. Cities, towns, villages, or corporate authorities or persons aggrieved may prosecute suit against any treasurer, or other officer collecting or receiving funds for their use, upon his or her bond, in the name of the State of Nebraska, for their use in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the Tax Commissioner or not. Cities, towns, villages, and other corporate authorities or persons shall have the same right in any suits or proceedings in their behalf as is provided in case of suits by or on behalf of the state.

Source: Laws 1903, c. 73, § 189, p. 457; R.S.1913, § 6517; C.S.1922, § 6045; C.S.1929, § 77-1950; R.S.1943, § 77-1766; Laws 1995, LB490, § 173; Laws 2007, LB334, § 86.

77-1767. Collection of taxes; loss or destruction of tax records; new assessment or new records authorized. When assessment rolls or treasurers' books, in whole or in part, of any county, town, city, village or district shall be lost or destroyed by any means whatever, a new assessment, or new books as the case may require, shall be made under direction of the county board. The board shall, in such cases, fix reasonable times and dates for performing the work of assessment, equalization, levy, extension and collection of taxes, and paying over the same, or making new books, as the circumstances of the case may require. The dates fixed by the county board shall conform to the dates required by law for similar purposes. The county board is fully empowered to select and appoint persons where it may find the same necessary to carry into effect the provisions of this section.

Source: Laws 1903, c. 73, § 190, p. 458; R.S.1913, § 6518; C.S.1922, § 6046; C.S.1929, § 77-1951; R.S.1943, § 77-1767.

77-1771. Collection of taxes; claim against governmental subdivision; deduction of personal taxes. The governing body of any municipal corporation or governmental subdivision of the state, whenever the account or claim of any person is presented to it for allowance, and whenever there has been filed with it a statement from the county treasurer of the amount of delinquent personal taxes assessed against the person in whose favor the account or claim is presented, shall deduct from any amount found due upon such account or claim the amount of such tax, and shall forthwith issue a warrant for the balance remaining, if any. For any such delinquent personal taxes so setoff and deducted from any such account or claim, the governing body shall issue an order to the treasurer thereof directing him to draw from the same fund out of which said account or claim should have been paid, the amount of said delinquent taxes so setoff or deducted, and apply the same upon the said delinquent personal taxes in satisfaction thereof. The county treasurer shall, upon application of such claimant, issue receipt therefor to the person whose taxes are so satisfied.

Source: Laws 1933, c. 126, § 2, p. 501; C.S.Supp.,1941, § 77-1954; R.S.1943, § 77-1771.

Annotations

Personal property taxes must be deducted on allowance of claim by county. State ex rel. Bates v. Morgan, 154 Neb. 234, 47 N.W.2d 512 (1951).

77-1772. Collection of taxes; interest on delinquent taxes; distribution. Interest collected upon delinquent county, city, village, school district, or learning community taxes shall be credited on the books and distributed among the various governmental subdivisions and municipal corporations in the same proportion as the principal of the taxes is credited and distributed.

Source: Laws 1933, c. 132, § 1, p. 509; C.S.Supp.,1941, § 77-1957; R.S.1943, § 77-1772; Laws 1947, c. 261, § 1, p. 850; Laws 2006, LB1024, § 11.

77-1774. Collection of taxes; reciprocity with other states; taxes, defined. (1) Any state of the United States of America or any political subdivision thereof has the right to sue in the courts of the State of Nebraska to recover any lawfully imposed taxes which may be owing it, whether or not the taxes have been reduced to judgment, when the like right is accorded to the State of Nebraska and its political subdivisions by

that state through statutory authority or granted as a matter of comity. The appropriate officials of such other state are authorized to bring action in the courts of this state for the collection of such taxes. The certificate of the Secretary of State of such other state that such officials have the authority to collect the taxes to be collected by such action shall be conclusive proof of authority.

(2) The Attorney General or an appropriate official of any political subdivision of the State of Nebraska may bring suit in the courts of other states to collect taxes legally due this state or any political subdivision thereof.

(3) Taxes as used in this section shall include: (a) Any and all tax assessments lawfully made, whether they be based upon a return or other disclosure of the taxpayer, or upon the information and belief of the taxing authority, or otherwise; (b) any and all penalties lawfully imposed pursuant to a taxing statute; and (c) interest charges lawfully added to the tax liability which constitutes the subject of the action.

Source: Laws 1967, c. 491, § 1, p. 1672.

77-1775. Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure. (1) In case of payment of any taxes upon property valued by the state made as a result of a clerical error or honest mistake or misunderstanding, except as to valuation or equalization, on the part of the taxing officials of the state or the taxpayer, the taxpayer shall make a written claim for a credit or refund of the tax paid within two years from the date the tax was due. The claim shall set forth the amount of the overpayment and the reasons therefor.

(2) The Tax Commissioner may approve or disapprove the claim in whole or part without a hearing. The Tax Commissioner shall grant a hearing prior to taking any action on a claim for refund or credit if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim by the Tax Commissioner. The written order of the Tax Commissioner shall be mailed to the claimant within seven days after the date of the order. If the claim is denied in whole or part, the taxpayer may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

(3) Upon approval of the claim by the Tax Commissioner, the Property Tax Administrator shall certify the amount of the refund or credit to the county treasurer to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Property Tax Administrator shall certify the value resulting from the written order to the official who received the original valuation which was changed by the written order. The refund shall be made in the manner prescribed in section 77-1736.06. The ordering of a refund or credit pursuant to this section shall not have a dispositional effect on any similar claim for refund or credit made by another taxpayer.

Source: Laws 1983, LB193, § 12; Laws 1988, LB352, § 157; Laws 1989, LB762, § 5; Laws 1991, LB829, § 17; Laws 1995, LB490, § 174;Laws 2004, LB973, § 42; Laws 2007, LB334, § 87; Laws 2009, LB166, § 17.

Annotations

Discriminatory taxes levied against railroad rolling stock in violation of section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 are invalid within the meaning of this section. Dairyland Power Co-op v. State Bd. of Equal., 238 Neb. 696, 472 N.W.2d 363 (1991).

77-1775.01. Appeal resulting in lower value; refund; procedure. (1) When property is valued or equalized by the Tax Commissioner, the Property Tax Administrator, or the Tax Equalization and Review Commission and an appeal is taken from such valuation or equalization and the final result of such appeal establishes a lower value than that upon which taxes have been paid, the amount of taxes paid on the value in excess of that finally determined value shall be refunded to the prevailing party who has paid such tax. If an appeal results in a lower value, only the taxpayer who is a party to the appeal shall be entitled to a refund.

(2) Upon receipt of a final nonappealable order, the commission shall meet or the Property Tax Administrator shall act within thirty days thereof to order the recertification of valuation of the prevailing party.

(3) The Property Tax Administrator upon receiving a certified copy of such recertification order shall recertify the amount of the valuation or tax to the county assessor of the county or counties to which the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Property Tax Administrator shall recertify the value resulting from the final nonappealable order to the county assessor who received the original valuation which was changed by the final order. The refund shall be made

in the manner prescribed in section 77-1736.06. Nothing in this section shall be construed to mean that any taxpayer shall have had to pay any tax under protest or claim a refund of the tax paid.

Source: Laws 1989, LB762, § 6; Laws 1989, Spec. Sess., LB2, § 1; Laws 1991, LB829, § 18; Laws 1992, Fourth Spec. Sess., LB1, § 18; Laws 1995, LB490, § 175; Laws 1997, LB397, § 24.

77-1775.02. Changes to section 77-1775.01; applicability. The changes made to section 77-1775.01 by Laws 1989, LB2, Ninety-first Legislature, First Special Session, are expressly intended to apply to all litigation pending as of November 22, 1989.

Source: Laws 1989, Spec. Sess., LB2, § 2.

77-1776. Overpayment due to clerical error or mistake; return by political subdivision; how treated. Any political subdivision which has received proceeds from a levy imposed on all taxable property within an entire county which is in excess of that requested by the political subdivision under section 77-1601.02 as a result of a clerical error or mistake shall, in the fiscal year following receipt, return the excess tax collections, net of the collection fee, to the county. By July 31 of the fiscal year following the receipt of any excess tax collections, the county treasurer shall certify to the political subdivision the amount to be returned. Such excess tax collections shall be restricted funds in the budget of the county that receives the funds under section13-518.

Source: Laws 1999, LB36, § 1.

77-1777. Tax refund; sections applicable. Sections 77-1778 to 77-1782 shall apply to any tax, except property taxes, collected by the Tax Commissioner to the extent that specific refund provisions have not been enacted. If there is any conflict between any specific refund statutes and the provisions of sections 77-1778 to 77-1782, the specific refund statutes shall control.

Source: Laws 1987, LB523, § 36; Laws 1989, LB762, § 7; Laws 1996, LB1041, § 3.

77-1778. Tax refund; file claim; when. When any person believes that he or she has made payment of a tax or any penalty or interest that is in excess of his or her tax liability for any reason, he or she may file a claim with the Tax Commissioner for a refund of such overpayment.

Source: Laws 1987, LB523, § 37.

77-1779. Tax refund; claim; contents; form. (1) A claim for a refund shall be in writing and filed with the Tax Commissioner within three years of the date (a) on which the overpayment was made or (b) on which the tax was required to be paid, whichever is later.

(2) The claim shall state the reason for the overpayment and the amount of refund or credit requested.

(3) The Tax Commissioner may prescribe the necessary forms for the filing of a claim for refund.

(4) An amended return reducing the amount of the liability and containing an explanation of the reduction shall constitute a refund claim.

Source: Laws 1987, LB523, § 38.

77-1780. Tax refund; Tax Commissioner; powers; duties; interest. (1) Pursuant to this section, the Tax Commissioner may approve the claim for refund, in whole or in part.

(2) The Tax Commissioner shall grant a hearing prior to taking any action on a claim for a refund if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim.

(3) The Tax Commissioner shall notify the taxpayer in writing of the denial of his or her claim for a refund. The notification shall be made by mail.

(4) Upon approval, the Tax Commissioner shall cause:

(a) A refund to be paid from the fund to which the tax was originally deposited;

(b) A credit to be established against the subsequent tax liability of the taxpayer if the amount of the credit does not exceed twelve times the average monthly tax liability of the taxpayer; or

(c) A credit to be applied to any other existing liability for any other tax collected by the Tax Commissioner.

(5) The payment of the claim for a refund, the allowance of a credit, or the application of the refund to an existing balance, in whole or in part, shall be considered a final decision of the Tax Commissioner for the purposes of the Administrative Procedure Act.

(6) Interest shall be paid from the date of overpayment or the date the tax was required to be paid, whichever is later, until the date the overpayment is refunded, credited, or applied.

(7) Interest shall be paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1987, LB523, § 39; Laws 1996, LB1041, § 4; Laws 2012, LB727, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

77-1781. Tax refund; denial; appeal. The denial, in whole or in part, of a claim for refund shall be considered a final action of the Tax Commissioner. The denial may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1987, LB523, § 40; Laws 1988, LB352, § 158.

Cross References

Administrative Procedure Act, see section 84-920.

77-1782. Tax refund; erroneous payment; how treated. (1) Any refund that is erroneously paid shall be considered an underpayment of the tax liability and may be assessed and collected in the same manner as any other underpayment of the tax required to be paid.

(2) It shall be an underpayment as of the date of the payment of the refund, the date the refund was applied to another liability, or the date the credit was used by the taxpayer to satisfy a subsequent tax liability.

Source: Laws 1987, LB523, § 41.

77-1783.01. Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation. (1) Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 77-27,135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) No notice or demand for payment may be issued against any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation more than three years after the final determination of the corporation's liability or more than one year after the closure or dismissal of a bankruptcy case in which the corporation appeared as the debtor or debtor in possession if the three-year period to issue a notice or demand for payment had not expired prior to the filing of the petition in bankruptcy, whichever date is later.

(7) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the revenue laws of this state which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1996, LB1041, § 5; Laws 2008, LB914, § 6; Laws 2009, LB165, § 2; Laws 2011, LB210, § 6.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1784. Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.
(1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.
(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.
(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established.
(4) The Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer who made payments exceeding five thousand dollars for a tax program in any prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.
(5) Except for individual income tax payments required under section 77-2715 and estimated payments for individuals under section 77-2769, any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.
(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.
(7) For tax returns due on or after January 1, 2010, the Tax Commissioner may require any person that aids, procures, advises, or assists in the preparation of and files any tax return on behalf of any taxpayer for profit to file an electronic return if the person filed twenty-five or more tax returns in the prior calendar year. The requirement to require electronic filing may be phased in as deemed necessary by the Tax Commissioner.
Any person that files a tax return on behalf of a taxpayer must disclose in writing to the taxpayer that the return will be filed in an electronic format and in accordance with rules and regulations prescribed by the Tax Commissioner.
(8) Any person who fails to file an electronic return as required under subsection (7) of this section shall be subject to a penalty of one hundred dollars for each return that was not properly filed in addition to other penalties provided by law. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.
(9) The Legislature hereby finds and determines that the development of a comprehensive electronic filing and payment system for all state tax programs and fees administered by the Department of Revenue is of critical importance to the State of Nebraska. It is the intent of the Legislature that the department implement a mandatory electronic filing system for all state tax programs and fees administered by the department as deemed practicable and necessary for the proper administration of the Nebraska Revenue Act of 1967. It is the intent of the Legislature that the department require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the department as deemed practicable and necessary for the proper administration of the Nebraska Revenue Act of 1967.

Source: Laws 1987, LB523, § 42; Laws 1995, LB134, § 1; Laws 2000, LB1251, § 1; Laws 2005, LB216, § 2; Laws 2009, LB165, § 3; Laws 2010, LB879, § 7.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 18
COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY SALE OF REAL PROPERTY

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77-1801. Real property taxes; collection by sale; when. Except for delinquent taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, all real estate on which the taxes shall not have been paid in full, as provided by law, on or before the first Monday of March, after they become delinquent, shall be subject to sale on or after such date.

Source: Laws 1903, c. 73, § 193, p. 459; R.S.1913, § 6521; C.S.1922, § 6049; C.S.1929, § 77-2001; Laws 1933, c. 136, § 4, p. 518; Laws 1937, c. 167, § 23, p. 655; Laws 1939, c. 98, § 23, p. 442; Laws 1941, c. 157, § 23, p. 626; C.S.Supp.,1941, § 77-2001; R.S.1943, § 77-1801; Laws 1986, LB531, § 1; Laws 2000, LB968, § 70.

77-1802. Real property taxes; delinquent tax list; notice of sale. The county treasurer shall, not less than four nor more than six weeks prior to the first Monday of March in each year, make out a list of all real property subject to sale and the amount of all delinquent taxes against each item, describing the property as it is described on the tax list, with an accompanying notice stating that so much of such property described in the list as may be necessary for that purpose will, on the first Monday of March next thereafter, be sold by such county treasurer at public auction at his or her office for the taxes, interest, and costs thereon.

Source: Laws 1903, c. 73, § 194, p. 459; R.S.1913, § 6522; C.S.1922, § 6050; Laws 1929, c. 169, § 1, p. 583; C.S.1929, § 77-2002; Laws 1933, c. 136, § 5, p. 519; Laws 1937, c. 167, § 24, p. 655; Laws 1939, c. 98, § 24, p. 442; Laws 1941, c. 157, § 24, p. 626; C.S.Supp.,1941, § 77-2002; R.S.1943, § 77-1802; Laws 1986, LB531, § 2; Laws 1992, LB1063, § 139; Laws 1992, Second Spec. Sess., LB1, § 112.

Annotations

Requirement to include all delinquent taxes applies to the delinquent tax list and not to private tax sale, and does not require county treasurer to include in private sale all taxes delinquent at time of sale. McGerr v. Bradley, 117 Neb. 841, 223 N.W. 132 (1929), overruling Wight v. McGuigan, 94 Neb. 358, 143 N.W. 232 (1913).

Notice is not required of a private sale of lands previously noticed for public sale at which they were not sold. Kittle v. Shervin, 11 Neb. 65, 7 N.W. 861 (1881).

77-1803. Real property taxes; notice of sale; sufficiency of description. In describing real property in the notice required by section 77-1802 and in all proceedings relative to assessing, advertising, or selling the property for taxes, it shall be sufficient to designate the township, range, sections, or part of section and also the number of lots and blocks, by initial letters, abbreviations, and figures.

In describing improvements on leased land for such notice and proceedings, the words "Improvements Only Located Upon" shall precede the designation of such property as set out in this section.

Source: Laws 1903, c. 73, § 195, p. 460; R.S.1913, § 6523; C.S.1922, § 6051; C.S.1929, § 77-2003; R.S.1943, § 77-1803; Laws 1992, LB1063, § 140; Laws 1992, Second Spec. Sess., LB1, § 113.

Annotations

Description is sufficient if interested parties are enabled thereby to determine what property is intended. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

Where land was described as part of lot 5, B. 41, tax was void for uncertainty. Spiech v. Tierney, 56 Neb. 514, 76 N.W. 1090 (1898).

It is sufficient if description affords notice and protects owner's rights. Kershaw v. Jansen, 49 Neb. 467, 68 N.W. 616 (1896).

Taxes levied were valid although plat by which lots had been described had never been recorded. Roads v. Estabrook, 35 Neb. 297, 53 N.W. 64 (1892); Bryant v. Estabrook, 16 Neb. 217, 20 N.W. 245 (1884).

Description is sufficient if property can be identified. Alexander v. Hunter, 29 Neb. 259, 45 N.W. 461 (1890); Lynam v. Anderson, 9 Neb. 367, 2 N.W. 732 (1879); Concordia L. & T. Co. v. Van Camp, 2 Neb. Unof. 633, 89 N.W. 744 (1902).

77-1804. Real property taxes; delinquent tax list; publication and posting of notice; publication charges; publication on Department of Revenue web site. (1) The county treasurer shall cause the list of real property subject to sale and accompanying notice to be published once a week for three consecutive weeks prior to the date of sale, commencing the first week in February, in a legal newspaper and, in counties having more than two hundred fifty thousand inhabitants, in a daily legal newspaper of general circulation, published in the English language in the county, and designated by the county board. The county treasurer shall also cause to be posted in some conspicuous place in his or her office a copy of such notice. The treasurer shall assess against each description the sum of five dollars to defray the expenses of advertising, which sum shall be added to the total amount due on such real property and be collected in the same manner as taxes are collected.

(2) The county treasurer shall also forward an electronic copy of the list of real property subject to sale to the Property Tax Administrator who shall compile a list for all counties and publish the compiled list on the web site of the Department of Revenue.

Source: Laws 1903, c. 73, § 196, p. 460; R.S.1913, § 6524; Laws 1915, c. 111, § 1, p. 260; Laws 1919, c. 133, § 2, p. 310; C.S.1922, § 6052; Laws 1929, c. 170, § 1, p. 584; C.S.1929, § 77-2004; Laws 1933, c. 136, § 6, p. 519; Laws 1937, c. 167, § 25, p. 656; Laws 1939, c. 98, § 25, p. 443; Laws 1941, c. 157, § 25, p. 627; C.S.Supp.,1941, § 77-2004; R.S.1943, § 77-1804; Laws 1953, c. 279, § 1, p. 910; Laws 1965, c. 495, § 1, p. 1583; Laws 1974,

LB937, § 2; Laws 1976, LB675, § 1; Laws 1986, LB531, § 3; Laws 1992, LB1063, § 141; Laws 1992, Second Spec. Sess., LB1, § 114; Laws 1995, LB202, § 2; Laws 2014, LB697, § 1.

Cross References

For legal rate for publications, see section 33-141.

Annotations

Treasurer is not required to include in private sale taxes becoming delinquent subsequent to the taxes levied and advertised for previous year. McGerr v. Bradley, 117 Neb. 841, 223 N.W. 132 (1929).

Statute providing rate for publishing notices in general governs rate for publishing delinquent tax lists and not above section which applies to amount to be charged to delinquent taxpayer. Wisner v. Morrill County, 117 Neb. 324, 220 N.W. 280 (1928).

Notice of tax sale must contain substantially all of the matter specified in statute. Tate v. Biggs, 89 Neb. 195, 130 N.W. 1053 (1911).

County board may change designation of paper in which notice is published from time to time. World Pub. Co. v. Douglas County, 79 Neb. 849, 113 N.W. 539 (1907).

Where county board recognizes and deals with newspaper as official paper of county, it is a paper designated for purpose of publication of notices of tax sales. Continental Trust Co. v. Link, 79 Neb. 29, 112 N.W. 352 (1907).

Action by board, in designating paper if in good faith, will not be interfered with by court of equity. Getzschmann v. Board of County Commissioners of Douglas County, 76 Neb. 648, 107 N.W. 987 (1906).

Week means period of time beginning and ending Saturday following. Requirements of section are discussed. Medland v. Linton, 60 Neb. 249, 82 N.W. 866 (1900).

Treasurer has no authority to sell real estate without including in sale all taxes delinquent for all previous years, with interest and costs. Grant v. Bartholomew, 57 Neb. 673, 78 N.W. 314 (1899); Medland v. Connell, 57 Neb. 10, 77 N.W. 437 (1898); Adams v. Osgood, 42 Neb. 450, 60 N.W. 869 (1894); O'Donohue v. Hendrix, 13 Neb. 257, 13 N.W. 281 (1882); Tillotson v. Small, 13 Neb. 202, 13 N.W. 201 (1882); State ex rel. Whiffen v. Helmer, 10 Neb. 25, 4 N.W. 367 (1880).

If county board fails to designate paper, treasurer should cause notice to be published. Hamilton County v. Bailey, 12 Neb. 56, 10 N.W. 539 (1881).

77-1805. Real property taxes; affidavits of publication; by whom made. Every printer who shall publish such list and notice shall, immediately after the last publication thereof, furnish to the treasurer of the proper county an affidavit of publication made by the publisher, manager or foreman of such newspaper to whom the facts of publication are known. No printer shall be paid for such publication who shall fail to furnish such affidavit within ten days after the last publication. The county treasurer shall also make, or cause to be made, an affidavit or affidavits of the publication of such list and notice as above required, all of which shall be carefully preserved by him in his office.

Source: Laws 1903, c. 73, § 197, p. 460; R.S.1913, § 6525; C.S.1922, § 6053; C.S.1929, § 77-2005; R.S.1943, § 77-1805.

Annotations

Affidavit of publication of tax list sworn to before a United States Commissioner was void. Cornell v. Maverick Loan & Trust Co., 95 Neb. 9, 144 N.W. 1072 (1914).

Affidavit subscribed and sworn to before a person not authorized by law to administer oaths is void and no affidavit. Lanning v. Haases, 89 Neb. 19, 130 N.W. 1008 (1911).

77-1806. Real property taxes; delinquent tax sale; when commenced and concluded. On the day designated in the notice of sale, the county treasurer shall commence the sale of the real property on which the taxes and charges have not been paid and shall continue the sale from day to day, Sundays and holidays excepted, until each item of real property or so much thereof as is sufficient to pay the taxes and charges thereon, including the cost of advertising, has been sold or offered for sale.

Source: Laws 1903, c. 73, § 198, p. 461; R.S.1913, § 6526; C.S.1922, § 6054; C.S.1929, § 77-2006; Laws 1937, c. 167, § 10, p. 642; Laws 1939, c. 98, § 10, p. 428; Laws 1941, c. 157, § 10, p. 613; C.S.Supp.,1941, § 77-2006; R.S.1943, § 77-1806; Laws 1992, LB1063, § 142; Laws 1992, Second Spec. Sess., LB1, § 115.

Annotations

Duty to continue sale from day to day ends when property is sold or offered for sale. Nolan v. Klug, 134 Neb. 860, 279 N.W. 791 (1938).

Treasurer is required to commence sale at appointed time and continue to offer the advertised lands until they are sold or not sold for want of bidders. McGerr v. Bradley, 117 Neb. 841, 223 N.W. 132 (1929).

Sale is invalid unless made for full amount of all delinquent taxes and charges. Grant v. Bartholomew, 57 Neb. 673, 78 N.W. 314 (1899); Medland v. Connell, 57 Neb. 10, 77 N.W. 437 (1898).

Intended purchaser in good faith may compel treasurer to offer property for sale. State ex rel. Snow v. Farney, 36 Neb. 537, 54 N.W. 862 (1893).

All steps in proceedings must be strictly followed. Miller v. Hurford, 11 Neb. 377, 9 N.W. 477 (1881).

77-1807. Real property taxes; delinquent tax sale; how conducted; sale of part; bid by land bank; effect. (1)(a) This subsection applies until January 1, 2015.

(b) Except as otherwise provided in subdivision (c) of this subsection, the person who offers to pay the amount of taxes due on any real property for the smallest portion of the same shall be the purchaser, and when such person designates the smallest portion of the real property for which he or she will pay the amount of taxes assessed against any such property, the portion thus designated shall be considered an undivided portion.

(c) If a land bank gives an automatically accepted bid for the real property pursuant to section 19-5217, the land bank shall be the purchaser, regardless of the bid of any other person.

(d) If no person bids for a less quantity than the whole and no land bank has given an automatically accepted bid pursuant to section 19-5217, the treasurer may sell any real property to any one who will take the whole and pay the taxes and charges thereon.

(e) If the homestead is listed separately as a homestead, it shall be sold only for the taxes delinquent thereon.

(2)(a) This subsection applies beginning January 1, 2015.

(b) If a land bank gives an automatically accepted bid for real property pursuant to section 19-5217, the land bank shall be the purchaser and no public or private auction shall be held under sections 77-1801 to 77-1863.

(c) If no land bank has given an automatically accepted bid pursuant to section19-5217, the person who offers to pay the amount of taxes, delinquent interest, and costs due on any real property shall be the purchaser.

(d) The county treasurer shall announce bidding rules at the beginning of the public auction, and such rules shall apply to all bidders throughout the public auction.

(e) The sale, if conducted in a round-robin format, shall be conducted in the following manner:

(i) At the commencement of the sale, a count shall be taken of the number of registered bidders present who want to be eligible to purchase property. Each registered bidder shall only be counted once. If additional registered bidders appear at the sale after the commencement of a round, such registered bidders shall have the opportunity to participate at the end of the next following round, if any, as provided in subdivision (v) of this subdivision;

(ii) Sequentially enumerated tickets shall be placed in a receptacle. The number of tickets in the receptacle for the first round shall equal the count taken in subdivision (i) of this subdivision, and the number of tickets in the receptacle for each subsequent round shall equal the number of the count taken in subdivision (i) of this subdivision plus additional registered bidders as provided in subdivision (v) of this subdivision;

(iii) In a manner determined by the county treasurer, tickets shall be selected from the receptacle by hand for each registered bidder whereby each ticket has an equal chance of being selected. Tickets shall be selected until there are no tickets remaining in the receptacle;

(iv) The number on the ticket selected for a registered bidder shall represent the order in which a registered bidder may purchase property consisting of one parcel subject to sale from the list per round; and

(v) If property listed remains unsold at the end of a round, a new round shall commence until all property listed is either sold or, if any property listed remains unsold, each registered bidder has consecutively passed on the opportunity to make a purchase. Registered bidders who are not present when it is their turn to purchase property shall be considered to have passed on the opportunity to make a purchase. At the beginning of the second and any subsequent rounds, the county treasurer shall inquire whether there are additional registered bidders. If additional registered bidders are present, tickets for each such bidder shall be placed in a receptacle and selected as provided in subdivisions (ii) through (iv) of this subdivision. The second and any subsequent rounds shall proceed in the same manner and purchase order as the last preceding round, except that any additional registered bidders shall be given the opportunity to purchase at the end of the round in the order designated on their ticket.

(f) Any property remaining unsold upon completion of the public auction shall be sold at a private sale pursuant to section 77-1814.

(g) A bidder shall (i) register with the county treasurer prior to participating in the sale, (ii) provide proof that it maintains a registered agent for service of process with the Secretary of State if the bidder is a foreign corporation, and (iii) pay a twenty-five-dollar registration fee. The fee is not refundable upon redemption.

Source: Laws 1903, c. 73, § 199, p. 461; R.S.1913, § 6527; C.S.1922, § 6055; C.S.1929, § 77-2007; Laws 1937, c. 167, § 11, p. 643; Laws 1939, c. 98, § 11, p. 428; Laws 1941, c. 157, § 11, p. 614; C.S.Supp.,1941, § 77-2007; R.S.1943, § 77-1807; Laws 1992, LB1063, § 143; Laws 1992, Second Spec. Sess., LB1, § 116; Laws 2013, LB97, § 21; Laws 2013, LB341, § 1; Laws 2014, LB851, § 9.

Annotations

1. Effect of sale

Sale for less than amount of taxes due is not sale of the land, but it only transfers lien to purchaser. Barker v. Hume, 84 Neb. 235, 120 N.W. 1131 (1909).

Sale operates to transfer the lien to the purchaser. City Safe Dep. & Agency Co. v. City of Omaha, 79 Neb. 446, 112 N.W. 598 (1907).

Rule of caveat emptor applies to purchasers of real estate at tax sale. McCague v. City of Omaha, 58 Neb. 37, 78 N.W. 463 (1899); Norris v. Burt County, 56 Neb. 295, 76 N.W. 551 (1898).

2. Payment of purchase money

Tax lien is ordinarily extinguished by payment, except where land is sold for taxes, and subsequent delinquent taxes are paid by holder of certificate. Toy v. McHugh, 62 Neb. 820, 87 N.W. 1059 (1901).

Statute is notice to purchaser that purchase money must be paid. Richardson County v. Miles, 7 Neb. 118 (1878).

3. Payment of subsequent taxes

Payment of subsequent valid taxes by owner of invalid certificate gives him lien for such valid taxes. John v. Connell, 61 Neb. 267, 85 N.W. 82 (1901).

4. Subrogation

On sale of one tract for taxes levied upon another, purchaser is subrogated to lien of public. Wyman v. Searle, 88 Neb. 26, 128 N.W. 801 (1910).

Holder of certificate is subrogated to rights of public in any taxes paid to protect his lien. Adams v. Osgood, 60 Neb. 779, 84 N.W. 257 (1900).

Purchaser is entitled to reimbursement, or subrogation to rights of public. Grant v. Bartholomew, 57 Neb. 673, 78 N.W. 314 (1899); Leavitt v. Bartholomew, 1 Neb. Unof. 756, 93 N.W. 856 (1901).

5. Miscellaneous

In a suit to foreclose, a deficiency judgment is void. Kelley v. Wehn, 63 Neb. 410, 88 N.W. 682 (1902).

Tax levied on real estate is not a debt against owner, but a charge against the land. Philadelphia M. & T. Co. v. City of Omaha, 63 Neb. 280, 88 N.W. 523 (1901).

Policy of the law is to encourage competition at the sale. State ex rel. Snow v. Farney, 36 Neb. 537, 54 N.W. 862 (1893).

Force of tax deed and validity of sale are tested by law in force when sale was made. McCann v. Merriam, 11 Neb. 241, 9 N.W. 96 (1881).

77-1808. Real property taxes; delinquent tax sale; payment by purchaser; resale. The person purchasing any real property shall pay to the county treasurer the amount of taxes, interest, and cost thereon, which payment may be made in the same funds receivable by law in the payment of taxes. If any purchaser fails to so pay, then the real property shall at once again be offered as if no such sale had been made.

Source: Laws 1903, c. 73, § 200, p. 461; R.S.1913, § 6528; C.S.1922, § 6056; C.S.1929, § 77-2008; Laws 1937, c. 167, § 12, p. 643; Laws 1939, c. 98, § 12, p. 429; Laws 1941, c. 157, § 12, p. 614; C.S.Supp.,1941, § 77-2008; R.S.1943, § 77-1808; Laws 1992, LB1063, § 144; Laws 1992, Second Spec. Sess., LB1, § 117; Laws 2013, LB341, § 2.

Annotations

Sale is not invalid though payment is not made immediately, where treasurer is unable to receive it. Leavitt v. S. D. Mercer Co., 64 Neb. 31, 89 N.W. 426 (1902); Ure v. Bunn, 3 Neb. Unof. 61, 90 N.W. 904 (1902).

Failure of treasurer to offer land for resale does not invalidate taxes. Green v. Hellman, 61 Neb. 875, 86 N.W. 912 (1901).

77-1809. Real property taxes; delinquent tax sales; purchase by county; assignment of certificate of purchase; interest; notice to land bank. (1) At all sales provided by law, the county board may purchase for the use and benefit, and in the name of the county, any real estate advertised and offered for sale when the same remains unsold for want of bidders. The county treasurer shall issue certificates of purchase of the real estate so sold in the name of the county. Such certificates shall remain in the custody of the county treasurer, who shall at any time assign the same to any person wishing to buy for the amount expressed on the face of the certificate and interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date thereof. Such assignment shall be attested by the

endorsement of the county clerk of his or her name on the back of such certificate, and such endorsement shall be made when requested by the county treasurer.

(2) If real estate is purchased by a county under this section and such real estate lies within a municipality that has created a land bank pursuant to the Nebraska Municipal Land Bank Act, the county treasurer of such county shall notify the land bank of such purchase as soon as practical and shall give the land bank the first opportunity to acquire the certificate of purchase for such real estate from the county.

Source: Laws 1903, c. 73, § 201, p. 462; R.S.1913, § 6529; C.S.1922, § 6057; C.S.1929, § 77-2009; Laws 1937, c. 167, § 34, p. 662; Laws 1939, c. 98, § 34, p. 449; Laws 1941, c. 157, § 34, p. 633; C.S.Supp.,1941, § 77-2009; R.S.1943, § 77-1809; Laws 1971, LB26, § 1; Laws 1979, LB84, § 2; Laws 1981, LB167, § 44; Laws 2013, LB97, § 22.

Cross References

Nebraska Municipal Land Bank Act, see section 19-5201.

Annotations

Certificate of tax sale is required to show payment of taxes and interest. Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).

A governmental subdivision purchasing and foreclosing a tax sale certificate on real estate does so as trustee of an express trust for use and benefit of the state and all other governmental subdivisions entitled to participate in distribution of proceeds. City of McCook v. Johnson, 135 Neb. 270, 281 N.W. 69 (1938).

County board may purchase for county any real estate remaining unsold for want of bidders and foreclose tax. Logan County v. Carnahan, 66 Neb. 685, 92 N.W. 984 (1902), affirmed on rehearing 66 Neb. 693, 95 N.W. 812 (1903); Otoe County v. Mathews, 18 Neb. 466, 25 N.W. 618 (1885); Otoe County v. Brown, 16 Neb. 394, 20 N.W. 274 (1884).

Certificate cannot be assigned for less than amount due thereon with interest and costs. State of Neb. ex rel. John T. Jones v. Graham, 17 Neb. 43, 22 N.W. 114 (1885).

77-1810. Real property taxes; delinquent tax sales; purchase by political subdivisions authorized. (1) Except as otherwise provided in subsection (2) of this section, whenever any real property subject to sale for taxes is within the corporate limits of any city, village, school district, drainage district, or irrigation district, it shall have the right and power through its governing board or body to purchase such real property for the use and benefit and in the name of the city, village, school district, drainage district, or irrigation district as the case may be. The treasurer of the city, village, school district, drainage district, or irrigation district may assign the certificate of purchase by endorsement of his or her name on the back thereof when directed so to do by written order of the governing board.

(2) No such sale shall be made to any city, village, school district, drainage district, or irrigation district by the county treasurer (a) when the real property has been previously sold to the county, but in any such case, the city, village, school district, drainage district, or irrigation district may purchase the tax certificate held by the county or (b) if a land bank has given an automatically accepted bid on such real property pursuant to section 19-5217.

Source: Laws 1903, c. 73, § 202, p. 462; R.S.1913, § 6530; Laws 1917, c. 118, § 1, p. 292; C.S.1922, § 6058; C.S.1929, § 77-2010; Laws 1937, c. 167, § 35, p. 662; Laws 1939, c. 98, § 35, p. 450; Laws 1941, c. 159, § 1, p. 641; Laws 1941, c. 157, § 35, p. 633; C.S.Supp.,1941, § 77-2010; R.S.1943, § 77-1810; Laws 1992, LB1063, § 145; Laws 1992, Second Spec. Sess., LB1, § 118; Laws 2013, LB97, § 23.

Annotations

City that purchases tax sale certificate may not bid in property at foreclosure sale without paying the amount bid. City of McCook v. Johnson, 135 Neb. 270, 281 N.W. 69 (1938).

Tax sale dates from the issuance of tax sale certificate to the city, not from date county treasurer receives the money therefor. Nolan v. Klug, 134 Neb. 860, 279 N.W. 791 (1938).

A drainage district may buy at a tax sale lands encumbered by unpaid delinquent assessments levied thereon for special drainage benefits. Schobert-Zimmerman Drainage Dist. v. Soll, 132 Neb. 629, 272 N.W. 775 (1937).

77-1811. Real property taxes; delinquent tax sales; purchase by political subdivisions; accounting by county treasurer. Whenever real estate is purchased under section 77-1809 or 77-1810, the county treasurer shall not be required to account to the State Treasurer or to any person for the amount of taxes due, until the county board, city, village, school district, drainage district or irrigation district authorities have sold the certificate or certificates of purchase of such real estate, or until, by redemption or foreclosure proceedings, he shall have received the money thereon.

Source: Laws 1903, c. 73, § 203, p. 462; R.S.1913, § 6531; C.S.1922, § 6059; C.S.1929, § 77-2011; Laws 1937, c. 167, § 36, p. 663; Laws 1939, c. 98, § 36, p. 451; Laws 1941, c. 157, § 36, p. 634; C.S.Supp.,1941, § 77-2011; R.S.1943, § 77-1811.

Annotations

It is unnecessary for county to pay the amount of the tax to the treasurer, and the certificate covering the taxes is valid lien upon the real estate. County of Madison v. Walz, 144 Neb. 677, 14 N.W.2d 319 (1944).

Trust relation terminates on sale of certificate or completion of foreclosure and distribution of proceeds. City of McCook v. Johnson, 135 Neb. 270, 281 N.W. 69 (1938).

Tax sale dates from the issuance of tax sale certificate to the city, not from date county treasurer receives the money therefor. Nolan v. Klug, 134 Neb. 860, 279 N.W. 791 (1938).

77-1812. Real property taxes; county treasurer; record. The county treasurer shall keep a record showing in separate columns the number and date of each certificate of sale, the name of the owners or owner if known, the description of the real property, the name of the purchaser, the total amount of taxes and costs for which sold, the amount of subsequent taxes paid by the purchaser and date of payment, to whom assigned, and the amount paid therefor, name of person redeeming, date of redemption, total amount paid for redemption, name of person to whom conveyed, and date of deed.

Source: Laws 1903, c. 73, § 204, p. 463; R.S.1913, § 6532; C.S.1922, § 6060; C.S.1929, § 77-2012; R.S.1943, § 77-1812; Laws 1992, LB1063, § 146; Laws 1992, Second Spec. Sess., LB1, § 119; Laws 2013, LB341, § 3.

77-1813. Real property taxes; annual tax sale; return of county treasurer; when made; certified copy as evidence. On or before the first Monday of April following the sale of the real property, the county treasurer shall file in the office of the county clerk a return thereon as the same shall appear upon the county treasurer's record, and such return, duly certified, shall be evidence of the regularity of the proceedings.

Source: Laws 1903, c. 73, § 205, p. 463; R.S.1913, § 6533; C.S.1922, § 6061; Laws 1933, c. 136, § 7, p. 520; R.S.1943, § 77-1813; Laws 1987, LB215, § 1; Laws 2013, LB341, § 4.

Annotations

There can be no valid administrative private sale for taxes unless county treasurer has filed with the county clerk a return of public sale showing land unsold for want of bidders. Pettijohn v. County of Furnas, 150 Neb. 736, 35 N.W.2d 828 (1949).

Private tax sale certificate issued by county treasurer to city in December after making due return to annual public sale does not contravene this section. Nolan v. Klug, 134 Neb. 860, 279 N.W. 791 (1938).

Return of sale to the county clerk must be made by the county treasurer on or before the first Monday in December. McGerr v. Bradley, 117 Neb. 841, 223 N.W. 132 (1929).

Treasurer cannot make valid private sale until he has made return of public sale. Gallatin v. Tri-State Land Co., 89 Neb. 235, 131 N.W. 224 (1911); Johnson v. Finley, 54 Neb. 733, 74 N.W. 1080 (1898).

Returns must be certified and signed by treasurer. Tate v. Biggs, 89 Neb. 195, 130 N.W. 1053 (1911).

Return must be filed with county clerk. Medland v. Linton, 60 Neb. 249, 82 N.W. 866 (1900).

Return is not required until amount bid is paid. Richardson County v. Miles, 7 Neb. 118 (1878).

77-1814. Real property taxes; private tax sale; issuance of certificates. After the sale is closed and the treasurer has made his or her return thereof to the county clerk as provided in section 77-1813, if any real property remains unsold for want of bidders therefor, the county treasurer is authorized and required to sell the same at private sale at his or her office to any person who will pay the amount of taxes, penalty, and costs thereof and to make out duplicate certificates of sale and deliver one to the purchaser and the other to the county clerk. Such certificate shall contain the additional statement that such real property has been offered at public sale but not sold for want of bidders and shall also contain the words "sold for taxes at private sale". The treasurer is further authorized and required to sell all real property in the county on which taxes remain unpaid and delinquent for any previous year or years.

Source: Laws 1903, c. 73, § 206, p. 463; R.S.1913, § 6534; C.S.1922, § 6062; C.S.1929, § 77-2014; Laws 1937, c. 167, § 13, p. 643; Laws 1939, c. 98, § 13, p. 429; Laws 1941, c. 157, § 13, p. 614; C.S.Supp.,1941, § 77-2014; R.S.1943, § 77-1814; Laws 1992, LB1063, § 147; Laws 1992, Second Spec. Sess., LB1, § 120.

Annotations

Where land is sold for taxes at private sale, deed must contain recital that land had first been offered at public sale. Podewitz v. Gering Nat. Bank, 171 Neb. 380, 106 N.W.2d 497 (1960).

Party who seeks to foreclose tax sale certificate is required to plead and prove all steps necessary to issuance of valid certificate. Pettijohn v. County of Furnas, 150 Neb. 736, 35 N.W.2d 828 (1949).

Realty may be sold at private sale for delinquent taxes advertised for previous year, though at the time of sale taxes for another year have become delinquent but have not been advertised and are not included in such sale. McGerr v. Bradley, 117 Neb. 841, 223 N.W. 132 (1929), overruling first two paragraphs of syllabus in Wight v. McGuigan, 94 Neb. 358, 143 N.W. 232 (1913).

Failure to file duplicate tax receipt will not affect sale or rights of purchaser. Cowles v. Adams, 78 Neb. 130, 110 N.W. 697 (1907).

Certificate is presumptive evidence that report was made and filed in due time. Gallentine v. Fullerton, 67 Neb. 553, 93 N.W. 932 (1903).

Private sale is invalid where treasurer has failed to make return of public sale as required by statute. Gallentine v. Fullerton, 67 Neb. 553, 93 N.W. 932 (1903); Medland v. Connell, 57 Neb. 10, 77 N.W. 437 (1898).

If private sale is invalid, purchaser is subrogated to rights of public and may foreclose lien for all taxes paid. Johnson v. Finley, 54 Neb. 733, 74 N.W. 1080 (1898); Weston v. Meyers, 45 Neb. 95, 63 N.W. 117 (1895); Adams v. Osgood, 42 Neb. 450, 60 N.W. 869 (1894).

Treasurer is not required to give notice or invite competition at private sale. Kittle v. Shervin, 11 Neb. 65, 7 N.W. 861 (1881).

77-1815. Real property taxes; county treasurer; attendance at tax sale; penalty. If any treasurer fails to attend any sale of real property as required by sections 77-1801 to 77-1814, either in person or by deputy, he or she shall be liable to a fine of not less than fifty nor more than three hundred dollars to be recovered by an action in the district court in the name of the county against the treasurer and the person issuing the treasurer's bond.

Source: Laws 1903, c. 73, § 207, p. 464; R.S.1913, § 6535; C.S.1922, § 6063; C.S.1929, § 77-2015; R.S.1943, § 77-1815; Laws 1992, LB1063, § 148; Laws 1992, Second Spec. Sess., LB1, § 121.

77-1816. Real property taxes; fraudulent sales; penalty. If any treasurer or deputy shall sell or assist in selling any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and willfully sell, or assist in selling, any real property for the payment of taxes to defraud the owner of such real property, or shall knowingly execute a deed for property so sold, he shall be deemed guilty of a Class I misdemeanor and shall be liable to pay the injured party all damages sustained by such wrongful act, and all such sales shall be void.

Source: Laws 1903, c. 73, § 207, p. 464; R.S.1913, § 6535; C.S.1922, § 6063; C.S.1929, § 77-2015; R.S.1943, § 77-1816; Laws 1977, LB39, § 227.

77-1817. Real property tax sales; prohibition against purchase by county treasurer; penalty. If any county treasurer shall, either directly or indirectly, be concerned in the purchase of any real property sold for the payment of taxes, he shall be liable to a penalty of not more than one thousand dollars to be recovered in an action in the district court brought in the name of the county against such treasurer and his bondsmen, and all such sales shall be void.

Source: Laws 1903, c. 73, § 208, p. 464; R.S.1913, § 6536; C.S.1922, § 6064; C.S.1929, § 77-2016; R.S.1943, § 77-1817.

77-1818. Real property taxes; certificate of purchase; lien of purchaser; subsequent taxes. The purchaser of any real property sold by the county treasurer for taxes shall be entitled to a certificate in writing, describing the real property so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be signed by the county treasurer in his or her official capacity and shall be presumptive evidence of the regularity of all prior proceedings. Each tax lien shall be shown on a single certificate. The purchaser acquires a perpetual lien of the tax on the real property, and if after the taxes become delinquent he or she subsequently pays any taxes levied on the property, whether levied for any year or years previous or subsequent to such sale, he or she shall have the same lien for them and may add them to the amount paid by him or her in the purchase.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1818; Laws 1992, LB1063, § 149; Laws 1992, Second Spec. Sess., LB1, § 122; Laws 2013, LB341, § 5.

Annotations

1. Presumption of validity

Holder of tax sale certificate is relieved of the necessity, in the first instance, of proving that every requirement of the statute has been followed to establish that property is subject to the lien of his certificate. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

Sale certificate and receipts are prima facie evidence of validity of taxes. Wales v. Warren, 66 Neb. 455, 92 N.W. 590 (1902).

Legal presumption of validity of taxes and regularity of sale is raised by sale of land for delinquent taxes. Darr v. Berquist, 63 Neb. 713, 89 N.W. 256 (1902).

Burden of showing irregularities is upon party asserting same. Darr v. Wisner, 63 Neb. 305, 88 N.W. 518 (1901).

Tax certificate is sufficient to establish prima facie existence of a lien in some amount. Merrill v. Van Camp, 1 Neb. Unof. 462, 96 N.W. 344 (1901).

2. Lien

Provisions by which taxes are declared to be a perpetual lien are for the exclusive benefit of the state and the different agencies thereof. Gibson v. Peterson, 118 Neb. 218, 224 N.W. 272 (1929); Alexander v. Shaffer, 38 Neb. 812, 57 N.W. 541 (1894).

3. Effect of sale

Purchase, by one whose duty it was to pay taxes, operates as payment only. Gibson v. Sexson, 82 Neb. 475, 118 N.W. 77 (1908).

Purchase of title by holder of certificate merges tax lien in legal title. Mead v. Brewer, 77 Neb. 400, 109 N.W. 399 (1906).

Tax lien is ordinarily extinguished by payment, but exception to rule is where holder of sale certificate pays subsequent delinquent taxes. Toy v. McHugh, 62 Neb. 820, 87 N.W. 1059 (1901).

Purchaser has lien for all legal taxes paid by him, with interest and costs. Medland v. Connell, 57 Neb. 10, 77 N.W. 437 (1898).

Rule of caveat emptor applies to purchaser at tax sale for special assessment levied by metropolitan city. Though tax is invalid, city is not required to refund. Pennock v. Douglas County, 39 Neb. 293, 58 N.W. 117 (1894).

4. Subrogation

Certificate, barred upon void levy, gives no lien on property, but payment of subsequent valid taxes by holder in good faith, entitles him to subrogation to rights of public to lien. John v. Connell, 61 Neb. 267, 85 N.W. 82 (1901).

Purchaser in good faith is entitled to subrogation to all rights of public to lien. Leavitt v. Bartholomew, 1 Neb. Unof. 756, 93 N.W. 856 (1901).

5. Miscellaneous

This section does not require treasurer's official seal to be affixed to tax sale certificate. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Purchaser of tax sale certificate may pay subsequent taxes, and the amount thus paid may be added to the amount due on the certificate and included in foreclosure. County of Madison v. Walz, 144 Neb. 677, 14 N.W.2d 319 (1944).

Where sale was made at time required by law, a certificate dated three months afterwards was valid. Otoe County v. Brown, 16 Neb. 394, 20 N.W. 274 (1884).

77-1819. Real property taxes; certificate of purchase; form. The certificate shall be substantially in the following form: COUNTY TREASURER'S CERTIFICATE OF TAX SALE. State of Nebraska ..... County, ss: I, ... treasurer of the county of ....., in the State of Nebraska, do hereby certify that the following described real estate in such county and state: (describe the same) was, on the ..... day of ..... 20...., duly sold by me in the manner provided by law for the delinquent taxes for the years .....(list years)..... thereon, amounting to ..... dollars, including interest thereon, and costs allowed by law, to ..... for the sum of ..... dollars. I further certify that unless redemption is made of such real estate in the manner provided by law, the ....., heirs or assigns will be entitled to a deed therefor on and after the ..... day of ..... A.D. 20...., on surrender of this certificate, and compliance with the provisions required by law.

In witness whereof, I have hereunto set my hand this ..... day of ..... A.D. 20.... .

(L.S.) ....., Treasurer.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1819; Laws 2004, LB813, § 32.

Annotations

This section does not require treasurer's official seal to be affixed to tax sale certificate. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

77-1821. Real property taxes; tax receipt; entries. The treasurer shall make out a tax receipt for the taxes on the real estate mentioned in the certificate, the same as in other cases, and shall write thereon sold for taxes at public sale or sold for taxes at private sale, as the case may be.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1821; Laws 2012, LB851, § 5.

77-1822. Real property taxes; certificate of purchase; assignable; fee. The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his or her legal representatives, all the right and title of the original purchaser. The statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof. An assignment shall be recorded by the county treasurer who shall collect a reassignment fee of twenty dollars and issue a new certificate to the assignee. The fee is not refundable upon redemption.

Source: Laws 1903, c. 73, § 210, p. 465; R.S.1913, § 6538; C.S.1922, § 6066; C.S.1929, § 77-2018; Laws 1937, c. 167, § 37, p. 663; Laws 1939, c. 98, § 37, p. 451; Laws 1941, c. 157, § 37, p. 634; C.S.Supp.,1941, § 77-2018; R.S.1943, § 77-1822; Laws 2002, LB994, § 24; Laws 2013, LB341, § 6.

Annotations

A tax sale certificate may be assigned by endorsement; and assignee acquires all the rights of assignor. Security Investment Co. v. Golz, 151 Neb. 172, 36 N.W.2d 862 (1949).

Possession of certificate, without proof of assignment, will not satisfy burden of proof placed upon plaintiff, where his title as assignee is denied. Wyman v. Searle, 88 Neb. 26, 128 N.W. 801 (1910).

Proof of endorsement by original purchaser and possession by endorsee are prima facie evidence of ownership. Farmers L. & T. Co. v. Joseph, 86 Neb. 256, 125 N.W. 533 (1910); Leavitt v. Bartholomew, 1 Neb. Unof. 756, 93 N.W. 856 (1901).

Certificate may be assigned by endorsement, and assignee acquires all rights of assignor. Green v. Hellman, 61 Neb. 875, 86 N.W. 912 (1901).

A quitclaim deed will convey equitable title to sale certificate on land conveyed. Leavitt v. Bell, 55 Neb. 57, 75 N.W. 524 (1898).

77-1823. Real property taxes; tax certificates and deeds; fees of county treasurer; entry on record of issuance of deed. The county treasurer shall charge a twenty-dollar issuance fee for each deed or certificate made by him or her for a sale of real property for taxes together with the fee of the notary public or other officer acknowledging the deed. The issuance fee shall not be required if the tax sale certificate is issued in the name of the county, but the issuance fee is due from the purchaser when the county assigns the certificate to another person. The fee is not refundable upon redemption. Whenever the county treasurer makes a deed to any real property sold for taxes, he or she shall enter an account thereof in the record opposite the description of the real property conveyed.

Source: Laws 1903, c. 73, § 211, p. 466; R.S.1913, § 6539; C.S.1922, § 6067; C.S.1929, § 77-2019; R.S.1943, § 77-1823; Laws 1989, LB324, § 2; Laws 1992, LB1063, § 151; Laws 1992, Second Spec. Sess., LB1, § 124; Laws 1995, LB202, § 3; Laws 2013, LB341, § 7.

77-1824. Real property taxes; redemption from sale; when and how made. The owner or occupant of any real property sold for taxes or any person having a lien thereupon or interest therein may redeem the same. The right of redemption expires when the purchaser files an application for tax deed with the county treasurer. A redemption shall not be accepted by the county treasurer, or considered valid, unless received prior to the close of business on the day the application for the tax deed is received by the county treasurer. Redemption shall be accomplished by paying the county treasurer for the use of such purchaser or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from date of such payment to date of redemption. The amount due for redemption shall include the issuance fee charged pursuant to section 77-1823.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1824; Laws 1969, c. 646, § 3, p. 2564; Laws 1979, LB84, § 3; Laws 1981, LB167, § 45; Laws 1992, LB1063, § 152; Laws 1992, Second Spec. Sess., LB1, § 125; Laws 2012, LB370, § 1; Laws 2013, LB341, § 8.

Annotations

1. Right of redemption

Redemption before delivery of the tax deed inures to benefit of one having legal or equitable title to the property redeemed. Mack v. Luebben, 215 Neb. 832, 341 N.W.2d 335 (1983).

Owner or occupant may redeem from tax sale prior to issuance of valid tax deed. Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).

Private holder of tax sale certificate, other than minor or incompetent, must bring action to foreclose certificate within five years from its date. Gibson v. Peterson, 118 Neb. 218, 224 N.W. 272 (1929).

Dower interest of wife gives her right to redeem before as well as after death of husband. Henze v. Mitchell, 93 Neb. 278, 140 N.W. 149 (1913).

When last day of period for redemption falls on Sunday, owners right of redemption extends over all next day. Counselman v. Samuels, 93 Neb. 168, 139 N.W. 862 (1913).

When decree of foreclosure is void for want of service, owner of fee should be allowed to redeem. Clarence v. Cunningham, 86 Neb. 434, 125 N.W. 597 (1910).

Right of redemption given by Constitution applies to judicial as well as administrative sales. Butler v. Libe, 81 Neb. 740, 116 N.W. 663 (1908).

A tender to tax purchaser of less sum than is due will not discharge his lien. Sanford v. Moore, 58 Neb. 654, 79 N.W. 548 (1899).

Failure to pay printer's fees will not avoid redemption. State ex rel. Nelson v. Harper, 26 Neb. 761, 42 N.W. 764 (1889).

Where purchaser received large portion of taxes paid, from owner of land, for redemption, owner is entitled to redeem. Taylor v. Courtnay, 15 Neb. 190, 16 N.W. 842 (1883).

2. Interest

Owner of tax sale certificate issued prior to 1933 is entitled to interest at twelve percent per annum on amount due at time of decree, and decree draws interest at same rate. McDonald v. Masonic Temple Craft, 133 Neb. 589, 276 N.W. 176 (1937).

Purchaser of land, not subject to assessment at time taxes purchased were assessed, is entitled to same rate of interest as though land rightfully sold. Caspary v. Boyd County, 114 Neb. 124, 206 N.W. 736 (1925).

3. Miscellaneous

Section is not applicable to judicial sales for taxes. Wood v. Speck, 78 Neb. 435, 110 N.W. 1001 (1907).

One having no title or interest in land redeeming same from sale, requires no claim against owner, or lien against land. McKenzie v. Beaumont, 70 Neb. 179, 97 N.W. 225 (1903).

Tax sales and lien, mentioned in section, have reference only to valid sales and liens. Adams v. Osgood, 42 Neb. 450, 60 N.W. 869 (1894).

Treasurer is required to hold redemption money subject to order of owner of certificate. Mandamus will lie to compel payment. State ex rel. Merrill v. Snyder, 34 Neb. 345, 51 N.W. 827 (1892).

County board has no control over money collected by treasurer on redemption of lands, and treasurer alone is liable therefor. State ex rel. Myers v. Richardson County, 11 Neb. 403, 9 N.W. 550 (1881).

77-1824.01. Real property taxes; owner-occupied real property, defined; determination by purchaser; affidavit. (1) For purposes of sections 77-1801 to 77-1863, owner-occupied real property means real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner on the date of the notice of the application for the tax deed.

(2) The determination of owner-occupied real property shall be made solely by the purchaser. The purchaser's determination shall be proved by affidavit at the time of the application and shall be accepted as true and correct by the county treasurer for his or her determination of statutory compliance with sections 77-1801 to 77-1863. Any person swearing falsely in the affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915.

Source: Laws 2012, LB370, § 2; Laws 2013, LB341, § 9.

77-1825. Real property taxes; redemption from sale; entry on record; fee; notice to and payment of redemption money to certificate holder. The county treasurer shall enter a memorandum of redemption of real property in the record and shall give a receipt therefor to the person redeeming the same, for which the

county treasurer may charge a fee of two dollars. The county treasurer shall send written notice of redemption to the holder of the county treasurer's certificate of tax sale by first-class mail if the post office address of the holder of the certificate is filed in the office of the county treasurer or by electronic means if previously agreed to by the parties. The redemption money shall be paid to or upon the order of the holder on return of the certificate.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1825; Laws 1967, c. 503, § 2, p. 1700; Laws 1989, LB324, § 3; Laws 2012, LB370, § 3; Laws 2013, LB341, § 10.

77-1826. Real property taxes; redemption from sale; minors; time permitted. The real property of minors, or any interest they may have in any real property sold for taxes, may be redeemed at any time during the time of redemption above described or at any time before such minor becomes of age and during two years thereafter.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1826; Laws 1992, LB1063, § 153; Laws 1992, Second Spec. Sess., LB1, § 126.

77-1827. Real property taxes; redemption; persons with intellectual disability or mental disorder; time permitted. The real property of persons with an intellectual disability or a mental disorder so sold, or any interest they may have in real property sold for taxes, may be redeemed at any time within five years after such sale.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1827; Laws 1986, LB1177, § 34; Laws 1992, LB1063, § 154; Laws 1992, Second Spec. Sess., LB1, § 127; Laws 2013, LB23, § 42.

77-1828. Real property taxes; redemption from sale; for whom made; reimbursement. Any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1828.

Annotations

Redemption before delivery of the tax deed inures to benefit of one having legal or equitable title to the property redeemed. Mack v. Luebben, 215 Neb. 832, 341 N.W.2d 335 (1983).

77-1829. Real property taxes; redemption from sale; extension of time by second sale. If any purchaser of real property sold for taxes under sections 77-1801 to 77-1860 suffers the same to be again sold for taxes before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the second sale, during which time the real property shall be subject to redemption upon the terms and conditions prescribed by law.

Source: Laws 1903, c. 73, § 213, p. 466; R.S.1913, § 6541; C.S.1922, § 6069; Laws 1925, c. 168, § 2, p. 442; C.S.1929, § 77-2021; Laws 1937, c. 167, § 29, p. 659; Laws 1939, c. 98, § 29, p. 446; Laws 1941, c. 157, § 29, p. 629; C.S.Supp.,1941, § 77-2021; R.S.1943, § 77-1829; Laws 1992, LB1063, § 155; Laws 1992, Second Spec. Sess., LB1, § 128.

77-1830. Real property taxes; redemption from sale; part interest in land; how made. Any person claiming an undivided part of any real property sold for taxes may redeem the property on paying such proportion of the purchase money, interest, costs, and subsequent taxes as he or she claims of the real property sold. The owner or occupant of a divided part of any real property sold for taxes or any person having a lien thereon or interest therein may redeem the property by paying the taxes separately assessed

against such divided part, together with interest, costs, and subsequent taxes. If no taxes have been separately assessed against such divided part, then it shall be the duty of the county assessor, upon demand of the owner or lienholder or upon the demand of the county treasurer, to assess the divided part and to certify the assessment to the county treasurer. The owner or lienholder of the divided part may thereupon redeem the divided part upon the payment to the county treasurer of such sum so assessed, together with interest thereon, costs, and subsequent taxes. The county treasurer shall make a proper entry of such partial redemption in his or her record, and no deed thereafter given shall convey a greater interest than that remaining unredeemed.

Source: Laws 1903, c. 73, § 213, p. 466; R.S.1913, § 6541; C.S.1922, § 6069; Laws 1925, c. 168, § 2, p. 442; C.S.1929, § 77-2021; Laws 1937, c. 167, § 29, p. 659; Laws 1939, c. 98, § 29, p. 446; Laws 1941, c. 157, § 29, p. 629; C.S.Supp.,1941, § 77-2021; R.S.1943, § 77-1830; Laws 1992, LB1063, § 156; Laws 1992, Second Spec. Sess., LB1, § 129; Laws 2013, LB341, § 11.

Annotations

Payments made to county treasurer to redeem special assessment can only apply to such as are shown by the county treasurer's books to be subject to redemption, and county treasurer has no authority to apportion special assessments as between properties. Village of Winside v. Brune, 133 Neb. 80, 274 N.W. 212 (1937).

77-1831. Real property taxes; issuance of treasurer's tax deed; notice given by purchaser; contents. Except as otherwise provided in this section, no purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the tax deed, serves or causes to be served a notice that states, after the expiration of at least three months from the date of service of such notice, the tax deed will be applied for. In the case of owner-occupied property, no purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months and forty-five days before applying for the tax deed, serves or causes to be served a notice that states, after the expiration of at least three months and forty-five days from the date of service of such notice, the tax deed will be applied for.

The notice shall include:

(1) The following statement in sixteen-point type: UNLESS YOU ACT YOU WILL LOSE THIS PROPERTY;

(2) The date when the purchaser purchased the real property sold by the county for taxes;

(3) The description of the real property;

(4) In whose name the real property was assessed;

(5) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and a statement that subsequent taxes may have been paid and interest may have accrued as of the date the notice is signed by the purchaser; and

(6) The following statements:

(a) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;

(b) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer; and

(c) Except as provided for real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner, right of redemption expires at the close of business on the date of application for the tax deed, and a deed may be applied for after the expiration of three months from the date of service of this notice. For real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner, a deed may be applied for after the expiration of three months and forty-five days after the service of this notice.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1831; Laws 1992, LB1063, § 157; Laws 1992, Second Spec. Sess., LB1, § 130; Laws 2012, LB370, § 4; Laws 2013, LB341, § 12.

Annotations

Once a purchaser has shown proof of notice as provided by statute and requested a deed within 6 months after the expiration of 3 years from the date of sale, the purchaser has done all that is required under chapter 77, article 18, to acquire a treasurer's tax deed. Ottaco, Inc. v. McHugh, 263 Neb. 489, 640 N.W.2d 662 (2002).

No notice is required under this statute if purchaser elects to foreclose on the land pursuant to sections 77-1901 to 77-1941 rather than obtain a treasurer's deed. Bish v. Fletcher, 219 Neb. 863, 366 N.W.2d 778 (1985).

Notice to parties in actual occupancy or possession is required for the issuance of tax deed. Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).

All information required by this section is jurisdictional and must be contained in the notice to redeem. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946); Thomsen v. Dickey, 42 Neb. 314, 60 N.W. 558 (1894).

Provisions of statute must be strictly complied with, and are mandatory. Brokaw v. Cottrell, 114 Neb. 858, 211 N.W. 184 (1926); Howell v. Jordan, 94 Neb. 264, 143 N.W. 217 (1913); Henze v. Mitchell, 93 Neb. 278, 140 N.W. 149 (1913).

Rights of parties in all respects are to be determined under law in force when party purchased land at tax sale, and tax deed should be issued in accordance with law in force when tax sale certificate was issued and not by law enacted subsequently. Wells v. Bloom, 96 Neb. 430, 147 N.W. 1112 (1914); Whiffin v. Higgenbotham, 80 Neb. 468, 114 N.W. 599 (1908).

Notice of time when redemption will expire must be given by purchaser or assignee before time expires. Hendrix v. Boggs, 15 Neb. 469, 20 N.W. 28 (1884).

77-1832. Real property taxes; issuance of treasurer's tax deed; service of notice; upon whom made. (1) Service of the notice provided by section 77-1831 shall be made by:

(a) Personal or residence service as described in section 25-505.01 upon every person in actual possession or occupancy of the real property who qualifies as an owner-occupant under section 77-1824.01; or

(b) Certified mail, return receipt requested, upon the person in whose name the title to the real property appears of record to the address where the property tax statement was mailed and upon every encumbrancer of record in the office of the register of deeds of the county. Whenever the record of a lien shows the post office address of the lienholder, notice shall be sent by certified mail, return receipt requested, to the holder of such lien at the address appearing of record.

(2) Personal or residence service shall be made by the county sheriff of the county where service is made or by a person authorized by section 25-507. The sheriff or other person serving the notice shall be entitled to the statutory fee prescribed in section 33-117. Within twenty days after the date of request for service of the notice, the person serving the notice of service shall (a) make proof of service to the person requesting the service and state the time and place of service including the address if applicable, the name of the person with whom the notice was left, and the method of service or (b) return the proof of service with a statement of the reason for the failure to serve. Failure to make proof of service or delay in doing so does not affect the validity of the service.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1832; Laws 1987, LB93, § 20; Laws 1992, LB1063, § 158; Laws 1992, Second Spec. Sess., LB1, § 131;Laws 2003, LB319, § 1; Laws 2012, LB370, § 5; Laws 2013, LB341, § 13.

Annotations

Actual occupancy or possession means such occupancy or possession as would put an ordinarily prudent man on notice by observation of the premises involved. Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).

Service of notice must be made upon the person in whose name the title appears of record, and upon occupant in possession. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

Personal service is not necessary if owner dead. Sanford v. Scott, 105 Neb. 479, 181 N.W. 148 (1920).

Notice must be served on person in whose name assessed, and failure to serve notice or show necessity for service by publication renders subsequent proceedings void. Howell v. Jordan, 94 Neb. 264, 143 N.W. 217 (1913).

Notice to actual occupant is essential. Parsons v. Prudential R. E. Co., 86 Neb. 271, 125 N.W. 521 (1910).

Service of notice is not essential to foreclosure of lien by purchaser. Carman v. Harris, 61 Neb. 635, 85 N.W. 848 (1901); Merrill v. Ijams, 58 Neb. 706, 79 N.W. 734 (1899).

77-1833. Real property taxes; issuance of treasurer's tax deed; proof of service; fees. The service of notice provided by section 77-1832 shall be proved by affidavit, and the notice and affidavit shall be filed and preserved in the office of the county treasurer. The purchaser or assignee shall also affirm in the affidavit that a title search was conducted to determine those persons entitled to notice pursuant to such section. The certified mail return receipt shall be filed with and accompany the return of service. The affidavit shall be filed with the application for the tax deed pursuant to section 77-1837. For each service of such notice, a fee

of one dollar shall be allowed. The amount of such fees shall be noted by the county treasurer in the record opposite the real property described in the notice and shall be collected by the county treasurer in case of redemption for the benefit of the holder of the certificate.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1833; Laws 1969, c. 645, § 9, p. 2561; Laws 1992, LB1063, § 159; Laws 1992, Second Spec. Sess., LB1, § 132; Laws 2003, LB319, § 2; Laws 2012, LB370, § 6; Laws 2013, LB341, § 14.

Annotations

Deed issued, without affidavit showing service of notice to redeem first filed with treasurer, is void. Peck v. Garfield County, 88 Neb. 635, 130 N.W. 258 (1911).

Owner is not liable for expenses and costs in serving notice, when sale was illegal. Covell & Ransom v. Young, 11 Neb. 510, 9 N.W. 694 (1881).

77-1834. Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication. If the person in whose name the title to the real property appears of record in the office of the register of deeds in the county or if the encumbrancer in whose name an encumbrance on the real property appears of record in the office of the register of deeds in the county cannot, upon diligent inquiry, be found, the purchaser or his or her assignee shall publish the notice in some newspaper published in the county and having a general circulation in the county or, if no newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which the real property is situated.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1834; Laws 1992, LB1063, § 160; Laws 1992, Second Spec. Sess., LB1, § 133; Laws 2003, LB319, § 3; Laws 2008, LB893, § 1; Laws 2012, LB370, § 7.

Annotations

Disputed question of fact was raised as to occupancy of premises upon which notice could be given under this section. Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).

Notice published is sufficient if it imparts all of the information which the holder of tax sale certificate is required to disclose. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

Provisions are mandatory, and are strictly construed. Brokaw v. Cottrell, 114 Neb. 858, 211 N.W. 184 (1926).

Publication of notice is not required unless there is no person in actual occupancy of land, and the person in whose name the title to the land appears cannot, upon diligent inquiry, be found in county. Sanford v. Scott, 105 Neb. 479, 181 N.W. 148 (1920).

Owner, in order to redeem from void tax deed, must pay the taxes, interest, penalties and costs, and also value of permanent improvements placed on land. Herman v. Barth, 85 Neb. 722, 124 N.W. 135 (1910); Humphrey v. Hays, 85 Neb. 239, 122 N.W. 987 (1909).

Giving of notice is not essential when purchaser proceeds in equity to foreclose lien. Carman v. Harris, 61 Neb. 635, 85 N.W. 848 (1901).

77-1835. Real property taxes; issuance of treasurer's tax deed; manner and proof of publication; false affidavit; penalty. The notice provided by section 77-1834 shall be inserted three consecutive weeks, the last time not less than three months before applying for the tax deed. Proof of publication shall be made by filing in the county treasurer's office the affidavit of the publisher, manager, or other employee of such newspaper, that to his or her personal knowledge, the notice was published for the time and in the manner provided in this section, setting out a copy of the notice and the date upon which the same was published. The purchaser or assignee shall also file an affidavit in the office that a title search was conducted to determine those persons entitled to notice pursuant to such section. The affidavits shall be filed with the application for the tax deed pursuant to section 77-1837. The affidavits shall be preserved as a part of the files of the office. Any publisher, manager, or employee of a newspaper knowingly or negligently making a false affidavit regarding any such matters shall be guilty of perjury and shall be punished accordingly. Section25-520.01 does not apply to publication of notice pursuant to section 77-1834.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1835; Laws 2012, LB370, § 8.

Cross References

Perjury, see section 28-915.

Annotations

Notice must be published for three consecutive weeks. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

A tax deed, void for want of proper affidavit of service having been filed with county treasurer, is not validated by filing of subsequent affidavit showing compliance. Brokaw v. Cottrell, 114 Neb. 858, 211 N.W. 184 (1926).

Proof of publication of notice must be made by affidavit, sworn to before officer authorized to administer oaths. Lanning v. Haases, 89 Neb. 19, 130 N.W. 1008 (1911).

Where affidavit of publication was sworn to before notice of publication could have been completed, the proof of publication was insufficient. Lanning v. Musser, 88 Neb. 418, 129 N.W. 1022 (1911).

Notice must be inserted at least three times, first being not more than five months and last not less than three months, before time fixed by law for redemption expires. State ex rel. Richards v. Gayhart, 34 Neb. 192, 51 N.W. 746 (1892).

77-1836. Real property taxes; issuance of treasurer's tax deed; fee. If any person is compelled to publish notice in a newspaper as provided in sections 77-1834 and 77-1835, then before any person who may have a right to redeem such real property from such sale is permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money the amount paid for publishing such notice, for the use of the person compelled to publish the notice. The fee for such publication shall not exceed five dollars for each item of real property contained in such notice. The cost of making such publication shall be noted by the county treasurer in the record opposite the real property described in the notice.

Source: Laws 1903, c. 73, § 216, p. 468; R.S.1913, § 6544; C.S.1922, § 6072; C.S.1929, § 77-2024; R.S.1943, § 77-1836; Laws 1992, LB1063, § 161; Laws 1992, Second Spec. Sess., LB1, § 134; Laws 2002, LB994, § 25; Laws 2013, LB341, § 15.

Annotations

Treasurer cannot demand amount unless statement thereof is left with him. State ex rel. Nelson v. Harper, 26 Neb. 761, 42 N.W. 764 (1889).

This action does not definitely fix charge, only limits amount owner shall pay to redeem. Swan v. Huse, 15 Neb. 465, 19 N.W. 605 (1884).

77-1837. Real property taxes; issuance of treasurer's tax deed; when. At any time within nine months after the expiration of three years after the date of sale of any real estate for taxes or special assessments, if such real estate has not been redeemed, the county treasurer, on application, on production of the certificate of purchase, and upon compliance with sections 77-1801 to 77-1863, shall execute and deliver a deed of conveyance for the real estate described in such certificate as provided in this section. The failure of the county treasurer to issue the deed of conveyance if requested within the timeframe provided in this section shall not impair the validity of such deed if there has otherwise been compliance with sections 77-1801 to 77-1863.

Source: Laws 1903, c. 73, § 217, p. 468; R.S.1913, § 6545; C.S.1922, § 6073; C.S.1929, § 77-2025; R.S.1943, § 77-1837; Laws 1975, LB78, § 1; Laws 1987, LB215, § 2; Laws 2001, LB118, § 1; Laws 2012, LB370, § 9; Laws 2013, LB341, § 16.

Annotations

Where the original tax certificate is in the possession of the treasurer, the holder of the certificate is not obligated to undertake the formalistic procedure of requesting the return of the original tax certificate only to "present" the tax certificate back to the treasurer. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

This section sets out the period during which a purchaser of a tax sale certificate may exercise his or her right to request a treasurer's tax deed. Before executing and delivering a treasurer's tax deed, this section requires the county treasurer to determine that the property has not been redeemed and that the purchaser has fulfilled all of the statutory requisites under chapter 77, article 18. In addition, the purchaser must present a valid sale certificate and make a request for a deed within the request period. If the county treasurer determines that these requisites have been satisfied, then he or she must execute and deliver the deed, but this authority is not limited to the 6-month request period. Ottaco, Inc. v. McHugh, 263 Neb. 489, 640 N.W.2d 662 (2002).

The time for redeeming property from a tax sale expires after three years plus ninety days from the date of the original sale. Bish v. Fletcher, 219 Neb. 863, 366 N.W.2d 778 (1985).

Personal notice is required in all cases where tax deed is sought, but is not required in sales under tax foreclosures. Connely v. Hesselberth, 132 Neb. 886, 273 N.W. 821 (1937).

Private holder of tax sale certificate must bring action to foreclose certificate within five years from its date. Gibson v. Peterson, 118 Neb. 218, 224 N.W. 272 (1929).

Tax deed issued more than five years after date of certificate is invalid. Fuller v. County of Colfax, 33 Neb. 716, 50 N.W. 1044 (1892).

The force of a tax deed and validity of sale are tested by revenue law in force at time of sale. Baldwin v. Merriam, 16 Neb. 199, 20 N.W. 250 (1884).

Production of certificate is a condition precedent to execution of deed. Thompson v. Merriam, 15 Neb. 498, 20 N.W. 24 (1884).

Tax deed issued on last day for redemption is void. McGavock v. Pollack, 13 Neb. 535, 14 N.W. 659 (1882).

A valid assessment and levy and sale for taxes are essential to the validity of tax deed. State ex rel. Merriam v. Patterson, 11 Neb. 266, 9 N.W. 82 (1881).

77-1837.01. Real property taxes; tax deed proceedings; changes in law not retroactive; laws governing. (1) Except as otherwise provided in subsection (2) of this section, the laws in effect on the date of the issuance of a tax sale certificate govern all matters related to tax deed proceedings, including noticing and application, and foreclosure proceedings. Changes in law shall not apply retroactively with regard to the tax sale certificates previously issued.

(2) Tax sale certificates sold and issued between January 1, 2010, and December 31, 2014, shall be governed by the laws and statutes that were in effect on December 31, 2009, with regard to all matters relating to tax deed proceedings, including noticing and application, and foreclosure proceedings.

Source: Laws 2012, LB370, § 10; Laws 2014, LB851, § 10.

77-1838. Real property taxes; issuance of treasurer's tax deed; execution, acknowledgment, and recording; effect; lien for special assessments. The deed made by the county treasurer shall be under the official seal of office and acknowledged by the county treasurer before some officer authorized to take the acknowledgment of deeds. When so executed and acknowledged, it shall be recorded in the same manner as other conveyances of real estate. When recorded it shall vest in the grantee and his or her heirs and assigns the title of the property described in the deed, subject to any lien on real estate for special assessments levied by a sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer.

Source: Laws 1903, c. 73, § 218, p. 469; R.S.1913, § 6546; C.S.1922, § 6074; C.S.1929, § 77-2026; R.S.1943, § 77-1838; Laws 2015, LB277, § 1.

Effective Date: August 30, 2015

Annotations

1. Formal requirements

Affixing of county treasurer's official seal necessary to validity of tax deed. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

When the statute under which land is sold for taxes directs an act to be done, such as recording a tax deed, such statute must be strictly, if not literally, complied with. Saffer v. Saffer, 133 Neb. 528, 274 N.W. 479 (1937).

Tax deed issued on private sale was void for failure to recite that land was not sold at public sale for want of bidders. Sherlock v. Gillis, 108 Neb. 72, 187 N.W. 812 (1922).

Deed need not be witnessed. Sanford v. Scott, 105 Neb. 479, 181 N.W. 148 (1920).

If deed is invalid by reason of formal defects, purchaser has lien for amount of taxes paid with interest. Merriam v. Rauen, 23 Neb. 217, 36 N.W. 489 (1888).

A tax deed to be valid must have official seal of treasurer attached. Bendexen v. Fenton, 21 Neb. 184, 31 N.W. 685 (1887); Baldwin v. Merriam, 16 Neb. 199, 20 N.W. 250 (1884).

A deed which does not recite that sale was had at place designated by statute is invalid. Shelley v. Towle, 16 Neb. 194, 20 N.W. 251 (1884); Haller v. Blaco, 10 Neb. 36, 4 N.W. 362 (1880).

A scroll to represent a seal is not sufficient. Sullivan v. Merriam, 16 Neb. 157, 20 N.W. 118 (1884).

2. Miscellaneous

Where deed conforms to statute then in force, it is valid on its face within meaning of special statute of limitations. Opp v. Smith, 102 Neb. 152, 166 N.W. 265 (1918).

Two distinct tracts may be included in deed. Towle v. Holt, 14 Neb. 221, 15 N.W. 203 (1883).

77-1839. Real property taxes; issuance of tax deed by county treasurer; form. The conveyance provided by section 77-1838 shall be substantially in the following form:

Whereas, at a ..... sale of real estate for the nonpayment of taxes, made in the county of ..... on the ..... day of ..... A.D. 20...., the following described real estate situated in such county: (here describe

real estate conveyed) was sold to ..... for the delinquent taxes of the year ..... and, Whereas, the same not having been redeemed from such sale, and it appearing that the holder of the certificate of purchase of such real estate has complied with the laws of the State of Nebraska, necessary to entitle ..... to a deed of such real estate, Now, Therefor, I, county treasurer of the county of ....., in consideration of the premises, and by virtue of the statutes of the State of Nebraska in such cases made and provided, do hereby grant and convey unto ....., his or her heirs and assigns, forever, the real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and official seal this ..... day of ..... A.D. 20.... .

..... County Treasurer.

State of Nebraska ..... County, ss.

On this ..... day of ..... A.D. 20...., before me a ..... in and for such county, personally appeared the above named ..... treasurer of such county, personally known to me to be the treasurer of such county, at the date of the execution of the foregoing conveyance, and to be the identical person whose name is affixed to, and who executed the conveyance as treasurer of such county, and acknowledged the execution of the same to be his or her voluntary act and deed as treasurer of such county, for the purposes therein expressed.

Witness my hand and official seal the day and year last above written.

.....

.....

Source: Laws 1903, c. 73, § 218, p. 469; R.S.1913, § 6546; C.S.1922, § 6074; C.S.1929, § 77-2026; R.S.1943, § 77-1839; Laws 2004, LB813, § 33.

Annotations

This section and section 77-1857 merely require that the treasurer's seal be affixed. They do not require that the treasurer's seal be entirely legible. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

Affixing of county treasurer's official seal necessary to validity of tax deed. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

A tax deed is not required to state that the land has been offered at public sale. Podewitz v. Gering Nat. Bank, 171 Neb. 380, 106 N.W.2d 497 (1960).

77-1840. Real property taxes; issuance of treasurer's tax deed; recording of proceedings. The register of deeds shall record the evidence upon which the tax deeds are issued, and be entitled to the same fee therefor that may be allowed by law for recording deeds, and the county treasurer shall deliver the same to the register of deeds for that purpose.

Source: Laws 1903, c. 73, § 219, p. 470; R.S.1913, § 6547; C.S.1922, § 6075; C.S.1929, § 77-2027; R.S.1943, § 77-1840.

Cross References

For fee for recording deed, see section 33-109.

Annotations

This section makes the evidence, on which deeds were executed, a part of the public records in the office of the register of deeds. Lanigan v. Gilroy, 97 Neb. 754, 151 N.W. 297 (1915).

It is the duty of the register of deeds to record deed when presented for that purpose. Burnham v. State ex rel. Farmers Loan and Trust Co., 44 Neb. 438, 63 N.W. 45 (1895).

77-1841. Real property taxes; issuance of treasurer's tax deed; loss of tax sale certificate; procedure. In case of the loss of any certificate, on being fully satisfied thereof by due proof, and upon bond being given to the State of Nebraska in a sum equal to the value of the property conveyed, as in cases of lost notes or other commercial paper, the county treasurer may execute and deliver the proper conveyance, and file such proof and bond with the register of deeds to be recorded as aforesaid.

Source: Laws 1903, c. 73, § 219, p. 470; R.S.1913, § 6547; C.S.1922, § 6075; C.S.1929, § 77-2027; R.S.1943, § 77-1841.

77-1842. Real property taxes; treasurer's tax deed; presumptive evidence of certain facts; lien for special assessments. Deeds made by the county treasurer shall be presumptive evidence in all courts of this state, in all controversies and suits in relation to the rights of the purchaser and his or her heirs or assigns to the real property thereby conveyed, of the following facts: (1) That the real property conveyed was subject to

taxation for the year or years stated in the deed; (2) that the taxes were not paid at any time before the sale; (3) that the real property conveyed had not been redeemed from the sale at the date of the deed; (4) that the property had been listed and assessed; (5) that the taxes were levied according to law; (6) that the property was sold for taxes as stated in the deed; (7) that the notice had been served or due publication made as required in sections 77-1831 to 77-1835 before the time of redemption had expired; (8) that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; (9) that the grantee named in the deed was the purchaser or his or her assignee; and (10) that all the prerequisites of the law were complied with by all the officers who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale and to vest the title in the purchaser, subject to any lien on real estate for special assessments levied by a sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, were done.

Source: Laws 1903, c. 73, § 220, p. 470; R.S.1913, § 6548; C.S.1922, § 6076; C.S.1929, § 77-2028; R.S.1943, § 77-1842; Laws 1992, LB1063, § 162; Laws 1992, Second Spec. Sess., LB1, § 135; Laws 2015, LB277, § 2.

Effective Date: August 30, 2015

Annotations

Burden of proof rests on party seeking to quiet title against tax deed claimed to be void. Thomas v. Flynn, 169 Neb. 458, 100 N.W.2d 37 (1959).

Presumption is not conclusive and may be rebutted, but burden rests upon party attacking deed to show some jurisdictional defect. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

Tax deed is not conclusive of matters as to which this section makes it presumptive evidence only. Tate v. Biggs, 89 Neb. 195, 130 N.W. 1053 (1911).

Deed is only prima facie evidence of regularity. Failure to comply with requirements of the law may be shown, notwithstanding the presumption. Equitable Land Co. v. Willis, 86 Neb. 200, 125 N.W. 512 (1910).

Title acquired under tax sale is a new title, free from encumbrances connected with prior title. Topliff v. Richardson, 76 Neb. 114, 107 N.W. 114 (1906).

Possession under a void tax deed is under color of title and is adverse. McPherson v. McPherson, 75 Neb. 830, 106 N.W. 991 (1906).

Issuance of tax deed raises presumption that taxes have been regularly levied and assessed. Wales v. Warren, 66 Neb. 455, 92 N.W. 590 (1902); Darr v. Berquist, 63 Neb. 713, 89 N.W. 256 (1902).

One taking possession of land, claiming it under tax deed, is not a trespasser. Gaster v. Welna, 23 Neb. 564, 37 N.W. 456 (1888).

A tax deed is not a lien or encumbrance, within meaning of appraisement statute, and party claiming under it holds adversely. Sessions and Curson v. Irwin, 8 Neb. 5 (1878).

77-1843. Real property taxes; treasurer's tax deed; proof required to defeat tax title. In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially by the treasurer in the manner provided by sections 77-1831 to 77-1842, the person claiming the title adverse to the title conveyed by such deed shall be required to prove, in order to defeat the title, either (1) that the real property was not subject to taxation for the years or year named in the deed; (2) that the taxes had been paid before the sale; (3) that the property has been redeemed from the sale according to the provisions of sections 77-1201 to 77-1219, 77-1229 to 77-1236, 77-1301 to 77-1318.01, 77-1501 to 77-1514, 77-1601 to 77-1618, 77-1701 to 77-1710, 77-1716 to 77-1738,77-1740 to 77-1767, and 77-1801 to 77-1855, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state; or (4) that there had been an entire omission to list or assess the property, or to levy the taxes, or to sell the property.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1843; Laws 2006, LB808, § 40.

Annotations

Even if title under a tax deed is void or voidable, the conditions precedent set forth in this section and section 77-1844 must be met in order to first question and then defeat title. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

Proof of redemption before delivery of the tax deed defeats any title conveyed by the tax deed. Mack v. Luebben, 215 Neb. 832, 341 N.W.2d 335 (1983).

Nothing in this section changes the general rule that the purchase or extinguishment of an outstanding title, interest, or claim by one cotenant inures to the benefit of the other cotenants. O'Toole v. Yunghans, 211 Neb. 852, 320 N.W.2d 768 (1982).

Tax deed to former tenant cannot be avoided because tenant owed owner for rent which accrued during tenancy. Manning v. Oakes, 80 Neb. 471, 114 N.W. 604 (1908).

Tax deed is sufficient color of title, when coupled with possession, to put statute of limitations in operation. Craven v. Craven, 68 Neb. 459, 94 N.W. 604 (1903).

Possession under tax deed is adverse to possession of prior occupant. Maxwell v. Higgins, 38 Neb. 671, 57 N.W. 388 (1894).

77-1844. Real property taxes; treasurer's tax deed; condition required to question title. No person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property had been paid by such person or the persons under whom he claims title as aforesaid.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1844.

Annotations

Even if title under a tax deed is void or voidable, the conditions precedent set forth in section 77-1843 and this section must be met in order to first question and then defeat title. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

Tender to county treasurer of taxes due is sufficient to lay foundation for action to redeem. Brokaw v. Cottrell, 114 Neb. 858, 211 N.W. 184 (1926).

Where tax deed is void, owner may redeem from tax liens upon payment of delinquent taxes, interest and penalties. Sherlock v. Gillis, 108 Neb. 72, 187 N.W. 812 (1922).

It is not essential as condition precedent to suit to set aside tax deed that all taxes be first paid, but it is sufficient if taxes are paid at or before trial and decree. Cornell v. Maverick Loan & Trust Co., 95 Neb. 842, 147 N.W. 697 (1914).

Tender by owner of unpaid taxes is sufficient where county treasurer refuses to accept payment. Howell v. Jordan, 94 Neb. 264, 143 N.W. 217 (1913).

In action to quiet title against sale for taxes under void decree of court, offer to pay such taxes as are found due is sufficient. Humphrey v. Hays, 85 Neb. 239, 122 N.W. 987 (1909).

In action to set aside tax title, party must discharge all unpaid taxes as a condition precedent to invoking assistance of court. Thomas v. Farmers L. & T. Co., 76 Neb. 568, 107 N.W. 589 (1906).

77-1845. Real property taxes; treasurer's tax deed; taxes paid; mistake in entry; effect. In all cases when a person has paid his or her taxes and through mistake in the entry made in the treasurer's books or in the receipt the real property upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1845; Laws 1992, LB1063, § 163; Laws 1992, Second Spec. Sess., LB1, § 136.

Annotations

A deed erroneously issued after redemption has occurred is void. Mack v. Luebben, 215 Neb. 832, 341 N.W.2d 335 (1983).

77-1846. Real property taxes; treasurer's tax deed; effect of fraud. In all cases when the owner of real property sold for taxes resists the validity of a tax title, the owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established, the sale and title shall be void.

Source: Laws 1903, c. 73, § 221, p. 471; R.S.1913, § 6549; C.S.1922, § 6077; C.S.1929, § 77-2029; R.S.1943, § 77-1846; Laws 1992, LB1063, § 164; Laws 1992, Second Spec. Sess., LB1, § 137.

77-1847. Real property taxes; wrongful sale by officers; purchaser held harmless by county; liability of officers. When by mistake or wrongful act of the treasurer or other officer real property has been sold on which no tax was due at the time or whenever real property is sold in consequence of error in describing such real property in the tax receipt, the county shall hold the purchaser harmless by paying him or her the amount of principal, interest, and costs to which he or she would have been entitled had the real property been rightfully sold. The treasurer or other officer shall be liable to the county therefor upon his or her official bond, or the purchaser or his or her assignee may recover directly of the treasurer or other officer in an action on his or her official bond.

Source: Laws 1903, c. 73, § 222, p. 472; R.S.1913, § 6550; C.S.1922, § 6078; C.S.1929, § 77-2030; R.S.1943, § 77-1847; Laws 1992, LB1063, § 165; Laws 1992, Second Spec. Sess., LB1, § 138.

Annotations

1. Liability of county

Liability of county to holder of tax sale certificate for refund of taxes illegally assessed is purely statutory. Kennedy v. Dawes County, 130 Neb. 227, 264 N.W. 452 (1936).

Liability of county for refund to purchaser where title fails is statutory, and claim is barred unless presented within five years after date of sale. Gibson v. Dawes County, 129 Neb. 706, 262 N.W. 671 (1935).

Purchaser of land, which was not subject to assessment when taxes paid were assessed, is entitled to recover amount to which he would have been entitled if land rightfully sold. Caspary v. Boyd County, 114 Neb. 124, 206 N.W. 736 (1925).

County is not liable for derelictions of officers and agents of cities. Kelley v. Gage County, 67 Neb. 6, 93 N.W. 194 (1903), affirmed on rehearing 67 Neb. 11, 99 N.W. 524 (1904); Concordia L. & T. Co. v. Douglas County, 2 Neb. Unof. 124, 96 N.W. 55 (1901).

Rights and liabilities of purchaser and county are determined by statutes in force when sale occurred. Norris v. Burt County, 56 Neb. 295, 76 N.W. 551 (1898).

Where land, not subject to taxation, is sold, county is liable to purchaser for amount paid, with interest, together with subsequent taxes paid in good faith to protect lien. Wilson v. Butler County, 26 Neb. 676, 42 N.W. 891 (1889).

County is liable to purchaser where land is sold, no taxes being due. Roberts v. Adams County, 20 Neb. 409, 30 N.W. 405 (1886).

2. Liability of municipal corporations

A county cannot recover from a city on account of city taxes refunded by it. Kelley v. Gage County, 67 Neb. 6, 93 N.W. 194 (1903), affirmed on rehearing 67 Neb. 11, 99 N.W. 524 (1904).

In absence of statutory authority, a city cannot be required to refund money received from purchaser at sale made for illegal assessments. Martin v. Kearney County, 62 Neb. 538, 87 N.W. 351 (1901); McCague v. City of Omaha, 58 Neb. 37, 78 N.W. 463 (1899).

3. Actions to recover

A party to recover under this section must bring himself within its terms. Martin v. Kearney County, 62 Neb. 538, 87 N.W. 351 (1901).

Action should be brought in name of person to whom deed was issued. Alexander v. Overton, 52 Neb. 283, 72 N.W. 212 (1897).

Statute of limitations commences to run when title is adjudged invalid by court of competent jurisdiction. Merriam v. Otoe County, 15 Neb. 408, 19 N.W. 479 (1884).

Petition must set out particular act done or omitted, and name of officer doing or omitting it. Kaeiser v. Nuckolls County, 14 Neb. 277, 15 N.W. 363 (1883).

4. Miscellaneous

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Prior to 1915, there was no provision for the recovery back of money paid for void tax certificate unless the certificate for void tax was the result of mistake or wrongful act of a treasurer or other officer under this section. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

Statute does not require foreclosure action begun or demand for deed made on void tax sale certificate before instituting proceedings before county board for reimbursement, provided proceedings are begun within five years from date of certificate. Farm Investment Co. v. Scotts Bluff County, 125 Neb. 582, 251 N.W. 115 (1933).

Liability of county to refund money paid by purchaser of tax sale certificate, where title has failed, is entirely statutory. Speidel v. Scotts Bluff County, 125 Neb. 431, 250 N.W. 555 (1933).

Failure to demand deed or commence foreclosure within time provided by law bars action against county to refund. Battelle v. Douglas County, 65 Neb. 329, 91 N.W. 412 (1902).

Claims should be presented to county board, and, if rejected, appeal should be taken. Fuller v. Colfax County, 33 Neb. 716, 50 N.W. 1044 (1892); Richardson County v. Hull, 28 Neb. 810, 45 N.W. 53 (1890).

77-1848. Sale of school real property for taxes; interest acquired by purchaser. Whenever any school or university real property bought on credit is sold for taxes, the purchaser at such tax sale shall acquire only the interest of the original purchaser in such real property, and no sale of such real property for taxes shall prejudice the rights of the state therein or preclude the recovery of the purchase money or interest due thereon. In all cases when the real property is mortgaged or otherwise encumbered to the school or university

fund, the interest of the person who holds the fee shall alone be sold for taxes and in no case shall the lien or interest of the state be affected by any sale of such encumbered real property made for taxes.

Source: Laws 1903, c. 73, § 223, p. 472; R.S.1913, § 6551; C.S.1922, § 6079; C.S.1929, § 77-2031; R.S.1943, § 77-1848; Laws 1992, LB1063, § 166; Laws 1992, Second Spec. Sess., LB1, § 139.

Annotations

Sale of school lands for special assessment does not affect rights of state. Morehouse v. Elkhorn River Drainage Dist., 90 Neb. 406, 133 N.W. 446 (1911).

Purchaser's remedy is under this section, where taxes have been paid. Alexander v. Hunter, 29 Neb. 259, 45 N.W. 461 (1890).

It is only when in fact lands assessed were not subject to taxation that the entry can be made by treasurer. Price v. Lancaster County, 20 Neb. 252, 29 N.W. 931 (1886).

77-1849. Real property taxes; erroneous sale; refund of purchase money. Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or, if a deed is returned by the purchaser, that any tract or lot has been sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he or she shall make an entry opposite such tract or lot on the record that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. In such cases the purchase money shall be refunded to the purchaser.

Source: Laws 1903, c. 73, § 224, p. 473; R.S.1913, § 6552; C.S.1922, § 6080; C.S.1929, § 77-2032; R.S.1943, § 77-1849; Laws 2013, LB341, § 17.

77-1850. Real property taxes; treasurer's tax deed; effect of acts of de facto officers. In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, clerks, supervisors, commissioners, and other officers de facto shall be deemed and construed to be of the same validity as acts of officers de jure.

Source: Laws 1903, c. 73, § 225, p. 473; R.S.1913, § 6553; C.S.1922, § 6081; C.S.1929, § 77-2033; R.S.1943, § 77-1850.

Annotations

One who holds and performs the duties of an office, and receives the fees and emoluments thereof, under color of right, is a de facto officer. Holt County v. Scott, 53 Neb. 176, 73 N.W. 681 (1897).

77-1851. Real property taxes; assessed in wrong name; effect. No sale of real property for taxes shall be void or voidable on account of the same having been assessed in any other name than that of the rightful owner, if the property be in other respects sufficiently described.

Source: Laws 1903, c. 73, § 226, p. 473; R.S.1913, § 6554; C.S.1922, § 6082; C.S.1929, § 77-2034; R.S.1943, § 77-1851.

Annotations

Where owner and county treasurer were both able to determine property intended by description although part thereof was assessed in name other than owner, taxes were not void. Scotts Bluff County v. Frank, 142 Neb. 698, 7 N.W.2d 625 (1943).

77-1852. Real property taxes; books and records; certified copies; presumptive evidence. The books and records belonging to the offices of the county clerk and county treasurer, or copies thereof properly certified, shall be presumptive evidence of the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

Source: Laws 1903, c. 73, § 227, p. 473; R.S.1913, § 6555; C.S.1922, § 6083; C.S.1929, § 77-2035; R.S.1943, § 77-1852.

77-1853. Real property taxes; irregularities; effect. Irregularities in making or equalizing assessments, or in making the returns thereof, shall not invalidate the sale of any real estate when sold by the county treasurer for delinquent taxes due thereon, nor in any manner invalidate the tax levied on any property or charged against any person.

Source: Laws 1903, c. 73, § 228, p. 473; R.S.1913, § 6556; C.S.1922, § 6084; C.S.1929, § 77-2036; R.S.1943, § 77-1853.

Annotations

Fixing actual value at eighty percent of market value was an irregularity of which taxpayer could not complain. Collier v. County of Logan, 169 Neb. 1, 97 N.W.2d 879 (1959).

Irregularity in certification of special assessment did not invalidate tax. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

Consideration by county assessor of valuations made by others was an irregularity that did not invalidate tax. Gamboni v. County of Otoe, 159 Neb. 417, 67 N.W.2d 489 (1954).

In absence of proof to contrary, it will be presumed that taxing authorities discharged all duties imposed upon them. Adams v. Osgood, 60 Neb. 779, 84 N.W. 257 (1900).

Injunction will not lie to restrain collection of tax on ground of irregularities in levy. Wilson v. City of Auburn, 27 Neb. 435, 43 N.W. 257 (1889).

Failure to attach tax certificate is an irregularity which section intended to provide for. Wood v. Helmer, 10 Neb. 65, 4 N.W. 968 (1880).

Fact that taxes are illegal in part does not invalidate sale, and sale operates as assignment of lien. Hall v. Moore, 3 Neb. Unof. 574, 92 N.W. 294 (1902).

County assessor's assessment of mobile homes on different ledger pages from the underlying property is at most a mere irregularity and does not affect the validity of the taxes or subsequent liens on the underlying property. Phelps County v. Anderson, 2 Neb. App. 236, 508 N.W.2d 314 (1993).

77-1854. Real property taxes; irregularities enumerated. The following defects, omissions and circumstances occurring in the assessment of any property for taxation, or in the levy of taxes, or elsewhere in the course of the proceedings from and including the assessment and to and including the execution and delivery of the deed of the property sold for taxes, shall be taken and deemed to be mere irregularities within the meaning of section 77-1853: (1) The failure of the assessor to take or subscribe an oath or attach one to any assessment roll; (2) the omission of a dollar mark or other designation descriptive of the value of figures used to denote an amount assessed, levied or charged against property, or the valuation of any property upon any record; (3) the failure or neglect of the county treasurer to offer any real estate for sale for delinquent taxes thereon at the time provided by law, unless the same be sold sooner than is provided by law; (4) the failure of the treasurer to adjourn such sale from time to time as required by law, or any irregularity or informality in such adjournment; (5) the failure of the county treasurer to offer any real estate at public sale which may afterwards be sold at private sale, and any irregularity or informality in the manner or order in which real estate may be offered at public sale; (6) the failure to assess any property for taxation or to levy any tax within the time provided by law; and (7) any irregularity, informality or omission in any assessment book, tax collector's book, or other record of any real or personal property assessed for taxation, or upon which any tax is levied, or which may be sold for taxes. Where the defect is in the description of property, such description must be sufficiently definite to enable the county treasurer or other officer, or any person interested, to determine what property is meant or intended by the description, and in such case a defective or indefinite description on the assessment or treasurer's book, or in any notice or advertisement may be made definite by the treasurer in the deed by which he may convey such property, if sold for taxes, by conveying by proper and definite description the property so defectively or indefinitely described.

Source: Laws 1903, c. 73, § 229, p. 474; R.S.1913, § 6557; C.S.1922, § 6085; C.S.1929, § 77-2037; R.S.1943, § 77-1854.

Annotations

Error in typing amount of special assessment tax due on line for delinquent general tax was deemed a mere irregularity on the tax sale certificate. County of Polk v. Wombacher, 229 Neb. 239, 426 N.W.2d 266 (1988).

Failure of tax list to contain certificate of county clerk was mere irregularity. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

A description of real estate contained in a published notice of tax sale is sufficient if interested parties are enabled thereby to determine what property is meant or intended. Kuska v. Kubat, 147 Neb. 139, 22 N.W.2d 484 (1946).

Any indefiniteness and uncertainty arising from the use of initialed letters, abbreviations and figures in describing real estate is at most an irregularity in no way affecting the validity of an assessment. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

Mere irregularities in conducting sale for taxes legally assessed will not defeat lien of purchaser. Sanford v. Moore, 58 Neb. 654, 79 N.W. 548 (1899).

Indefinite description giving section, town and range was sufficient under this section. Concordia L. & T. Co. v. Van Camp, 2 Neb. Unof. 633, 89 N.W. 744 (1902).

77-1855. Real property taxes; recovery of real estate sold; limitation of action. No action for the recovery of real estate sold for the nonpayment of taxes shall be brought after five years from the execution

and recording of the treasurer's deed, unless the owner is at the time of the sale a minor, a mentally incompetent person, or a convict in a Department of Correctional Services adult correctional facility in which case such action must be brought within five years after such disability is removed.

Source: Laws 1903, c. 73, § 230, p. 475; R.S.1913, § 6558; C.S.1922, § 6086; C.S.1929, § 77-2038; R.S.1943, § 77-1855; Laws 1986, LB1177, § 35; Laws 1993, LB31, § 22.

Annotations

Statute has no application where tax deed was void. Mack v. Luebben, 215 Neb. 832, 341 N.W.2d 335 (1983).

Suit attacking void tax deed is not barred in five years. Sherlock v. Gillis, 108 Neb. 72, 187 N.W. 812 (1922); Opp v. Smith, 102 Neb. 152, 166 N.W. 265 (1918).

When tax deed is void, owner may maintain action to redeem within ten years after recording of deed. Lanigan v. Gilroy, 97 Neb. 754, 151 N.W. 297 (1915).

Limitation is applicable in quieting title, when lands are sold under void decree. Hill v. Chamberlain, 91 Neb. 610, 136 N.W. 999 (1912).

Deed must be valid on its face to entitle party claiming under it to benefit of this special limitation. Bendexen v. Fenton, 21 Neb. 184, 31 N.W. 685 (1887); Housel v. Boggs, 17 Neb. 94, 22 N.W. 226 (1885).

Party claiming under a tax deed and invoking the aid of special statute of limitations must have actual possession of land. Baldwin v. Merriam, 16 Neb. 199, 20 N.W. 250 (1884).

77-1856. Real property taxes; effect of failure to demand deed or to foreclose; cancellation of tax sales. If the owner of any tax sale certificate fails or neglects to demand a deed thereon or to commence an action for the foreclosure of the same within the time specified in section 77-1837 or 77-1902, such tax sale certificate shall cease to be valid or of any force or effect whatever and the real property covered thereby shall be forever released and discharged from the lien of all taxes for which the real property was sold. It is made the duty of each and every county treasurer of the State of Nebraska to enter on the tax sale records of his or her office a cancellation of all tax sales on which the time specified in section 77-1837 or 77-1902 has elapsed since date of sale, with date of entry affixed, in language substantially as follows: Canceled by section 77-1856. No county treasurer or bonded abstracter shall be held responsible on his or her bond or otherwise on account of such entry being made in accordance with this section. All real property covered by tax sales that comes within the provisions of sections 77-1801 to 77-1860 shall from the time of this entry be considered to stand of record as though no tax sale had ever been made.

Source: Laws 1903, c. 73, § 241, p. 478; R.S.1913, § 6569; Laws 1915, c. 112, § 1, p. 261; C.S.1922, § 6097; C.S.1929, § 77-2049; R.S.1943, § 77-1856; Laws 1977, LB6, § 1; Laws 1992, LB1063, § 167; Laws 1992, Second Spec. Sess., LB1, § 140.

Annotations

1. Limitation of action

Action to foreclose tax lien may be instituted within five years by filing of cross-petition in partition suit. Fairley v. Kemper, 174 Neb. 565, 118 N.W.2d 754 (1962).

Action to foreclose a tax sale certificate, except as to minors and incompetents, must be brought within five years from the date of the tax sale certificate. Gibson v. Dawes County, 129 Neb. 706, 262 N.W. 671 (1935).

Where foreclosure was instituted within five years of date of tax sale certificate, action was not barred. Jones v. Gibson, 119 Neb. 574, 230 N.W. 249 (1930).

Private holder of tax sale certificate must bring action to foreclose certificate within five years from its date. Gibson v. Peterson, 118 Neb. 218, 224 N.W. 272 (1929).

Limitation does not relate to remedy merely, but to cause of action. Foree v. Stubbs, 41 Neb. 271, 59 N.W. 798 (1894).

2. Miscellaneous

This section does not apply to recovery from county of money paid for void taxes. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

Liability of county to holder of tax sale certificate for refund upon taxes illegally assessed is measured solely by statute relating thereto, and, if the action is barred on its face by statute of limitations, demurrer to petition will be sustained. Kennedy v. Dawes County, 130 Neb. 227, 264 N.W. 452 (1936).

Where tax sale certificate has been held valid and decree of foreclosure entered thereon, tax purchaser is not entitled to refund from county in any amount. Speidel v. Scotts Bluff County, 125 Neb. 431, 250 N.W. 555 (1933).

Where right of action on certificate has lapsed, it carries with it all right to recover for subsequent taxes. Battelle v. Douglas County, 65 Neb. 329, 91 N.W. 412 (1902).

Statute operates not merely to defeat the remedy, but limits the duration of lien itself. Carson v. Broady, 56 Neb. 648, 77 N.W. 80 (1898).

Statute is not a bar to recovery of taxes under provisions of occupying claimant's act. Lothrop v. Michaelson, 44 Neb. 633, 63 N.W. 28 (1895).

77-1857. County treasurer; seal; when used. County treasurers shall have and keep an official seal, which may be either an engraved or an ink stamp seal, and which shall have included thereon the name of the county followed by the word County, the name of the state, and the words County Treasurer. Each county treasurer shall affix an impression or representation of such seal to every certificate of tax sale and tax deed made by him.

Source: Laws 1903, c. 31, § 1, p. 280; R.S.1913, § 6571; C.S.1922, § 6099; C.S.1929, § 77-2051; R.S.1943, § 77-1857; Laws 1953, c. 280, § 1, p. 911; Laws 1971, LB653, § 9.

Annotations

Section 77-1839 and this section merely require that the treasurer's seal be affixed. They do not require that the treasurer's seal be entirely legible. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

Omission from tax sale certificate of treasurer's seal is an irregularity and does not render tax sale certificate void or unenforceable. County of Lincoln v. Evans, 185 Neb. 19, 173 N.W.2d 365 (1969).

77-1858. Real property taxes; powers of sale; special assessments included; exception. Wherever power is now given by the revenue laws of this state to the county treasurer of any county in this state to sell real estate, on which the taxes have not been paid as provided by law, it shall include the power to sell the real estate for (1) all the taxes and special assessments, except special assessments levied by a sanitary and improvement district organized under sections 31-727 to 31-762, levied or hereafter levied by any county, municipality, drainage district, or other political subdivision of the state and (2) all special assessments levied or hereafter levied by any sanitary and improvement district if such sale is requested by such sanitary and improvement district which levied the special assessment. All provisions of the revenue law now in force with reference to the collection of taxes shall apply with equal force to all taxes and special assessments levied by such county, municipality, drainage district, or other political subdivision of the state.

Source: Laws 1915, c. 228, § 1, p. 531; C.S.1922, § 6101; C.S.1929, § 77-2053; R.S.1943, § 77-1858; Laws 1996, LB1321, § 2.

Annotations

Under this section, county may foreclose upon special assessment lien levied by a village. County of Polk v. Wombacher, 229 Neb. 239, 426 N.W.2d 266 (1988).

Special assessments may be collected in same manner as general taxes. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

This section was cumulative, and did not give taxpayer right to recover interest under older statute. Caspary v. Boyd County, 114 Neb. 124, 206 N.W. 736 (1925).

77-1859. Real property taxes; void tax sale; reimbursement of purchaser. Whenever, for any reason, real estate has been sold or shall hereafter be sold for the payment of any tax or special assessment levied by any county, municipality, drainage district, or other political subdivision of the state, and it shall thereafter be determined by a court of competent jurisdiction that said sale was void, it shall be the duty of said county, municipality, drainage district, or other political subdivision of the state, which levied the tax or special assessment, to hold said purchaser harmless by paying him or her the amount of principal paid by him or her at the sale, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of sale.

Source: Laws 1915, c. 228, § 2, p. 531; C.S.1922, § 6102; C.S.1929, § 77-2054; R.S.1943, § 77-1859; Laws 1981, LB167, § 46.

Annotations

Limitation upon the right to recover money paid for void taxes under this section is the general statute of limitations, and action may be brought at any time within four years after the date that the taxes are declared void by a court of competent jurisdiction. McDonald v. County of Lincoln, 141 Neb. 741, 4 N.W.2d 903 (1942).

Where tax is void because levied on exempt property, remedy of purchaser at tax sale to recover money paid is under this section. McDonald v. Masonic Temple Craft, 135 Neb. 48, 280 N.W. 275 (1938).

Liability of county to holder of tax sale certificate for refund upon taxes illegally assessed is solely statutory, and, if petition shows on its face that it is barred by statute of limitations, it will not stand against demurrer. Kennedy v. Dawes County, 130 Neb. 227, 264 N.W. 452 (1936).

Where action for refund of taxes, involved in county treasurer's tax sale certificate, is barred by the statute of limitations, plaintiff, the holder of the certificate, is not entitled to recover back from the county taxes paid by him subsequent to the treasurer's sale. Gibson v. Dawes County, 129 Neb. 706, 262 N.W. 671 (1935).

Tax sale certificate must have been adjudged invalid by court of competent jurisdiction before purchaser can claim refund from county. Farm Investment Co. v. Scotts Bluff County, 125 Neb. 582, 251 N.W. 115 (1933).

To entitle tax certificate purchaser to refund, it must appear that land was sold for taxes when no tax was due, or in consequence of error in describing land, or it must have been determined by court that sale was void. Speidel v. Scotts Bluff County, 125 Neb. 431, 250 N.W. 555 (1933).

All rights possessed under prior statutes were reserved. Caspary v. Boyd County, 114 Neb. 124, 206 N.W. 736 (1925).

77-1860. Foreclosure by counties prior to 1903; decrees validated. All judgments, orders, decrees and findings made prior to July 28, 1903, by any district court in the State of Nebraska, in any action wherein any county in the state prosecuted actions to foreclose tax liens and sell lots or lands in Nebraska for the taxes levied thereon and delinquent, without having first purchased a tax certificate from the county treasurer, but on the contrary were based solely on the taxes assessed and delinquent, and purported to have been bought for the county in its own behalf, and as trustee for the State of Nebraska and the several municipalities interested in such taxes, and all sheriff's deeds made in said proceedings, are legalized and made valid, to the same extent and purpose as though the statute had specifically authorized such foreclosures without the purchase of a treasurer's tax certificate.

Source: Laws 1903, c. 77, § 1, p. 521; R.S.1913, § 6572; C.S.1922, § 6100; C.S.1929, § 77-2052; R.S.1943, § 77-1860.

77-1861. Real property taxes and special assessments; extinguishment after fifteen years; vitalization of constitutional amendment. It is declared to be the intent and purpose of sections 77-203, and 77-1861 to77-1863 to vitalize Article VIII, section 4, of the Constitution of Nebraska, and to invoke and exercise the powers conferred upon the Legislature of Nebraska, thereby.

Source: Laws 1959, c. 354, § 1, p. 1249.

77-1862. Real property taxes and special assessments; extinguishment after fifteen years; year 1943 and prior thereto; subsequent years. (1) Any and all taxes and special assessments, together with interest, penalty, and costs, levied upon any real property, and any lien created thereby in this state and due to this state or to any county or other political subdivision thereof, becoming delinquent in the calendar year 1943 or any prior year, are hereby released and extinguished forever.

(2) Any and all taxes and special assessments, together with interest, penalty, and costs, levied upon any real property, except mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, and any lien created thereby in this state and due to this state or to any county or other political subdivision thereof, becoming delinquent in the calendar year 1944, or any subsequent year, are hereby released and extinguished forever upon the expiration of fifteen years after the date upon which the tax or special assessment became or shall become delinquent.

Source: Laws 1959, c. 354, § 2, p. 1249; Laws 2000, LB968, § 71.

77-1863. Real property taxes and special assessments; extinguished after fifteen years; not required to be certified. Any county officer or other person who is required to certify to public records shall not be required to certify to any taxes or special assessments, penalty and costs, which have been released and extinguished in accordance with the provisions of section 77-1861 and 77-1862.

Source: Laws 1959, c. 354, § 3, p. 1249.

ARTICLE 19
COLLECTION OF DELINQUENT REAL ESTATE TAXES THROUGH COURT PROCEEDINGS

77-1901. Tax liens; delinquency; order of county board directing foreclosure.
77-1902. Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period.
77-1903. Foreclosure proceedings; confirmation of sale.
77-1904. Foreclosure proceedings; designation of property.
77-1906. Foreclosure proceedings; unknown owners; real property as defendant.
77-1908. Foreclosure proceedings; presumptive evidence.
77-1909. Foreclosure proceedings; decree; contents; attorney's fee.
77-1910. Foreclosure proceedings; surplus proceeds; application; limit of real property to be sold.
77-1911. Foreclosure proceedings; decree; order of sale, when issued; limitation.
77-1912. Foreclosure proceedings; sheriff's sale; political subdivision as purchaser; postponement of sale; notice.
77-1913. Foreclosure proceedings; examination by court; order for sheriff's deed; certificate of tax sale for subsequent taxes.
77-1914. Foreclosure proceedings; confirmation of sale; release of real property.
77-1915. Foreclosure proceedings; proceeds of sale; disposition.
77-1916. Foreclosure proceedings; surplus proceeds; disposition; prorating.
77-1917. Foreclosure proceedings; redemption; subsequent taxes paid; conditions.
77-1917.01. Delinquent special assessments; effect; foreclosure proceedings.
77-1918. Delinquent taxes; annual report by county treasurer; duty of county board; duty of county attorney; fees; failure to perform duty; penalty; removal, when.
77-1918.01. Foreclosure proceedings; county attorney fee; when effective.
77-1923. Foreclosure of tax lien by county under old law; sale prior to May 26, 1943; action to attack; limitation period.
77-1924. Foreclosure of tax lien by county under old law; sale after May 26, 1943; action to attack; limitation period.
77-1925. Foreclosure of tax lien by county under old law; sale not confirmed prior to May 26, 1943; action to attack; limitation period.
77-1927. Foreclosure of tax lien by county under old law; resale by county board.
77-1928. Foreclosure of tax lien by county under old law; sale of property; proceeds; disposition.
77-1934. Tax certificate foreclosure proceedings under old law; defective procedure; confirmation of sale not yet obtained; action to cure defects.
77-1935. Tax certificate foreclosure proceedings under old law; action to cure defects; conditions precedent.
77-1936. Tax certificate foreclosure proceedings; authority of governmental subdivisions to convey real property obtained thereunder.
77-1938. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; proper completion of proceedings authorized.
77-1939. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; application to complete proceedings.
77-1940. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; notice of hearing; service.
77-1941. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; hearing; determination.

77-1901. Tax liens; delinquency; order of county board directing foreclosure. Counties shall have a lien upon real estate within their boundaries for all taxes due thereon to the state, any governmental subdivision of the state, any municipal corporation, and any drainage or irrigation district. After any parcel of real estate has been offered for sale and not sold for want of bidders, the county board shall make and enter an order directing the county attorney to foreclose the lien for all taxes then delinquent, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of real estate mortgages, except as otherwise specifically provided by sections 77-1903 to 77-1917.

Source: Laws 1943, c. 176, § 1, p. 614; R.S.1943, § 77-1901; Laws 1965, c. 496, § 1, p. 1584; Laws 1979, LB84, § 4; Laws 1996, LB1321, § 3;Laws 2011, LB423, § 1.

Annotations

Sheriff's deeds are specially covered by this statute and, unlike the provisions for tax certificates, there is no section establishing a presumption regarding service, as is true in the case of a treasurer's deed. Brown v. Glebe, 213 Neb. 318, 328 N.W.2d 786 (1983).

Procedure for foreclosure of tax liens, except as otherwise provided by tax foreclosure act, is the same as in the foreclosure of real estate mortgages. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

In the foreclosure of tax lien, final confirmation of sale cannot be had until two years shall have expired from date of sale. County of Douglas v. Christensen, 144 Neb. 899, 15 N.W.2d 53 (1944).

77-1902. Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period. When land has been sold for delinquent taxes and a tax sale certificate or tax deed has been issued, the holder of such tax sale certificate or tax deed may, instead of demanding a deed or, if a deed has been issued, by surrendering the same in court, proceed in the district court of the county in which the land is situated to foreclose the lien for taxes represented by the tax sale certificate or tax deed and all subsequent tax liens thereon, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903 to 77-1917. Such action shall only be brought within nine months after the expiration of three years from the date of sale of any real estate for taxes or special assessments.

Source: Laws 1943, c. 176, § 2, p. 615; R.S.1943, § 77-1902; Laws 1975, LB78, § 2; Laws 1987, LB215, § 3; Laws 1996, LB1321, § 4; Laws 2011, LB423, § 2; Laws 2013, LB341, § 18.

Annotations

A foreclosure action brought under this section must be brought within 6 months after the expiration of 3 years from the date of sale of any real estate for taxes. County of Seward v. Andelt, 251 Neb. 713, 559 N.W.2d 465 (1997).

Under this section, "time for redemption" is the three years immediately following a delinquent tax sale, and an action to foreclose a tax lien can only be brought within ninety days immediately after expiration of such time for redemption. Bish v. Fletcher, 219 Neb. 863, 366 N.W.2d 778 (1985), is overruled. County of Lancaster v. Maser, 224 Neb. 566, 400 N.W.2d 238 (1987).

Foreclosure of a tax lien must be brought within ninety days after the expiration of the right to redeem. In accordance with section 77-1837, such redemption right expires three years plus ninety days from the date of the original sale. Bish v. Fletcher, 219 Neb. 863, 366 N.W.2d 778 (1985).

Authority to proceed under equity powers is limited by remaining provisions of tax foreclosure act. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

In foreclosure under this section, court may refuse confirmation of sale where increased bid has been made after sale and before confirmation. County of Gage v. Beatrice Neb. Water Co., 147 Neb. 236, 22 N.W.2d 696 (1946).

A delinquent taxpayer may redeem a tax sale certificate after a foreclosure action has been filed. KLH Retirement Planning v. Cejka, 3 Neb. App. 687, 530 N.W.2d 279 (1995).

77-1903. Foreclosure proceedings; confirmation of sale. The foreclosure proceedings, provided by sections 77-1901 and 77-1902, shall be conducted as nearly as possible in the same manner, except in the following particulars: (1) In the foreclosure of a tax lien, as provided by section 77-1901, final confirmation of sale cannot be had until two years have expired from the date of the sale held by the sheriff in the

foreclosure proceedings; or (2) in the foreclosure of a tax sale certificate or tax deed, as provided in section 77-1902, final confirmation of sale may be had immediately after the sheriff's sale.

Source: Laws 1943, c. 176, § 3, p. 615; R.S.1943, § 77-1903.

Annotations

Confirmation cannot be had until expiration of two-year period, unless right to redeem is waived by owner or all persons having a legal interest in the land. County of Douglas v. Christensen, 144 Neb. 899, 15 N.W.2d 53 (1944).

77-1904. Foreclosure proceedings; designation of property. In all foreclosure proceedings, including in the complaint, it is sufficient to designate the township, range, section, or part of section and the number and description of any lot or block by initial letters, abbreviations, and figures.

In describing improvements on leased land for such notice and proceedings, the words "Improvements Only Located Upon" shall precede the designation of such property as set out in this section.

Source: Laws 1943, c. 176, § 4, p. 615; R.S.1943, § 77-1904; Laws 1992, LB1063, § 168; Laws 1992, Second Spec. Sess., LB1, § 141; Laws 2002, LB876, § 83.

Annotations

Purpose of this section is to reduce costs in the foreclosure of tax liens and tax sale certificates when more than one is held by the same party. County of Hall v. Engleman, 182 Neb. 676, 156 N.W.2d 801 (1968).

Under prior act, and reenactment of this section by 1943 act, the use of initial letters, abbreviations, and figures in describing real estate was expressly authorized. City of Scottsbluff v. Kennedy, 141 Neb. 728, 4 N.W.2d 878 (1942).

Plaintiff may join as many tracts as he sees fit, but each one constitutes a separate cause of action and must be separately stated and numbered. McNish v. Perrine, 14 Neb. 582, 16 N.W. 837 (1883).

Certificate of tax sale, together with subsequent taxes, constitutes one cause of action. Cushman v. Taylor, 2 Neb. Unof. 793, 90 N.W. 207 (1902).

77-1906. Foreclosure proceedings; unknown owners; real property as defendant. The plaintiff may also, if desired, include as or make the real property described in the complaint a defendant and, if the owners of any such real property are unknown and cannot be found, may proceed against the real property itself, but in such case the service shall be as in the case of an unknown defendant.

Source: Laws 1943, c. 176, § 6, p. 616; R.S.1943, § 77-1906; Laws 1992, LB1063, § 169; Laws 1992, Second Spec. Sess., LB1, § 142; Laws 2002, LB876, § 84.

Cross References

For proceedings against unknown defendants, see section 25-321.

For provisions for mailing copy of notice, see sections 25-520.01 to 25-520.03.

77-1908. Foreclosure proceedings; presumptive evidence. The tax sale certificate or tax deed, in foreclosure proceedings under section77-1902, or a certificate of the county treasurer, as to the amount of unpaid delinquent taxes in foreclosure proceedings under section 77-1901, shall be presumptive evidence of all facts necessary to entitle the plaintiff to a decree for the amount appearing to be due thereon with interest at the rate required to be paid for redemption from tax sale.

Source: Laws 1943, c. 176, § 8, p. 616; R.S.1943, § 77-1908.

77-1909. Foreclosure proceedings; decree; contents; attorney's fee. In its decree, the court shall ascertain and determine the amount of taxes, special assessments, and other liens, interest, and costs chargeable to each particular item of real property, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, and award to the plaintiff an attorney's fee, unless waived by the plaintiff, in an amount equal to ten percent of the amount due which shall be taxed as part of the costs in the action and apportioned equitably as other costs.

Source: Laws 1943, c. 176, § 9, p. 616; R.S.1943, § 77-1909; Laws 1992, LB1063, § 171; Laws 1992, Second Spec. Sess., LB1, § 144; Laws 2011, LB423, § 3.

Annotations

Interest and costs are to be included in awarding an attorney fee pursuant to this section. The award of attorney fees is to be made in the decree of foreclosure, not in the order confirming the sale. Buffalo County v. Kizzier, 250 Neb. 247, 548 N.W.2d 753 (1996).

77-1910. Foreclosure proceedings; surplus proceeds; application; limit of real property to be sold. The court may in its decree order that any surplus proceeds of the sale of one item of real property shall be applied to the payment of taxes and costs against any other item of real property owned by the same defendant when no rights of a third person are affected thereby and may order that only so much of the real property, so owned by one defendant, shall be sold as may be necessary to satisfy all taxes and costs charged against all the real property owned by the same defendant.

Source: Laws 1943, c. 176, § 10, p. 616; R.S.1943, § 77-1910; Laws 1992, LB1063, § 172; Laws 1992, Second Spec. Sess., LB1, § 145.

77-1911. Foreclosure proceedings; decree; order of sale, when issued; limitation. Upon the expiration of twenty days from and after such decree, the plaintiff shall be entitled to an order of sale of the real property remaining unredeemed. This order of sale shall be issued only at the request of the plaintiff or the holder of an unredeemed lien and shall be issued within ten years from the date of the decree. After ten years from the date of the decree, (1) no order of sale shall issue, (2) the decree shall be deemed satisfied, and (3) no further action shall lie to enforce the lien of any taxes or special assessments included in the decree.

Source: Laws 1943, c. 176, § 11, p. 617; R.S.1943, § 77-1911; Laws 1953, c. 281, § 1, p. 912; Laws 1992, LB1063, § 173; Laws 1992, Second Spec. Sess., LB1, § 146.

Annotations

Procedure contemplates sale of the lands if not redeemed. Madison County v. School Dist. No. 2, 148 Neb. 218, 27 N.W.2d 172 (1947).

77-1912. Foreclosure proceedings; sheriff's sale; political subdivision as purchaser; postponement of sale; notice. (1) The sheriff shall sell the real property in the same manner provided by law for a sale on execution and shall at once pay the proceeds thereof to the clerk of the district court. Any governmental subdivision of the state, municipal corporation, or drainage or irrigation district to which any part of the taxes included in the decree of foreclosure is due may purchase any real property sold at sheriff's sale. The provisions of the law for the protection of the purchasers at tax sales shall apply to purchasers at foreclosure sales provided for in this section. The sheriff or officer conducting the sale shall not be entitled to any commission on the money received and paid out on foreclosure sales provided for herein.

(2) The sheriff or officer conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the real property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by the sheriff or officer at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1943, c. 176, § 12, p. 617; R.S.1943, § 77-1912; Laws 1992, LB1063, § 174; Laws 1992, Second Spec. Sess., LB1, § 147; Laws 2010, LB732, § 5.

Annotations

The sheriff is required to collect the entire price bid at the judicial sale, not merely a percentage thereof. Buffalo County v. Kizzier, 250 Neb. 247, 548 N.W.2d 753 (1996).

As a general rule, property which is susceptible of being sold at a foreclosure sale in separate tracts should, if practicable, be sold in parcels, rather than as an entirety. It is within the discretion of the trial court to provide in a decree of foreclosure for the sale of property en masse, and such a sale will be sustained absent a showing of prejudice. Where the record does not show that the judgment debtor requested that the land be sold in separate tracts, he is not entitled as a matter of right to have the sale set aside because the land was sold en masse. County of Dakota v. Mallett, 235 Neb. 82, 453 N.W.2d 594 (1990).

Interest on money received by sheriff on bids at tax foreclosure sale belongs to beneficial owners of fund and not to clerk of district court. Bordy v. Smith, 150 Neb. 272, 34 N.W.2d 331 (1948).

77-1913. Foreclosure proceedings; examination by court; order for sheriff's deed; certificate of tax sale for subsequent taxes. The court shall, after the expiration of the time provided in section 77-1903 and on the motion of the plaintiff, examine the proceedings and, if they are found to be correct and if the subsequent taxes have been paid to date, in case the purchaser is not a land reutilization authority or a governmental subdivision of the state, a municipal corporation or an irrigation or drainage district interested in the distribution of the proceeds of the foreclosure sale, make and enter an order of confirmation of the sale, shall direct the disposition of the proceeds of the sale and order the sheriff to make and deliver to the purchasers,

without further cost to them, a sheriff's deed for any real estate not redeemed; *Provided,* if a private purchaser at any sale held by the sheriff in tax foreclosure proceedings shall fail to pay the subsequent taxes levied and assessed against the property under foreclosure, any governmental subdivision of the state, municipal corporation or drainage or irrigation district, interested in the distribution of the proceeds of the foreclosure sale, may apply for and have issued to it a certificate of tax sale covering such subsequent taxes in the manner provided by sections 77-1809 and77-1810, and, upon production of such certificate in the court conducting said foreclosure proceedings, such court may thereupon order confirmation of such foreclosure sale, notwithstanding the private purchaser has failed to pay the subsequent taxes levied and assessed against the property.

Source: Laws 1943, c. 176, § 13, p. 617; R.S.1943, § 77-1913; Laws 1982, LB630, § 1.

Annotations

Subsequent taxes that a purchaser at a sheriff's sale in the foreclosure of a tax certificate is required to pay before confirmation of the sale are limited to those levied and assessed on the property under foreclosure, i.e., taxes assessed and levied after commencement of the foreclosure proceeding. "Subsequent taxes" within the meaning of this section do not include taxes, whether general taxes or special assessments, that were assessed and levied prior to the commencement of the foreclosure proceeding. INA Group v. Young, 271 Neb. 956, 716 N.W.2d 733 (2006).

When there is no evidence that others are willing to pay more, a judicial sale will not be set aside on account of mere inadequacy of price, unless such inadequacy is so gross as to make it appear that it was the result of fraud or mistake, or to shock the conscience of the court. The district court must determine by unrestricted means whether at the sheriff's sale the price bid is adequate or whether at a subsequent sale more would be realized, and this court will not overturn its determination absent an abuse of discretion. County of Dakota v. Mallett, 235 Neb. 82, 453 N.W.2d 594 (1990).

Substantially increased offers made in open court before confirmation of sale are sufficient to authorize district court to deny confirmation and order a new sale. County of Gage v. Beatrice Neb. Water Co., 147 Neb. 236, 22 N.W.2d 696 (1946).

Title to land acquired by tax foreclosure in Nebraska was subject to attack in Missouri federal district court on jurisdictional grounds. Duke v. Durfee, 308 F.2d 209 (8th Cir. 1962).

77-1914. Foreclosure proceedings; confirmation of sale; release of real property. Upon confirmation of the sale, the clerk of the district court shall certify to the county treasurer the year or years of the taxes for which the real property was sold. The county treasurer shall thereupon cancel the taxes for such years, and the proceedings shall operate as a release of such real property from all liens for the taxes included on the real property. The delivery of the sheriff's deed shall pass title to the purchaser free and clear of all liens and interests of all persons who were parties to the proceedings, who received service of process, and over whom the court had jurisdiction, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 14, p. 618; R.S.1943, § 77-1914; Laws 1992, LB1063, § 175; Laws 1992, Second Spec. Sess., LB1, § 148; Laws 2008, LB893, § 2; Laws 2011, LB423, § 4.

77-1915. Foreclosure proceedings; proceeds of sale; disposition. From the proceeds of the sale of any real property, the costs charged thereto shall first be paid. When the plaintiff is a private person, firm, or corporation, the balance thereof, or so much thereof as is necessary, shall be paid to the plaintiff. When the plaintiff is a governmental subdivision other than a land bank, or is a municipal corporation or drainage or irrigation district, the balance thereof, or so much thereof as is necessary, shall be paid to the county treasurer for distribution to the various governmental subdivisions, municipal corporations, or drainage or irrigation districts entitled thereto in discharge of all claims, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer. When the plaintiff is a land bank, the balance thereof, or so much thereof as is necessary, shall be paid to the land bank.

Source: Laws 1943, c. 176, § 15, p. 618; R.S.1943, § 77-1915; Laws 1992, LB1063, § 176; Laws 1992, Second Spec. Sess., LB1, § 149; Laws 2011, LB423, § 5; Laws 2013, LB97, § 24.

Annotations

Attorney's fee taxed as costs is not distributable as tax revenue. Strawn v. County of Sarpy, 156 Neb. 797, 58 N.W.2d 168 (1953).

77-1916. Foreclosure proceedings; surplus proceeds; disposition; prorating. If a surplus remains after satisfying all costs and taxes against any particular item of real property, the excess shall be applied in the manner provided by law for the disposition of the surplus in the foreclosure of mortgages on real property. If the proceeds are insufficient to pay the costs and all the taxes, when the plaintiff is a governmental subdivision other than a land bank or is a municipal corporation or a drainage or irrigation district, the amount remaining shall be prorated among the governmental subdivisions, municipal corporations, and drainage or irrigation districts in the proportion of their interest in the decree of foreclosure. The proceeds of the sale of one item of real property shall not be applied to the discharge of a lien for taxes against another item of real property except when so directed by the decree for foreclosure under the circumstances set forth in section77-1910. The lien on real estate for special assessments levied by any sanitary and improvement district shall not be entitled to any surplus unless such special assessments have been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 16, p. 618; R.S.1943, § 77-1916; Laws 1992, LB1063, § 177; Laws 1992, Second Spec. Sess., LB1, § 150; Laws 2011, LB423, § 6; Laws 2013, LB97, § 25.

77-1917. Foreclosure proceedings; redemption; subsequent taxes paid; conditions. (1) Any person entitled to redeem real property may do so at any time prior to the institution of foreclosure proceedings by paying the county treasurer for the use of such holder of a tax sale certificate or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to the date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from the date of such payment to the date of redemption.

(2) Any person entitled to redeem real property may do so at any time after the decree of foreclosure and before the final confirmation of the sale by paying to the clerk of the district court the amount found due against the property, with interest and costs to the date of redemption and, in addition thereto, when the real property has been sold at sheriff's sale to a purchaser other than the plaintiff, any subsequent taxes paid by such purchaser, as shown by tax receipts filed by such purchaser with the clerk of the district court, with interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date or dates of payment of such taxes, and also interest on the purchase price at the same rate, for the use of the purchaser, from the date of sale to the date of redemption. During the pendency of a foreclosure action any person entitled to redeem any lot or parcel may do so by paying to the court the amount due with interest and costs, including attorney's fees, provided for in section 77-1909, if requested in the foreclosure complaint. Within thirty days after receipt of payment of all amounts due, the holder of the tax sale certificate shall dismiss its claim in the foreclosure proceeding with respect to any redeemed tax sale certificate. The holder of the tax sale certificate shall be required to provide the county treasurer with written notice that a foreclosure suit has been instituted and provide the county treasurer with an affidavit setting forth the costs incurred in the foreclosure action and indicating whether attorney's fees were requested in the foreclosure complaint.

(3) The person redeeming any lot or parcel shall be required to provide the county treasurer with an appropriate receipt evidencing the payment to the court of the amount due with interest and costs and the holder of the tax sale certificate shall file with the county treasurer notice of its dismissal of the claim in the foreclosure proceeding.

Source: Laws 1943, c. 176, § 17, p. 619; R.S.1943, § 77-1917; Laws 1945, c. 194, § 1, p. 597; Laws 1971, LB743, § 1; Laws 1979, LB84, § 5; Laws 1981, LB167, § 47; Laws 1992, LB1063, § 178; Laws 1992, Second Spec. Sess., LB1, § 151; Laws 1997, LB486, § 1; Laws 2002, LB876, § 85; Laws 2008, LB893, § 3.

Cross References

For redemption from foreclosure generally, see section 25-1530.

Annotations

County may not proceed in foreclosure action under this statute. County of Polk v. Wombacher, 229 Neb. 239, 426 N.W.2d 266 (1988).

77-1917.01. Delinquent special assessments; effect; foreclosure proceedings. All cities, villages and sanitary and improvement districts in Nebraska shall have a lien upon real estate within their boundaries for all special assessments due thereon to the municipal corporation or district, which lien shall be inferior only

to general taxes levied by the state and its political subdivisions. When such special assessments have become delinquent, without the real property against which they are assessed being first offered at tax sale by the tax sale certificate method or otherwise, the municipal corporation or district involved may itself as party plaintiff proceed in the district court of the county in which the real estate is situated to foreclose, in its own name, the lien for such delinquent special assessments in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903 to 77-1917, which shall govern when applicable. Final confirmation of sale in such foreclosure proceeding and issuance of deed to the plaintiff, or its assignee, cannot be had until two years have expired from the date of the sale held by the sheriff, and, after expiration of such two-year period, personal notice has been served on occupants of the real property. The remedy granted in this section to cities, villages and sanitary and improvement districts for the collection of delinquent special assessments shall be cumulative and in addition to other existing methods.

Source: Laws 1961, c. 387, § 1, p. 1182; Laws 1976, LB313, § 13.

Annotations

This section provides the subdivision of the government named therein an independent and complete remedy for the foreclosure of special assessment liens and is in addition to any other remedies provided by the law for the collection of special assessments. Sanitary & Improvement Dist. #222 v. Metropolitan Life Ins. Co., 201 Neb. 10, 266 N.W.2d 73 (1978).

77-1918. Delinquent taxes; annual report by county treasurer; duty of county board; duty of county attorney; fees; failure to perform duty; penalty; removal, when. On or before October 1 of each year, the county treasurer shall make a report in writing to the county board setting out a complete list of all real property in the county on which any taxes are delinquent and which was not sold for want of bidders at the last annual tax sale held in such county. It shall be the duty of the county board, at its first meeting held after the making of such report, to carefully examine the same, and while it may direct the issuance of tax sale certificates to the county upon any real property upon which there are any delinquent taxes, it shall, as to all real property upon which taxes are delinquent for three or more years, either enter an order directing the foreclosure of the lien of such taxes as provided in section 77-1901 or enter an order for the county treasurer to issue tax sale certificates to the county covering the delinquent taxes upon such real property, to be foreclosed upon in the manner and at the time provided in sections77-1901 to 77-1918.

The county board shall have authority to direct the county attorney to commence foreclosure of such liens or certificates or it may designate another attorney to commence such actions, and the county board is authorized to pay any reasonable fee for such foreclosures to be assessed as costs. In the event the county attorney is designated to bring the action, the fee shall be fifty dollars for each cause of action in addition to his or her salary to be retained by him or her, but it shall not be paid to the county attorney until the decree is entered and the property sold pursuant to such decree. No fee shall be allowed the county attorney for such foreclosures in counties having a population of more than one hundred thousand inhabitants.

Any county treasurer, county attorney, or member of the county board who willfully fails, neglects, or refuses to perform the duties imposed by such sections shall be guilty of official misdemeanor and subject to removal from office as provided in sections 23-2001 to 23-2009. If the county board fails to dismiss the county attorney for failure to foreclose liens, the county board shall be removed. Any member of a county board who, upon a motion duly made by one member of such board to remove a county attorney from office who has failed to foreclose liens, does not vote for such motion or any member who votes to retain a county attorney in office after it has been brought to the board's attention that he or she has failed to foreclose liens shall be subject to removal from office as provided in sections 23-2001 to 23-2009.

Source: Laws 1943, c. 176, § 18, p. 619; R.S.1943, § 77-1918; Laws 1961, c. 388, § 1, p. 1183; Laws 1971, LB743, § 2; Laws 1986, LB531, § 4; Laws 1992, LB1063, § 179; Laws 1992, Second Spec. Sess., LB1, § 152; Laws 1995, LB488, § 1.

Annotations

Pursuant to this section, a county must choose to foreclose real estate tax liens under either the lien method set forth at section 77-1901 or the certificate method set forth in section 77-1902. County of Seward v. Andelt, 251 Neb. 713, 559 N.W.2d 465 (1997).

Laws 1971, L.B. 743, which amended this section was effective so far as compensation was provided for county attorneys as soon as it could become operative under the Constitution, but fee not payable until property sold pursuant to decree. State ex rel. Nebraska State Bar Assn. v. Holscher, 193 Neb. 729, 230 N.W.2d 75 (1975).

County attorney is obligated to institute and prosecute actions by county to foreclose tax lien. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

77-1918.01. Foreclosure proceedings; county attorney fee; when effective. Section 77-1918 shall be so interpreted as to effectuate its general purpose, to provide, in the public interest, adequate compensation as therein provided for county attorneys, and to give effect to such salary as soon as same may become operative under the Constitution of the State of Nebraska.

Source: Laws 1971, LB743, § 3; Laws 1972, LB1069, § 6.

77-1923. Foreclosure of tax lien by county under old law; sale prior to May 26, 1943; action to attack; limitation period. Where any county shall have commenced proceedings in this state under the provisions of section 77-2039, C.S.Supp.,1941, and shall have purchased real estate sold under said proceedings, as trustee for the benefit of the governmental bodies interested in the taxes, and the sale has been confirmed and the deed or deeds therefor have been issued and delivered to the county and the county has sold the real estate prior to May 26, 1943, any person, persons, firm or corporation or governmental body of the state, which shall have or has had any interest whatsoever in said real estate, lien thereon or interest in said taxes, shall have one year and no more, under any circumstances whatever, from May 26, 1943, within which to bring any action whatsoever to attack said proceeding, any of the steps taken thereunder, the method of purchasing, the power of the county either to bring said proceeding or to purchase the property in its name as trustee or said deeds. In the event no such action shall be brought within said period so fixed by this period of limitation, then the title of the purchaser from the county shall be valid and absolute against any such person, persons, firm or corporation or governmental body.

Source: Laws 1943, c. 184, § 1, p. 631; R.S.1943, § 77-1923.

77-1924. Foreclosure of tax lien by county under old law; sale after May 26, 1943; action to attack; limitation period. Where any county shall have commenced proceedings in this state under the provisions of section 77-2039, C.S.Supp.,1941, and shall have purchased real estate sold under said proceedings, as trustee for the benefit of the governmental bodies interested in the taxes, and the sale has been confirmed and the deed or deeds therefor have been issued and delivered to the county, any person, persons, firm or corporation or governmental body of the state, which shall have or have had any interest whatsoever in said real estate, lien thereon or interest in said taxes, shall have one year and no more, under any circumstances whatever, from May 26, 1943, within which to bring any action whatsoever to attack said proceeding, any of the steps taken thereunder, the method of purchasing, the power of the county either to bring said proceeding or to purchase the property in its name as trustee or said deeds. In the event no such action shall be brought within said period so fixed by this period of limitations, then the title of the county as trustee shall be valid and absolute against any such person, persons, firm or corporation or governmental body.

Source: Laws 1943, c. 184, § 2, p. 632; R.S.1943, § 77-1924.

77-1925. Foreclosure of tax lien by county under old law; sale not confirmed prior to May 26, 1943; action to attack; limitation period. Where any county shall have commenced proceedings in this state under the provisions of section 77-2039, C.S.Supp.,1941, and shall have purchased real estate sold under said proceedings, as trustee for the benefit of the governmental bodies interested in the taxes, and the sale or sales have not been confirmed as of May 26, 1943, but more than two years shall have elapsed since the date of the sale, then the county shall be entitled upon motion to have the sale or sales confirmed and a deed or deeds issued to it and any person, persons, firm or corporation or governmental body, which shall have or have had any interest whatsoever in said real estate, lien thereon or interest in said taxes, shall have one year and no more, under any circumstances whatever, from the date of the issuance of said deeds within which to bring any action whatsoever to attack such proceedings, any of the steps taken thereunder, the method of purchasing, the power of the county either to bring said proceeding or to purchase the property in its name as trustee or said deeds. In the event no such action shall be brought within said period so fixed by this period of limitation, then the title of the county to said premises, as trustee, shall be good and valid as against each and all such person, persons, firms, corporations or governmental bodies, and the county shall not be required to pay the subsequent taxes, levied or assessed against said premises, or the court costs charged against said real estate in the foreclosure proceeding.

Source: Laws 1943, c. 184, § 3, p. 632; R.S.1943, § 77-1925.

77-1927. Foreclosure of tax lien by county under old law; resale by county board. Where any county shall have acquired real estate, under the conditions set forth in any one or more of sections 77-1923 to 77-

1925, the county board shall have power to convey any of such real estate, by a deed signed by the chairman of the county board at any time after May 26, 1943, subject to the right, if any, of any person, persons, firm or corporation or governmental body to attack the same by action or proceeding within the one-year limitation herein provided for, for such price as the county board, in the exercise of good faith, shall determine to be a fair and reasonable price for the property.

Source: Laws 1943, c. 184, § 5, p. 633; R.S.1943, § 77-1927.

77-1928. Foreclosure of tax lien by county under old law; sale of property; proceeds; disposition. From the proceeds of the sales of said pieces of property, or any sales which may have heretofore been had, there shall first be paid the costs of sale, the court costs, including any attorney's fees paid or to be paid on account of said foreclosure, any reasonable expense in taking care of the property and all costs for advertising for delinquent taxes. The balance, if any, shall be distributed to the governmental bodies in the following manner: By paying the taxes which shall have been unpaid by the previous owners, with interest and penalties, in the inverse order assessed, to the extent of the proceeds, and any unpaid taxes thereafter remaining shall be canceled on the books of the county.

Source: Laws 1943, c. 184, § 6, p. 634; R.S.1943, § 77-1928.

77-1934. Tax certificate foreclosure proceedings under old law; defective procedure; confirmation of sale not yet obtained; action to cure defects. Where any county, city, village, school district, drainage district, or irrigation district shall have commenced proceedings under the provisions of either section77-2040 or 77-2041, C.S.Supp.,1941, to foreclose tax sale certificates, and the sale or sales held by the sheriff in such proceedings has not been confirmed as of March 24, 1947, but more than two years shall have elapsed, either between the time of issuance of tax sale certificate and the time of instituting the tax foreclosure proceedings, or from and after the time of holding sheriff's sale, then such purchaser of the tax sale certificate or certificates shall be entitled upon motion to have the sale or sales confirmed and a deed or deeds issued to such purchaser, and any person, persons, firm, corporation, or governmental body, which shall have or has had any interest whatsoever in the real estate, lien thereon, or interest in the taxes foreclosed, shall have one year and no more, under any circumstances whatever, from the date of the issuance of the deed or deeds, within which to bring any action whatsoever to attack such proceedings, any of the steps taken thereunder, the method of purchasing or the power of the county, municipality or other governmental subdivision mentioned above to bring said proceedings, to purchase the property in its name as trustee, or to receive deed. In the event no such action shall be brought within the period of limitation fixed by this section, the title of the purchaser shall be valid and absolute against any such person, persons, firm, corporation, or governmental body.

Source: Laws 1947, c. 264, § 2, p. 855.

Annotations

Failure to bring action did not bar claim of easement. Jurgensen v. Ainscow, 155 Neb. 701, 53 N.W.2d 196 (1952).

77-1935. Tax certificate foreclosure proceedings under old law; action to cure defects; conditions precedent. In the event any person, persons, firm, corporation, or governmental body shall bring any action whatever to contest the validity of any of the tax foreclosure proceedings, under either section 77-1933 or 77-1934, then such person, persons, firm, corporation, or governmental body shall first pay to the clerk of the district court in which the action shall be brought all taxes levied or assessed against real estate for the years foreclosed on, with interest and penalties provided by law, and all court costs in the tax foreclosure proceedings taxed in the cause of action affecting the real estate involved in the subsequent action, and shall also pay to the county treasurer of the county all taxes levied or assessed against said real estate subsequent to the taxes foreclosed upon, with interest and penalties provided by law, which are liens upon the property at the time such subsequent action shall be commenced. The money paid to the county treasurer as subsequent taxes shall be held by the county treasurer in escrow until there has been a final adjudication as to the validity of the tax foreclosure proceedings under attack, and not unless and until such proceedings have been adjudicated to be invalid shall the county treasurer distribute the subsequent taxes thus paid to the state and governmental subdivisions entitled to participate therein. The payment of such taxes and court costs shall be a prerequisite to the filing of any such action. In the event the party bringing action to contest the validity of such tax foreclosure proceedings is unsuccessful, the clerk of the district court shall refund to such party,

after deducting all unpaid costs assessed against him by the court in such action, the balance remaining after such deduction of the amount of any costs and taxes paid to such clerk as a condition precedent to institution of such action. The county treasurer shall also refund all subsequent taxes paid by such party in the event he is unsuccessful.

Source: Laws 1947, c. 264, § 3, p. 855.

77-1936. Tax certificate foreclosure proceedings; authority of governmental subdivisions to convey real property obtained thereunder. When any county, city, village, school district, drainage district, or irrigation district shall have acquired real estate under such tax foreclosure proceedings, the governing body of such governmental subdivision or municipal corporation shall have power to convey any such real estate by a deed signed by the chairperson or other presiding officer of such body, subject to the right, if any, of any person, persons, firm, corporation, or governmental body to attack the same by action or proceeding within the one-year limitation provided in sections 77-1934 to 77-1936, for such price as the governing body of any such governmental subdivision or municipal corporation, in the exercise of good faith, shall determine to be a fair and reasonable price for the property.

Source: Laws 1947, c. 264, § 4, p. 856; Laws 2013, LB341, § 19.

77-1938. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; proper completion of proceedings authorized. In all proceedings heretofore had for the foreclosure of tax liens or tax sale certificates wherein a valid decree of foreclosure was procured, but proceedings subsequent to the entry of such decree were defective, invalid, or void for any reason, any person who has, subsequent to the entry of such decree, acquired any interest in such property by purchase from a former owner, assignment from a lienholder, payment of subsequent taxes, or erection of improvements on the property, may file an application to have the tax foreclosure proceeding properly completed, and the rights of the parties subsequent to the entry of such decree adjusted by the court.

Source: Laws 1949, c. 240, § 1, p. 652.

Annotations

Act is only procedural in character. City of Wayne v. Adams, 156 Neb. 297, 56 N.W.2d 117 (1952).

77-1939. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; application to complete proceedings. The application provided for in section 77-1938 shall be filed in the original tax foreclosure proceeding wherein the decree of foreclosure was rendered. The application shall set forth: (1) The nature of the interest of the applicant in the property and how it was acquired; (2) the defect or defects which rendered proceedings subsequent to the decree of foreclosure defective, invalid, or void; (3) the taxes and special assessments which have become a lien since the entry of the decree of foreclosure, and the amount thereof, if any, paid by the applicant; (4) the improvements, if any, placed upon the property since the decree of foreclosure by the applicant or any person under whom he claims an interest in the property; and (5) any other facts proper for a court of equity to take into consideration in determining the rights, equities, and liens of the parties in and to the premises described in the tax foreclosure proceedings. The application shall conclude with a request that the court order the foreclosure proceedings to be properly completed and the rights of all parties arising subsequent to the decree of foreclosure be adjusted and determined.

Source: Laws 1949, c. 240, § 2, p. 652.

77-1940. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; notice of hearing; service. Notice of hearing upon the application shall be given to the plaintiff in the foreclosure proceedings, the state and all governmental subdivisions having any interest in the taxes found due by the decree, and all other persons who have since the entry of the decree apparently acquired any interest of record in the property. Such notice shall be served upon the parties in the same manner as a summons is served at the beginning of a civil action. Service of process may be made upon the State of Nebraska by service upon the Attorney General. Such parties shall have twenty days from the date of service of such notice in which to answer said application.

Source: Laws 1949, c. 240, § 3, p. 653.

77-1941. Tax foreclosure proceedings; defects subsequent to decree of foreclosure; hearing; determination. Upon hearing the application, the court shall enter a supplemental decree directing that the tax foreclosure proceeding be properly completed, and determining the rights of all parties that have arisen subsequent to the entry of the decree of foreclosure. The rights adjudicated in the original tax foreclosure proceeding shall be respected and observed, but such adjudication shall not prevent any party from establishing superior rights that may have arisen since the entry of the decree through payment of subsequent taxes and special assessments and the placing of improvements on the premises in good faith. In the event any municipal corporation or governmental subdivision shall have received any consideration as the result of the proceedings which were defective, invalid, or void, it shall be required to account for the same, and judgment may be entered against it for the amount thereof and applied as a credit on any amount due it under the original decree of foreclosure.

Source: Laws 1949, c. 240, § 4, p. 653.

Annotations

Applicant is required to pay taxes or place improvements on premises in good faith. City of Wayne v. Adams, 156 Neb. 297, 56 N.W.2d 117 (1952).

ARTICLE 28
UNPAID TAXES ON GOVERNMENTAL PROPERTY

77-2801. Property; unpaid taxes; sale; when.
77-2802. Property; unpaid taxes; governing body; certify to county treasurer; certify value of property less than total taxes.
77-2803. Property; unpaid taxes; sale; date.
77-2804. Property; unpaid taxes; sale; notice; procedure if no bid is made.
77-2805. Property; unpaid taxes; notice to state and political subdivisions.
77-2806. Property; unpaid taxes; sale; who may purchase.
77-2807. Property; unpaid taxes; sale; proceeds; disposition.
77-2808. Property; unpaid taxes and costs; cancellation; when.
77-2809. Property; unpaid taxes; sale; proceeds insufficient; special assessments, interest, penalty; cancel.

77-2801. Property; unpaid taxes; sale; when. Whenever the state or any of its political subdivisions shall own property upon which there are any unpaid taxes or special assessments and any interest, penalties or costs relating to such taxes or special assessments, and the value of such property is less than the total of such taxes, special assessments, interest, penalties and costs, such property may be sold by the owner and title given as provided in sections 77-2801 to 77-2809.

Source: Laws 1967, c. 483, § 1, p. 1495.

77-2802. Property; unpaid taxes; governing body; certify to county treasurer; certify value of property less than total taxes. The governing body of the political subdivision owning property described in section 77-2801 and desiring to sell the same shall certify by official action to the county treasurer of the county in which the property is located, the legal description of the property and the street address of such property if within a city or village, that the value of the property is less than the total of all taxes, special assessments and interest, penalties, and cost levied against such property, and that the owner desires that such property be sold.

Source: Laws 1967, c. 483, § 2, p. 1495.

77-2803. Property; unpaid taxes; sale; date. The county treasurer shall set a date of sale which shall be within two months of the date of the certification made pursuant to section 77-2802 and proceed, as provided in sections 77-2801 to 77-2809, to offer and sell such property to the highest bidder.

Source: Laws 1967, c. 483, § 3, p. 1495.

77-2804. Property; unpaid taxes; sale; notice; procedure if no bid is made. The county treasurer shall, prior to the sale, cause an advertisement to be printed in a legal newspaper published in the English language in such county or, if none is published in the county, in such a legal newspaper of general circulation in the county at least once a week for three consecutive weeks. Such advertisement shall state the owner of such property and that such property, described by its legal description and if within a city or village by its street address in addition to its legal description, will be sold to the highest bidder on the date set for sale and that a title clear of all liens for taxes, or special assessments and interest, penalties, or costs thereon will be conveyed. If upon the date of sale no bid is made, the county treasurer shall continue such sale until a bid shall have been received, except that the owner, at any time after the date for sale, may cause the selling of the property to be discontinued by notifying the county treasurer of such desire.

Source: Laws 1967, c. 483, § 4, p. 1496; Laws 1986, LB960, § 40.

77-2805. Property; unpaid taxes; notice to state and political subdivisions. Prior to advertising for sale, the county treasurer shall notify the state and all political subdivisions which have any interest in taxes or special assessments levied and assessed against such property of the proposed sale and the date of such sale.

Source: Laws 1967, c. 483, § 5, p. 1496.

77-2806. Property; unpaid taxes; sale; who may purchase. The state or any other political subdivision may purchase such property.

Source: Laws 1967, c. 483, § 6, p. 1496.

77-2807. Property; unpaid taxes; sale; proceeds; disposition. The proceeds of such sale shall be first applied toward payment of all taxes or special assessments and all interest, penalties and costs thereon in the same manner as proceeds from tax foreclosure sales. If there are any proceeds remaining, such remainder shall be applied against any other liens held by the owner and if there remain any further proceeds, such proceeds shall be distributed as otherwise provided by law.

Source: Laws 1967, c. 483, § 7, p. 1496.

77-2808. Property; unpaid taxes and costs; cancellation; when. If after all proceeds have been distributed and there still remains unpaid any portion of taxes, interest and penalties and costs thereon, the county shall by official action cause all such taxes, interest, and penalties and costs, regardless of whether such are for the benefit of the state or any political subdivision, to be stricken from the records of the county. Such action shall forever release such property from such taxes, interest, penalties, and costs thereon.

Source: Laws 1967, c. 483, § 8, p. 1496.

77-2809. Property; unpaid taxes; sale; proceeds insufficient; special assessments, interest, penalty; cancel. If after the proceeds have been distributed and there still remains unpaid any portion of special assessments, interest, penalties, or costs thereon the governing body of each and every political subdivision interested in the unpaid special assessment shall cause such special assessment, and interest, penalties and costs thereon to be stricken from the records. Such action shall forever release such property from such special assessments and interest, penalties and costs thereon.

Source: Laws 1967, c. 483, § 9, p. 1497.

ARTICLE 34
POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

77-3401. Act, how cited.
77-3402. Political subdivisions; budget limitation; petition; election; procedure.
77-3404. Budget limitation; approval; effect.
77-3405. Petition; contents; election; when held.
77-3406. Election; notice; ballot; form.
77-3407. Petition; unlawful signature; penalty.
77-3408. Election; statutes; applicability.
77-3409. Budget limitation; two or more proposals; how treated; placed on ballot.
77-3410. Budget limitation; duration; termination; procedure.
77-3410.01. Budget limitation adopted prior to April 11, 1981; termination.
77-3411. Statutory limitation on budgets; not applicable; when.
77-3442. Property tax levies; maximum levy; exceptions.
77-3443. Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy.
77-3444. Authority to exceed maximum levy; procedure.
77-3445. Council on public improvements and services; membership; powers and duties.
77-3446. Base limitation, defined.

77-3401. Act, how cited. Sections 77-3401 to 77-3411 shall be known and may be cited as the Local Option Tax Control Act.

Source: Laws 1978, Spec. Sess., LB2, § 1.

77-3402. Political subdivisions; budget limitation; petition; election; procedure. If the voters of any political subdivision of the state authorized to levy a tax or cause a tax to be levied determine that a limitation of the budget of the political subdivision funded by property taxes is needed, they may call for an election for that purpose. When ten percent of the registered voters of any political subdivision sign a petition calling for a limitation on the budget funded by property taxes, the question of such budget limitation shall be placed before the voters at a general, primary, or special election. The petition shall be filed with the governing body of the political subdivision. The budget limitation shall be adopted if approved by a majority of those voting on the question. Voting at such general, primary, or special election shall be by those persons who are authorized to vote for the members of the governing body of such political subdivision. For the purposes of the Local Option Tax Control Act, the term budget funded by property taxes shall include all funds the source of which is a property tax, regardless of the purpose of such funds, except such funds as are necessary to pay interest on and for retiring, funding, or servicing bonded indebtedness during the upcoming fiscal year.

Source: Laws 1978, Spec. Sess., LB2, § 2; Laws 1981, LB17, § 1; Laws 1992, LB1063, § 188; Laws 1992, Second Spec. Sess., LB1, § 160.

77-3404. Budget limitation; approval; effect. When a budget limitation is approved by the voters at a general, primary, or special election held for such purpose, the budget for the years in which taxes will be levied to fund such budget shall, except as provided in section 13-511, be limited as provided in the petition.

Source: Laws 1978, Spec. Sess., LB2, § 4; Laws 1981, LB17, § 2.

77-3405. Petition; contents; election; when held. The petition calling for a budget limitation election and the election notice shall refer to section 77-3402, state the percentage limitation placed on the budget for the ensuing two years, and specify the first year for which such limitation is applicable. All elections held pursuant to section 77-3402 or 77-3410 shall be held at least ninety days prior to the date on which the fiscal year of the affected political subdivision begins and shall affect the budgets for the fiscal years specified

subsequent to such election, except that elections for which petitions have been completed prior to April 11, 1981, shall not be subject to such ninety-day limitation but shall be held prior to August 15, 1981.

Source: Laws 1978, Spec. Sess., LB2, § 5; Laws 1981, LB17, § 3.

77-3406. Election; notice; ballot; form. (1) Notice of an election held pursuant to section 77-3402 or 77-3410 shall state the date on which the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in the political subdivision at least fifteen days prior to such election. If no newspaper is published in or of general circulation in the political subdivision, notice shall be posted in each of three public places therein.

(2) The governing body shall prescribe the form of the ballot to be used at the election, and the proposition appearing on such ballot shall state the percentage limitation to be placed on the budget for the ensuing two years and specify the two years for which such limitation is applicable. The form of submission upon the ballot shall be as follows:

For a budget limitation

Against a budget limitation.

Source: Laws 1978, Spec. Sess., LB2, § 6; Laws 1981, LB17, § 4.

77-3407. Petition; unlawful signature; penalty. Any person who signs a petition under section 77-3402, knowing that he or she is not a qualified voter in the place where such a petition is made, or bribes or gives or pays any money or thing of value to any person directly or indirectly to induce him or her to sign the petition, shall be guilty of a Class III misdemeanor.

Source: Laws 1978, Spec. Sess., LB2, § 7.

77-3408. Election; statutes; applicability. The statutes of this state relating to election officers, voting places, election apparatus and blanks, preparation and form of ballots, information to voters, delivery of ballots, calling of elections, conduct of elections, manner of voting, counting of votes, records and certificates of election, and recounts of votes, so far as applicable, shall apply to voting on the question of establishing a budget limitation by the voters under the provisions of sections 77-3401 to 77-3411.

Source: Laws 1978, Spec. Sess., LB2, § 8.

77-3409. Budget limitation; two or more proposals; how treated; placed on ballot. If two or more proposals relating to the budget level of a political subdivision are placed upon the ballot at a general, primary, or special election and more than one such proposal receives a majority of affirmative votes, the proposal receiving the largest number of affirmative votes shall be considered the successful proposal.

Source: Laws 1978, Spec. Sess., LB2, § 9; Laws 1981, LB17, § 5.

77-3410. Budget limitation; duration; termination; procedure. Any limitation placed on budgets pursuant to sections 77-3401 to 77-3411 shall remain in effect for only the ensuing two fiscal years, except that the governing body of a political subdivision may, during the first year of a two-year budget limitation, by a majority vote place the issue of terminating the limitation after the first year on the ballot at a general, primary, or special election. Such budget limitation shall be terminated at the end of the first year if such termination is approved by a majority of those voting on the issue. Such election shall be held at least ninety days prior to the date on which the second fiscal year subject to the limitation begins.

Source: Laws 1978, Spec. Sess., LB2, § 10; Laws 1981, LB17, § 6.

77-3410.01. Budget limitation adopted prior to April 11, 1981; termination. Any limitation placed on a budget pursuant to the Local Option Tax Control Act prior to April 11, 1981, which has been in effect for two or more fiscal years shall not apply to any budget for a fiscal year commencing after April 11, 1981. Any limitation placed on a budget pursuant to the Local Option Tax Control Act prior to April 11, 1981, which has been in effect for less than two fiscal years shall be terminated after a total of two fiscal years unless terminated prior to such date pursuant to section 77-3410.

Source: Laws 1981, LB17, § 7.

77-3411. Statutory limitation on budgets; not applicable; when. Any statutory limitation on the budget, funded by property taxes, of a political subdivision authorized to levy a tax or cause a tax to be levied shall

not apply to any such political subdivision which has adopted a tax or budgetary limitation on property taxes by vote of the electors of the political subdivision pursuant to the Local Option Tax Control Act or any home rule charter.

Source: Laws 1978, Spec. Sess., LB2, § 11; Laws 1992, LB1063, § 189; Laws 1992, Second Spec. Sess., LB1, § 161.

77-3442. Property tax levies; maximum levy; exceptions. (1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivisions (2)(b) and (2)(e) of this section, school districts and multiple-district school systems may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year prior to fiscal year 2017-18, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year prior to fiscal year 2017-18, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levy pursuant to subdivision (2)(b) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment, amounts levied in compliance with sections 79-10,110 and 79-10,110.02, and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For each fiscal year, learning communities may levy a maximum levy of one-half cent on each one hundred dollars of taxable property subject to the levy for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(g) For each fiscal year, learning communities may levy a maximum levy of one and one-half cents on each one hundred dollars of taxable property subject to the levy for early childhood education programs for children in poverty, for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects, except that no more than ten percent of such levy may be used for elementary learning center employees.

(3) For each fiscal year, community college areas may levy the levies provided in subdivisions (2)(a) through (c) of section 85-1517, in accordance with the provisions of such subdivisions. A community college area may exceed the levy provided in subdivision (2)(b) of section 85-1517 by the amount necessary to retire general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act

exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.
(10) Beginning July 1, 2016, rural and suburban fire protection districts may levy a maximum levy of ten and one-half cents per one hundred dollars of taxable valuation of property subject to the levy if (a) such district is located in a county that had a levy pursuant to subsection (8) of this section in the previous year of at least forty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) for any rural or suburban fire protection district that had a levy request pursuant to section 77-3443 in the previous year, the county board of the county in which the greatest portion of the valuation of such district is located did not authorize any levy authority to such district in the previous year.
(11) Property tax levies (a) for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, (b) for preexisting lease-purchase contracts approved prior to July 1, 1998, (c) for bonds as defined in section 10-134 approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, and (d) for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.
(12) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.
(13) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.
(14) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.
(15) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14; Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5; Laws 2009, LB121, § 11; Laws 2010, LB1070, § 4; Laws 2010, LB1072, § 3; Laws 2011, LB59, § 2; Laws 2011, LB400, § 2; Laws 2012, LB946, § 10; Laws 2012, LB1104, § 1; Laws 2013, LB585, § 1; Laws 2015, LB261, § 13; Laws 2015, LB325, § 7; Laws 2016, LB959, § 1; Laws 2016, LB1067, § 10.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB959, section 1, with LB1067, section 10, to reflect all amendments.

Note: Changes made by LB959 became effective April 19, 2016. Changes made by LB1067 became effective July 21, 2016.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Ground Water Management and Protection Act, see section 46-701.

Annotations

Because the levy authorized under subsection (2)(b) of this section benefits all taxpayers in a learning community, which is the relevant taxing district, subsection (2)(b) does not violate the constitutional prohibition in Neb. Const. art. VIII, sec. 4, against a commutation of taxes. Sarpy Cty. Farm Bureau v. Learning Community, 283 Neb. 212, 808 N.W.2d 598 (2012).

Because the levy authorized under subsection (2)(b) of this section is uniform throughout the entire learning community, which is the relevant taxing district, subsection (2)(b) does not violate the uniformity

clause in Neb. Const. art. VIII, sec. 1. Sarpy Cty. Farm Bureau v. Learning Community, 283 Neb. 212, 808 N.W.2d 598 (2012).

Subsection (2)(b) of this section was enacted for substantially local purposes, and therefore it does not violate the prohibition in Neb. Const. art. VIII, sec. 1A, against a property tax for a state purpose. Sarpy Cty. Farm Bureau v. Learning Community, 283 Neb. 212, 808 N.W.2d 598 (2012).

77-3443. Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy. (1) All political subdivisions, other than (a) school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, municipal counties, rural and suburban fire protection districts that have levy authority pursuant to subsection (10) of section 77-3442, and sanitary and improvement districts and (b) political subdivisions subject to municipal allocation under subsection (2) of this section, may levy taxes as authorized by law which are authorized by the county board of the county or the council of a municipal county in which the greatest portion of the valuation is located, which are counted in the county or municipal county levy limit provided in section 77-3442, and which do not collectively total more than fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property for all governments for which allocations are made by the municipality, county, or municipal county, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. The county board or council shall review and approve or disapprove the levy request of all political subdivisions subject to this subsection. The county board or council may approve all or a portion of the levy request and may approve a levy request that would allow the requesting political subdivision to levy a tax at a levy greater than that permitted by law. The county board of a county or the council of a municipal county which contains a transit authority created pursuant to section 14-1803 shall allocate no less than three cents per one hundred dollars of taxable property within the city or municipal county subject to the levy to the transit authority if requested by such authority. For any political subdivision subject to this subsection that receives taxes from more than one county or municipal county, the levy shall be allocated only by the county or municipal county in which the greatest portion of the valuation is located. The county board of equalization shall certify all levies by October 15 to insure that the taxes levied by political subdivisions subject to this subsection do not exceed the allowable limit for any parcel or item of taxable property. The levy allocated by the county or municipal county may be exceeded as provided in section 77-3444.

(2) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, transit authorities established under the Transit Authority Law, and offstreet parking districts established under the Offstreet Parking District Act may be allocated property taxes as authorized by law which are authorized by the city, village, or municipal county and are counted in the city or village levy limit or municipal county levy limit provided by section 77-3442, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For offstreet parking districts established under the Offstreet Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. The city council of a city which has created a transit authority pursuant to section 14-1803or the council of a municipal county which contains a transit authority shall allocate no less than three cents per one hundred dollars of taxable property subject to the levy to the transit authority if requested by such authority. The city council, village board, or council shall review and approve or disapprove the levy request of the political subdivisions subject to this subsection. The city council, village board, or council may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the municipality or municipal county may be exceeded as provided in section 77-3444.

(3) On or before August 1, all political subdivisions subject to county, municipal, or municipal county levy authority under this section shall submit a preliminary request for levy allocation to the county board, city council, village board, or council that is responsible for levying such taxes. The preliminary request of the

political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude such political subdivision from using procedures set forth in section 77-3444 to exceed the final levy allocation as determined in subsection (4) of this section.

(4) Each county board, city council, village board, or council shall (a) adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions and (b) forward a copy of such resolution to the chairperson of the governing body of each of its political subdivisions. No final levy allocation shall be changed after September 1 except by agreement between both the county board, city council, village board, or council which determined the amount of the final levy allocation and the governing body of the political subdivision whose final levy allocation is at issue.

Source: Laws 1996, LB1114, § 2; Laws 1997, LB269, § 57; Laws 1998, LB306, § 37; Laws 1999, LB141, § 12; Laws 2001, LB142, § 58; Laws 2002, LB994, § 26; Laws 2015, LB325, § 8.

Operative Date: July 1, 2016

Cross References

Cities Airport Authorities Act, see section 3-514.

Community Development Law, see section 18-2101.

Offstreet Parking District Act, see section 19-3301.

77-3444. Authority to exceed maximum levy; procedure. (1) A political subdivision, other than a Class I school district, may exceed the limits provided in section 77-3442 or a final levy allocation determination as provided in section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits provided in section 77-3442 or a final levy allocation as provided in section 77-3443 must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits or final levy allocation. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for exceeding the limits or final levy allocation by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in section77-3442 or the final levy allocation as provided in section 77-3443 and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the county clerk or election commissioner no later than thirty days prior to the date of the election, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the county clerk or election commissioner on or after May 1, 1998, the petition shall be in the form as provided in sections 32-628 to 32-631. Any excess levy authority approved under this section shall terminate pursuant to its terms, on a vote of the governing body of the political subdivision to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit or the final levy allocation, or as provided in subsection (4) of this section, whichever is earliest. A governing body may pass no more than one resolution calling for an election pursuant to this section during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this section.

(2) The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the following: "Shall (name of political subdivision) be allowed to levy a property tax not to exceed ..... cents per one hundred dollars of taxable valuation in excess of the limits prescribed by law until fiscal year ..... for the purposes of (general operations; building construction, remodeling, or site acquisition; or both general operations and building construction, remodeling, or site acquisition)?". If a majority of the votes cast upon the ballot question are in favor of such tax, the county board shall authorize a tax in excess of the limits in section 77-3442 or the final levy allocation in section 77-3443 but such tax shall

not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the governing body of the political subdivision shall not impose such tax.

(3) In lieu of the election procedures in subsection (1) of this section, any political subdivision subject to section 77-3443, other than a Class I school district, and villages may approve a levy in excess of the limits in section 77-3442 or the final levy allocation provided in section 77-3443 for a period of one year at a meeting of the residents of the political subdivision or village, called after notice is published in a newspaper of general circulation in the political subdivision or village at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the political subdivision or village shall constitute a quorum for purposes of taking action to exceed the limits or final levy allocation. A record shall be made of the registered voters residing in the political subdivision or village who are present at the meeting. The method of voting at the meeting shall protect the secrecy of the ballot. If a majority of the registered voters present at the meeting vote in favor of exceeding the limits or final levy allocation, a copy of the record of that action shall be forwarded to the county board prior to October 10 and the county board shall authorize a levy as approved by the residents for the year. If a majority of the registered voters present at the meeting vote against exceeding the limits or final allocation, the limit or allocation shall not be exceeded and the political subdivision shall have no power to call for an election under subsection (1) of this section.

(4) A political subdivision, other than a Class I school district, may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five years. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The election shall be held pursuant to the Election Act.

(5) For purposes of this section, when the political subdivision is a sanitary and improvement district, registered voter means a person qualified to vote as provided in section 31-735. Any election conducted under this section for a sanitary and improvement district shall be conducted and counted as provided in sections 31-735 to 31-735.06.

(6) For purposes of this section, when the political subdivision is a school district or a multiple-district school system, registered voter includes both (a) persons qualified to vote for the members of the school board of the school district which is voting to exceed the maximum levy limits pursuant to this section and (b) persons in those portions of any Class I district which are affiliated with or a part of the school district which is voting pursuant to this section, if such voter is also qualified to vote for the school board of the affected Class I school district.

Source: Laws 1996, LB1114, § 3; Laws 1997, LB269, § 58; Laws 1997, LB343, § 1; Laws 1997, LB806, § 4; Laws 1998, LB306, § 38; Laws 1998, LB1104, § 18; Laws 1999, LB141, § 13; Laws 2007, LB289, § 1.

Cross References

Election Act, see section 32-101.

77-3445. Council on public improvements and services; membership; powers and duties. A council on public improvements and services may be created within each county or for adjoining counties by resolutions of county boards or by joint resolutions passed by at least three different types of political subdivisions located in the county which are authorized to levy property taxes or which may benefit from property taxes affected by the levy limits imposed by sections 77-3442 to 77-3444. Such councils shall include, but are not limited to, one elected official from each school board, county board, incorporated city or village, natural

resources district, community college, educational service unit, hospital district, airport authority, fire protection district, and township taxing property within the county or counties. The elected governing body of each political subdivision which has the legal authority to request property tax funding or a levy set by the county board within a county may by resolution of the governing body appoint one elected official from the governing board to the council on public improvements and services.

Councils on public improvements and services may meet as often as necessary prior to the adoption of budgets and property tax requests affected by the levy limits described in sections 77-3442 to 77-3444. The council shall jointly examine the budgets and property tax requests of each governmental agency or quasi-governmental agency with statutory authority to request a share of the property tax. The county clerk of each county shall attend such meetings and keep a public record of the proceedings. Each council on public improvements and services which is created by resolution as provided in this section shall hold at least one public meeting prior to the adoption of public budgets affected by the levy limits imposed by sections 77-3442 to 77-3444. Such council may continue to meet to discuss issues of public service provision in an effective and coordinated manner, the impacts of levy limits, state and federal law, program, or aid changes, and the joint provision or use of capital facilities and equipment.

Source: Laws 1996, LB1114, § 4; Laws 1998, LB306, § 39; Laws 2012, LB801, § 100.

77-3446. Base limitation, defined. Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal year 2012-13 is one-half of one percent and the base limitation for school districts for school fiscal year 2013-14 is one and one-half percent. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB989, § 15; Laws 2001, LB365, § 1; Laws 2003, LB540, § 3; Laws 2009, LB545, § 2; Laws 2009, First Spec. Sess., LB5, § 1; Laws 2011, LB235, § 1; Laws 2013, LB407, § 1.

ARTICLE 35
HOMESTEAD EXEMPTION

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77-3501. Definitions, where found. For purposes of sections 77-3501 to 77-3529, unless the context otherwise requires, the definitions found in sections 77-3501.01 to 77-3505.05 shall be used.

Source: Laws 1979, LB65, § 1; Laws 1984, LB809, § 1; Laws 1987, LB376A, § 1; Laws 1989, LB84, § 7; Laws 1994, LB902, § 25; Laws 1995, LB483, § 2; Laws 1997, LB182, § 1; Laws 2009, LB94, § 1; Laws 2014, LB1087, § 1.

77-3501.01. Exempt amount, defined. (1) For purposes of section 77-3507, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or forty thousand dollars, whichever is greater.

(2) For purposes of sections 77-3508 and 77-3509, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred twenty percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or fifty thousand dollars, whichever is greater.

(3) For purposes of section 77-3506, exempt amount shall mean the taxable value of the homestead.

Source: Laws 1994, LB902, § 27; Laws 2006, LB968, § 13; Laws 2014, LB1087, § 2.

77-3501.02. Closely related, defined. Closely related shall mean the relationship of being a brother, sister, or parent to another owner-occupant of a homestead.

Source: Laws 1997, LB182, § 2.

77-3502. Homestead, defined. Homestead shall mean either (1) a residence or mobile home, and the land surrounding it, not exceeding one acre, in this state actually occupied as such by a natural person who is the owner of record thereof from January 1 through August 15 in each year, (2) a residence or mobile home located on land leased by the owner of the residence or mobile home, which is located within this state, and is actually occupied by the person who is the owner of record from January 1 through August 15 in each year, or so occupied by the surviving spouse and minor children, if any, of such owner of record during the year of the owner's death, or so much thereof as shall be so occupied, or (3) a residential unit in a dwelling complex, the record title owner of which is a not-for-profit corporation, when the purchase for fair market value of a life tenancy in a taxable unit of the dwelling complex entitles the purchaser to exclusive occupancy of that unit for life, actually occupied by a natural person who has a life tenancy therein from January 1 through August 15 in each year. For purposes of this section, mobile home shall include every transportable or relocatable device of any description without motive power and designed for living quarters, whether or not permanently attached to real estate, but shall not include a cabin trailer registered for operation upon the highways of this state.

Source: Laws 1979, LB65, § 2; Laws 1980, LB647, § 1; Laws 1981, LB168, § 17; Laws 1987, LB376A, § 2.

77-3503. Owner, defined. Owner shall mean the owner of record or surviving spouse, the vendee in possession under a land contract or surviving spouse, one of the joint tenants or tenants in common or surviving spouse, or the beneficiary of a trust of which the trustee is the record title owner and the beneficiary-occupant (1) has a specific right to occupy the premises as stated in the trust instrument, (2) has the right to amend or revoke the trust to obtain such power of occupancy or of title, or (3) has the power to withdraw the homestead premises from the trust and place the record title in such occupant's name. Owner shall also mean a resident of a dwelling complex, the record title owner of which is a not-for-profit corporation, who has by purchase for fair market value secured a life tenancy in a taxable unit of the complex. The deed, trust instrument, contract, or memorandum showing that the criteria of this section have been met shall be on file on the appropriate public record as of January 1 of the year for which exemption is sought, except that if such instrument is not on file as of January 1, a copy of such instrument shall be attached to such application before the homestead exemption shall be granted.

Source: Laws 1979, LB65, § 3; Laws 1980, LB647, § 2; Laws 1983, LB195, § 1.

77-3504. Household income, defined. Household income means the total federal adjusted gross income, as defined in the Internal Revenue Code, plus (1) any Nebraska adjustments increasing the total federal adjusted gross income, (2) any interest or dividends received by the owner regarding obligations of the State of Nebraska or any political subdivision, authority, commission, or instrumentality thereof to the extent excluded in the computation of gross income for federal income tax purposes, (3) any social security or railroad retirement benefit to the extent excluded in the computation of gross income for federal income tax purposes, and (4) any carryforward of a net operating loss to the extent deducted for federal income tax purposes, of the claimant and spouse, and any additional owners who are natural persons and who occupy the homestead, for the taxable year of the claimant immediately prior to the year for which the claim for exemption is made, less all medical expenses actually incurred and paid by the claimant, his or her spouse, or any owner-occupant which are in excess of four percent of household income calculated prior to the deduction for medical expenses. For purposes of this section, medical expenses means the costs of health insurance premiums and the costs of goods and services purchased from a person licensed under the Uniform Credentialing Act or a health care facility or health care service licensed under the Health Care Facility Licensure Act for purposes of restoring or maintaining health, including insulin and prescription medicine, but not including nonprescription medicine.

Source: Laws 1979, LB65, § 4; Laws 1987, LB376A, § 3; Laws 1988, LB1105, § 1; Laws 1994, LB902, § 26; Laws 1995, LB574, § 74; Laws 1996, LB1039, § 3; Laws 2000, LB819, § 152; Laws 2007, LB463, § 1309; Laws 2015, LB591, § 14.

Operative Date: January 1, 2016

Cross References

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

77-3505. Qualified claimant, defined. A qualified claimant shall mean an owner of a homestead during the calendar year for which the claim is made who was sixty-five years of age or older before January 1 of such year and who shall be entitled to relief pursuant to section 77-3507.

Source: Laws 1979, LB65, § 5; Laws 1981, LB179, § 18; Laws 1986, LB1258, § 1; Laws 1987, LB376A, § 4.

77-3505.01. Married, defined. Married shall mean a person who would file a federal individual income tax return as married filing jointly or separately if required to file a return.

Source: Laws 1994, LB902, § 28.

77-3505.02. Maximum value, defined. Maximum value shall mean:

(1) For applicants eligible under section 77-3507, two hundred percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or ninety-five thousand dollars, whichever is greater; and

(2) For applicants eligible under sections 77-3508 and 77-3509, two hundred twenty-five percent of the average assessed value of single-family residential property in the claimant's county of residence as determined in section 77-3506.02 or one hundred ten thousand dollars, whichever is greater.

Source: Laws 1994, LB902, § 29; Laws 1995, LB483, § 3; Laws 1996, LB1039, § 4; Laws 1997, LB182, § 3; Laws 2006, LB968, § 14.

77-3505.03. Single, defined. Single shall mean a person who would file a federal individual income tax return as single or head of household if required to file a return.

Source: Laws 1994, LB902, § 30.

77-3505.04. Single-family residential property, defined. Single-family residential property shall mean all real property with dwellings designed for occupancy by one family or duplexes designed for occupancy by two families.

Source: Laws 1994, LB902, § 31.

77-3505.05. Medical condition, defined. Medical condition means a disease, physical ailment, or injury requiring inpatient care in a hospital, hospice, or residential care facility or involving any period of incapacity due to a condition for which treatment may not be effective.

Source: Laws 2009, LB94, § 2.

77-3506. Certain veterans; exemption; unremarried widow or widower; application. (1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subsection (2) of this section, one hundred percent of the exempt amount.

(2) The exemption described in subsection (1) of this section shall apply to homesteads of:

(a) A veteran who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), who is drawing compensation from the United States Department of Veterans Affairs because of one hundred percent service-connected disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528 or the unremarried widow or widower of a veteran described in this subdivision;

(b) An unremarried widow or widower of any veteran, including a veteran other than a veteran described in section 80-401.01, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who died because of a service-connected disability; and

(c) An unremarried widow or widower of a serviceman or servicewoman, including a veteran other than a veteran described in section 80-401.01, whose death while on active duty was service-connected.

(3) Application for exemption under this section shall include certification of the status set forth in subsection (2) of this section from the United States Department of Veterans Affairs.

Source: Laws 2014, LB1087, § 5.

77-3506.02. County assessor; duties. After county board of equalization action pursuant to sections 77-1502 to 77-1504.01 and on or before September 1 each year, the county assessor shall certify to the Department of Revenue the average assessed value of single-family residential property in the county for the current year for purposes of sections 77-3507, 77-3508, and 77-3509.

The county assessor shall determine the current average assessed value of single-family residential property from all real property records containing dwellings, mobile homes, and duplexes all of which are designed for occupancy as single-family residential property and any associated land not to exceed one acre.

The county assessor shall also report to the Department of Revenue the computed exempt amounts pursuant to section 77-3501.01.

Source: Laws 1994, LB902, § 32; Laws 1995, LB499, § 1; Laws 2004, LB973, § 43; Laws 2014, LB1087, § 3.

77-3506.03. Exempt amount; reduction; when; homestead exemption; limitation. For homesteads valued at or above the maximum value, the exempt amount for any exemption under section 77-3507, 77-3508, or 77-3509 shall be reduced by ten percent for each two thousand five hundred dollars of value by which the homestead exceeds the maximum value and any homestead which exceeds the maximum value by twenty thousand dollars or more is not eligible for any exemption under section 77-3507, 77-3508, or 77-3509. This section shall not apply to any exemption under section 77-3506.

Source: Laws 1995, LB483, § 1; Laws 2014, LB1087, § 4.

77-3507. Homesteads; assessment; exemptions; qualified claimants; based on income. (1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation on homesteads of qualified claimants a percentage of the exempt amount as limited by section 77-3506.03. The percentage of the exempt amount shall be determined based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(2) For 2014, for a qualified married or closely related claimant, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 31,600	100
31,601 through 33,300	90
33,301 through 35,000	80
35,001 through 36,700	70

36,701 through 38,400	60
38,401 through 40,100	50
40,101 through 41,800	40
41,801 through 43,500	30
43,501 through 45,200	20
45,201 through 46,900	10
46,901 and over	0

(3) For 2014, for a qualified single claimant, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A	Column B
Household Income	Percentage
In Dollars	Of Relief
0 through 26,900	100
26,901 through 28,300	90
28,301 through 29,700	80
29,701 through 31,100	70
31,101 through 32,500	60
32,501 through 33,900	50
33,901 through 35,300	40
35,301 through 36,700	30
36,701 through 38,100	20
38,101 through 39,500	10
39,501 and over	0

(4) For exemption applications filed in calendar year 2015 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB65, § 7; Laws 1980, LB647, § 4; Laws 1981, LB179, § 19; Laws 1984, LB956, § 1; Laws 1988, LB1105, § 2; Laws 1994, LB902, § 33; Laws 1995, LB483, § 4; Laws 1997, LB182, § 4; Laws 1999, LB179, § 1; Laws 2014, LB986, § 1.

77-3508. Homesteads; assessment; exemptions; individuals; based on disability and income. (1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03. The exemption shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) Veterans as defined in section 80-401.01 who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who are totally disabled by a non-service-connected accident or illness;

(ii) Individuals who have a permanent physical disability and have lost all mobility so as to preclude locomotion without the regular use of a mechanical aid or prostheses;

(iii) Individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent; and

(iv) Beginning January 1, 2015, individuals who have a developmental disability as defined in section 83-1205.

(c) Application for the exemption described in subdivision (a) of this subsection shall include certification from a qualified medical physician, physician assistant, or advanced practice registered nurse for subdivisions (b)(i) through (b)(iii) of this subsection, certification from the United States Department of Veterans Affairs affirming that the homeowner is totally disabled due to non-service-connected accident or illness for subdivision (b)(i) of this subsection, or certification from the Department of Health and Human Services for subdivision (b)(iv) of this subsection. Such certification from a qualified medical physician, physician assistant, or advanced practice registered nurse or from the Department of Health and Human Services shall be made on forms prescribed by the Department of Revenue.

(2) For 2014, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 34,700	100
34,701 through 36,400	90
36,401 through 38,100	80
38,101 through 39,800	70
39,801 through 41,500	60
41,501 through 43,200	50
43,201 through 44,900	40
44,901 through 46,600	30
46,601 through 48,300	20
48,301 through 50,000	10
50,001 and over	0

(3) For 2014, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 30,300	100
30,301 through 31,700	90
31,701 through 33,100	80
33,101 through 34,500	70
34,501 through 35,900	60
35,901 through 37,300	50
37,301 through 38,700	40
38,701 through 40,100	30
40,101 through 41,500	20
41,501 through 42,900	10
42,901 and over	0

(4) For exemption applications filed in calendar year 2015 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative

inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB65, § 8; Laws 1980, LB647, § 5; Laws 1981, LB478, § 1; Laws 1983, LB195, § 2; Laws 1986, LB1258, § 2; Laws 1987, LB376A, § 5; Laws 1988, LB1105, § 3; Laws 1991, LB2, § 17; Laws 1994, LB902, § 34; Laws 1995, LB483, § 5; Laws 1997, LB182, § 5;Laws 1999, LB179, § 2; Laws 2000, LB1279, § 2; Laws 2005, LB17, § 1; Laws 2005, LB54, § 17; Laws 2014, LB986, § 2.

77-3509. Homesteads; assessment; exemptions; unremarried widow or widower of certain servicemen or servicewomen; percentage of exemption. (1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of an unremarried widow or widower of a serviceman or servicewoman who died while on active duty during the periods described in section 80-401.01.

(c) The exemption described in subdivision (a) of this subsection shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section. Application for exemption under this section shall include certification of the status set forth in this section from the United States Department of Veterans Affairs.

(2) For 2014, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 34,700	100
34,701 through 36,400	90
36,401 through 38,100	80
38,101 through 39,800	70
39,801 through 41,500	60
41,501 through 43,200	50
43,201 through 44,900	40
44,901 through 46,600	30
46,601 through 48,300	20
48,301 through 50,000	10
50,001 and over	0

(3) For 2014, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief

0 through 30,300	100
30,301 through 31,700	90
31,701 through 33,100	80
33,101 through 34,500	70
34,501 through 35,900	60
35,901 through 37,300	50
37,301 through 38,700	40
38,701 through 40,100	30
40,101 through 41,500	20
41,501 through 42,900	10
42,901 and over	0

(4) For exemption applications filed in calendar year 2015 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 9; Laws 1983, LB 195, § 3; Laws 1986, LB 1258, § 3; Laws 1989, LB 762, § 10; Laws 1994, LB 902, § 35; Laws 1995, LB 483, § 6; Laws 1997, LB 182, § 6; Laws 1999, LB179, § 3; Laws 2005, LB54, § 18; Laws 2014, LB986, § 3; Laws 2014, LB1087, § 6.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB986, section 3, with LB1087, section 6, to reflect all amendments.

Note: Changes made by LB986 became effective April 3, 2014. Changes made by LB1087 became operative January 1, 2015.

Note: Section 77-3509 was not printed correctly in the 2014 Supplement. The changes made by Laws 2014, LB1087, were not incorporated. The section as it is printed in the 2015 Supplement incorporates the LB1087 changes.

77-3509.01. Transfer of exemption to new homestead; procedure. The owner of a homestead which has been granted an exemption provided in sections 77-3506 and 77-3507 to 77-3509, who becomes the owner of another homestead prior to August 15 during the year for which the exemption was granted, may file an application with the county assessor of the county where the new homestead is located, on or before August 15 of such year, for a transfer of the exemption to the new homestead. The county assessor shall examine each application and determine whether or not the new homestead, except for the January 1 through August 15 ownership and occupancy requirement and the income requirements, is eligible for exemption under sections 77-3506 and 77-3507 to 77-3509. If the application is approved by the county assessor, he or she shall make a deduction upon the assessment rolls using the same criteria as previously applied to the original homestead. The county assessor may allow the application for transfer to also be considered an application for a homestead exemption for the subsequent year.

Source: Laws 1983, LB494, § 5; Laws 1984, LB809, § 4; Laws 1985, Second Spec. Sess., LB6, § 1; Laws 1987, LB376A, § 6; Laws 1988, LB834, § 1; Laws 1996, LB921, § 1; Laws 2009, LB302, § 1; Laws 2014, LB1087, § 7.

77-3509.02. Transfer of exemption to new homestead; disallowance for original homestead; county assessor; duties. If the owner of any homestead granted an exemption under sections 77-3506and 77-3507 to 77-3509 becomes the owner of another homestead on or before August 15 of any year pursuant to section 77-3509.01 and makes the application for transfer of the homestead exemption and such application is approved, the exemption shall be disallowed for such year as applied to the original homestead if the exemption was granted based on the status of such owner. If the transfer involves property in more than one county, the county assessor of the county where the new homestead is located shall notify the other county assessor and the Department of Revenue of the application for transfer within ten days after receipt of the application.

Source: Laws 1983, LB494, § 6; Laws 1984, LB809, § 5; Laws 1985, Second Spec. Sess., LB6, § 2; Laws 1987, LB376A, § 7; Laws 1988, LB834, § 2; Laws 1996, LB921, § 2; Laws 2009, LB302, § 2; Laws 2014, LB1087, § 8.

77-3509.03. Homesteads; exemptions; property tax statement; contents. All property tax statements for homesteads granted an exemption in sections77-3506 and 77-3507 to 77-3509 shall show the amount of the exemption, the tax that would otherwise be due, and a statement that the tax loss shall be reimbursed by the state as a homestead exemption.

Source: Laws 1984, LB956, § 3; Laws 1989, LB84, § 9; Laws 1991, LB9, § 3; Laws 2014, LB1087, § 9.

77-3510. Homesteads; exemptions; transfers; claimants; forms; contents; county assessor; furnish; confidentiality. On or before February 1 of each year, the Tax Commissioner shall prescribe forms to be used by all claimants for homestead exemption or for transfer of homestead exemption. Such forms shall contain provisions for the showing of all information which the Tax Commissioner may deem necessary to (1) enable the county officials and the Tax Commissioner to determine whether each claim for exemption under sections 77-3506 and 77-3507 to 77-3509 should be allowed and (2) enable the county assessor to determine whether each claim for transfer of homestead exemption pursuant to section 77-3509.01 should be allowed. It shall be the duty of the county assessor of each county in this state to furnish such forms, upon request, to each person desiring to make application for homestead exemption or for transfer of homestead exemption. The forms so prescribed shall be used uniformly throughout the state, and no application for exemption or for transfer of homestead exemption shall be allowed unless the applicant uses the prescribed form in making an application. The forms shall require the attachment of an income statement for any applicant seeking an exemption under section 77-3507, 77-3508, or 77-3509 as prescribed by the Tax Commissioner fully accounting for all household income. The Tax Commissioner shall provide to each county assessor printed claim forms and address lists of applicants from the prior year. The application and information contained on any attachments to the application shall be confidential and available to tax officials only.

Source: Laws 1979, LB65, § 10; Laws 1983, LB494, § 2; Laws 1983, LB396, § 1; Laws 1984, LB809, § 6; Laws 1985, Second Spec. Sess., LB6, § 3; Laws 1986, LB1258, § 4; Laws 1987, LB376A, § 8; Laws 1989, LB84, § 10; Laws 1991, LB9, § 4; Laws 1994, LB902, § 36; Laws 1995, LB135, § 1; Laws 1996, LB921, § 3; Laws 1997, LB397, § 26; Laws 2003, LB192, § 1; Laws 2007, LB145, § 1; Laws 2014, LB1087, § 10.

77-3511. Homestead; exemption; application; execution. The application for homestead exemption or for transfer of homestead exemption shall be signed by the owner of the property who qualifies for exemption under sections 77-3501 to 77-3529 unless the owner is an incompetent or unable to make such application, in which case it shall be signed by the guardian. If an owner who in all respects qualifies for a homestead exemption under such sections dies after January 1 and before the last day for filing an application for a homestead exemption and before applying for a homestead exemption, his or her personal representative may file the application for exemption on or before the last day for filing an application for a homestead exemption of that year if the surviving spouse of such owner continues to occupy the homestead. Any exemption granted as a result of such application signed by a personal representative shall be in effect for only the year in which the owner died.

Source: Laws 1979, LB65, § 11; Laws 1980, LB647, § 6; Laws 1983, LB195, § 4; Laws 1983, LB494, § 3; Laws 1984, LB809, § 7; Laws 1986, LB1258, § 5; Laws 1987, LB376A, § 9; Laws 1988, LB1105, § 4; Laws 1989, LB84, § 11; Laws 1994, LB902, § 37; Laws 2014, LB1087, § 11.

77-3512. Homestead; exemption; application; when filed. It shall be the duty of each owner who applies for the homestead exemption provided in sections 77-3506 and 77-3507 to 77-3509 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for that year, except that:

(1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner.

Source: Laws 1979, LB65, § 12; Laws 1980, LB647, § 7; Laws 1983, LB195, § 5; Laws 1983, LB396, § 2; Laws 1984, LB809, § 8; Laws 1985, Second Spec. Sess., LB6, § 4; Laws 1989, LB84, § 12; Laws 1991, LB9, § 5; Laws 1991, LB773, § 21; Laws 1995, LB133, § 1; Laws 1996, LB1039, § 5; Laws 1997, LB397, § 27; Laws 2003, LB192, § 2; Laws 2009, LB94, § 3; Laws 2014, LB1087, § 12.

77-3513. Homestead; exemption; filing requirements; notice; contents. (1) Except as required by section 77-3514, if an owner is granted a homestead exemption as provided in section 77-3506, 77-3507, or 77-3509 or subdivision (1)(b)(ii), (iii), or (iv) of section 77-3508, no reapplication need be filed for succeeding years, in which case the county assessor and Tax Commissioner shall determine whether the claimant qualifies for the homestead exemption in such succeeding years as otherwise provided in sections 77-3501 to 77-3529 as though a claim were made.

(2) It shall be the duty of each claimant who wants the homestead exemption provided in subdivision (1)(b)(i) of section 77-3508 to file an application therefor with the county assessor on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for such year, except that:

(a) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(b) A claimant may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to file the application in a timely manner.

(3) The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which was granted an exemption under subdivision (1)(b)(i) of section 77-3508 in the preceding year unless the claimant has already filed the application for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the application deadlines for the current year, a list of documents that must be filed with the application, and the county assessor's office address and telephone number.

Source: Laws 1979, LB65, § 13; Laws 1980, LB647, § 8; Laws 1983, LB195, § 6; Laws 1983, LB396, § 3; Laws 1984, LB809, § 9; Laws 1985, Second Spec. Sess., LB6, § 5; Laws 1986, LB1258, § 6; Laws 1987, LB376A, § 10; Laws 1991, LB773, § 22; Laws 1994, LB902, § 38; Laws 1995, LB133, § 2; Laws 1996, LB1039, § 6; Laws 1997, LB397, § 28; Laws 1999, LB179, § 4; Laws 2005, LB54, § 19; Laws 2007, LB145, § 2; Laws 2009, LB94, § 4; Laws 2014, LB986, § 4; Laws 2014, LB1087, § 13.

77-3514. Homestead; exemption; certification of status; notice; failure to certify; penalty; lien. A claimant who is the owner of a homestead which has been granted an exemption under sections 77-3506 and 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, shall certify to the county assessor on or before June 30 of each year that a change in the homestead exemption status has occurred or that no change in the homestead exemption status has occurred. The county board of the county in which the homestead is located may, by majority vote, extend the deadline for certification by a claimant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. In addition, a claimant may make such certification late pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to certify in a timely manner. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which has been granted an exemption under sections 77-3506 and 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, in the preceding year unless the claimant has already filed the certification for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the certification deadlines for the current year, a list of documents that must be filed with the certification, and the county assessor's office address and telephone number. For purposes of this section, change in the homestead exemption status shall include any change in the name of the owner, ownership, residence, occupancy, marital status, veteran status, or rating by the United States Department of Veterans Affairs or any other change that would affect the qualification for or type of exemption granted, except income checked by the Tax Commissioner under section 77-3517. The certificate shall require the attachment of an income statement for exemptions under sections 77-3507, 77-3508, and 77-3509 as prescribed by the Tax Commissioner fully accounting for all household income. The certification and the information contained on any attachments to the certification shall be confidential and available to tax officials only. In addition, a claimant who is the owner of a homestead which has been granted an exemption under sections 77-3506 and 77-3507 to 77-3509 may notify the county assessor by August 15 of each year of any change in the homestead exemption status occurring in the preceding portion of the calendar year as a result of a transfer of the homestead exemption pursuant to sections 77-3509.01 and 77-3509.02. If by his or her failure to give such notice any property owner permits the allowance of the homestead exemption for any

year, or in the year of application in the case of transfers pursuant to sections 77-3509.01 and 77-3509.02, after the homestead exemption status of such property has changed, an amount equal to the amount of the taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption, together with penalty and interest on such total sum as provided by statute on delinquent ad valorem taxes, shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property while unpaid. Such lien may be enforced in the manner provided for liens for other delinquent taxes. Any person who has permitted the improper and unlawful allowance of such homestead exemption on his or her property shall, as an additional penalty, also forfeit his or her right to a homestead exemption on any property in this state for the two succeeding years.

Source: Laws 1979, LB65, § 14; Laws 1983, LB494, § 4; Laws 1983, LB195, § 7; Laws 1983, LB396, § 4; Laws 1984, LB809, § 10; Laws 1985, Second Spec. Sess., LB6, § 6; Laws 1987, LB376A, § 11; Laws 1988, LB834, § 3; Laws 1988, LB1105, § 5; Laws 1991, LB2, § 18; Laws 1991, LB773, § 23; Laws 1994, LB902, § 39; Laws 1995, LB133, § 3; Laws 1995, LB135, § 2; Laws 1996, LB1039, § 7; Laws 1997, LB397, § 29; Laws 2005, LB54, § 20; Laws 2007, LB145, § 3; Laws 2009, LB94, § 5; Laws 2014, LB1087, § 14.

77-3514.01. Homestead; exemption; late application or certification because of medical condition; filing; form; county assessor; powers and duties; rejection; notice; hearing. (1) A late application or certification filed pursuant to section 77-3512, 77-3513, or 77-3514 because of a medical condition which impaired the claimant's ability to apply or certify in a timely manner shall only be for the current tax year. The late application or certification shall be filed with the county assessor on or before the date on which the first half of the real estate taxes levied on the property for the current year become delinquent.

(2) The application or certification shall include certification of the medical condition affecting the filing from a physician, physician assistant, or advanced practice registered nurse. The medical certification shall be made on forms prescribed by the Tax Commissioner.

(3) The county assessor shall approve or reject the late filing within thirty days of receipt of the late filing. If approved, the county assessor shall mark it approved and sign the application or certification. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application or certification as rejected and state the reason for rejection and sign the application or certification. In any case when the county assessor rejects an exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application or certification. The notice shall be on forms prescribed by the Tax Commissioner. In any case when the county assessor rejects an exemption, such applicant may obtain a hearing before the county board of equalization in the manner described by section 77-3519.

Source: Laws 2009, LB94, § 7.

77-3515. Homestead; exemption; new owner of property; when claimed. Any purchaser, new resident, or new owner of property must claim a homestead exemption as provided in section 77-3512 before the allowance to the owner on such property shall be lawful.

Source: Laws 1979, LB65, § 15; Laws 1983, LB195, § 8.

77-3516. Homestead; exemption; application; county assessor; duties. The county assessor shall examine each application for homestead exemption filed with him or her for an exemption pursuant to sections 77-3506 and 77-3507 to77-3509 and shall determine, except for the income requirements, whether or not such application should be approved or rejected. If the application is approved, the county assessor shall mark the same approved and sign the application. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application rejected and state thereon the reason for such rejection and sign the application. In any case when the county assessor rejects an application for exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application, which notice shall be mailed not later than July 31 of each year, except that in cases of a change in ownership or occupancy from January 1 through August 15 or a late application authorized by the county board or permitted because of a medical condition which impaired the applicant's ability to file in a timely manner, the notice shall be sent within a reasonable time. The notice shall be on forms prescribed by the Tax Commissioner.

Source: Laws 1979, LB65, § 16; Laws 1980, LB647, § 9; Laws 1983, LB396, § 5; Laws 1984, LB809, § 11; Laws 1985, Second Spec. Sess., LB6, § 7; Laws 1986, LB1258, § 7; Laws 1987, LB376A, § 12; Laws 1989, LB84, § 13; Laws 1991, LB9, § 6; Laws 1991, LB773, § 24; Laws 1995, LB133, § 4; Laws 1996, LB1039, § 8; Laws 1997, LB397, § 30;Laws 2009, LB94, § 6; Laws 2014, LB1087, § 15.

77-3517. Homestead; application for exemption; county assessor; Tax Commissioner; duties; refunds; liens. (1) On or before August 1 of each year, the county assessor shall forward the approved applications for homestead exemptions and a copy of the certification of disability status that have been examined pursuant to section 77-3516 to the Tax Commissioner. The Tax Commissioner shall determine if the applicant meets the income requirements and may also review any other application information he or she deems necessary in order to determine whether the application should be approved. The Tax Commissioner shall, on or before November 1, certify his or her determinations to the county assessor. If the application is approved, the county assessor shall make the proper deduction on the assessment rolls. If the application is denied or approved in part, the Tax Commissioner shall notify the applicant of the denial or partial approval by mailing written notice to the applicant at the address shown on the application. The applicant may appeal the Tax Commissioner's denial or partial approval pursuant to section 77-3520. Late applications authorized by the county board shall be processed in a similar manner after approval by the county assessor.

(2)(a) Upon his or her own action or upon a request by an applicant, a spouse, or an owner-occupant, the Tax Commissioner may review any information necessary to determine whether an application is in compliance with sections 77-3501 to 77-3529. Any action taken by the Tax Commissioner pursuant to this subsection shall be taken within three years after December 31 of the year in which the exemption was claimed.

(b) If after completion of the review the Tax Commissioner determines that an exemption should have been approved or increased, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant and the county treasurer and assessor of his or her determination. The applicant, spouse, or owner-occupant shall receive a refund of the tax, if any, that was paid as a result of the exemption being denied, in whole or in part. The county treasurer shall make the refund and shall amend the county's claim for reimbursement from the state.

(c) If after completion of the review the Tax Commissioner determines that an exemption should have been denied or reduced, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant of such denial or reduction. The applicant, the spouse, and any owner-occupant may appeal the Tax Commissioner's denial or reduction pursuant to section 77-3520. Upon the expiration of the appeal period in section 77-3520, the Tax Commissioner shall notify the county assessor of the denial or reduction and the county assessor shall remove or reduce the exemption from the tax rolls of the county. Upon notification by the Tax Commissioner to the county assessor, the amount of tax due as a result of the action of the Tax Commissioner shall become a lien on the homestead until paid. Upon attachment of the lien, the county treasurer shall refund to the Tax Commissioner the amount of tax equal to the denied or reduced exemption for deposit into the General Fund. No lien shall be created if a change in ownership of the homestead or death of the applicant, the spouse, and all other owner-occupants has occurred prior to the Tax Commissioner's notice to the county assessor.

Source: Laws 1979, LB65, § 17; Laws 1980, LB647, § 10; Laws 1986, LB1258, § 8; Laws 1987, LB376A, § 13; Laws 1989, LB84, § 14; Laws 1991, LB9, § 7; Laws 1991, LB773, § 25; Laws 1995, LB133, § 5; Laws 1995, LB499, § 2; Laws 1996, LB1039, § 9; Laws 1997, LB397, § 31;Laws 2010, LB877, § 6; Laws 2014, LB1087, § 16.

77-3519. Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal. In any case when the county assessor rejects an application for homestead exemption, such applicant may obtain a hearing before the county board of equalization by filing a written complaint with the county clerk within thirty days from receipt of the notice from the county assessor showing such rejection. Such complaint shall specify his or her grievances and the pertinent facts in relation thereto, in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. The board may take evidence pertinent to such complaint, and for that purpose may compel the attendance of witnesses and the production of books, records, and papers by subpoena. The board shall issue its decision on the complaint within thirty days after the filing of the complaint. Notice of the board's decision shall be mailed by the county clerk to the applicant within seven days after the decision. The taxpayer shall have the right to appeal from the board's decision with reference to the application for homestead exemption to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB65, § 19; Laws 1987, LB376A, § 14; Laws 1995, LB490, § 177; Laws 2004, LB973, § 44; Laws 2011, LB384, § 19.

77-3520. Homestead; exemption; Tax Commissioner; rejection or reduction; petition; contents; hearing; appeal. In any case when the Tax Commissioner rejects or reduces a claim for exemption, the applicant may obtain a hearing before the Tax Commissioner by filing a written petition with the Tax Commissioner within thirty days from the receipt of the notice of rejection or reduction. The petition shall state, in clear and concise language, (1) the amount in controversy, (2) the issues involved, (3) the name and address of the applicant, and (4) a demand for relief. The hearing shall be conducted in accordance with the Administrative Procedure Act. Notice of the Tax Commissioner's decision shall be mailed to the applicant within seven days after the decision. The applicant may appeal the Tax Commissioner's decision to the Tax Equalization and Review Commission in accordance with section 77-5013within thirty days after the decision.

Source: Laws 1979, LB65, § 20; Laws 1987, LB376A, § 15; Laws 2004, LB973, § 45.

Cross References

Administrative Procedure Act, see section 84-920.

77-3521. Tax Commissioner; rules and regulations. It shall be the duty of the Tax Commissioner to adopt and promulgate rules and regulations for the information and guidance of the county assessors and county boards of equalization, not inconsistent with sections 77-3501 to 77-3529, affecting the application, hearing, assessment, or equalization of property which is claimed to be entitled to the exemption granted by such sections.

Source: Laws 1979, LB65, § 21; Laws 1984, LB809, § 12; Laws 1989, LB84, § 15; Laws 1994, LB902, § 40; Laws 2014, LB1087, § 17.

77-3522. Violations; penalty. (1) Any person who makes any false or fraudulent claim for exemption or any false statement or false representation of a material fact in support of such claim or any person who assists another in the preparation of any such false or fraudulent claim or enters into any collusion with another by the execution of a fictitious deed or other instrument for the purpose of obtaining unlawful exemption under sections77-3501 to 77-3529 shall be guilty of a Class II misdemeanor and shall be subject to a forfeiture of any such exemption for a period of two years from the date of conviction. Any person who shall make an oath or affirmation to any false or fraudulent application for homestead exemption knowing the same to be false or fraudulent shall be guilty of a Class I misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, if any person files a claim for exemption as provided in section 77-3506, 77-3507, 77-3508, or 77-3509 which is excessive due to misstatements by the owner filing such claim, the claim may be disallowed in full and, if the claim has been allowed, an amount equal to the amount of taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property until paid and a penalty equal to the amount of taxes lawfully due but claimed for exemption shall be assessed.

Source: Laws 1979, LB65, § 22; Laws 1984, LB809, § 13; Laws 1986, LB1258, § 9; Laws 1989, LB84, § 16; Laws 1994, LB902, § 41; Laws 2014, LB1087, § 18.

77-3523. Homestead; exemption; county treasurer; certify tax revenue lost within county; reimbursed; manner; distribution. The county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner the total tax revenue that will be lost to all taxing agencies within his or her county from taxes levied and assessed in that year because of exemptions allowed under sections 77-3501 to 77-3529. The county treasurer may amend the certification to show any change or correction in the total tax that will be lost until May 30 of the next succeeding year. If a homestead exemption is approved, denied, or corrected by the Tax Commissioner under subsection (2) of section 77-3517 after May 1 of the next year, the county treasurer shall prepare and submit amended reports to the Tax Commissioner and the political subdivisions covering any affected year and shall adjust the reimbursement to the county and the other political subdivisions by adjusting the reimbursement due under this section in later years. The Tax Commissioner shall, on or before January 1 next following such certification or within thirty days of any amendment to the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the funds lost shall be made to each county according to the certification and shall be distributed in six as nearly as possible equal monthly payments on the last business day of each month beginning in January. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General

Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. Out of the amount so received the county treasurer shall distribute to each of the taxing agencies within his or her county the full amount so lost by such agency, except that one percent of such amount shall be deposited in the county general fund and that the amount due a Class V school district shall be paid to the district and the county shall be compensated pursuant to section 14-554. Each taxing agency shall, in preparing its annual or biennial budget, take into account the amount to be received under this section.

Source: Laws 1979, LB65, § 23; Laws 1983, LB494, § 7; Laws 1986, LB1258, § 10; Laws 1987, LB376A, § 16; Laws 1994, LB902, § 42; Laws 1995, LB499, § 3; Laws 1996, LB1040, § 5; Laws 1997, LB397, § 32; Laws 2000, LB1116, § 17; Laws 2009, LB166, § 18; Laws 2014, LB1087, § 19.

77-3524. Homestead; exemption; categories; Department of Revenue; maintain statistics. The Department of Revenue shall maintain statistics to demonstrate the number of claimants and the amount of relief granted for the categories of homestead exemption.

Source: Laws 1979, LB65, § 24; Laws 1981, LB545, § 26; Laws 1983, LB396, § 6; Laws 1984, LB956, § 2; Laws 1996, LB1039, § 10.

77-3526. Paraplegic, multiple amputee; terms, defined. As used in sections 77-3526 to 77-3528:

(1) Paraplegic shall mean a veteran who is paralyzed in both legs such as to preclude locomotion without the aid of braces, crutches, canes, or wheelchair;

(2) Multiple amputee shall mean a veteran who has undergone amputation of (a) either both lower extremities or one lower extremity and one upper extremity, such as to preclude locomotion without the aid of braces, crutches, canes, wheelchair, or artificial limbs, or (b) both upper extremities;

(3) Home shall mean one housing unit and necessary land therefor not to exceed one acre occupied by the veteran or his or her unmarried surviving spouse when the veteran or surviving spouse is the owner of record from January 1 through August 15 in each year; and

(4) Substantially contributed by the United States Department of Veterans Affairs shall mean any amount received by a veteran from the department under Public Law 85-857 adopted September 2, 1958, as amended and in effect on January 1, 1979.

Source: Laws 1979, LB65, § 26; Laws 1987, LB376A, § 17; Laws 1991, LB2, § 19; Laws 2004, LB986, § 1.

77-3527. Property taxable; paraplegic veteran; multiple amputee; exempt; value; transfer of property; effect. The value of a home substantially contributed by the United States Department of Veterans Affairs for a paraplegic veteran or multiple amputee shall be exempt from taxation during the life of such veteran or until the death of his or her surviving spouse or his or her remarriage. If such veteran or his or her unmarried surviving spouse disposes of such home and within one year uses the proceeds therefrom or part of such proceeds to acquire another home for occupancy by such veteran or his or her surviving spouse, such home shall be deemed to be one substantially contributed to by the department and the exemption provided for in this section shall apply to such substituted home during the life of such veteran or until the death of his or her surviving spouse or his or her remarriage. Application for exemption under this section shall include certification from the department affirming that the department has substantially contributed to the purchase, construction, remodeling, or special adaptation of a home by the applicant.

Source: Laws 1979, LB65, § 27; Laws 1983, LB195, § 9; Laws 1991, LB2, § 20; Laws 2004, LB986, § 2.

77-3528. Property taxable; paraplegic; multiple amputee; claim exemption. Any veteran claiming the exemption as provided by section 77-3527 shall make application to the county assessor upon forms prescribed and furnished by the Tax Commissioner. Such application shall be made on or before June 30 of each year. Exemptions claimed before June 30 shall apply for the year such exemption is claimed.

Source: Laws 1979, LB65, § 28; Laws 1995, LB133, § 6; Laws 1996, LB1039, § 11; Laws 1997, LB397, § 33.

77-3529. Homestead; exemption; application; denied; other exemption allowed. If any application for exemption pursuant to sections 77-3501 to 77-3529 is denied and the applicant would be qualified for any other exemption under such sections, then such denied application shall be treated as an application for the highest exemption for which qualified. Any additional documentation necessary for such other exemption shall be submitted to the county assessor within a reasonable time after receipt of the notice of denial.

Source: Laws 1979, LB65, § 29; Laws 1983, LB195, § 10; Laws 1984, LB809, § 14; Laws 1987, LB376A, § 18; Laws 1989, LB84, § 17; Laws 1994, LB902, § 43; Laws 2014, LB1087, § 20.

ARTICLE 37
MOBILE HOMES

77-3701. Mobile home, defined.
77-3706. Owner, lessee, or manager of land; report mobile homes; form; contents of report; failure to report; penalty.
77-3707. Owner, lessee, or manager of land; permit; fee; disbursement; annual renewal.
77-3708. Mobile home; movement on road or highway; permit; conditions.
77-3709. Violations; penalty.
77-3710. Sections, how construed.

77-3701. Mobile home, defined. For purposes of sections 77-3701 to 77-3708, unless the context otherwise requires, mobile home shall mean every portable or relocatable device of any description, without motive power, and designed for living quarters, whether or not permanently attached to the land, but shall not include a cabin trailer registered for operation upon the highways of this state.

Source: Laws 1981, LB168, § 1; Laws 1992, LB1063, § 195; Laws 1992, Second Spec. Sess., LB1, § 166.

77-3706. Owner, lessee, or manager of land; report mobile homes; form; contents of report; failure to report; penalty. The owner, lessee, or manager of land upon which is parked or located a mobile home, shall report by January 15 of each year to the county assessor, upon forms sent by the county assessor, in the county in which such land is located all mobile homes located thereon as of January 1 of each year, the year, make, model, and size of each mobile home, the name, post office address of the owner or occupant thereof, and the date the mobile home was first parked or located on such land. Failure to make any report required by this section shall result in cancellation of the permit issued and forfeiture of the fee paid pursuant to section 77-3707.

Source: Laws 1959, c. 303, § 8, p. 1134; R.R.S.1943, § 60-1608; Laws 1969, c. 519, § 1, p. 2131; Laws 1969, c. 516, § 13, p. 2126; R.S.1943, (1978), § 60-1609; Laws 1981, LB168, § 7.

77-3707. Owner, lessee, or manager of land; permit; fee; disbursement; annual renewal. Every owner, lessee, or manager of land upon which are located or to be located two or more mobile homes shall obtain a permit therefor from the county treasurer upon payment of an annual fee of five dollars which shall be deposited in the county general fund. Such annual permit shall be renewed during January of each year. Application for such permit shall be made on forms prescribed and furnished by the Tax Commissioner. If the applicant is an individual, the application for a permit shall include the applicant's social security number.

Source: Laws 1969, c. 516, § 14, p. 2126; Laws 1977, LB396, § 1; R.S.1943, (1978), § 60-1609.01; Laws 1981, LB168, § 8; Laws 1997, LB752, § 215.

77-3708. Mobile home; movement on road or highway; permit; conditions. A mobile home may not be moved upon any road or highway in the state without first obtaining a movement permit as required by law for the movement of any oversize vehicle. No movement permit shall be issued by any governmental agency charged with issuance thereof unless a tax certificate issued by the county treasurer showing payment of all taxes due or to become due because of the location of such mobile home in such county on assessment day is displayed by the owner. A tax certificate shall not be required if the movement contemplated is between a manufacturer and a licensed dealer or between two licensed dealers or between a licensed dealer's place of business or storage area and a bona fide customer to whom title to the mobile home has passed or does pass within a reasonable time after movement. For the purposes of this section, taxes and fees shall include those of all governmental subdivisions. Nothing in this section shall alter or amend any other existing regulations, rules, or statutes governing the movement of mobile homes.

Source: Laws 1969, c. 516, § 16, p. 2126; R.S.1943, (1978), § 60-1611; Laws 1981, LB168, § 9.

77-3709. Violations; penalty. Any person violating any of the provisions of section 77-3706, 77-3707, or 77-3708 shall be guilty of a Class IV misdemeanor.

Source: Laws 1959, c. 303, § 10, p. 1134; R.R.S.1943, § 60-1610; Laws 1969, c. 516, § 17, p. 2128; Laws 1977, LB39, § 97; R.S.1943, (1978), § 60-1612; Laws 1981, LB168, § 10.

77-3710. Sections, how construed. Nothing in sections 77-3706, 77-3707, and 77-3708 shall be construed as altering or affecting in any manner, any zoning, planning, building or land-use, laws, ordinances, rules, or regulations.

Source: Laws 1969, c. 516, § 18, p. 2128; R.S.1943, (1978), § 60-1613; Laws 1981, LB168, § 11.

ARTICLE 41
EMPLOYMENT AND INVESTMENT GROWTH ACT

77-4101. Act, how cited.
77-4102. Legislative findings.
77-4103. Terms, defined.
77-4103.01. Qualified employee leasing company; employees; duty.
77-4104. Incentives; application; contents; fee; approval; agreements; contents.
77-4104.01. Incentives; credits or benefits; limitation.
77-4105. Incentives; income tax, personal property tax, sales and use tax; credits.
77-4106. Credits; use; refund claims; procedures; interest; appointment of purchasing agent.
77-4107. Recapture or disallowance of incentives.
77-4108. Incentives; transfer; when; effect.
77-4108.01. Refund claims; interest not allowable.
77-4109. Application; valid; when; limitation on new applications.
77-4110. Annual report; contents; joint hearing.
77-4111. Tax Commissioner; adopt rules and regulations.
77-4112. Change in law; effect; operative date.
77-4113. Department of Revenue; estimate of sales tax refunds under Employment and Investment Growth Act; duties.

77-4101. Act, how cited. Sections 77-4101 to 77-4112 shall be known and may be cited as the Employment and Investment Growth Act.

Source: Laws 1987, LB775, § 1; Laws 1988, LB1234, § 3; Laws 1998, LB1104, § 19; Laws 1999, LB539, § 4.

77-4102. Legislative findings. (1) The Legislature hereby finds and declares that:
(a) Current economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of jobs, and difficulty in attracting and retaining business operations; and
(b) Major revisions in Nebraska's tax structure are necessary to accomplish economic revitalization of Nebraska and to be competitive with other states involved in economic revitalization and development.
(2) It is the policy of this state to make revisions in Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska, retain existing businesses and aid in their expansion, promote the creation and retention of new jobs in Nebraska, and attract and retain investment capital in the State of Nebraska.

Source: Laws 1987, LB775, § 2.

77-4103. Terms, defined. For purposes of the Employment and Investment Growth Act, unless the context otherwise requires:
(1) Any term shall have the same meaning as used in Chapter 77, article 27;
(2) Base year shall mean the year immediately preceding the year during which the application was submitted;
(3) Base-year employee shall mean any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project;
(4) Compensation shall mean the wages and other payments subject to withholding for federal income tax purposes;
(5) Entitlement period shall mean the year during which the required increases in employment and investment were met or exceeded, and the next six years;
(6) Equivalent employees shall mean the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;
(7) Investment shall mean the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified

property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation;

(8) Motor vehicle shall mean any motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act and subject to licensing for operation on the highways;

(9) Nebraska employee shall mean an individual who is either a resident or partial-year resident of Nebraska;

(10) Number of new employees shall mean the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year;

(11) Qualified business shall mean any business engaged in the activities listed in subdivisions (b)(i) through (v) of this subdivision or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business shall not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (a) assembled, fabricated, manufactured, or processed by the taxpayer or (b) used by the purchaser in any of the following activities:

(i) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(ii) The performance of data processing, telecommunication, insurance, or financial services. Financial services for purposes of this subdivision shall only include financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(iii) The assembly, fabrication, manufacture, or processing of tangible personal property;

(iv) The administrative management of any activities, including headquarter facilities relating to such activities; or

(v) Any combination of the activities listed in this subdivision;

(12) Qualified employee leasing company shall mean a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(13) Qualified property shall mean any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, or the components of such property, that will be located and used at the project. Qualified property shall not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Employment and Investment Growth Act to another person;

(14) Related persons shall mean any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986;

(15) Taxpayer shall mean any person subject to the sales and use taxes and either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under sections 77-3801 to 77-3807, any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such taxes, and any other partnership, limited liability company, S corporation, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such taxes; and

(16) Year shall mean the taxable year of the taxpayer.

The changes made in this section by Laws 1997, LB264, apply to investments made or employment on or after January 1, 1997, and for all agreements in effect on or after January 1, 1997.

Source: Laws 1987, LB775, § 3; Laws 1988, LB1234, § 4; Laws 1993, LB121, § 517; Laws 1997, LB264, § 2; Laws 1999, LB539, § 5; Laws 2004, LB1065, § 10; Laws 2005, LB274, § 278.

Cross References

Motor Vehicle Registration Act, see section 60-301.

Nebraska Revenue Act of 1967, see section 77-2701.

Annotations

Components are not qualified property unless they are part of the tangible property otherwise covered by subsection (13) of this section, and they are themselves depreciable or subject to amortization or other recovery. Goodyear Tire & Rubber Co. v. State, 275 Neb. 594, 748 N.W.2d 42 (2008).

The definition of "tangible property" under subsection (13) of this section shall be interpreted using the Internal Revenue Code of 1986. Computer software in this case constitutes tangible property within the definition of "qualified property" in subsection (13) of this section. First Data Corp. v. State, Dept. of Revenue, 263 Neb. 344, 639 N.W.2d 898 (2002).

77-4103.01. Qualified employee leasing company; employees; duty. An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Employment and Investment Growth Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 1999, LB539, § 6.

77-4104. Incentives; application; contents; fee; approval; agreements; contents. (1) In order to utilize the incentives set forth in the Employment and Investment Growth Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-4110 and 77-4113.

(3) Once satisfied that the plan in the application defines a project consistent with the purposes stated in section 77-4102 in one or more qualified business activities within this state, that the plans will result in either (a) the investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (b) the investment in qualified property resulting in a net gain in the total value of tangible property in this state of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986 of at least twenty million dollars, and that the required levels of employment and investment for the project will be met prior to the end of the sixth year after the year in which the application was submitted, the Tax Commissioner shall approve the application. In determining the net gain in value for purposes of this subsection, all tangible personal property shall be valued in a manner consistent with the value determined for qualified property, and the total value on the last day of each year shall be compared with the total value on the last day of the base year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Employment and Investment Growth Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;
(d) The date the application was filed; and
(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.
(5) The incentives contained in section 77-4105 shall be in lieu of the tax credits allowed by section 77-27,188 for any project. In computing credits under section 77-27,188, any investment or employment which is eligible for benefits under the Employment and Investment Growth Act shall be subtracted from the increases computed for determining the credits under section 77-27,188.
(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment and investment belongs.

Source: Laws 1987, LB775, § 4; Laws 1988, LB1234, § 5; Laws 1990, LB431, § 2; Laws 1994, LB1066, § 86; Laws 1996, LB1290, § 2; Laws 1999, LB87A, § 1; Laws 2008, LB914, § 18.

77-4104.01. Incentives; credits or benefits; limitation. The following transactions or activities shall not create any credits or allow any benefits under the Employment and Investment Growth Act except as specifically allowed by this section:
(1) The acquisition of a business which is continued by the taxpayer and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All employees of the acquired business during such period shall be considered base-year employees, and the compensation paid during the base year or the year before acquisition, whichever is later shall be the base-year compensation. Any investment in the acquisition of such business shall be considered as being made before the date of application;
(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;
(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;
(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;
(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the Employment and Investment Growth Act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;
(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and
(7) For applications received after April 16, 2004, any activity that results in benefits under the Ethanol Development Act.

Source: Laws 1988, LB1234, § 6; Laws 2004, LB479, § 9.

Cross References

Ethanol Development Act, see section 66-1330.

77-4105. Incentives; income tax, personal property tax, sales and use tax; credits. (1) A taxpayer who has signed an agreement under section 77-4104 may elect to determine taxable income for purposes of the Nebraska income tax using the sales factor only. The election may be made for the year during which the application was filed and for each year thereafter through the eighth year after the end of the entitlement period. The election shall be made for the year of the election by computing taxable income using the sales factor only on the tax return.

(2) A taxpayer who has signed an agreement under section 77-4104 shall receive the incentive provided in this subsection if the agreement contains one or more projects which together will result in the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. Such ten-million-dollar investment and hiring of at least one hundred new employees shall be considered a required level of investment and employment for this subsection and for the recapture of personal property tax only.

The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(b) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computers. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers; and

(c) Personal property which is business equipment located in a single project if (i) the business equipment is involved directly in the manufacture or processing of agricultural products and (ii) the investment in the single project exceeds ten million dollars.

Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (2)(a) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (2)(b) and (2)(c) of this section, through the sixteenth December 31 after the filing of the application. In order to receive the property tax exemptions allowed by subdivisions (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(3) When the taxpayer has met the required levels of employment and investment contained in the agreement, the taxpayer shall also be entitled to the following incentives:

(a) A refund of all sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of the sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(4) Any taxpayer who qualifies for the incentives contained in subsections (1) and (3) of this section and who has added at least thirty new employees at the project shall also be entitled to:

(a) A credit equal to five percent of the amount by which the total compensation paid during the year to employees who are either Nebraska employees or base-year employees while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees.

For the computation of such credit, average compensation shall mean the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(b) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (a) and (b) of this subsection shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

The credit prescribed in subdivision (b) of this subsection shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

Source: Laws 1987, LB775, § 5; Laws 1988, LB1234, § 7; Laws 1996, LB1177, § 20; Laws 2000, LB968, § 73; Laws 2001, LB142, § 59; Laws 2007, LB223, § 25; Laws 2007, LB334, § 95; Laws 2008, LB965, § 19.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-4106. Credits; use; refund claims; procedures; interest; appointment of purchasing agent. (1)(a) The credits prescribed in section 77-4105 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. The credits may be used to obtain a refund of sales and use taxes under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project.

(b) The credits may be used as allowed in subdivision (a) of this subsection and shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(c) The credit may be carried over until fully utilized, except that such credit may not be carried over more than eight years after the end of the entitlement period.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Employment and Investment Growth Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Any refund claim for sales and use tax on materials incorporated into real estate as a part of the project shall be filed by and the refund paid to the owner of the improvement to real estate. A refund claim for such materials purchased by a purchasing agent shall include a copy of the purchasing agent appointment, the contract price, and a certification by the contractor or repairperson of the percentage of the materials incorporated into the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Employment and Investment Growth Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) Interest shall not be allowed on any sales and use taxes refunded under the Employment and Investment Growth Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

Source: Laws 1987, LB775, § 6; Laws 1996, LB1177, § 21; Laws 2001, LB142, § 60.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-4107. Recapture or disallowance of incentives. (1) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the sixth year after the end of the year the application was submitted for such project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Employment and Investment Growth Act shall be recaptured or disallowed.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a taxpayer who failed to meet the required levels within the required time period, all reduction in the personal property tax because of the Employment and Investment Growth Act shall be recaptured and any reduction in the corporate income tax arising solely because of an election under subsection (1) of section 77-4105 shall be deemed an underpayment of the income tax for the year in which the election was exercised and shall be immediately due and payable; and

(b) In the case of a taxpayer who has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subdivision (3)(a) of section 77-4105, and any refunds or reduction in tax allowed because of the use of a credit allowed under subsection (4) of section 77-4105 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds, one-seventh of the reduction in personal property tax, and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers and the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable.

When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(4) Any personal property tax that would have been due except for the exemption allowed under the Employment and Investment Growth Act, to the extent it becomes due under this section, shall be considered an underpayment of such tax and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(5) Notwithstanding any other limitations contained in the laws of this state, collections of any taxes deemed to be underpayments by this section shall be allowed for a period of ten years after the signing of the agreement or three years after the end of the entitlement period, whichever is later.

(6) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Employment and Investment Growth Act unless the recapture was in error.

(7) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 1987, LB775, § 7; Laws 1988, LB1234, § 8.

Annotations

By its terms, this section does not provide for the retroactive assessment of interest on recaptured personal property taxes. Ameritas Life Ins. Corp. v. Balka, 257 Neb. 878, 601 N.W.2d 508 (1999).

77-4108. Incentives; transfer; when; effect. (1) The incentives allowed under the Employment and Investment Growth Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or

beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-4107; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 1987, LB775, § 8; Laws 1993, LB121, § 518.

77-4108.01. Refund claims; interest not allowable. For all refund claims filed on or after October 1, 1998, interest shall not be allowable on any refunds paid because of benefits earned under the Employment and Investment Growth Act.

Source: Laws 1998, LB1104, § 20.

77-4109. Application; valid; when; limitation on new applications. (1) Any complete application filed on or after the date of passage of Laws 1987, LB775, shall be considered a valid application on the date submitted for the purposes of the Employment and Investment Growth Act.

(2) No new applications shall be filed under the act on or after January 1, 2006. All project applications filed before January 1, 2006, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to project applications filed before January 1, 2006. All project agreements pending, approved, or entered into before such date with respect to the act shall continue in full force and effect.

Source: Laws 1987, LB775, § 9; Laws 2005, LB312, § 57.

77-4110. Annual report; contents; joint hearing. (1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than July 15 of each year. The Department of Revenue shall, on or before September 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.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1987, LB775, § 10; Laws 1990, LB431, § 3; Laws 2007, LB223, § 26; Laws 2012, LB782, § 138; Laws 2013, LB612, § 4.

77-4111. Tax Commissioner; adopt rules and regulations. The Tax Commissioner shall adopt and promulgate all rules and regulations necessary to carry out the purposes of the Employment and Investment Growth Act.

Source: Laws 1988, LB1234, § 9.

77-4112. Change in law; effect; operative date. (1) The changes made in sections 77-4103 to 77-4105 and 77-4107 by Laws 1988, LB1234, shall become operative for all applications filed on and after January 1, 1988. For all applications filed prior to January 1, 1988, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

(2) Section 77-4113 and the changes made in section 77-4104 by Laws 1996, LB1290, shall become operative for all applications filed on or after May 1, 1996.

(3) The changes made in sections 77-4101 and 77-4103 by Laws 1999, LB539, and section 77-4103.01 shall become operative for any taxpayer with an agreement in effect on or after January 1, 1999. Such changes and section 77-4103.01 shall be applied on a consistent basis for determining benefits for tax years beginning, or deemed to begin, on and after January 1, 1999. For all benefit determinations in tax years beginning, or deemed to begin, prior to January 1, 1999, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

Source: Laws 1988, LB1234, § 11; Laws 1996, LB1290, § 3; Laws 1999, LB539, § 7.

77-4113. Department of Revenue; estimate of sales tax refunds under Employment and Investment Growth Act; duties. The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales tax refunds to be paid under the Employment and Investment Growth Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (4)(e) of section 77-4104. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Source: Laws 1996, LB1290, § 1.

Cross References

Employment and Investment Growth Act, see section 77-4101.

ARTICLE 42
PROPERTY TAX CREDIT ACT

77-4209. Act, how cited.
77-4210. Purpose of act.
77-4211. Property Tax Credit Cash Fund; created; use; investment.
77-4212. Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

77-4209. Act, how cited. Sections 77-4209 to 77-4212 shall be known and may be cited as the Property Tax Credit Act.

Source: Laws 2007, LB367, § 1.

77-4210. Purpose of act. The purpose of the Property Tax Credit Act is to provide property tax relief for property taxes levied against real property. The property tax relief will be made to owners of real property in the form of a property tax credit.

Source: Laws 2007, LB367, § 2.

77-4211. Property Tax Credit Cash Fund; created; use; investment. The Property Tax Credit Cash Fund is created. The fund shall only be used pursuant to the Property Tax Credit Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB367, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

77-4212. Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties. (1) For tax year 2007, the amount of relief granted under the Property Tax Credit Act shall be one hundred five million dollars. For tax year 2008, the amount of relief granted under the act shall be one hundred fifteen million dollars. It is the intent of the Legislature to fund the Property Tax Credit Act for tax years after tax year 2008 using available revenue. The relief shall be in the form of a property tax credit which appears on the property tax statement.

(2) To determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subsection (4) of this section by the ratio of the real property valuation of the parcel to the total real property valuation in the county. The amount determined shall be the property tax credit for the property.

(3) If the real property owner qualifies for a homestead exemption under sections 77-3501 to 77-3529, the owner shall also be qualified for the relief provided in the act to the extent of any remaining liability after calculation of the relief provided by the homestead exemption. If the credit results in a property tax liability on the homestead that is less than zero, the amount of the credit which cannot be used by the taxpayer shall be returned to the State Treasurer by July 1 of the year the amount disbursed to the county was disbursed. The State Treasurer shall immediately credit any funds returned under this section to the Property Tax Credit Cash Fund.

(4) The amount disbursed to each county shall be equal to the amount available for disbursement determined under subsection (1) of this section multiplied by the ratio of the real property valuation in the county to the real property valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subsection to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit

bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located.

(5) The State Treasurer shall transfer from the General Fund to the Property Tax Credit Cash Fund one hundred five million dollars by August 1, 2007, and one hundred fifteen million dollars by August 1, 2008.

(6) The Legislature shall have the power to transfer funds from the Property Tax Credit Cash Fund to the General Fund.

Source: Laws 2007, LB367, § 4; Laws 2014, LB1087, § 21.

ARTICLE 50
TAX EQUALIZATION AND REVIEW COMMISSION

77-5001. Act, how cited.
77-5002. Terms, defined.
77-5003. Tax Equalization and Review Commission; created; commissioners; term; salary.
77-5004. Commissioner; qualifications; conflict of interests; continuing education; expenses.
77-5005. Commission; meetings; quorum; orders.
77-5006. Office space.
77-5007. Commission; powers and duties.
77-5007.01. Appeals by county assessor; appointment of attorney.
77-5008. Commission; writs of mandamus; costs.
77-5009. Personnel; special masters; referees.
77-5010. Political subdivisions; levy not restricted.
77-5011. Chairperson; powers and duties.
77-5013. Commission; jurisdiction; time for filing; filing fee.
77-5015. Appeals; hearing; notice.
77-5015.01. Appeal; petition; commission; powers; other parties; service.
77-5015.02. Single commissioner hearing; evidence; record; rehearing.
77-5016. Hearing or proceeding; commission; powers and duties; false statement; penalty; costs.
77-5016.01. Oath, affirmation, or statement; perjury.
77-5016.02. Subpoena for witness; authorized.
77-5016.03. Subpoena for witness; contents.
77-5016.04. Subpoena for witness; service.
77-5016.05. Witnesses; attendance required; fees.
77-5016.06. Witness; demand fees; when.
77-5016.07. Witness; demand for fees; effect.
77-5016.08. Prohibited acts; penalty.
77-5016.09. Death or disability of party; transfer of property; effect on proceeding.
77-5017. Appeals or petitions; orders authorized.
77-5018. Appeals; decisions and orders; requirements; publication on web site; correction of errors.
77-5019. Appeals; judicial review; procedure.
77-5020. County assessor or deputy assessor; invalidation or suspension of certificate; appeal.
77-5021. Rules and regulations.
77-5022. Commission; annual meeting; powers and duties.
77-5023. Commission; power to change value; acceptable range.
77-5024.01. Notice; contents.
77-5026. Commission; change of value; hearing; procedure.
77-5027. Commission; change valuation; Property Tax Administrator; duties.
77-5028. Commission; enter order.
77-5029. County assessor; recertify county abstract; Property Tax Administrator; duties.
77-5030. Property Tax Administrator; certify distributed taxable value.
77-5031. Tax Equalization and Review Commission Cash Fund; created; use; investment.

77-5001. Act, how cited. Sections 77-5001 to 77-5031 shall be known and may be cited as the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB490, § 1; Laws 1997, LB270, § 100; Laws 1997, LB397, § 34; Laws 1998, LB1104, § 23; Laws 2003, LB291, § 4; Laws 2004, LB973, § 46; Laws 2011, LB384, § 20.

77-5002. Terms, defined. For purposes of the Tax Equalization and Review Commission Act:

(1) Commission means the Tax Equalization and Review Commission;

(2) Commissioner means a member of the commission; and

(3) Special master means a person appointed by the commission pursuant to section 77-5009.

Source: Laws 1995, LB490, § 2.

77-5003. Tax Equalization and Review Commission; created; commissioners; term; salary. (1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. Prior to July 1, 2011, the commission shall have four commissioners, one commissioner from each congressional district and one at-large commissioner. On July 1, 2011, the term of each commissioner shall expire, and thereafter the commission shall have three commissioners, one from each congressional district, with terms as provided in subsection (2) of this section. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature. The salaries of the commissioners shall be fixed by the Governor.

(2) The term of the commissioner from district 1 expires January 1, 2016, the term of the commissioner from district 2 expires January 1, 2018, and the term of the commissioner from district 3 expires January 1, 2014. After the terms of the commissioners are completed as provided in this subsection, each subsequent term shall be for six years beginning and ending on January 1 of the applicable year. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The commission shall designate pursuant to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Source: Laws 1995, LB490, § 3; Laws 1998, LB1104, § 24; Laws 2001, LB465, § 3; Laws 2003, LB291, § 5; Laws 2007, LB167, § 4; Laws 2011, LB384, § 21.

77-5004. Commissioner; qualifications; conflict of interests; continuing education; expenses. (1) Each commissioner shall be a qualified voter and resident of the state and a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) At least one commissioner shall possess the certification or training required to become a licensed residential real property appraiser as set forth in section 76-2230.
(4) At least one commissioner shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.
(5) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.
(6) Each commissioner shall annually attend a seminar or class of at least two days' duration that is:
(a) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or
(b) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.
(7) Each commissioner shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.
(8) The commissioners shall be considered employees of the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.
(9) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for their actual and necessary expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB490, § 4; Laws 1996, LB1038, § 2; Laws 1999, LB32, § 1; Laws 2001, LB170, § 19; Laws 2001, LB465, § 4; Laws 2002, LB994, § 28; Laws 2003, LB292, § 15; Laws 2004, LB973, § 47; Laws 2006, LB778, § 73; Laws 2007, LB186, § 25; Laws 2008, LB965, § 20; Laws 2010, LB931, § 25; Laws 2011, LB384, § 22.

77-5005. Commission; meetings; quorum; orders. (1) Within ten days after appointment, the commissioners shall meet at their office in Lincoln, Nebraska, and enter upon the duties of their office.
(2) A majority of the commission shall at all times constitute a quorum to transact business, and one vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission.
(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by a single commissioner in those appeals designated for hearing pursuant to section 77-5015.02.
(4) All investigations, inquiries, hearings, and decisions of a single commissioner and every order made by a single commissioner shall be deemed to be the order of the commission, except as provided in subsection (6) of section 77-5015.02. The full commission, on an application made within thirty days after the date of an order, may grant a rehearing and determine de novo any decisions of or orders made by the commission. The commission, on an application made within thirty days after the date of an order issued after a hearing by a single commissioner, except for an order dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits, shall grant a rehearing on the merits before the commission. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.
(5) All hearings or proceedings of the commission shall be open to the public.
(6) The Open Meetings Act applies only to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Source: Laws 1995, LB490, § 5; Laws 1998, LB1104, § 25; Laws 2001, LB465, § 5; Laws 2003, LB291, § 6; Laws 2004, LB821, § 23; Laws 2005, LB15, § 7; Laws 2011, LB384, § 23.

Cross References

Open Meetings Act, see section 84-1407.

77-5006. Office space. The state shall furnish the commission and its commissioners with appropriate office space in Lincoln, Nebraska, together with suitable equipment, furniture, and supplies.

Source: Laws 1995, LB490, § 6.

77-5007. Commission; powers and duties. The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Tax Commissioner determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Tax Commissioner determining adjusted valuation pursuant to section 79-1016;

(5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3,188;

(9) Decisions of the Tax Commissioner made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Tax Commissioner regarding property valuation, exemption, or taxation;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520;

(13) Final decisions of a county board of equalization appealed by the Tax Commissioner or Property Tax Administrator pursuant to section 77-701;

(14) Determinations of the Rent-Restricted Housing Projects Valuation Committee regarding the capitalization rate to be used to value rent-restricted housing projects pursuant to section 77-1333 or the requirement under such section that an income-approach calculation be used by county assessors to value rent-restricted housing projects;

(15) The requirement under section 77-1314 that the income approach, including the use of a discounted cash-flow analysis, be used by county assessors; and

(16) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions.

Source: Laws 1995, LB490, § 7; Laws 1996, LB1038, § 3; Laws 1997, LB270, § 102; Laws 1997, LB397, § 35; Laws 1998, LB306, § 40; Laws 1999, LB140, § 2; Laws 1999, LB194, § 33; Laws 2001, LB170, § 20; Laws 2004, LB973, § 48; Laws 2005, LB15, § 8; Laws 2005, LB261, § 8; Laws 2005, LB274, § 280; Laws 2007, LB334, § 96; Laws 2010, LB877, § 7; Laws 2011, LB384, § 24; Laws 2014, LB191, § 22; Laws 2015, LB356, § 2.

Effective Date: August 30, 2015

Cross References

Rent-Restricted Housing Projects Valuation Committee, see section 77-1333.

Annotations

A county assessor is not required to file a protest with the county board, as described in section 77-1504, before taking an appeal to the Nebraska Tax Equalization and Review Commission under this section. Phelps Cty. Bd. of Equal. v. Graf, 258 Neb. 810, 606 N.W.2d 736 (2000).

This section does not create a duty on the part of the Tax Equalization and Review Commission to compel the taxpayer to produce more probative evidence at the hearing. J.C. Penney Co., Inc. v. Lancaster Cty. Bd. of Equal., 6 Neb. App. 838, 578 N.W.2d 465 (1998).

The commission has the power under this statute to hear and determine appeals of any decision of any county board of equalization. McLaughlin v. Jefferson Cty. Bd. of Equal., 5 Neb. App. 781, 567 N.W.2d 794 (1997).

77-5007.01. Appeals by county assessor; appointment of attorney. In appeals by a county assessor in his or her official capacity pursuant to section 77-5007, the county assessor may request that the district court appoint an attorney to represent the county assessor before the commission. Upon a showing of good cause, the district court may make such an appointment by an order to be entered upon the minutes of the court. Any attorney so appointed shall receive no compensation from the county except as provided for in section 23-1204.01.

Source: Laws 1998, LB1104, § 26.

77-5008. Commission; writs of mandamus; costs. In addition to its other powers and duties, the commission may issue writs of mandamus compelling compliance with its orders and compelling the Tax Commissioner to enforce its orders and may charge the party which has not complied with the commission's orders with costs borne by the Tax Commissioner.

Source: Laws 1995, LB490, § 8; Laws 2007, LB334, § 97; Laws 2011, LB384, § 25.

77-5009. Personnel; special masters; referees. (1) The commission may employ legal, clerical, and other assistants as may be necessary to carry out the powers and duties of the commission.

(2)(a) For purposes of finding facts or conducting an investigation on behalf of the commission with regard to any matters relating to taxation or assessment, the commission may appoint by an order in writing a special master or special masters whose duties are prescribed in the order, except that the duties of a special master shall not include the determination of conclusions of law or the final disposition of any case or controversy.

(b) Special masters may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the special master renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

(3) In the discharge of his or her duties, a special master shall have all the investigative and factfinding powers of the commission.

(4)(a) The commission may conduct a number of factfindings or investigations contemporaneously through different special masters and may delegate to a special master the taking of all testimony bearing upon any investigation or hearing.

(b) The decision of the commission shall be based upon its examination of all testimony and records.

(c) The recommendations made by any special master shall be advisory only and shall not preclude the taking of further testimony if the commission orders further investigation.

(5)(a) For purposes of mediating valuation disputes between the county and the owner of the property, the commission by order may also contract with or appoint a referee or referees. The purpose of the referee is to meet with the parties and facilitate agreement on facts and issues prior to the hearing on the appeal. The referee may not be called as a witness in a hearing on the merits nor may evidence of any statements made by the parties or the referee pertaining to or at the referee meeting be received by the commission in a hearing on the merits. If the parties fail to resolve their differences, a hearing on the merits of the appeal shall be held before the commission. If the parties resolve their differences, the commission shall enter an order that reflects the agreement of the parties.

(b) Referees may be paid a salary or fee in the discretion of the commission. If a salary is paid, the amount paid shall be fixed by the commission, and if a fee is paid, the amount paid shall be in accordance with the value of the service rendered and shall be agreed upon and approved by the commission before the referee renders service under his or her appointment.

(c) The claim for services rendered shall be certified by the commission and paid as provided by law for other claims against the state.

Source: Laws 1995, LB490, § 9; Laws 1998, LB1104, § 27; Laws 2000, LB968, § 74; Laws 2001, LB465, § 6; Laws 2006, LB808, § 41.

77-5010. Political subdivisions; levy not restricted. County boards, city councils, school boards, and all other bodies legally authorized to make levies are free to make the rate of levy for their respective political subdivisions or municipalities at any amount not prohibited by the Constitution of Nebraska or the laws of the state.

Source: Laws 1995, LB490, § 10.

77-5011. Chairperson; powers and duties. The chairperson may call special meetings of the commission at such times as its business requires. The chairperson may also administer oaths and affirmations and sign all orders, certificates, and process in the name of the commission. The chairperson shall attest all orders, certificates, and process with the official seal of the commission. In the absence of the chairperson the vice-

chairperson may perform the duties of the chairperson. Orders, certificates, and process under the official seal of the commission may be enforced by the district court for Lancaster County.

Source: Laws 1995, LB490, § 11; Laws 1997, LB397, § 36; Laws 2003, LB291, § 7; Laws 2007, LB167, § 5.

77-5013. Commission; jurisdiction; time for filing; filing fee. (1) The commission obtains exclusive jurisdiction over an appeal or petition when:

(a) The commission has the power or authority to hear the appeal or petition;

(b) An appeal or petition is timely filed;

(c) The filing fee, if applicable, is timely received and thereafter paid; and

(d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Source: Laws 1995, LB490, § 13; Laws 1998, LB1104, § 28; Laws 2001, LB170, § 21; Laws 2004, LB973, § 49; Laws 2010, LB877, § 8.

Annotations

A separate filing fee must accompany each appeal to the Tax Equalization and Review Commission and must be timely received by the commission in order for it to have jurisdiction over an appeal. Widtfeldt v. Tax Equal. & Rev. Comm., 15 Neb. App. 410, 728 N.W.2d 295 (2007).

77-5015. Appeals; hearing; notice. In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time and place of the hearing. Opportunity shall be afforded all parties to present evidence and argument. The commission shall prepare an official record, which includes testimony and exhibits, in each case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purposes of rehearing, in which event the transcript and record shall be furnished by the commission upon request and tender of the cost of preparation. Informal disposition may also be made of any case by stipulation, agreed settlement, consent order, or default.

Source: Laws 1995, LB490, § 15; Laws 1999, LB140, § 3; Laws 2003, LB291, § 8; Laws 2004, LB973, § 50; Laws 2011, LB384, § 26.

Annotations

This section provides that opportunity shall be afforded all parties to present evidence and argument at a hearing before the Tax Equalization and Review Commission. Krusemark v. Thurston Cty. Bd. of Equal., 10 Neb. App. 35, 624 N.W.2d 328 (2001).

77-5015.01. Appeal; petition; commission; powers; other parties; service. The commission may determine an appeal or petition before it when it can be done without prejudice to the rights of others or by saving such rights; but when a determination of the appeal or petition cannot be had without the presence of other parties, the commission shall serve such other parties with notice of the proceeding.

Source: Laws 2011, LB384, § 27.

77-5015.02. Single commissioner hearing; evidence; record; rehearing. (1) A single commissioner may hear an appeal and cross appeal and appeals and cross appeals consolidated with any such appeal and cross appeal when:

(a) The taxable value of each parcel is one million dollars or less as determined by the county board of equalization; and

(b) The appeal and cross appeal has been designated for hearing pursuant to this section by the chairperson of the commission or in such manner as the commission may provide in its rules and regulations.
(2) A proceeding held before a single commissioner shall be informal. The usual common-law or statutory rules of evidence, including rules of hearsay, shall not apply, and the commissioner may consider and utilize all matters presented at the proceeding in making his or her determination.
(3) Any party to an appeal designated for hearing before a single commissioner pursuant to this section may, prior to a hearing, elect in writing to have the appeal heard by the commission. The commissioner conducting a proceeding pursuant to this section may at any time designate the appeal for hearing by the commission.
(4) Documents necessary to establish jurisdiction of the commission shall constitute the record of a proceeding before a single commissioner. No recording shall be made of a proceeding before a single commissioner.
(5) A party to a proceeding before a single commissioner may request a rehearing pursuant to section 77-5005.
(6) An order entered by a single commissioner pursuant to this section may not be appealed pursuant to section 77-5019 or any other provision of law.
(7) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 77-5016 apply to proceedings before a single commissioner.

Source: Laws 2011, LB384, § 28.

77-5016. Hearing or proceeding; commission; powers and duties; false statement; penalty; costs. Any hearing or proceeding of the commission shall be conducted as an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In any hearing or proceeding heard by the commission:
(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The requesting party shall be liable for the payment of fees and costs of a court reporter pending a final decision. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered, and all other costs shall be allocated as the commission may determine;
(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;
(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations;
(4) All evidence, other than that described in subdivision (3) of this section, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case. No other factual information or evidence other than that set forth in this section shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;
(5) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;
(6) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general

levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

(7) Any person testifying under oath at a hearing who knowingly and intentionally makes a false statement to the commission or its designee is guilty of perjury. For the purpose of this section, perjury is a Class I misdemeanor;

(8) The commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal;

(9) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

(10) If the appeal concerns a decision by the county board of equalization that property is, in whole or in part, exempt from taxation, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(11) If the appeal concerns a decision by the county board of equalization that property owned by the state or a political subdivision is or is not exempt and there has been no final determination of the value of the property, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(12) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless (a) the appellant is the county assessor or county clerk in which case the costs shall be paid by the county or (b) the appellant is the Tax Commissioner or Property Tax Administrator in which case the costs shall be paid by the state;

(13) The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted; and

(14) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of this section apply to hearings or proceedings before a single commissioner pursuant to section 77-5015.02.

Source: Laws 1995, LB490, § 16; Laws 1997, LB397, § 38; Laws 1999, LB140, § 4; Laws 2000, LB968, § 75; Laws 2001, LB170, § 22; Laws 2001, LB419, § 1; Laws 2001, LB465, § 7; Laws 2002, LB994, § 29; Laws 2003, LB291, § 9; Laws 2004, LB973, § 51; Laws 2005, LB15, § 9; Laws 2007, LB167, § 6; Laws 2010, LB877, § 9; Laws 2011, LB384, § 29.

Annotations

The Tax Equalization and Review Commission determines de novo all questions raised in proceedings before it. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

The Tax Equalization and Review Commission is not required to accept any and all evidence offered during an informal hearing; it has some discretion in determining the probative value of proffered evidence and may exclude that which it determines to be incompetent, irrelevant, immaterial, and unduly repetitious. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

The Tax Equalization and Review Commission is not required to make specific findings with respect to arguments or issues which it does not deem significant or necessary to its determination. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

The taxpayer's burden is to present clear and convincing evidence to rebut the presumption that the Board of Equalization faithfully performed its valuation duties. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

A presumption exists that a board of equalization has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. This presumption remains until there is competent evidence to the contrary presented. Once the presumption has been rebutted, the burden shifts to the party requesting the exemption to prove its entitlement thereto. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

The only material difference between an appeal from a board of equalization before the passage of LB490 and after is that subsection (5) of this section allows the Tax Equalization and Review Commission to take judicial notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment. J.C. Penney Co., Inc. v. Lancaster Cty. Bd. of Equal., 6 Neb. App. 838, 578 N.W.2d 465 (1998).

77-5016.01. Oath, affirmation, or statement; perjury. Each appeal or petition filed with the commission shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or should know. Any person who willfully falsifies any such representation shall be guilty of perjury and shall, upon conviction thereof, be punished as provided by section 28-915.

Source: Laws 2004, LB973, § 52.

77-5016.02. Subpoena for witness; authorized. The chairperson of the commission shall, on application of any person having a cause or any matter pending before it, issue a subpoena for a witness or witnesses under the seal of the commission, inserting all the names required by the applicant in one subpoena.

Source: Laws 2004, LB973, § 53.

77-5016.03. Subpoena for witness; contents. A subpoena of the commission shall be directed to the person named therein, requiring him or her to attend at a particular time and place and to testify as a witness. The subpoena may contain a clause directing the witness to bring with him or her any book, writing, or other thing under his or her control, which he or she is bound by law to produce as evidence.

Source: Laws 2004, LB973, § 54.

77-5016.04. Subpoena for witness; service. The subpoena shall be served in the manner requested by the applicant, by either (1) personally serving a copy or (2) mailing a copy by registered or certified mail, return receipt requested, not less than six days before the day of the hearing or deposition which the witness is required to attend. The person making such service shall make a return thereof showing the manner of service. A subpoena may be served by any person not interested in the matter or by the sheriff. When served by any person other than a sheriff, proof of service shall be shown by affidavit, but no costs of serving shall be allowed, except when served by a sheriff.

Source: Laws 2004, LB973, § 55.

77-5016.05. Witnesses; attendance required; fees. (1) Witnesses cannot be compelled to attend a hearing out of the state where they are served or at a distance of more than one hundred miles from the place of their residence or from the place where they are served with a subpoena, unless within the same county. Witnesses shall not be obliged to attend a deposition outside the county of their residence or outside the county where the subpoena is served.

(2) The chairperson of the commission may, upon deposit with the commission of sufficient money to pay the legal fees and mileage and reasonable expenses for hotel and meals of such a witness who attends at points so far removed from his or her residence as to make it reasonably necessary that such expenses be incurred, order a subpoena to issue requiring the hearing attendance, but excluding a deposition appearance, of such witness from a greater distance within the state than that provided in subsection (1) of this section. Mileage shall be computed at the rate provided in section 81-1176. The subpoena shall show that it is issued under this section. After the appearance of such witness in response to any such subpoena, the chairperson of the commission shall enter an order directing the payment to the witness from such deposit of such legal fees, mileage, and the actual expenses for hotel and meals incurred by such witness. If such deposit is not adequate for such purpose, the chairperson of the commission shall direct the party procuring the issuance of such subpoena to pay to such witness the deficiency.

Source: Laws 2004, LB973, § 56.

77-5016.06. Witness; demand fees; when. (1) Except as provided in subsection (2) of this section, a witness may demand his or her traveling fees and fee for one day's attendance when the subpoena is served upon him or her, and if the same is not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and nonpayment shall be stated in the return.

(2) When a subpoena is issued at the request of any agency of state government, the witness shall not be entitled to demand his or her traveling fees and fee for one day's attendance but shall be required to obey the subpoena if, at the time of service upon him or her, he or she is furnished a statement prepared by the agency advising him or her of the rate of travel fees allowable, the fee for each day's attendance pursuant to the subpoena, and that he or she will be paid at such rates following his or her attendance.

Source: Laws 2004, LB973, § 57.

77-5016.07. Witness; demand for fees; effect. At the commencement of each day, after the first day, a witness may demand his or her fees for that day's attendance in obedience to a subpoena, and if the same is not paid he or she shall not be required to remain.

Source: Laws 2004, LB973, § 58.

77-5016.08. Prohibited acts; penalty. Disobedience of a subpoena or a refusal to be sworn, to answer as a witness, or to subscribe a deposition, when lawfully ordered, shall be a Class V misdemeanor.

Source: Laws 2004, LB973, § 59.

77-5016.09. Death or disability of party; transfer of property; effect on proceeding. An appeal or petition shall not be dismissed by reason of the death or other disability of a party or by the transfer of any interest in property during its pendency. In the case of the death or other disability of a party, the commission may allow the action to continue by the party's representative or successor in interest. In case of any other transfer of interest in property, the action may be continued in the name of the original party or the commission may allow the party to whom the transfer is made to be substituted in the action in accordance with the party's interests.

Source: Laws 2004, LB973, § 60.

77-5017. Appeals or petitions; orders authorized. (1) In resolving an appeal or petition, the commission may make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed. The commission may make prospective orders requiring changes in assessment practices which will improve assessment practices or affect the general level of assessment or the measures of central tendency in a positive way. If no other relief is adequate to resolve disputes, the commission may order a reappraisal of property within a county, an area within a county, or classes or subclasses of property within a county.

(2) In an appeal specified in subdivision (10) or (11) of section 77-5016 for which the commission determines exempt property to be taxable, the commission shall order the county board of equalization to determine the taxable value of the property, unless the parties stipulate to such taxable value during the hearing before the commission. The order shall require the county board of equalization to determine the taxable value of the property pursuant to section 77-1507, send notice of the taxable value pursuant to section 77-1507 within ninety days after the date the commission's order is certified pursuant to section 77-5018, and apply interest at the rate specified in section 45-104.01, but not penalty, to the taxable value as of the date the commission's order was issued or the date the taxes were delinquent, whichever is later.

(3) A determination of the taxable value of the property made by the county board of equalization pursuant to subsection (2) of this section may be appealed to the commission within thirty days after the board's decision as provided in section77-1507.

Source: Laws 1995, LB490, § 17; Laws 2001, LB419, § 2; Laws 2004, LB973, § 61; Laws 2007, LB167, § 7; Laws 2011, LB384, § 30.

77-5018. Appeals; decisions and orders; requirements; publication on web site; correction of errors. (1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed to each party or his or her attorney of record. Within seven days of issuing a decision and order, the commission

shall electronically publish such decision and order on a web site maintained by the commission that is accessible to the general public. The full text of final decisions and orders shall be published on the web site, except that final decisions and orders that are entered (a) on a dismissal by the appellant or petitioner, (b) on a default order when the appellant or petitioner failed to appear, (c) by agreement of the parties, or (d) by a single commissioner pursuant to section77-5015.02 may be published on the web site in a summary manner identifying the parties, the case number, and the basis for the final decision and order. Any decision rendered by the commission shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly and the tax list pursuant to section 77-1613.02.

(2) The commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order.

(3) The Tax Commissioner or the Property Tax Administrator shall have thirty days after a final decision of the commission to appeal the commission's decision pursuant to section 77-5019.

Source: Laws 1995, LB490, § 18; Laws 1997, LB397, § 39; Laws 2001, LB465, § 8; Laws 2005, LB15, § 10; Laws 2007, LB166, § 11; Laws 2010, LB877, § 10; Laws 2011, LB384, § 31.

77-5019. Appeals; judicial review; procedure. (1) Any party aggrieved by a final decision in a case appealed to the commission, any party aggrieved by a final decision of the commission on a petition, any party aggrieved by an order of the commission issued pursuant to section 77-5020 or sections 77-5023 to 77-5028, or any party aggrieved by a final decision of the commission appealed by the Tax Commissioner or the Property Tax Administrator pursuant to section 77-701 shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals:

(i) Within thirty days after the date on which a final appealable order is entered by the commission; or

(ii) For orders issued pursuant to section 77-5028, within thirty days after May 15 or thirty days after the date ordered pursuant to section 77-1514, whichever is later.

(b) All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1504.01 or 77-5020 or sections 77-5023 to 77-5028. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in a civil action. The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(c) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Upon receipt of a petition the date for submission of the official record shall be determined by the court. The commission shall prepare a certified copy of the official record of the proceedings had before the commission in the case. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The official record in an appeal of a commission decision issued pursuant to

sections 77-5023 to 77-5028may be limited by the request of a petitioner to those parts of the record pertaining to a specific county. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. If payment is required, payment of the cost, as estimated by the commission, for preparation of the official record shall be paid to the commission prior to preparation of the official record and the commission shall not transmit the official record to the court until payment of the actual costs of its preparation is received.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Source: Laws 1995, LB490, § 19; Laws 1997, LB165, § 4; Laws 1999, LB140, § 5; Laws 2000, LB968, § 76; Laws 2001, LB465, § 9; Laws 2005, LB15, § 11; Laws 2006, LB808, § 42; Laws 2008, LB965, § 21; Laws 2010, LB877, § 11; Laws 2011, LB384, § 32.

Annotations

1. Tax Equalization and Review Commission

The plain language in subsection (2)(a) of this section referring to "the action complained of" refers to the particular Tax Equalization and Review Commission order being appealed and does not refer to a previous order of the commission which might be relevant to issues in the current appeal. Marshall v. Dawes Cty. Bd. of Equal., 265 Neb. 33, 654 N.W.2d 184 (2002).

Pursuant to subsection (1) of this section, because the Tax Equalization and Review Commission performs essentially the same functions that were performed by the State Board of Equalization and Assessment, the appellate court considers appeals from the commission's decisions under the same standards and principles that were applied to appeals from equalization proceedings before the board. Pursuant to subsection (5) of this section, appellate review of a Tax Equalization Review Commission decision shall be conducted for error on the record of the commission. County of Douglas v. Nebraska Tax Equal. & Rev. Comm., 262 Neb. 578, 635 N.W.2d 413 (2001).

Pursuant to subsection (2) of this section, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or section 77-5023, the commission is not a proper party to a proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Appellate review of the decisions of the Nebraska Tax Equalization and Review Commission is limited to error on the record. Lyman-Richey Corp. v. Cass Cty. Bd. of Equal., 258 Neb. 1003, 607 N.W.2d 806 (2000); Ash Grove Cement Co. v. Cass Cty. Bd. of Equal., 258 Neb. 990, 607 N.W.2d 810 (2000); Kawasaki Motors Corp. v. Lancaster Cty. Bd. of Equal., 7 Neb. App. 655, 584 N.W.2d 63 (1998).

Decisions of the Tax Equalization and Review Commission are reviewed for error appearing on the record. Washington Cty. Bd. of Equal. v. Rushmore Borglum, 11 Neb. App. 377, 650 N.W.2d 504 (2002).

2. Jurisdiction

Where the Tax Equalization and Review Commission lacked jurisdiction over a tax valuation appeal because of the appellant's failure to pay a filing fee, the Nebraska Court of Appeals also lacked jurisdiction over the appellant's further appeal filed pursuant to this section. Widtfeldt v. Tax Equal. & Rev. Comm., 15 Neb. App. 410, 728 N.W.2d 295 (2007).

Pursuant to subsection (2) of this section, failure to accomplish service of process upon the county board of equalization within 30 days after filing the petition for judicial review is necessary to confer subject matter jurisdiction upon the reviewing court. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

The Nebraska Court of Appeals did not have jurisdiction under subsection (1) of this section to hear county's appeal of claim brought pursuant to section 77-1504.01 because the claim was not a decision appealed to the Nebraska Tax Equalization and Review Commission and was not brought pursuant to section 77-5028. Boone Cty. Bd. of Equal. v. Nebraska Tax Equal. and Rev. Comm., 9 Neb. App. 298, 611 N.W.2d 119 (2000).

Under this section, service of summons within 30 days of the filing of a petition for review of the commission's decision is necessary to confer subject matter jurisdiction on the Court of Appeals. McLaughlin v. Jefferson Cty. Bd. of Equal., 5 Neb. App. 781, 567 N.W.2d 794 (1997).

3. Miscellaneous

Subsection (2)(a) of this section provides for service of only the state or a political subdivision. Cargill Meat Solutions v. Colfax Cty. Bd. of Equal., 281 Neb. 93, 798 N.W.2d 823 (2011).

Pursuant to subsection (2) of this section, the county board of equalization is a necessary party to a proceeding for judicial review of an order of the Nebraska Tax Equalization and Review Commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

Pursuant to subsection (5) of this section, when reviewing a judgment of the Tax Equalization and Review Commission for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

Pursuant to subsection (5) of this section, appellate review of a Tax Equalization and Review Commission decision shall be conducted for error on the record; the appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Krusemark v. Thurston Cty. Bd. of Equal., 10 Neb. App. 35, 624 N.W.2d 328 (2001).

77-5020. County assessor or deputy assessor; invalidation or suspension of certificate; appeal. The commission, subject to rules and regulations, shall have the power to invalidate or suspend the certificate issued pursuant to section 77-422 of any county assessor or deputy assessor who willfully fails or refuses to comply with any order of the commission. No certificate shall be invalidated or suspended except upon a hearing before the commission.

Any county assessor or deputy assessor whose certificate has been so invalidated or suspended may appeal the decision to the Court of Appeals in accordance with section 77-5019.

No action shall be brought under this section more than two years after the date of the act, last date of a series of actions complained of, or the last date the county assessor or deputy assessor could have acted to comply, whichever is later.

Source: Laws 1995, LB490, § 20; Laws 2004, LB973, § 62; Laws 2007, LB167, § 8.

77-5021. Rules and regulations. The commission may adopt and promulgate rules and regulations to carry out its constitutional or statutory purposes, powers, or authority. The commission may adopt and promulgate rules and regulations necessary to regulate persons and proceedings within the commission's jurisdiction and authority.

Source: Laws 1995, LB490, § 21; Laws 2003, LB291, § 10.

77-5022. Commission; annual meeting; powers and duties. The commission shall annually equalize the assessed value or special value of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property that is valued by the state. The commission shall have the power to recess from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference or telephone conference.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-505; Laws 1969, c. 653, § 1, p. 2569; Laws 1987, LB508, § 18; Laws 1992, LB1063, § 57; Laws 1992, Second Spec. Sess., LB1, § 55; R.S.1943, (1996), § 77-505; Laws 1997, LB397, § 40; Laws 1999, LB140, § 6; Laws 2003, LB291, § 12; Laws 2004, LB973, § 63; Laws 2006, LB808, § 43; Laws 2009, LB166, § 19; Laws 2011, LB384, § 33.

Annotations

Authority to equalize the assessments of property among counties has been reserved exclusively to the State Board of Equalization and Assessment. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993).

The State Board of Equalization and Assessment values and equalizes the property of centrally assessed taxpayers pursuant to this section. In reviewing the county abstracts pursuant to this section, the State Board of Equalization and Assessment deals only with the values of the taxable property of a county in the aggregate. AT&T Information Sys. v. State Bd. of Equal., 237 Neb. 591, 467 N.W.2d 55 (1991).

Under former law, state board met on first Monday in July. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954); County of Buffalo v. State Board of Equalization and Assessment, 158 Neb. 353, 63 N.W.2d 468 (1954); County of Howard v. State Board of Equalization and Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954); County of Douglas v. State Board of Equalization and Assessment, 158 Neb. 325, 63 N.W.2d 449 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

Where taxpayer sought a reduction of assessment based on alleged errors in method of computation and elements entering into value, the procedure under this section was not applicable. Mid-Continent Airlines, Inc. v. State Board of Equalization and Assessment, 154 Neb. 371, 48 N.W.2d 81 (1951).

Under former law State Board of Equalization and Assessment was required to hold regular meeting on first Monday in July. Antelope County v. State Board of Equalization and Assessment, 146 Neb. 661, 21 N.W.2d 416 (1946).

Under former law board of equalization was required to forward an abstract of assessment rolls to state board on or before July 10 of each year. Farmers Co-op. Creamery & Supply Company v. McDonald, 100 Neb. 33, 158 N.W. 369 (1916); Farmers Co-op. Creamery & Supply v. McDonald, 97 Neb. 510, 150 N.W. 640 (1915), overruling 97 Neb. 512, 150 N.W. 656 (1915).

77-5023. Commission; power to change value; acceptable range. (1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-506; Laws 1955, c. 289, § 4, p. 918; Laws 1957, c. 323, § 1, p. 1145; Laws 1957, c. 320, § 3, p. 1139; Laws 1979, LB187, § 193; Laws 1985, LB268, § 2; Laws 1987, LB508, § 19; Laws 1992, LB1063, § 58; Laws 1992, Second Spec. Sess., LB1, § 56; Laws 1995, LB137, § 1; R.S.1943, (1996), § 77-506; Laws 1997, LB397, § 41; Laws 2000, LB968, § 77; Laws 2001, LB170, § 23; Laws 2003, LB291, § 13; Laws 2004, LB973, § 64; Laws 2006, LB808, § 44; Laws 2006, LB968, § 15; Laws 2007, LB167, § 9; Laws 2009, LB166, § 20.

Annotations

1. Powers and duties

It is the primary duty of the State Board of Equalization and Assessment to establish uniformity between the various counties. Hanna v. State Board of Equalization & Assessment, 181 Neb. 725, 150 N.W.2d 878 (1967).

Basic powers and duties of State Board of Equalization and Assessment are set out in this section. Carpenter v. State Board of Equalization & Assessment, 178 Neb. 611, 134 N.W.2d 272 (1965).

State board has duty to equalize assessments on farm lands between counties. Laflin v. State Board of Equalization and Assessment, 156 Neb. 427, 56 N.W.2d 469 (1953).

State Board of Equalization is not a board of review with power to correct errors of the county boards of equalization or assessors. Scotts Bluff County v. State Board of Equalization & Assessment, 143 Neb. 837, 11 N.W.2d 453 (1943).

2. Modification of valuation

Although the State Board of Equalization and Assessment has the power to increase or decrease the actual valuation of a class or subclass of real or personal property of any county or tax district pursuant to this section, it may do so only to change the value of the taxable property of a county in the aggregate so that there will be equalization between counties and centrally assessed property considered in the aggregate. AT&T Information Sys. v. State Bd. of Equal., 237 Neb. 591, 467 N.W.2d 55 (1991).

Increase or decrease should be by percentage. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

Pursuant to subsection (1) of this section, the Tax Equalization and Review Commission lacked the authority to create a new market area in a county for the purpose of increasing the overall valuation of the agricultural range in that county so that it fell within the acceptable statutory range. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

Pursuant to subsection (2) of this section, the decision of the Tax Equalization and Review Commission to increase the value of all unimproved agricultural property in a county by 5 percent was proper, since the increase resulted in a median level valuation countywide of 77 percent, which is the midpoint of the acceptable range required by statute. Dodge County Bd. v. Nebraska Tax Equal. & Rev. Comm., 10 Neb. App. 927, 639 N.W.2d 683 (2002).

3. Miscellaneous

Under this section, locally assessed taxpayers do not have the right to request that the State Board of Equalization and Assessment equalize their individual property, as part of a class or subclass, with a class or subclass or centrally assessed property in other counties. John Day Co. v. Douglas Cty. Bd. of Equal., 243 Neb. 24, 497 N.W.2d 65 (1993); AT&T Information Sys. v. State Bd. of Equal., 237 Neb. 591, 467 N.W.2d 55 (1991).

State board is not required to have before it all of the abstracts of assessment of all counties before commencement of its meetings. County of Howard v. State Board of Equalization and Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

Pursuant to subsection (2) of section 77-5019, except for orders issued by the Nebraska Tax Equalization and Review Commission pursuant to section 77-1504.01 or this section, the commission is not a proper party to a proceeding for judicial review of an order of the commission. Widtfeldt v. Holt Cty. Bd. of Equal., 12 Neb. App. 499, 677 N.W.2d 521 (2004).

77-5024.01. Notice; contents. The commission shall give notice of the time and place of the first meeting held pursuant to sections 77-5022 to 77-5028 by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the commission during normal business hours. The agenda shall be continually revised to remain current. The commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided in section 77-5026. The commission shall publish in its notice a list of those counties certified under section 77-5027 as having assessments which may fail to satisfy the requirements of law. The notice shall also contain a statement advising that any petition brought by a county board of equalization pursuant to section 77-1504.01 to adjust the value of a class or subclass of real property will be heard between July 26 and August 10 at a date, time, and place as provided in the agenda maintained by the commission.

Source: Laws 2003, LB291, § 11; Laws 2005, LB261, § 9; Laws 2011, LB384, § 34.

77-5026. Commission; change of value; hearing; procedure. Pursuant to section 77-5023, if the commission finds that the level of value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A county assessor or other legal representative of the county may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-508; Laws 1969, c. 653, § 2, p. 2569; Laws 1987, LB508, § 21; Laws 1992, LB1063, § 60; Laws 1992, Second Spec. Sess., LB1, § 58; Laws 1993, LB734, § 44; Laws 1995, LB490, § 56; R.S.1943, (1996), § 77-508; Laws 1997, LB397, § 44; Laws 2001, LB170, § 25; Laws 2005, LB15, § 12; Laws 2007, LB167, § 10.

Annotations

Pursuant to this section, if the Tax Equalization and Review Commission determines that equitable assessment of property in the state cannot be made without adjusting the value of a class or subclass of property in a county which it deems overvalued or undervalued, the commission may hold a hearing during which legal representatives of the county may show cause as to why the adjustment should not be made. Bartlett v. Dawes Cty. Bd. of Equal., 259 Neb. 954, 613 N.W.2d 810 (2000).

Because of the statutory time limits placed upon the State Board of Equalization by sections 77-505, 77-509, and 77-1514, R.R.S.1943, the five-day notice provision of section 77-508, R.R.S.1943, is reasonable. Where a notice of hearing was sent out and amended the next day without changing the hearing date, the date of the first notice is used to determine if the notice requirement of this section was met. Box Butte County v. State Board of Equalization & Assessment, 206 Neb. 696, 295 N.W.2d 670 (1980).

This section does not require a formal and explicit finding by the board, prior to any hearing, that equalization could not be made without increasing or decreasing property values. Box Butte County v. State Board of Equalization & Assessment, 206 Neb. 696, 295 N.W.2d 670 (1980).

A notice issued by the State Board of Equalization and Assessment should specify the percentage of increase or decrease which the board intends to make in the county. County of Brown v. State Board of Equalization and Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Kimball v. State Board of Equalization and Assessment, 180 Neb. 482, 143 N.W.2d 893 (1966); County of Blaine v. State Board of Equalization and Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

Reference is made to valuation of property in proceedings of state board. Fromkin v. State, 158 Neb. 377, 63 N.W.2d 332 (1954).

Notice sent to counties was sufficient. County of Buffalo v. State Board of Equalization and Assessment, 158 Neb. 353, 63 N.W.2d 468 (1954); County of Howard v. State Board of Equalization and Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954); County of Douglas v. State Board of Equalization and Assessment, 158 Neb. 325, 63 N.W.2d 449 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

Notice to county is a condition precedent to a valid order. Laflin v. State Board of Equalization and Assessment, 156 Neb. 427, 56 N.W.2d 469 (1953).

Without giving of statutory notice, State Board of Equalization and Assessment has no jurisdiction to order decrease of assessed valuation of a class or classes of property in all counties of the state. Antelope County v. State Board of Equalization & Assessment, 146 Neb. 661, 21 N.W.2d 416 (1946).

Increase in assessment valuation without notice or sufficient opportunity for hearing is violative of this section and amounts to confiscation of property without due process of law. American Tel. & Tel. Co. v. State Board of Equalization and Assessment, 119 Neb. 142, 227 N.W. 455 (1929); Northwestern Bell Tel. Co. v. State Board of Equalization and Assessment, 119 Neb. 138, 227 N.W. 452 (1929); Lincoln Tel. & Tel. Co. v. State Board of Equalization and Assessment, 119 Neb. 137, 227 N.W. 454 (1929); Stanton County v. State Board of Equalization and Assessment, 119 Neb. 136, 227 N.W. 454 (1929).

77-5027. Commission; change valuation; Property Tax Administrator; duties. (1) The commission shall, pursuant to section 77-5026, raise or lower the valuation of any class or subclass of real property in a county when it is necessary to achieve equalization.

(2) On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the commission and to each county assessor his or her annual reports and opinions. Beginning January 1, 2014, for any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the reports or opinions shall be prepared and delivered on or before fifteen days following such final filing due date.

(3) The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.

(4) In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by the commission.

(5) The Property Tax Administrator shall employ the methods specified in section 77-112, the comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and an analysis of the assessment practices employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may use sales of comparable real property in market areas similar to the county or area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant information in providing the annual reports and opinions to the commission.

Source: Laws 1969, c. 628, § 1, p. 2528; Laws 1987, LB508, § 22; Laws 1988, LB1207, § 1; Laws 1989, LB361, § 6; Laws 1995, LB490, § 57; Laws 1997, LB342, § 2; R.S.1943, (1996), § 77-508.01; Laws 1997, LB397, § 45; Laws 2001, LB170, § 26; Laws 2004, LB973, § 65; Laws 2005, LB263, § 15; Laws 2011, LB384, § 35.

Annotations

Pursuant to this section, when ordering an adjustment for purposes of equalization, the Tax Equalization and Review Commission is authorized to adjust only by class or subclass. Bartlett v. Dawes Cty. Bd. of Equal., 259 Neb. 954, 613 N.W.2d 810 (2000).

It is only when the appraisal made by the Tax Commissioner, under proper statutory provisions, fails to reflect current values to use in an assessment/sales ratio that this section requires the use of qualified appraisers. Banner County v. State Board of Equalization & Assessment, 206 Neb. 715, 295 N.W.2d 682 (1980).

The requirement of section 77-1315, R.R.S.1943, for notice of increase in valuation is not applicable hereunder. Hansen v. County of Lincoln, 188 Neb. 461, 197 N.W.2d 651 (1972).

77-5028. Commission; enter order. After a hearing conducted pursuant to section 77-5026, the commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to each parcel of real property in the class or subclass affected. The specified changes shall be made by the county assessor to each parcel of real property in the county so affected.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-509; Laws 1959, c. 359, § 1, p. 1275; Laws 1969, c. 656, § 1, p. 2573; Laws 1969, c. 653, § 3, p. 2570; Laws 1979, LB159, § 1; Laws 1987, LB508, § 23; Laws 1991, LB732, § 138; Laws 1992, LB1063, § 61; Laws 1992, Second Spec. Sess., LB1, § 59; Laws 1993, LB734, § 45; Laws 1995, LB452, § 14; Laws 1995, LB490, § 58; Laws 1996, LB1040, § 2; R.S.1943, (1996), § 77-509; Laws 1997, LB397, § 46; Laws 2001, LB170, § 27; Laws 2005, LB15, § 13; Laws 2005, LB261, § 10; Laws 2007, LB167, § 11.

Annotations

A notice issued by the State Board of Equalization and Assessment should specify the percentage of increase or decrease which the board intends to make in the county. County of Brown v. State Board of Equalization and Assessment, 180 Neb. 487, 143 N.W.2d 896 (1966); County of Kimball v. State Board of Equalization and Assessment, 180 Neb. 482, 143 N.W.2d 893 (1966); County of Blaine v. State Board of Equalization and Assessment, 180 Neb. 471, 143 N.W.2d 880 (1966).

Hearing held by state board was sufficient. County of Howard v. State Board of Equalization and Assessment, 158 Neb. 339, 63 N.W.2d 441 (1954); County of Douglas v. State Board of Equalization and Assessment, 158 Neb. 325, 63 N.W.2d 449 (1954); County of Grant v. State Board of Equalization and Assessment, 158 Neb. 310, 63 N.W.2d 459 (1954).

The State Board of Equalization, in the equalization of farm land as between counties, is not required to have a formal hearing. Boyd County v. State Board of Equalization & Assessment, 138 Neb. 896, 296 N.W. 152 (1941).

Burden of proof is on the railroad seeking to set aside assessment of property by Board of Equalization. Chicago, R. I. & P. Ry. Co. v. State Board of Equalization & Assessment, 112 Neb. 727, 200 N.W. 996 (1924).

The Nebraska Court of Appeals did not have jurisdiction under subsection (1) of section 77-5019 to hear county's appeal of a claim brought pursuant to section 77-1504.01 because the claim was not a decision appealed to the Nebraska Tax Equalization and Review Commission and was not brought pursuant to this section. Boone Cty. Bd. of Equal. v. Nebraska Tax Equal. and Rev. Comm., 9 Neb. App. 298, 611 N.W.2d 119 (2000).

77-5029. County assessor; recertify county abstract; Property Tax Administrator; duties. On or before June 5 of each year, the county assessor of any county adjusted by an order of the commission shall recertify the county abstract of assessment to the Property Tax Administrator. On or before August 1 of each year, the Property Tax Administrator shall certify to the commission that any order issued pursuant to sections 77-5023 to 77-5028 was or was not implemented by the county assessor as of June 1 of each year pursuant to section 77-1315. The Property Tax Administrator shall audit the records of the county assessor to determine whether the orders were implemented.

Source: Laws 1992, LB1063, § 62; Laws 1992, Second Spec. Sess., LB1, § 60; Laws 1993, LB734, § 46; Laws 1995, LB452, § 15; R.S.1943, (1996), § 77-509.01; Laws 1997, LB397, § 47; Laws 2006, LB808, § 45.

77-5030. Property Tax Administrator; certify distributed taxable value. On or before August 10 of each year, the Property Tax Administrator shall certify the distributed taxable value of the property valued by the state, as equalized by the commission, to each county assessor.

Source: Laws 1995, LB452, § 16; Laws 1995, LB490, § 59; R.S.1943, (1996), § 77-509.02; Laws 1997, LB397, § 48; Laws 1998, LB306, § 41.

77-5031. Tax Equalization and Review Commission Cash Fund; created; use; investment. The Tax Equalization and Review Commission Cash Fund is hereby created. All money received by the commission for appeals and services performed and billed to other agencies or persons shall be credited to the fund. The commission shall only bill for the actual amount expended in performing services. The fund shall be used to

carry out the provisions of the Tax Equalization and Review Commission Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Expenditures from the Tax Equalization and Review Commission Cash Fund shall be made only when such funds are available. Any unexpended balance in the fund at the end of each fiscal year shall not lapse to the General Fund. Any money in the Tax Equalization and Review Commission Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB270, § 101; Laws 2009, First Spec. Sess., LB3, § 57.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 52
BEGINNING FARMER TAX CREDIT ACT

77-5201. Act, how cited.
77-5202. Legislative findings.
77-5203. Terms, defined.
77-5204. Beginning Farmer Board; created; duties.
77-5205. Board; members; vacancies; removal.
77-5206. Board; officers; expenses.
77-5207. Board; quorum.
77-5208. Board; meetings; application; approval.
77-5209. Beginning farmer or livestock producer; qualifications.
77-5209.01. Tax credit for financial management program participation.
77-5209.02. Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption.
77-5210. Board; annual report.
77-5211. Owner of agricultural assets; tax credit; when.
77-5212. Rental agreement; requirements; appeal.
77-5213. Tax credit; amount; agreement; review.
77-5214. Board; support and assistance.
77-5215. Changes; when operative.

77-5201. Act, how cited. Sections 77-5201 to 77-5215 shall be known and may be cited as the Beginning Farmer Tax Credit Act.

Source: Laws 1999, LB630, § 2; Laws 2006, LB990, § 8; Laws 2008, LB1027, § 2.

77-5202. Legislative findings. (1) The Legislature hereby finds and declares that:
(a) Current farm economic conditions in the State of Nebraska have resulted in unemployment, outmigration of people, loss of agricultural jobs, and difficulty in attracting and retaining farm operations; and
(b) Major revisions in Nebraska's tax structure are necessary to accomplish economic revitalization of rural Nebraska and to be competitive with other states involved in economic revitalization and development of agriculture.
(2) It is the policy of this state to make revisions in Nebraska's tax structure in order to encourage persons to seek careers in the farming industry, retain existing and established farm operations, promote the creation and retention of new farm jobs in Nebraska, and attract and retain investment capital in rural Nebraska.

Source: Laws 1999, LB630, § 3.

77-5203. Terms, defined. For purposes of the Beginning Farmer Tax Credit Act:
(1) Agricultural assets means agricultural land, livestock, farming, or livestock production facilities or buildings and machinery used for farming or livestock production located in Nebraska;
(2) Board means the Beginning Farmer Board created by section 77-5204;
(3) Farm means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;
(4) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing livestock, fruits, and vegetables;
(5) Farming or livestock production means the active use, management, and operation of real and personal property for the production of a farm product;
(6) Financial management program means a program for beginning farmers or livestock producers which includes, but is not limited to, assistance in the creation and proper use of record-keeping systems, periodic

private consultations with licensed financial management personnel, year-end monthly cash flow analysis, and detailed enterprise analysis;
(7) Owner of agricultural assets means:
(a) An individual or a trustee having an ownership interest in an agricultural asset located within the State of Nebraska who meets any qualifications determined by the board;
(b) A spouse, child, or sibling who acquires an ownership interest in agricultural assets as a joint tenant, heir, or devisee of an individual or trustee who would qualify as an owner of agricultural assets under subdivision (7)(a) of this section; or
(c) A partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska which meets any additional qualifications determined by the board;
(8) Qualified beginning farmer or livestock producer means an individual who is a resident individual as defined in section 77-2714.01, who has entered farming or livestock production or is seeking entry into farming or livestock production, who intends to farm or raise crops or livestock on land located within the state borders of Nebraska, and who meets the eligibility guidelines established in section77-5209 and such other qualifications as determined by the board; and
(9) Share-rent agreement means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined portion of the production of farm products from the rented agricultural assets.

Source: Laws 1999, LB630, § 4; Laws 2000, LB1223, § 3; Laws 2006, LB990, § 9; Laws 2008, LB1027, § 3.

77-5204. Beginning Farmer Board; created; duties. For the purpose of developing and directing programs to provide increased and enhanced opportunities for beginning farmers and livestock producers, the Beginning Farmer Board is created. For administrative and budgetary purposes only, the board shall be housed within the Department of Agriculture. The board shall be vested with the following duties and responsibilities:
(1) To approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, for eligibility to claim tax credits authorized by section 77-5209.01, and for eligibility to claim an exemption of taxable tangible personal property tax as provided by section 77-5209.02;
(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213;
(3) To advocate joint ventures between beginning farmers or livestock producers and existing private and public credit and banking licensed institutions, as well as to advocate joint ventures with owners of agricultural assets desiring to assist beginning farmers and livestock producers seeking entry into farming or livestock production;
(4) To provide necessary and reasonable assistance and support to beginning farmers and livestock producers for qualification and participation in financial management programs approved by the board;
(5) To advocate appropriate changes in policies and programs of other public and private institutions or agencies which will directly benefit beginning farmers and livestock producers and may include changes regarding financing, taxation, and any other existing policies which prohibit or impede individuals from entering into farming or livestock production;
(6) To provide adequate explanations of facts and aspects of available programs offered or recommended by the board intended for beginning farmers and livestock producers;
(7) To assist and educate beginning farmers and livestock producers by acting as a liaison between beginning farmers or livestock producers and the Nebraska Investment Finance Authority;
(8) To encourage licensed financial institutions and individuals to use alternative amortization schedules for loans and land contracts granted to beginning farmers and livestock producers;
(9) To refer beginning farmers and livestock producers to agencies and organizations which may provide additional pertinent information and assistance;
(10) To provide any other assistance and support the board deems necessary and appropriate in order for entry into farming or livestock production;
(11) To adopt and promulgate rules and regulations necessary to carry out the purposes of the Beginning Farmer Tax Credit Act, including criteria required for tax credit eligibility and financial management program certification and guidelines which constitute a viably sized farm that is necessary to adequately support a beginning farmer or livestock producer. Such guidelines shall vary and take into account the region

of the state, number of acres, land quality and type, type of operation, type of crops or livestock raised, and other factors of farming or livestock production; and

(12) To keep minutes of the board's meetings and other books and records which will adequately reflect actions and decisions of the board and to provide an annual report to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically.

Source: Laws 1999, LB630, § 5; Laws 2000, LB1223, § 4; Laws 2008, LB1027, § 5; Laws 2012, LB782, § 140.

77-5205. Board; members; vacancies; removal. The board shall consist of the following members:

(1) The Director of Agriculture or his or her designee;

(2) The Tax Commissioner or his or her designee;

(3) One individual representing lenders of agricultural credit;

(4) One individual of the academic community with extensive knowledge and insight in the analysis of agricultural economic issues; and

(5) Three individuals, one from each congressional district, who are currently engaged in farming or livestock production and are representative of a variety of farming or livestock production interests based on size of farm, type of farm operation, net worth of farm operation, and geographic location.

All members of the board shall be resident individuals as defined in section 77-2714.01. Members of the board listed in subdivisions (3) through (5) of this section shall be appointed by the Governor with the approval of a majority of the Legislature. All appointments shall be for terms of four years.

Vacancies in the appointed membership of the board shall be filled for the unexpired term by appointment by the Governor. Members of the board shall serve the full term and until a successor has been appointed by the Governor and approved by the Legislature. Any member is eligible for reappointment. Any member may be removed from the board by the Governor or by an affirmative vote by any four members of the board for incompetence, neglect of duty, or malfeasance.

Source: Laws 1999, LB630, § 6.

77-5206. Board; officers; expenses. Once every two years, the members of the board shall elect a chairperson and a vice-chairperson. A member of the board may be reelected to the position of chairperson or vice-chairperson upon the discretion of the board. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1999, LB630, § 7.

77-5207. Board; quorum. Four of the members of the board shall constitute a quorum for the transaction of official business. The affirmative vote of at least four members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall constitute an impairment of a quorum to exercise any and all rights and perform all duties of the board.

Source: Laws 1999, LB630, § 8.

77-5208. Board; meetings; application; approval; deadline. The board shall meet at least twice during the year. The board shall review pending applications in order to approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, to approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213, and to approve and certify qualified beginning farmers and livestock producers as eligible for the tax credit authorized by section 77-5209.01 and for qualification to claim an exemption of taxable tangible personal property as provided by section 77-5209.02. No new applications for any such programs, tax credits, or exemptions shall be approved or certified by the board after December 31, 2019. Any action taken by the board regarding approval and certification of program eligibility, granting of tax credits, or termination of rental agreements shall require the affirmative vote of at least four members of the board.

Source: Laws 1999, LB630, § 9; Laws 2006, LB990, § 10; Laws 2008, LB1027, § 6; Laws 2015, LB538, § 12.

Effective Date: August 30, 2015

77-5209. Beginning farmer or livestock producer; qualifications. (1) The board shall determine who is qualified as a beginning farmer or livestock producer based on the qualifications found in this section. A qualified beginning farmer or livestock producer shall be an individual who: (a) Has a net worth of not more

than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value; (b) provides the majority of the day-to-day physical labor and management of his or her farming or livestock production operations; (c) has, by the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; (d) demonstrates to the board a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; (e) demonstrates to the board a need for assistance; (f) participates in a financial management program approved by the board; (g) submits a nutrient management plan and a soil conservation plan to the board on any applicable agricultural assets purchased or rented from an owner of agricultural assets; and (h) has such other qualifications as specified by the board. The qualified beginning farmer or livestock producer net worth thresholds in subdivision (a) of this subsection shall be adjusted annually beginning October 1, 2009, and each October 1 thereafter, by taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods divided by the Producer Price Index for 2008 and multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of twenty-five thousand dollars, the amount shall be rounded to the next lowest twenty-five thousand dollars.

(2) A qualified beginning farmer or livestock producer who has participated in a board approved and certified three-year rental agreement with an owner of agricultural assets shall not be eligible to file a subsequent application with the board but may refer to the board for additional support and participate in programs, including educational and financial programs and seminars, established or recommended by the board that are applicable to the continued success of such farmer or livestock producer.

Source: Laws 1999, LB630, § 10; Laws 2000, LB1223, § 5; Laws 2006, LB990, § 11; Laws 2008, LB1027, § 7; Laws 2009, LB447, § 1.

77-5209.01. Tax credit for financial management program participation. A qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement shall be allowed a one-time credit to be applied against the state income tax liability of such individual for the cost of participation in the financial management program required for eligibility under section 77-5209. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five hundred dollars.

Source: Laws 2006, LB990, § 12.

77-5209.02. Personal property tax exemption; authorized; application; form; county assessor; duties; protest; hearing; appeal; continuation of exemption. (1) Agricultural and horticultural machinery and equipment of a qualified beginning farmer or livestock producer utilized in the beginning farmer's or livestock producer's operation may be exempt from tangible personal property tax to the extent provided in this section.

(2) A qualified beginning farmer or livestock producer seeking an exemption of taxable agricultural and horticultural machinery and equipment from tangible personal property tax under this section shall apply for an exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is to begin. Application shall be on forms prescribed by the Tax Commissioner. For the initial year of application, an applicant shall provide the original documentation of certification provided by the board pursuant to section 77-5208 with the application. Failure to provide the required documentation shall result in a denial of the exemption for the following year but shall be considered as an application for the year thereafter.

(3) The county assessor shall approve or deny the application for exemption. On or before February 1, the county assessor shall issue notice of approval or denial to the applicant. If the application is approved, the county assessor shall exempt no more than one hundred thousand dollars of taxable value of agricultural or horticultural machinery and equipment for each year in addition to, and applied after, any amount exempted under subsection (1) of section 77-1238. If the application is denied by the county assessor, a written protest of the denial of the application may be filed within thirty days after the mailing of the denial to the county board of equalization.

(4) All provisions of section 77-1502 except dates for filing of a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed

pursuant to this section. The county board of equalization shall decide any protest filed pursuant to this section within thirty days after the filing of the protest. The county clerk shall mail a copy of any decision made by the county board of equalization on a protest filed pursuant to this section to the applicant within seven days after the board's decision. Any decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission, in accordance with section 77-5013, within thirty days after the date of the decision. Any applicant may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine whether the agricultural and horticultural machinery and equipment will receive the exemption for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in this section.

(5) A properly granted exemption for taxable agricultural and horticultural machinery and equipment under this section shall continue for a period of three years if each year a Nebraska personal property tax return and supporting schedules and depreciation worksheet, showing a list and value of all taxable tangible personal property, are provided and filed by the beginning farmer or livestock producer with the county assessor when due. The value of taxable agricultural and horticultural machinery and equipment exempted pursuant to this section in any year shall not exceed one hundred thousand dollars. The exemption allowed under this section shall continue irrespective of whether the person claiming the exemption no longer meets the qualification of a beginning farmer or livestock producer pursuant to section 77-5209 during the exemption period unless the beginning farmer or livestock producer discontinues farming or livestock production.

(6) Any person whose agricultural and horticultural machinery and equipment has been exempted from tangible personal property tax pursuant to this section shall be permanently disqualified from any further exemption of agricultural and horticultural machinery and equipment from tangible personal property tax as a qualified beginning farmer or livestock producer except as allowed in subsection (1) of section 77-1238.

Source: Laws 2008, LB1027, § 4; Laws 2015, LB259, § 10.

Operative Date: January 1, 2016

77-5210. Board; annual report. The board shall submit an annual report of the activities and actions of the board for the preceding fiscal year to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by request to the chairperson of the board. Each report shall include the following information:

(1) A complete operating and financial statement for the board for the prior fiscal year;

(2) The number of qualified beginning farmers and livestock producers receiving assistance from the board;

(3) The number of owners of agricultural assets claiming tax credits and the monetary amount of credits granted by the board; and

(4) Any other relevant information which the board deems necessary to report.

No information furnished to the board shall be disclosed in the report in such a way as to reveal information from a tax return of any person.

Source: Laws 1999, LB630, § 11; Laws 2000, LB1223, § 6; Laws 2012, LB782, § 141.

77-5211. Owner of agricultural assets; tax credit; when. (1) Except as otherwise disallowed under subsection (5) of this section, an owner of agricultural assets shall be allowed a credit to be applied against the state income tax liability of such owner for agricultural assets rented on a rental agreement basis, including cash rent of agricultural assets or cash equivalent of a share-rent rental, to qualified beginning farmers or livestock producers. Such asset shall be rented at prevailing community rates as determined by the board.

(2) The credit allowed shall be for renting agricultural assets used for farming or livestock production. Such credit shall be granted by the Department of Revenue only after approval and certification by the board and a written three-year rental agreement for such assets is entered into between an owner of agricultural assets and a qualified beginning farmer or livestock producer. An owner of agricultural assets or qualified beginning farmer or livestock producer may terminate such agreement for reasonable cause upon approval by the board. If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the board, the tax credit shall not be retroactively disallowed. If an agreement is terminated with fault on the

part of the owner of agricultural assets as determined by the board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska.
(3) A credit may be granted to an owner of agricultural assets for renting agricultural assets, including cash rent of agricultural assets or cash equivalent of a share-rent agreement, to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets shall not be eligible for further credits under the Beginning Farmer Tax Credit Act unless the rental agreement is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets. If the board finds that such a termination was not the fault of the owner of agricultural assets, it may approve the owner for credits arising from a subsequent qualifying rental agreement with a different qualified beginning farmer or livestock producer.
(4) Any credit allowable to a partnership, a corporation, a limited liability company, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed.
(5) The credit allowed under this section shall not be allowed to an owner of agricultural assets for a rental agreement with a beginning farmer or livestock producer who is a relative, as defined in section 36-702, of the owner of agricultural assets or of a partner, member, shareholder, or trustee of the owner of agricultural assets unless the rental agreement is included in a written succession plan. Such succession plan shall be in the form of a written contract or other instrument legally binding the parties to a process and timetable for the transfer of agricultural assets from the owner of agricultural assets to the beginning farmer or livestock producer. The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except that when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. The owner of agricultural assets shall be allowed the credit provided for qualified rental agreements under this section if the board certifies the plan as providing a reasonable manner and probability of successful transfer.

Source: Laws 1999, LB630, § 12; Laws 2000, LB1223, § 7; Laws 2006, LB990, § 13; Laws 2008, LB1027, § 8; Laws 2009, LB165, § 15.

77-5212. Rental agreement; requirements; appeal. In evaluating a rental agreement between an owner of agricultural assets and a qualified beginning farmer or livestock producer, the board shall not approve and certify credit for an owner of agricultural assets who (1) has, with fault, terminated a prior board approved and certified rental agreement with a qualified beginning farmer or livestock producer or (2) is proposing a rental agreement of agricultural assets which, if rented to a qualified beginning farmer or livestock producer, would cause the lessee to be responsible for managing or maintaining a farm which, based on the discretion of the board, is of greater scope and scale than necessary for a viably sized farm as established by the guidelines implemented by the board in order to adequately support a beginning farmer or livestock producer. Any person aggrieved by a decision of the board may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1999, LB630, § 13; Laws 2006, LB990, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

77-5213. Tax credit; amount; agreement; review. (1) The tax credit approved and certified by the board under section 77-5211for an owner of agricultural assets in the first, second, or third year of a qualifying rental agreement shall be equal to (a) ten percent of the gross rental income stated in a rental agreement that is a cash rent agreement or (b) fifteen percent of the cash equivalent of the gross rental income in a rental agreement that is a share-rent agreement. Tax credits shall only be approved and certified for rental agreements that are approved and certified by the board under the Beginning Farmer Tax Credit Act.
(2) To qualify for the greater rate of credit allowed under subdivision (1)(b) of this section, a share-rent agreement shall provide for sharing of production expenses or risk of loss, or both, between the agricultural asset owner and the qualified beginning farmer or livestock producer. The board may adopt and promulgate rules and regulations, consistent with the policy objectives of the act, to further define the standards that share-rent agreements shall meet for approval and certification of the tax credit under the act.
(3) The board shall review each existing three-year rental agreement between a beginning farmer or livestock producer and an owner of agricultural assets on a semiannual basis and shall either certify or terminate

program eligibility for beginning farmers or livestock producers or tax credits granted to owners of agricultural assets on an annual basis.

Source: Laws 1999, LB630, § 14; Laws 2006, LB990, § 15.

77-5214. Board; support and assistance. In order to carry out the provisions of the Beginning Farmer Tax Credit Act, the Department of Agriculture shall provide any and all of the necessary support and assistance to the board.

Source: Laws 1999, LB630, § 15; Laws 2012, LB782, § 142.

77-5215. Changes; when operative. (1) The changes made in sections 77-5201, 77-5203, 77-5208, 77-5209, and 77-5211 to 77-5213 by Laws 2006, LB990, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2007, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2007, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

(2) The changes made in sections 77-5203, 77-5209, and 77-5211 by Laws 2008, LB1027, shall become operative for all credits earned in tax years beginning or deemed to begin on and after January 1, 2008, under the Internal Revenue Code of 1986, as amended. For all credits earned in tax years beginning or deemed to begin prior to January 1, 2008, under the code, the provisions of the Beginning Farmer Tax Credit Act as they existed prior to such date shall apply.

Source: Laws 2006, LB990, § 16; Laws 2008, LB1027, § 9.

ARTICLE 57
NEBRASKA ADVANTAGE ACT.

77-5701. Act, how cited.
77-5702. Legislative findings.
77-5703. Definitions, where found.
77-5704. Applicability of other definitions.
77-5705. Base year, defined.
77-5706. Base-year employee, defined.
77-5707. Compensation, defined.
77-5707.01. County average weekly wage, defined.
77-5707.02. Data center, defined.
77-5708. Entitlement period, defined.
77-5709. Equivalent employees, defined.
77-5710. Investment, defined.
77-5711. Motor vehicle, defined.
77-5712. Nebraska average weekly wage, defined.
77-5713. Nebraska employee, defined.
77-5714. Number of new employees, defined.
77-5715. Qualified business, defined.
77-5716. Qualified employee leasing company, defined.
77-5717. Qualified property, defined.
77-5718. Related persons, defined.
77-5719. Taxpayer, defined.
77-5719.01. Tier 6 weekly required compensation, defined.
77-5719.02. Wages, defined.
77-5720. Year, defined.
77-5721. Year of application, defined.
77-5722. Qualified employee leasing company; employees; duty.
77-5722.01. Employees; verification of status required; exclusion.
77-5723. Incentives; application; contents; fee; approval; when; agreements; contents; modification.
77-5724. Incentives; credits or benefits; limitation.
77-5725. Tiers; requirements; incentives; enumerated.
77-5726. Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.
77-5727. Recapture or disallowance of incentives.
77-5728. Incentives; transfer; when; effect; disclosure of information.
77-5729. Refunds; interest not allowable.
77-5730. Application; valid; when.
77-5731. Reports; joint hearing.
77-5733. Rules and regulations.
77-5734. Department of Revenue; estimate of sales and use tax refunds; duties.
77-5735. Changes to sections; when effective; applicability.

77-5701. Act, how cited. Sections 77-5701 to 77-5735 shall be known and may be cited as the Nebraska Advantage Act.

Source: Laws 2005, LB312, § 23; Laws 2008, LB895, § 6; Laws 2009, LB403, § 10; Laws 2012, LB1118, § 1.

77-5702. Legislative findings. The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure in order to (1) encourage new businesses to relocate to Nebraska, (2) retain existing businesses and aid in their expansion, (3) promote the creation and retention of new, quality jobs in Nebraska, specifically jobs related to research and development, manufacturing, and large data centers, and (4) attract and retain investment capital in the State of Nebraska.

Source: Laws 2005, LB312, § 24; Laws 2014, LB836, § 3.

77-5703. Definitions, where found. For purposes of the Nebraska Advantage Act, the definitions found in sections 77-5704 to 77-5721 shall be used.

Source: Laws 2005, LB312, § 25; Laws 2008, LB895, § 7; Laws 2012, LB1118, § 2.

77-5704. Applicability of other definitions. Any term shall have the same meaning as used in Chapter 77, article 27.

Source: Laws 2005, LB312, § 26.

77-5705. Base year, defined. Except for a tier 5 project that is sequential to a tier 2 large data center project, base year means the year immediately preceding the year of application. For a tier 5 project that is sequential to a tier 2 large data center project, the base year means the last year of the tier 2 large data center project entitlement period relating to direct sales tax refunds.

Source: Laws 2005, LB312, § 27; Laws 2012, LB1118, § 4.

77-5706. Base-year employee, defined. Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project.

Source: Laws 2005, LB312, § 28.

77-5707. Compensation, defined. Compensation means the wages and other payments subject to the federal medicare tax.

Source: Laws 2005, LB312, § 29; Laws 2010, LB918, § 1.

77-5707.01. County average weekly wage, defined. County average weekly wage for any year means the most recent average weekly wage paid by all employers in the county as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2008, LB895, § 8; Laws 2013, LB34, § 1.

77-5707.02. Data center, defined. 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, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing. A data center also includes a facility described in this section for the co-location of computers.

Source: Laws 2012, LB1118, § 3.

77-5708. Entitlement period, defined. Entitlement period, for a tier 1 or tier 3 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application or the sixth year after the year the required increases were met or exceeded, whichever is sooner. Entitlement period, for a tier 2, tier 4, or tier 5 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded. Entitlement period, for a tier 6 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year after the year the required increases were met or exceeded.

Source: Laws 2005, LB312, § 30; Laws 2008, LB895, § 9.

77-5709. Equivalent employees, defined. Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year. A salaried employee who receives a predetermined amount of compensation each pay period on a weekly or less frequent basis is deemed to have been paid for forty hours per week during the pay period.

Source: Laws 2005, LB312, § 31; Laws 2013, LB34, § 2.

77-5710. Investment, defined. Investment means the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

Source: Laws 2005, LB312, § 32.

77-5711. Motor vehicle, defined. Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in the Motor Vehicle Registration Act and subject to registration for operation on the highways.

Source: Laws 2005, LB312, § 33.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-5712. Nebraska average weekly wage, defined. Nebraska average weekly wage for any year means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2005, LB312, § 34; Laws 2008, LB895, § 10; Laws 2013, LB34, § 3.

77-5713. Nebraska employee, defined. Nebraska employee means an individual who is either a resident or partial-year resident of Nebraska.

Source: Laws 2005, LB312, § 35.

77-5714. Number of new employees, defined. (1) Number of new employees, for a tier 1, tier 2, tier 3, or tier 4 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid wages at a rate equal to at least sixty percent of the Nebraska average weekly wage for the year of application.

(2) Number of new employees, for a tier 6 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid at a rate equal to or greater than the tier 6 weekly required compensation for the year of application.

(3) Teleworkers working for wages or salaries in Nebraska from their residences for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

(4) Employees who work at a military installation in Nebraska for a taxpayer on tasks interdependent with the work performed at the project shall be considered to be employed at the project.

Source: Laws 2005, LB312, § 36; Laws 2008, LB895, § 11; Laws 2009, LB164, § 3.

77-5715. Qualified business, defined. (1) For a tier 2, tier 3, tier 4, or tier 5 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, call center, or telemarketing;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;
(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;
(f) The sale of tangible personal property if the taxpayer derives at least seventy-five percent or more of the sales or revenue attributable to such activities relating to the project from sales to consumers who are not related persons and are located outside the state;
(g) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government, including sales of such services, systems, or products delivered by providing the customer with software or access to software over the Internet or by other electronic means, regardless of whether the software or data accessed by customers is stored on a computer owned by the applicant, the customer, or a third party and regardless of whether the computer storing the software or data is located at the project;
(h) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet;
(i) The research, development, and maintenance of a data center;
(j) The production of electricity by using one or more sources of renewable energy to produce electricity for sale. For purposes of this subdivision, sources of renewable energy includes, but is not limited to, wind, solar, geothermal, hydroelectric, biomass, and transmutation of elements; or
(k) Any combination of the activities listed in this subsection.
(2) For a tier 1 project, qualified business means any business engaged in:
(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;
(b) The assembly, fabrication, manufacture, or processing of tangible personal property;
(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government, including sales of such services, systems, or products delivered by providing the customer with software or access to software over the Internet or by other electronic means, regardless of whether the software or data accessed by customers is stored on a computer owned by the applicant, the customer, or a third party and regardless of whether the computer storing the software or data is located at the project; or
(d) Any combination of activities listed in this subsection.
(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.
(4) Except for business activity described in subdivision (1)(f) of this section, qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of (a) food prepared for immediate consumption or (b) tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Source: Laws 2005, LB312, § 37; Laws 2007, LB223, § 29; Laws 2008, LB895, § 12; Laws 2009, LB164, § 4; Laws 2010, LB918, § 2; Laws 2012, LB1118, § 5; Laws 2013, LB104, § 3.

77-5716. Qualified employee leasing company, defined. Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee.

Source: Laws 2005, LB312, § 38.

77-5717. Qualified property, defined. Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project. Qualified property does not include (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (2) property that is rented by the taxpayer qualifying under the Nebraska Advantage Act to another person. Qualified property of the taxpayer located at the residence of a teleworker working in Nebraska from his or her residence on tasks interdependent with the work performed at the project shall be deemed located and used at the project.

Source: Laws 2005, LB312, § 39.

77-5718. Related persons, defined. Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB312, § 40.

77-5719. Taxpayer, defined. Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Source: Laws 2005, LB312, § 41; Laws 2006, LB1003, § 12; Laws 2007, LB368, § 139; Laws 2010, LB918, § 3; Laws 2013, LB34, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5719.01. Tier 6 weekly required compensation, defined. Tier 6 weekly required compensation means two hundred percent of the county average weekly wage for the county in which the project is located or one hundred fifty percent of the state average weekly wage, whichever is higher. If the project is located in more than one county, the higher county average weekly wage shall be used to determine the tier 6 weekly required compensation.

Source: Laws 2008, LB895, § 13.

77-5719.02. Wages, defined. Wages means compensation.

Source: Laws 2008, LB895, § 14.

77-5720. Year, defined. Year means calendar year.

Source: Laws 2005, LB312, § 42; Laws 2013, LB34, § 5.

77-5721. Year of application, defined. Year of application means the year that a completed application is filed under the Nebraska Advantage Act.

Source: Laws 2005, LB312, § 43.

77-5722. Qualified employee leasing company; employees; duty. An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the Nebraska Advantage Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

Source: Laws 2005, LB312, § 44.

77-5722.01. Employees; verification of status required; exclusion. (1) The Tax Commissioner shall not approve or grant to any person any tax incentive under the Nebraska Advantage Act unless the taxpayer provides evidence satisfactory to the Tax Commissioner that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive under the act, the Tax Commissioner shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.
(3) This section does not apply to any application filed under the Nebraska Advantage Act prior to October 1, 2009.

Source: Laws 2009, LB403, § 11.

77-5723. Incentives; application; contents; fee; approval; when; agreements; contents; modification.
(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.
(2) The application shall contain:
(a) A written statement describing the plan of employment and investment for a qualified business in this state;
(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;
(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;
(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and
(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.
The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.
(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.
(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application. For a tier 5 project that is sequential to a tier 2 large data center project, the required level of investment shall be met prior to the end of the fourth year after the expiration of the tier 2 large data center project entitlement period relating to direct sales tax refunds.
(5) The Tax Commissioner shall make his or her determination to approve or not approve an application within one hundred eighty days after the date of the application. If the Tax Commissioner requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, such one-hundred-eighty-day period shall be tolled from the time the Tax Commissioner makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If the Tax Commissioner fails to make his or her determination within the prescribed one-hundred-eighty-day period, the application shall be deemed approved.
(6) Within one hundred eighty days after approval of the application, the Tax Commissioner shall prepare and mail a written agreement to the taxpayer for the taxpayer's signature. The taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a

project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:
(a) The levels of employment and investment required by the act for the project;
(b) The time period under the act in which the required levels must be met;
(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;
(d) The date the application was filed; and
(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.
(7) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.
(8) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for
either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.
(9) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Source: Laws 2005, LB312, § 45; Laws 2006, LB1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22; Laws 2009, LB164, § 5; Laws 2012, LB1118, § 6; Laws 2013, LB34, § 6.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Rural Development Act, see section 77-27,187.
Quality Jobs Act, see section 77-4901.

77-5724. Incentives; credits or benefits; limitation. The following transactions or activities shall not create any credits or allow any benefits under the Nebraska Advantage Act except as specifically allowed by this section:
(1) The acquisition of a business after the date of application which is continued by the taxpayer as a part of the project and which was operated in this state during the three hundred sixty-six days prior to the date of acquisition. All employees of the entities added to the taxpayer by the acquisition during the three hundred sixty-six days prior to the date of acquisition shall be considered employees during the base year. Any investment prior to the date of acquisition made by the entities added to the taxpayer by the acquisition or any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;
(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in the state after the date of the application;
(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;
(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;
(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and
(7) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 2005, LB312, § 46.

Cross References

Ethanol Development Act, see section 66-1330.

77-5725. Tiers; requirements; incentives; enumerated; deadlines. (1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six tiers:
(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2017. All complete project applications filed on or before December 31, 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;
(b) Tier 2, (i) investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (ii) for a large data center project, investment in qualified property for the data center of at least two hundred million dollars and the hiring for the data center of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2017. All complete project applications filed on or before December 31, 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;
(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2017. All complete project applications filed on or before December 31, 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;
(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2017. All complete project applications filed on or before December 31, 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;
(e) Tier 5, (i) investment in qualified property of at least thirty million dollars or (ii) for the production of electricity by using one or more sources of renewable energy to produce electricity for sale as described in subdivision (1)(j) of section77-5715, investment in qualified property of at least twenty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits. There shall be no new project applications for benefits under this tier filed after December 31, 2017. All

complete project applications filed on or before December 31, 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2017. All complete project applications filed on or before December 31, 2017, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate when such property is incorporated into real estate as a part of a project. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax;

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is annexed to, but not incorporated into, real estate as a part of a project. The refund shall be based on the cost of materials subject to the sales and use tax that were annexed to real estate; and

(v) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is both (A) incorporated into real estate as a part of a project and (B) annexed to, but not incorporated into, real estate as a part of a project. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to

any one employee during the year, divided by the number of equivalent employees making up such total compensation;
(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year; and
(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.
(4) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.
(5) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.
(6) The credits prescribed in subsections (3), (4), and (5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.
(7) The credit prescribed in subsection (5) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.
(8)(a) Property described in subdivisions (8)(c)(i) through (v) of this section used in connection with a project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed, shall constitute separate classes of property and are eligible for exemption under the conditions and for the time periods provided in subdivision (8)(b) of this section.
(b)(i) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer who has met the required levels of employment and investment for a tier 6 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.
(ii) A taxpayer who has filed an application that describes a tier 2 large data center project or a project under tier 4 or tier 6 shall receive the exemption of property in subdivision (8)(c)(i) of this section beginning with the first January 1 following the acquisition of the property. The exemption shall continue through the end of the period property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.
(iii) A taxpayer who has filed an application that describes a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project for which the entitlement period has expired shall receive the exemption of all property in subdivision (8)(c) of this section beginning any January 1 after the acquisition of the property. Such property shall be eligible for exemption from the tax on personal property from the January 1 preceding the first claim for exemption approved under this subdivision through the ninth December 31 after the year the first claim for exemption is approved.
(iv) A taxpayer who has a project for an Internet web portal or a data center and who has met the required levels of employment and investment for a tier 2 project or the required level of investment for a tier 5 project, taking into account only the employment and investment at the web portal or data center project, shall receive the exemption of property in subdivision (8)(c)(ii) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year any property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.
(v) Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(c) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:
(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;
(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;
(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;
(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and
(v) For a tier 2 large data center project or tier 6 project, any other personal property located at the project.
(d) In order to receive the property tax exemptions allowed by subdivision (8)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.
(9)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection, except that the investment threshold for a tier 5 project described in subdivision (1)(e)(ii) of this section shall not be adjusted.
(b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier 5 projects described in subdivision (1)(e)(ii) of this section, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006.
(c) For tier 6, beginning October 1, 2008, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2008 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2008.
(d) For a tier 2 large data center project, beginning October 1, 2012, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2012 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2012.
(e) If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars.
(f) The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB312, § 47; Laws 2006, LB1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22; Laws 2009, LB164, § 6; Laws 2010, LB879, § 18; Laws 2010, LB918, § 4; Laws 2012, LB1118, § 7; Laws 2013, LB104, § 4; Laws 2014, LB1067, § 2; Laws 2015, LB538, § 13.
Effective Date: August 30, 2015

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-5726. Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal. (1)(a) The credits prescribed in section 77-5725 for a year shall be established by filing the forms required by the Tax Commissioner with the income tax return for the taxable year which includes the end of the year the credits were earned. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Credits may be used beginning with the taxable year which includes December 31 of the year the required minimum levels were reached. The last year for which credits may be used is the taxable year which includes December 31 of the last year of the carryover period. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (3) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year. The taxpayer may use the credit provided in subsection (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section77-2756 or 77-2757 to the extent such liability is attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

For a tier 1, tier 2, tier 3, or tier 4 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees employed at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year.

For a tier 6 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year.

If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(e) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 2 large data center project or a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. Once the required levels of employment and investment for a tier 2 large data center project have been met, the credits earned for a tier 2 large data center project may be used to obtain a payment from the state equal to the real property taxes due after the year of application and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than one year past the end of the entitlement period for a tier 6 project.
(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.
(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.
(c) Refund claims for materials purchased by a purchasing agent shall include:
(i) A copy of the purchasing agent appointment;
(ii) The contract price; and
(iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of section 77-5725, a certification by the contractor or repairperson of the percentage of the materials incorporated into or annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent; or
(B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a certification by the contractor or repairperson of the percentage of the contract price that represents the cost of materials annexed to the project and the percentage of the materials annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.
(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.
(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.
(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.
(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into or annexed to the project and becomes the property of the owner of the improvement to real estate or the taxpayer. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the property.
(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23; Laws 2009, LB164, § 7; Laws 2010, LB879, § 19; Laws 2012, LB1118, § 8; Laws 2013, LB34, § 7.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5727. Recapture or disallowance of incentives. (1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for

the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6)(a) Except as provided in subdivision (6)(b) of this section, any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted.

(b) For a tier 2 large data center project, any personal property tax that would have been due except for the exemption under the Nebraska Advantage Act, together with interest at the rate provided in section 45-104.01 from the original delinquency date of the tax that would have been due until the date paid, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately payable to the county or counties in which the property was located when exempted.

(c) All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB312, § 49; Laws 2006, LB1003, § 15; Laws 2008, LB895, § 18; Laws 2009, LB164, § 8; Laws 2012, LB1118, § 9.

77-5728. Incentives; transfer; when; effect; disclosure of information. (1) The incentives allowed under the Nebraska Advantage Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-5727. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, estate, or trust shall be liable for any repayment required by section 77-5727; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

(5) The Department of Revenue may disclose information to the acquiring taxpayer about the project and prior benefits that is reasonably necessary to determine the future incentives and liabilities of the project.

Source: Laws 2005, LB312, § 50; Laws 2006, LB1003, § 16; Laws 2007, LB368, § 140; Laws 2013, LB34, § 8.

77-5729. Refunds; interest not allowable. Interest shall not be allowable on any refunds paid because of benefits earned under the Nebraska Advantage Act.

Source: Laws 2005, LB312, § 51.

77-5730. Application; valid; when. Any complete application shall be considered a valid application on the date submitted for the purposes of the Nebraska Advantage Act.

Source: Laws 2005, LB312, § 52.

77-5731. Reports; joint hearing. (1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than July 15 of each year. The Department of Revenue shall, on or before September 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.

(2) The report shall list (a) the agreements which have been signed during the previous year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created under the act subsequent to the application date, (j) the total number

of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed, (m) the credits outstanding under the act, (n) the value of personal property exempted by class in each county under the act, (o) the value of property for which payments equal to property taxes paid were allowed in each county, and (p) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the department Caretin approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by December 31 of the prior year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the department, but not necessarily received, during the previous two years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the new jobs at the project for which credits have been granted; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB312, § 53; Laws 2008, LB895, § 19; Laws 2012, LB782, § 146; Laws 2013, LB34, § 9; Laws 2013, LB612, § 7.

77-5733. Rules and regulations. The Tax Commissioner may adopt and promulgate all rules and regulations necessary to carry out the purposes of the Nebraska Advantage Act.

Source: Laws 2005, LB312, § 55.

77-5734. Department of Revenue; estimate of sales and use tax refunds; duties. The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales and use tax refunds to be paid under the Nebraska Advantage Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (6)(e) of section 77-5723. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Source: Laws 2005, LB312, § 56; Laws 2013, LB34, § 10.

77-5735. Changes to sections; when effective; applicability. (1) The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(2) The changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the taxpayer may make a one-time election, within the time period prescribed by the Tax Commissioner, to have the changes made in sections77-5725 and 77-5726 by Laws 2010, LB879, apply to such taxpayer's application, or in the absence of such an election, the provisions of the Nebraska Advantage Act as they existed immediately prior to July 15, 2010, apply to such application.

(3) The changes made in sections 77-5707, 77-5715, 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715, 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all applications filed on or after March 8, 2012. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(5) The changes made in sections 77-5707.01, 77-5709, 77-5712, 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all applications filed on or after September 6, 2013. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Source: Laws 2008, LB895, § 20; Laws 2010, LB879, § 20; Laws 2010, LB918, § 5; Laws 2012, LB1118, § 10; Laws 2013, LB34, § 11; Laws 2014, LB851, § 15.

ARTICLE 62
NAMEPLATE CAPACITY TAX

77-6201. Legislative findings and declarations
77-6202. Terms, defined.
77-6203. Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.
77-6204. County treasurer; distribute revenue; calculation.

77-6201. Legislative findings and declarations. The Legislature finds and declares:
(1) The purpose of the nameplate capacity tax levied under section 77-6203 is to replace property taxes currently imposed on renewable energy infrastructure and depreciated over a short period of time in a way that causes local budgeting challenges and increases upfront costs for renewable energy developers;
(2) The nameplate capacity tax should be competitive with taxes imposed directly and indirectly on renewable energy generation and development in other states;
(3) The nameplate capacity tax should be fair and nondiscriminatory when compared with other taxes imposed on other industries in the state; and
(4) The nameplate capacity tax should not be singled out as a source of General Fund revenue during times of economic hardship.

Source: Laws 2010, LB1048, § 12; Laws 2015, LB424, § 4.
Operative Date: January 1, 2016

77-6202. Terms, defined. For purposes of sections 77-6201 to 77-6204:
(1) Commissioned means the renewable energy generation facility has been in commercial operation for at least twenty-four hours. A renewable energy generation facility is not in commercial operation unless the renewable energy generation facility is connected to the electrical grid or to the end user if the renewable energy generation facility is a customer-generator as defined in section70-2002;
(2) Nameplate capacity means the capacity of a renewable energy generation facility to generate electricity as measured in megawatts, including fractions of a megawatt; and
(3) Renewable energy generation facility means (a) a facility that generates electricity using wind as the fuel source or (b) a facility that generates electricity using solar, biomass, or landfill gas as the fuel source if such facility was installed on or after January 1, 2016, and has a nameplate capacity of one hundred kilowatts or more.

Source: Laws 2010, LB1048, § 13; Laws 2015, LB424, § 5.
Operative Date: January 1, 2016

77-6203. Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties. (1) The owner of a renewable energy generation facility annually shall pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned renewable energy generation facility multiplied by a tax rate of three thousand five hundred eighteen dollars per megawatt.
(2) No tax shall be imposed on a renewable energy generation facility:
(a) Owned or operated by the federal government, the State of Nebraska, a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; or
(b) That is a customer-generator as defined in section 70-2002.
(3) No tax levied pursuant to this section shall be construed to constitute restricted funds as defined in section 13-518 for the first five years after the renewable energy generation facility is commissioned.
(4) The presence of one or more renewable energy generation facilities or supporting infrastructure shall not be a factor in the assessment, determination of actual value, or classification under section 77-201 of the real property underlying or adjacent to such facilities or infrastructure.
(5)(a) The Department of Revenue shall collect the tax due under this section.

(b) The tax shall be imposed beginning the first calendar year the renewable energy generation facility is commissioned. A renewable energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, shall be subject to the tax levied pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The amount of property tax on depreciable tangible personal property previously paid on a renewable energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized.

(c)(i) The tax for the first calendar year shall be prorated based upon the number of days remaining in the calendar year after the renewable energy generation facility is commissioned.

(ii) In the first year in which a renewable energy generation facility is taxed or in any year in which additional commissioned nameplate capacity is added to a renewable energy generation facility, the taxes on the initial or additional nameplate capacity shall be prorated for the number of days remaining in the calendar year.

(iii) When a renewable energy generation facility is decommissioned or made nonoperational by a change in law or decertification from its status as a certified renewable export facility during a tax year, the taxes shall be prorated for the number of days during which the renewable energy generation facility was not decommissioned or was operational.

(iv) When the capacity of a renewable energy generation facility to produce electricity is reduced but the renewable energy generation facility is not decommissioned, the nameplate capacity of the renewable energy generation facility is deemed to be unchanged.

(6)(a) On March 1 of each year, the owner of a renewable energy generation facility shall file with the Department of Revenue a report on the nameplate capacity of the facility for the previous year from January 1 through December 31. All taxes shall be due on April 1 and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(b) The owner of a renewable energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated.

(7) Failure to file a report required by subsection (6) of this section, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each quarter the report is overdue or the payment is delinquent, except that the penalty shall not exceed ten thousand dollars.

(8) The Department of Revenue shall enforce the provisions of this section. The department shall adopt and promulgate rules and regulations necessary for the implementation and enforcement of this section.

(9) The Department of Revenue shall separately identify the proceeds from the tax imposed by this section and shall pay all such proceeds over to the county treasurer of the county where the renewable energy generation facility is located within thirty days after receipt of such proceeds.

Source: Laws 2010, LB1048, § 14; Laws 2011, LB360, § 4; Laws 2015, LB424, § 6.

Operative Date: January 1, 2016

77-6204. County treasurer; distribute revenue; calculation. (1) The county treasurer shall distribute all revenue received from the Department of Revenue pursuant to section 77-6203 to local taxing entities which, but for such personal property tax exemption, would have received distribution of personal property tax revenue from depreciable personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source.

(2) A local taxing entity's status as eligible for distribution under subsection (1) of this section shall not be affected when and if the net book value of personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source becomes zero. A local taxing entity's status as eligible for distribution under such subsection shall be affected by the disposal of all of the exempt depreciable personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source.

(3) The distribution to each eligible local taxing entity shall be calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the total tax

levied by all of the eligible local taxing entities during the year. Each eligible entity's resulting fraction shall then be multiplied by the revenue distributed to the county treasurer by the department to determine the portion of such revenue due each local taxing entity.

(4) The Department of Revenue shall not retain any revenue collected pursuant to sections 77-6201 to 77-6204 for distribution, use, transfer, pledge, or allocation to or from the General Fund.

Source: Laws 2010, LB1048, § 15; Laws 2015, LB424, § 7.

Operative Date: January 1, 2016