

Index of Directives September 15, 2021
 NE Dept. of Revenue Property Assessment Division, revenue.nebraska.gov/PAD

Directive	Subject	Title	Date Issued
21-1	Real Property	Real Property Tax Credit and Tax Statements for 2021 and 2022	09-14-2021 Supersedes Directive 19-1
16-3	Sales File	Comparable Sales	12-16-2016
16-1	Renewable Energy	Assessment of Renewable Energy Generation Facilities	05-25-2016 Supersedes Directive 11-3
15-3	Homestead Exemption	Homestead Exemption Applications Following a Natural Disaster	06-05-2015
15-2	Report	Real Property Abstract of Assessment Extension Procedure	03-10-2015 Supersedes Directive 09-1
12-5	Sales File	Level of Value and Quality of Assessment Measurement	10-15-2012 Supersedes Directive 12-1
12-4	Real Property	Section 1031 Like-kind Exchanges of Real Property	08-23-2012
12-3	Real Property	Determining Whether a Site is a "Farm Home Site"	08-06-2012
12-2	Doc Stamp	Deeds to Trustees - Documentary Stamp Tax for Trusts and Certificate of Exemption	05-09-2012
11-8	Sales File	State Sales File Procedure for Adjusting and Reporting the Assessed Value of Agricultural Land Included in Sales of Non-Agricultural Land	08-16-2011 Supersedes Directive 05-7
11-5	Fixtures and Trade Fixtures	Fixtures and Trade Fixtures Classification as Real or Personal Property	08-16-2011
10-1	Carline Companies	Carline Company Time/Speed Study Procedures	03-29-2010
09-4	Agricultural Land	Classification of Irrigated Cropland Subject to Water Use Agreements	08-25-2009 Supersedes Directive 06-3 Directive 07-3

All other directives have been superseded by other directives, incorporated in regulations, or are obsolete due to repeal of laws.

September 14, 2021

Real Property Tax Credit and Tax Statements Tax Years 2021 and 2022

Purpose

This directive advises county assessors and treasurers of their responsibilities for administering the Property Tax Credit Act (Act), [Neb. Rev. Stat. §§ 77-4209 through 77-4212](#). The Act provides a real property tax credit (credit) based on the credit allocation valuation of each parcel of real property compared to the credit allocation valuation of all real property in the state. For purposes of the Act, credit allocation valuation means 120% of the taxable value of agricultural and horticultural land and agricultural and horticultural land receiving special valuation. For all real property, other than agricultural and horticultural land, credit allocation valuation means 100% of the taxable value. The Act has been funded for two years, pursuant to Neb. Laws 2021, LB 380. The total amount of the credit available for statewide distribution is \$300 million for year 2021 and \$313 million for 2022.

Procedure and Implementation

There are two tax credit rates. One tax credit rate will be for all real property other than the land classified as agricultural and horticultural land or agricultural and horticultural land receiving special valuation, referred to as the real property "credit." There will be second tax credit rate for real property classified as agricultural and horticultural land or agricultural and horticultural land receiving special valuation, pursuant to [Neb. Rev. Stat. § 77-1359](#), referred to as "agricultural land credit." The agland credit is only applicable to the portion of the real property parcel classified as agricultural and horticultural land and agricultural and horticultural land receiving special valuation. The agland credit is not applicable to any other portion of the real property parcel such as site land or improvements or buildings. See attached examples.

The credit amount, for real property and/or agricultural land, must be computed and displayed separately on the tax list of the county as prepared by the county assessor pursuant to [§ 77-1613](#). The credit amounts, for real property and/or agricultural land, must be displayed separately on the tax statement as a credit, as provided by [§ 77-4212\(1\)](#). Tax statements are required to display the amount of taxes levied by each political subdivision for the current year and for the immediate past year on the same parcel, pursuant to [§ 77-1704.01\(1\)](#). **The credit amounts cannot be netted against the taxes levied**, but must be shown as a credit to the taxes levied on the tax statement, similar to homestead exemption tax loss amounts in [§ 77-3509.03](#).

All taxable real property parcels are eligible for the credit. The portion of a real property parcel classified as agricultural and horticultural land and agricultural and horticultural land receiving special value is eligible for the agland credit.

- If the real property owner qualifies for a homestead exemption, the homestead owner also qualifies for the credit to the extent of any remaining liability after applying the homestead exemption. Any agricultural land that is part of the parcel qualifies for the agland credit.
- The credit is applicable to the total value of a real property parcel that is part of a community redevelopment project using tax increment financing (TIF) which includes both the base and excess valuations.
- The credit is applicable to the real property portion of centrally assessed railroads and public service entities. For centrally assessed companies recorded on the tax list by individual taxing subdivision, the credit is determined by the county's total real property value for each company (for example, each railroad branch line or each public service entity). The total credit is then apportioned to the respective individual taxing subdivisions based on the company's real property taxes levied computed for each subdivision compared to the total real property taxes levied for the company. If a centrally assessed company's value is 100% personal property, no credit will be received.
- The credit is applicable to the real property value as adjusted by any tax list correction made to the tax list for years 2021 and 2022.
- The credit **is not applicable** to real property parcels acquired by the Nebraska Game and Parks Commission for wildlife habitat and subject to the in lieu of tax, pursuant to [§ 37-335](#).
- The credit **is not applicable** to real property parcels owned by a joint entity created pursuant to the Interlocal Cooperation Act or natural resources district for purposes of a water augmentation project and are subject to the in lieu tax, pursuant to [§ 46-1701](#).

The Property Tax Administrator, county assessors, and county treasurer must perform the following six steps to properly administer the credits. Note: the valuation amounts used in these examples do not reflect actual certified numbers.

Step 1 – Determine County's Share of Credit. On or before September 15, the Property Tax Administrator must determine the credit amount to be disbursed to each county. The amount disbursed to the counties is equal to the amount available for disbursement, \$300 million in tax year 2021, and \$313 million in tax year 2022 – multiplied by the ratio of the credit allocation valuation in the county to the credit allocation valuation in the state eligible for the credit.

The Property Tax Administrator certifies the credit amounts to the State Treasurer and the county on or before September 15. The disbursements to the counties occur in two equal payments: the first, on or before January 31; and the second, on or before April 1 of the year following the respective year for which the tax credit was certified.

Step 2 – Determine Credit per Parcel. For ease of administration, the amount of credit for each real property parcel will be determined by applying the state's uniform rate of credit for real property and/or the rate of credit for agricultural land, as determined by the Property Tax Administrator.

Step 3 – Homestead Exemption. If the real property owner qualifies for a homestead exemption under [§§ 77-3501 to 77-3529](#), the homestead owner also qualifies for the credit to the extent of any remaining liability after the homestead exemption is applied. 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 must be returned by the county treasurer to the Property Tax Administrator by July 1 of the year the credit amount was disbursed to the county. Any agricultural land that is part of the parcel qualifies for the agland credit.

Step 4 – Disbursements. The credit disbursements to the counties occur in two equal payments: the first, on or before January 31; and the second, on or before April 1 of the year following the respective tax year for which the tax credit was certified. After retaining 1% of the credit for costs, the county treasurer allocates the remaining credit to each taxing unit that levies taxes on taxable property in the tax district where the real property is located. This allocation is done in the same proportion that the levy of each taxing unit bears to the total levy on taxable property of all the taxing units in the tax district where the real property is located, [§ 77-4212\(4\)](#).

Step 5 – Return of Unused Tax Credit. Upon return of the unused portion of the tax credit monies to the Property Tax Administrator, the county treasurer must also electronically forward information to the Nebraska Department of Revenue, indicating the total amount of real property tax credit distributed to political subdivisions for locally assessed real property and centrally assessed real property, the total amount retained for 1% collection fee, and the total amount of unused tax credit monies returned to the Property Tax Administrator.

Step 6 – Tax List Corrections and Claim for Additional Monies. For tax list corrections that occur on or before July 1, the county treasurer should use the unused credit amount to cover those corrections. The amount returned to the State will be the amount shown on the tax lists as unused credit, plus or minus the corrections on or before July 1.

After July 1, if additional tax list corrections occur resulting in a need for additional credit amounts for that tax year, the county treasurer may file a [claim form](#), along with supporting documentation, with the Risk Management State Claims Board.

Accelerated Tax on Real Property Parcels (Mobile Homes) and Tax Credit

Example 1. Mobile home is moved and the acceleration of tax is done in August 2020.

This scenario involves a mobile home with a 2020 value with the 2020 taxes accelerated or calculated at the 2019 tax rate. The purpose of the Act is to provide property tax relief for property taxes levied against real property for tax year 2020. Here, the 2020 accelerated real property taxes were collected prior to the certification of the rate of credit on September 15. If the owner of the mobile home desires to receive the 2020 credit for the accelerated 2020 taxes paid, a written claim must be made to the county treasurer within two years from the date the tax was due, requesting a refund pursuant to [§ 77-1734.01](#).

Example 2. Mobile home is moved and the acceleration of tax is done in February 2021.

In this scenario, the mobile home is listed on the 2020 tax list and the 2020 credit should already be reflected for the 2020 taxes due. In February of 2021, this mobile home has a 2021 assessed value with the 2021 taxes being accelerated or calculated at the 2020 tax rate. The 2021 rate of credit will not be determined until September 15, 2021; therefore, a 2021 credit amount cannot be calculated as of February. However, the taxpayer may be informed that after September 15, 2021, a written claim may be made to the county treasurer, within two years from the date the tax was due, requesting a refund pursuant to [§ 77-1734.01](#).

Example 3. Mobile home is moved and the acceleration of tax is done in February 2022.

In this scenario, the mobile home is listed on the 2021 tax list and the 2021 credit should already be reflected for the 2021 taxes due. In February of 2022, this mobile home has a 2022 assessed value with the 2022 taxes being accelerated or calculated at the 2021 tax rate. The Act is for property taxes levied against real property for years 2020 and 2021. The 2022 accelerated taxes are not eligible for a credit unless legislative changes are enacted to extend the credit to other tax years.

See attachments for the following examples

Attachment 1 Determine county's share of credit fund and per parcel rates of credit

- Example 1 Determine the amount of credit to be disbursed to each county
- Example 2A Determine rate of credit per parcel, real property (non-agland)
- Example 2B Determine rate of credit for agricultural land

Attachment 2 Tax credit for parcels of real property (non-agland) and agricultural land

- Example 1 Tax due and credit computations for a parcel with no agricultural land
- Example 2 Tax due and credit computations for a parcel with agricultural land only
- Example 3 Tax due and credit computations for an agricultural parcel with a residence, farm home site land, farm site land, agricultural improvements, and part agricultural land
- Example 4 Tax due and credit computations for a rural residential parcel with a residence, site land, and part agricultural land

Attachment 3 Tax credit for parcels with homestead exemption

- Example 1 Tax due and credit computations for parcel with homestead exemption
- Example 2 Tax due and credit computations for parcel with homestead exemption and unused credit
- Example 3 Tax due and credit computations for a parcel with homestead exemption and part agricultural land

Attachment 4 Tax credit for parcels with Tax Increment Financing (TIF)

- Example 1 Tax due and credit computations for parcel with Tax Increment Financing (TIF)
- Example 2 Tax due and credit computations for parcel with homestead exemption and Tax Increment Financing (TIF)

Attachment 5 Tax credit for centrally assessed

Examples for tax credit calculations for centrally assessed railroads and public service entities

For the Tax Commissioner

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
September 14, 2021

Attachment 1 Determine county's share of tax credit fund and per parcel rates of credit.

Step 1 - Determine County's Share of Credit, by September 15.			
Example 1- Determine the amount of credit to be disbursed to each county.			
<u>State Totals - Credit Allocation Value:</u>			
Taxable value of eligible real property (non-agland)		152,000,000,000	57.79%
Taxable value of agricultural land	92,500,000,000 multiplied by 120%	= <u>111,000,000,000</u>	42.21%
Grand total credit allocation value		263,000,000,000	
<u>County Totals - Credit Allocation Value:</u>			
Taxable value of eligible real property (non-agland)		1,900,000,000	
Taxable value of agricultural land	2,000,000,000 multiplied by 120%	= <u>2,400,000,000</u>	
Grand total credit allocation value		4,300,000,000	
<u>County vs. State - Ratios of credit allocation value</u>			
Taxable value of eligible real property (non-agland)		0.012500	
Taxable value of agland @ 120%		0.021622	
<u>State Totals - Credit Funds Allocated:</u>			
State total amount of tax relief available for disbursement		\$300,000,000	
Portion available for real property (non-agland)	57.79% of \$300,000,000	\$173,370,000	
Portion available for agricultural land	42.21% of \$300,000,000	\$126,630,000	
<u>County's Share of State Credit Funds (apply ratios to state funding):</u>			
Real property (nonagland)	.0125 x \$173,370,000	\$2,167,125	
Agricultural land	.021622 x \$126,630,000	<u>\$2,737,994</u>	
		\$4,905,119	

Step 2 - Determine rate of credit per parcel.			
Take the amount of credit money available divided by the credit allocation value eligible for the credit, for either the county or the state.			
Example 2A - Real property (nonagland) "rate of credit"			
<u>County's rate of credit for real property (non-agland)</u>			
County's share of allocated credit for real property (non-agland)		<u>\$2,167,127</u>	
Divided by the county's taxable value of real property (non-agland)		1,900,000,000 =	0.0011406
<u>State's rate of credit for real property (non-agland)</u>			
State's total allocated credit for real property (non-agland)		<u>\$173,370,000</u>	
Divided by the state's total real property value (non-agland)		152,000,000,000 =	0.0011406
Example 2A indicates \$114.06 credit per \$100,000 of value for real property (non-agland)			
Example 2B - Agricultural land "rate of credit"			
<u>County's rate of credit for agricultural land</u>			
County's share of allocated credit for agricultural land		<u>\$2,737,994</u>	
Divided by the county's taxable value of agricultural land		2,000,000,000 =	0.0013690
<u>State's rate of credit for agricultural land</u>			
State's total allocated credit for agricultural land		<u>\$126,630,000</u>	
Divided by the state's total value of agricultural land		92,500,000,000 =	0.0013690
Example 2B indicates \$136.90 credit per \$100,000 of value for agricultural land			

Attachment 2 Tax credit for parcels of real property (non-agland) and agricultural land.

Example 1- Tax due and credit computations for a parcel with no agricultural land.		
Real property credit rate		0.0011406
Taxable value (land & improvements, non-agland)		200,000
Tax rate (1.95%)	—	<u>0.0195</u>
Total taxes due before credit		\$3,900.00
Credit		\$228.12 (200,000 x .0011406 rate of credit)
Remaining tax due after credit		\$3,671.88

Example 2- Tax due and credit computations for a parcel with agricultural land only.		
Agland credit rate		0.0013690
Taxable value agricultural land (no site land or improvements)		480,000
Tax rate (1.95%)	—	<u>0.0195</u>
Total taxes due before credit		\$9,360.00
Agland credit		\$657.12 (480,000 x .0013690 agland rate of credit)
Remaining tax due after credit		\$8,702.88

Attachment 2 Tax credit for parcels of real property (non-agland) and agricultural land. (continued)

Example 3- Tax due and credit computations for an agricultural parcel with residence, farm home site land, farm site land, agricultural improvements, and part agricultural land.

Real property credit rate		0.0011406
Agland credit rate		0.0013690
Taxable value (non-agland)		
(for example, includes house, home site land, farm site land, farm site improvements, etc.)		200,000
Taxable value agricultural land only	—	<u>480,000</u>
Total taxable value		680,000
Tax rate (1.95%)	—	<u>0.0195</u>
Total taxes due before credit		\$13,260.00
*Note: These 2 credit amounts and total credit, need to display on the tax statement.		
Credit (non-agland)		\$228.12 (200,000 x .0011406 rate of credit)
Agland credit	—	<u>\$657.12</u> (480,000 x .0013690 agland rate of credit)
Total credit		\$885.24
Remaining tax due after credit		\$12,374.76

Example 4- Tax due and credit computations for a rural residential parcel with residence, site land, and part agricultural land.

Real property credit rate		0.0011406
Agland credit rate		0.0013690
Taxable value (non-agland)		
(for example, includes house, site land and any land not classified as agland)		150,000
Taxable value agricultural land only	—	<u>50,000</u>
Total taxable value		200,000
Tax rate (1.95%)	—	<u>0.0195</u>
Total taxes due before credit		\$3,900.00
*Note: These 2 credit amounts and total credit, need to display on the tax statement.		
Credit (non-agland)		\$171.09 (150,000 x .0011406 rate of credit)
Agland credit	—	<u>\$68.45</u> (50,000 x .0013690 agland rate of credit)
Total credit		\$239.54
Remaining tax due after credit		\$3,660.46

Attachment 3 Tax credit for parcels with homestead exemptions.

Example 1- Tax due and credit computations for a parcel with homestead exemption.
 If the parcel's remaining tax due after homestead exemption is equal to or greater than the credit, the parcel receives all of the credit.

Real property credit rate	0.0011406	
Taxable value (non-agland) before homestead exemption	75,000	
Homestead value exempted	<u>70,000</u>	
Taxable value after homestead exemption	5,000	
Tax rate (1.95%)	0.0195	
Tax due prior to homestead	\$1,462.50	(75,000 x .0195)
Tax exempt due to homestead	<u>\$1,365.00</u>	(70,000 x .0195)
Tax due after homestead	\$97.50	(5,000 x .0195)
Credit	\$85.55	(75,000 x .0011406 rate of credit)
Remaining tax due	\$11.95	(97.50 minus 85.55)

Example 2 - Tax due and credit computations for a parcel with homestead exemption and unused credit.
 If the credit is larger than the parcel's remaining tax due after the homestead exemption, the parcel only receives the portion of credit that brings its tax bill to zero.

Real property credit rate	0.0011406	
Taxable value (non-agland) before homestead exemption	75,000	
Homestead value exempted	<u>74,000</u>	
Taxable value after homestead exemption	1,000	
Tax rate (1.95%)	0.0195	
Tax due prior to homestead	\$1,462.50	(75,000 x .0195)
Tax exempt due to homestead	<u>\$1,443.00</u>	(74,000 x .0195)
Tax due after homestead	\$19.50	(1,000 x .0195)
Credit	\$85.55	(75,000 x .0011406 rate of credit)
Credit used to reduce tax due to 0 (zero)	\$19.50	(lesser of 19.50 or 85.55)
Remaining tax due	\$0.00	(19.50 minus 19.50)
"Unused" credit returned to the Property Tax Administrator	\$66.05	(85.55 minus 19.50)

Attachment 3 Tax credit for parcels with homestead exemptions. (continued)

Example 3 - Tax due and credit computations for an agricultural parcel with agland and other real property site land and improvements and is granted a homestead exemption.			
Real property credit rate		0.0011406	
Agland credit rate		0.0013690	
Tax rate (1.95%)		0.0195	
Taxable value (non-agland)			
Value eligible for Homestead; house, garage, and land up to 1 acre.		75,000	
Remaining value home site, farm site, and agricultural improvements.	-	<u>125,000</u>	
Total Non-agland value		200,000	@ .0195 tax rate= \$3,900.00
Taxable value agricultural land only	-	<u>480,000</u>	@ .0195 tax rate= \$9,360.00
Total taxable value of agricultural parcel.		680,000	
Total taxes due before credit		\$13,260.00	
Value eligible for Homestead; house, garage, and land up to 1 acre.		75,000	
Homestead value granted an exemption		74,000	
Tax due prior to the homestead (non-agland)		\$3,900.00	(200,000 x .0195)
Tax exempt due to homestead	-	<u>\$1,443.00</u>	(74,000 x .0195)
Tax due after homestead		\$2,457.00	
Credit (non-agland)		\$228.12	(200,000 x .0011406 rate of credit)
Agland credit	-	<u>\$657.12</u>	(480,000 x .0013690 agland rate of credit)
Total credit		\$885.24	
Remaining tax due after homestead exemption and tax credits		\$10,931.76	

Attachment 4 Tax credit for parcels in Tax Increment Financing (TIF).

Example 1- Tax due and credit computations for a parcel with TIF.

Real property credit rate (non-agland)	0.0011406	
TIF parcel's base value	5,000	
TIF parcel's excess value	<u>70,000</u>	
TIF parcel's total value	75,000	
Tax rate (1.95%)	0.0195	
Tax due on total value	\$1,462.50	(75,000 x .0195)
Credit for total value	<u>\$85.55</u>	(75,000 x .0011406 rate of credit)
Remaining tax due for parcel	\$1,376.95	(\$1,462.50 minus 85.55)

Allocation of TIF taxes for base and excess.

Tax due allocated to base value	\$97.50	(5,000 x .0195)
Credit allocated to base value	<u>\$5.70</u>	(5,000 x .0011406 rate of credit)
Remaining tax due on base value	\$91.80	(97.50 minus 5.23)
Tax due allocated to excess value	\$1,365.00	(70,000 x .0195)
Credit allocated to excess value	<u>\$79.84</u>	(70,000 x .0011406 rate of credit)
Remaining tax due on excess value	\$1,285.16	(1,365.00 minus 79.84)

Example 2- Tax due and credit computations for a parcel with TIF and a homestead exemption.

If a real property parcel in a redevelopment project is granted a homestead exemption, the homestead exempt value applies to the base value first, and any remaining homestead exempt value applies to the excess value. The division of homestead tax loss reimbursement must be proportionate to the homestead exempt value determined for the value base and excess value, pursuant to Title 350 Nebraska [Administrative Code Chapter 18, REG-18-003.03C](#).

Real property credit rate (non-agland)	0.0011406	
TIF parcel's base value	5,000	
TIF parcel's excess value	<u>70,000</u>	
TIF parcel's total value	75,000	
Homestead exempt value	<u>74,000</u>	
TIF parcel's taxable value after homestead	1,000	
Homestead exempt value allocated to base	5,000	
Homestead exempt value allocated to excess	69,000	
Tax rate (1.95%)	0.0195	
Tax due prior to homestead	\$1,462.50	(75,000 x .0195)
Tax exempt due to homestead	<u>\$1,443.00</u>	(74,000 x .0195)
Tax due after homestead	\$19.50	(1,000 x .0195)
Credit for total value	\$85.55	(75,000 x .0011406 rate of credit)
Credit used to reduce tax to 0 (zero)	\$19.50	(lesser of 19.50 or 78.42)
Tax due after homestead & credit	\$0.00	(19.50 minus 19.50)
"Unused" credit return to Property Tax Administrator	\$66.05	(85.55 minus 19.50)

Allocation of TIF taxes for base and excess.

Tax due allocated to base value	\$97.50	(5,000 x .0195)
Homestead exempt tax allocated to base	\$97.50	(5,000 of 74,000 exempt value x .0195)
Remaining tax due allocated to base	\$0.00	
Credit allocated to base value	\$5.70	(5,000 x .0011406 rate of credit)
"Unused" credit return to Property Tax Administrator	\$5.70	
Tax due allocated to excess value	\$1,365.00	(70,000 x .0195)
Homestead exempt tax allocated to excess	\$1,345.50	(69,000 of 74,000 exempt value x .0195)
Remaining tax due allocated to excess	\$19.50	
Credit allocated to excess value	\$79.84	(70,000 x .0011406 rate of credit)
Credit used to reduce tax due to 0 (zero)	\$19.50	(lesser of 19.50 or 79.84)
"Unused" credit return to Property Tax Administrator	\$60.34	(79.84 minus 19.50)

Attachment 5 Tax credit for centrally assessed railroads and public service entities.

Counties use one of two methods to record the centrally assessed property on the tax list, either by "individual taxing subdivision" or by "consolidated tax district."

Example 1- Tax credit for centrally assessed company recorded on the tax list by "individual taxing subdivision."

First, the "county taxing subdivision's real property value" for the respective railroad branch line or public service entity is determined. This is the real property eligible for the credit. Then, multiply this countywide value for the company (for example the railroad branch line or public service entity) by the state's rate of credit to determine the total credit. The total credit is then apportioned to the respective individual taxing subdivisions based upon the company's real property taxes levied computed for each subdivision compared to the total real property taxes levied for the company.

A centrally assessed company's values are certified to the county by the state below.

Subdivision	Total Value	Real Value	Personal Value
County	\$11,530,984	\$9,431,100	\$2,099,884
School District 1	8,593,054	7,322,632	1,270,422
School District 2	2,577,930	2,108,468	469,462
Fire District 1	8,593,054	7,322,632	1,270,422
Fire District 2	2,577,930	2,108,468	469,462
City	347,469	284,192	63,277
Natural Resource District	11,530,984	9,431,100	2,099,884
Educational Service Unit	11,530,984	9,431,100	2,099,884
Community College	11,530,984	9,431,100	2,099,884
Agricultural Society	11,530,984	9,431,100	2,099,884

Determine the taxes levied for real property portion of centrally assessed company and the percentage each subdivision is to the total property taxes.

Subdivision	Real Property Value	Tax Rate per \$100 of Value	Real Property Taxes by Subdivision	Subdivision's Real Property Tax % of Total Real Property Tax
County	\$9,431,100	0.340	\$32,065.74	24.1497%
School District 1	7,322,632	0.900	65,903.69	49.6340%
School District 2	2,108,468	1.050	22,138.91	16.6735%
Fire District 1	7,322,632	0.035	2,562.92	1.9302%
Fire District 2	2,108,468	0.025	527.12	0.3970%
City	284,192	0.285	809.95	0.6100%
Natural Resource District	9,431,100	0.023	2,169.15	1.6337%
Educational Service Unit	9,431,100	0.015	1,414.67	1.0654%
Community College	9,431,100	0.050	4,715.55	3.5514%
Agricultural Society	9,431,100	0.005	471.56	0.3551%
Total Real Property Taxes			\$132,779.26	100.0000%

Company's real property value in the county \$9,431,100 x .0011406 rate of credit = \$10,757.11

This is the company's total tax credit in the county.

The company's total credit in the county is then apportioned to each individual taxing subdivision based upon the company's real property taxes levied by each subdivision compared to the total real property taxes levied for the company.

Subdivision	Subdivision's Real Property Tax % of Total Real Property Tax	Credit Apportioned to Each Subdivision
County	24.1497%	\$2,597.81
School District 1	49.6340%	5,339.18
School District 2	16.6735%	1,793.59
Fire District 1	1.9302%	207.63
Fire District 2	0.3970%	42.71
City	0.6100%	65.62
Natural Resource District	1.6337%	175.74
Educational Service Unit	1.0654%	114.60
Community College	3.5514%	382.03
Agricultural Society	0.3551%	38.20
Company's Total Credit	100.0000%	\$10,757.11

Attachment 5 Tax credit for centrally assessed railroads and public service entities. (continued)

Example 2- Tax credit for centrally assessed company recorded on the tax list by "consolidated taxing district."			
Consolidated Tax District	Total Value	Real Value	Personal Value
Tax District 1	\$8,593,054	\$7,322,632	\$1,630,422
Tax District 2	2,577,930	2,108,468	469,462
Total Taxable Value	11,170,984	9,431,100	2,099,884
Tax District 1 real property value \$7,322,632 x .0011406 rate of credit =			\$8,352.19
Tax District 2 real property value \$2,108,468 x .0011406 rate of credit =			\$2,404.92
Company's total credit			\$10,757.11
Reminder: If a centrally assessed company's value is 100% personal property, with no real property, no credit will be received.			

Comparable Sales

Purpose

This directive advises county assessors of their responsibilities in determining comparable sales for assessed value purposes. It is also intended as a resource to county assessors in their effort to ensure that only sales that reflect market value are used to establish the assessed value of real property.

Statute

[Neb. Rev. Stat. § 77-1371](#) sets forth the guidelines for using comparable sales and includes a list of what types of sales should be analyzed to determine if the sale truly is a comparable sale. The statute also provides that the Property Tax Administrator (PTA) may issue guidelines for assessing officials to use in determining what constitutes a comparable sale, which will take into account the factors listed in the statute, and other relevant factors prescribed by the PTA.

Procedure and Implementation

Comparable sales are recent sales of properties that are similar to the property being assessed in physical, functional, and location characteristics and in their contribution to value. The sales comparison approach to determine actual value of real property should reflect the actions of the buyers and sellers in the typical marketplace. County assessors must identify comparable sales with similar value contributions for physical, functional, and locational characteristics. Sales with special conditions should be excluded or used as adjusted when individual circumstances are identified which substantially affect the purchase price.

Arm's-length transactions

All sales are considered arm's-length unless sufficient information is available to prove otherwise. An arm's-length sale is a sale between two or more parties each seeking to maximize their position from the transfer. In determining whether or not a sale is arm's-length, details of the transaction should be verified with the parties involved to ensure both acted in their own best interest, and neither were under any compulsion to buy or sell.

Evaluating the purchase price

The purchase price is the most essential item concerning a sale, and should be thoroughly evaluated as part of the assessment process to ensure the purchase price reflected market value. Market value is defined as the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's-length transaction between a willing seller and a willing buyer both of whom are knowledgeable concerning all the uses to which the property is adapted and for which it is capable of being used.

Sales with special conditions

Sales with special conditions must be reviewed to determine their validity as comparable sales reflecting market value. These sales should not be automatically excluded as

comparable sales, but should be sufficiently reviewed based upon the conditions of the sale. Sales with special conditions include sales involving:

Special financing –

Sales that include financing with unusual conditions, incentives, or sales concessions should be evaluated to determine if this financing materially affected the sales price. Examples might include, but are not limited to: interest-free or low-interest loans for beginning farmers; a buyer assuming the mortgage of the prior owner; the seller financing the transfer at less-than-market rates; or buyer premiums.

Adjoining Property Owners –

Sales in which the buyer already owns adjoining property should be examined to determine if the buyer paid more than the property is worth on the open market. In some cases, so-called “bidding wars” can occur when a property is bid up in excess of its market value because of its proximity to existing land holdings. These sales should not be excluded solely because the buyer owns adjoining property, but may be excluded if it is determined that the buyer was willing to pay more than the asking price or appraised value, the property sold substantially more or less than the asking price, or if the buyer was under substantial pressure to purchase the adjoining property.

Tax considerations –

Under the Internal Revenue Code § 1031, a property owner can sell his or her property and then reinvest the proceeds in ownership of like-kind property and defer the income tax on capital gains. These transactions should be reviewed individually to determine if the incentive to defer capital gains resulted in a purchase price in excess of what the property would have otherwise been worth on the open market.

Agricultural land parcels less than 40 acres –

Parcels of less than 40 acres may contain a size premium for nonagricultural purposes or uses and should be evaluated to determine if the per-acre sales price is a valid market indicator for agricultural land parcels larger than 40 acres. These parcels may vary depending on the market and the typical size of the agricultural parcels in the county.

Nonagricultural influences –

Sales of agricultural or horticultural land receiving special valuation should be reviewed by the county assessor to determine if the sales price reflects a value which the land has for purposes or uses other than agricultural or horticultural purposes. These sales do not reflect current market value of other agricultural or horticultural land. In those areas that recognize special valuation, these transactions should not be used to establish the special valuation of agricultural and horticultural land. If nonagricultural factors exist, county assessors may encourage eligible landowners to apply for special valuation.

Recreational uses –

Parcels with recreational uses may command a premium when sold. The county assessor should analyze the sales prices of these parcels and determine whether the sales prices are typical for all similarly classified land in the market area. If it is determined that a premium has been paid for a parcel with recreational uses, that sale should not be used for the determining the value of non-similarly situated land.

Family members –

Sales between immediate family members within three degrees of consanguinity (grandparents, parents, children, aunts, uncles) may sell for less than market value. These sales should be reviewed and considered valid if the property was exposed on the open market, the purchase price was established by independent appraisals, the price reflects market value, or if the sale meets other criteria typical of an arm's-length transaction.

Foreclosure, bankruptcy, condemnation, or other legal actions –

Distressed sales, forced sales, or sales resulting from foreclosure may not reflect open market conditions necessary to result in sales price at market value. However, in a market where foreclosure properties are abundant, buyers may have comparable foreclosure properties to choose from over conventional listings. Weak economic conditions in an area may cause foreclosure re-sales to be valid indicators of market value for nonforeclosure properties.

Transfers of real property identified through the verification process with special conditions having a substantial effect on the sales price so that it no longer serves as a valid indicator of market value should be excluded from consideration as a comparable sale, or the sales price should be adjusted to reflect market value. For any sales excluded, adjusted, or having special conditions in the sales file, the county assessor must provide a narrative description to adequately describe the reason for the exclusion or adjustment in the comments section.

Similar in physical, functional, and locational characteristics

Sales with purchase prices that reflect market value can be used as comparable sales when properly assigned to a market area in which parcels have similar physical, functional, and locational characteristics and are equally subject to the same set of economic forces.

When any physical, functional, or locational factors are identified through analysis as factors that affect market value similarly, those factors must be the basis on which comparable sales are selected. For agricultural land, county assessors should evaluate available data on well capacity or water availability, and whether these factors affect the market value of similar property.

Level of Value and Quality of Assessment Measurement

The PTA has a statutory obligation to provide the Tax Equalization and Review Commission a statistical analysis and narrative reports regarding the level of value and quality of assessment of real property in each county. The analysis will take into account the factors described in this Directive, and will include a review of the processes and procedures used by county assessors to evaluate sales. The review will ensure the measurement of assessed values is based upon sales prices that reflect market value.

For the Tax Commissioner

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
December 16, 2016

May 25, 2016

ASSESSMENT OF RENEWABLE ENERGY GENERATION FACILITIES

Purpose: This directive advises county assessors on the assessment and valuation of renewable energy generation facilities.

Statutory Authority: A nameplate capacity tax has replaced the central assessment and taxation of the tangible personal property of renewable energy generation facilities. A renewable energy generation facility includes facilities that generate electricity using wind, solar, biomass, and landfill gas as the fuel source. The tangible personal property used directly in the generation of electricity using wind as the fuel source is exempt from property tax and subject to the nameplate capacity tax. The tangible personal property used directly in the generation of electricity using solar, biomass, or landfill gas is exempt from property tax if the depreciable tangible personal property was installed on or after January 1, 2016, and has a nameplate capacity of 100 kilowatts or more.

[Neb. Rev. Stat. § 77-202\(9\)](#) defines the depreciable tangible personal property that is exempt from property taxation as follows:

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.

Procedure and Implementation: The nameplate capacity tax replaces the assessment of depreciable tangible personal property used directly in the generation of electricity using wind as a fuel source, and the depreciable tangible personal property used in the generation of electricity using solar, biomass, and landfill gas as a fuel source if the depreciable tangible personal property was installed on or after January 1, 2016. A renewable energy generation facility (facility) is a facility that

generates electricity using wind, solar, biomass, or landfill gas as the fuel source. More information regarding the administration of the nameplate capacity tax can be found in [Title 316, Chapter 13](#).

Real Property: The real property of the facility is subject to local assessment. The land associated with the facility will continue to be assessed as it was prior to the existence of the facility. If the land was classified and assessed as agricultural land prior to the facility being built, the land will continue to be classified and assessed as agricultural land. The presence of one or more renewable energy generation facilities or supporting infrastructure is not a factor in the assessment, valuation, or taxation of the real property on which the facility is located.

Real property also includes, but is not limited to: concrete pads; foundations; operations and maintenance buildings; road construction; leasehold value; and lease payments. This real property will be assessed at 100% of actual value. See, [Neb. Rev. Stat. § 77-103](#).

If the facility is owned or operated by the federal government, the State of Nebraska, a public power district, a public power and irrigation district, a municipality, a registered group of municipalities, an electric membership association, or a cooperative; or by a customer-generator, then it is exempt from the nameplate capacity tax and real property tax assessment. See, [Neb. Rev. Stat. § 77-6203\(2\)\(a\)](#).

Personal Property: “Supporting structures” are included in the definition of the depreciable tangible personal property that is exempt from taxation when used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source. These “supporting structures” are the portion of the tower that holds the generator and the propellers, including any load-bearing beams or girders. This does not include any of the real property upon which the tower is placed.

For the Tax Commissioner

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
May 25, 2016



DIRECTIVE 15-3

June 5, 2015

Homestead Exemption Applications Following a Natural Disaster

Purpose

This directive advises county assessors reviewing homestead exemption applications for homesteads that have been destroyed or damaged by a disaster.

Statutory Authority

Neb. Rev. Stat. § 77-3502 (R.S. Supp. 2009) provides:

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.

(emphasis added)

Definition

A disaster means any occurrence of fire, flood, storm, or earthquake caused by an act of nature

that results in substantial damage or destruction to property within this state, without the interference of any human action or agency, and prevents occupancy of the homestead.

Procedure

When a disaster occurs, owners are often displaced from their property. In many cases, it may be physically impossible for such an owner to reside in the homestead. If the owner of a homestead has been displaced from his or her homestead due to a disaster applies for a homestead exemption, the owner of the homestead may still be considered to be “actually occupying” the homestead and qualify for a homestead exemption even though he or she is not physically living in the homestead.

An owner/applicant who has been displaced from the homestead by a disaster may be considered to be actually occupying the homestead if he or she has manifested intent to return to the homestead. The county assessor must make the following determinations:

1. That the homestead was uninhabitable due to a disaster at any point between January 1 and August 15 of the year of application; and
2. That the applicant intends to rebuild or repair the homestead.

If the county assessor determines that both conditions have been satisfied, the county assessor should approve the homestead exemption application for the current tax year in which the disaster occurred. If both conditions have not been met the owner/applicant does not qualify for the homestead exemption and should apply again the next tax year.

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
June 5, 2015

APPROVED:

/s

Len Sloup
Acting Tax Commissioner
June 5, 2015

This Directive is promulgated under the authority of Neb. Rev. Stat. § 77-1330. It will be designated for inclusion in Title 350, Neb. Admin. Code, Chapter 45 upon the next revision of that regulation.



DIRECTIVE 15-2

Supersedes Directive 09-1 issued March 10, 2009

March 10, 2015

Real Property Abstract of Assessment Extension Procedure

Purpose

This directive specifies the process for extending the filing date for the Real Property Abstract of Assessment with the Department of Revenue, Property Assessment Division (Department). The County Abstract of Assessment for Real Property (abstract) consists of the Real Property Abstract, Form 45, the Assessment Practices Survey, the Report of Current Year Assessed Values for Properties Listed in the State Sales File, and maps of agricultural land market areas and assessor location areas in the county.

Statutory Authority

Neb. Rev. Stat. § 77-1514 (Cum. Supp. 2014) provides:

The county assessor shall prepare abstracts of the property assessment rolls of locally assessed property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the real property 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 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.

Procedure

The real property abstract is used by the Property Tax Administrator (PTA) to report the level and quality of assessment to the Tax Equalization and Review Commission (Commission) for the purpose of statewide equalization. Detailed analysis of the data contained in the abstract cannot occur until the abstract is filed with the Department.

The due date for the abstract is March 19 of each year, or March 25 for counties with over 150,000 inhabitants, and the due date for the reports and opinions from the PTA to the Commission is 19 days following the filing due date of the abstract pursuant to § 77-5027 (Cum. Supp. 2014). For counties with over 150,000 inhabitants, the due date for the reports and opinions of the PTA is 15 days following the filing due date of the abstract. If the filing due date for either the abstract or the reports and opinions falls on a weekend or holiday, the due date is the next business day.

The PTA has the authority, following a written request, to extend the filing date for the abstract. This directive is being issued to process extension requests in an orderly fashion. It also appraises county assessors and other county officials of the procedure that will be followed, on an annual basis, should a request for an extension for the filing of the abstract be filed.

Form of the Extension Request. Neb. Rev. Stat. § 77-1514 provides that the PTA may issue an extension **upon written request by the county assessor**. All requests for extension must be in writing and directed to the PTA. Fax transmissions and email are considered written requests.

Section 77-1514 also provides that the extension may be granted for good cause shown. The extension request must contain an explanation of why the extension is needed and how it would improve the quality of the assessment in the county.

Time of Filing.

The applicable filing date for requests for extension is:

- For counties with 150,000 inhabitants, March 22; and
- For all other counties, March 16.

Requests for extension must be filed with the PTA no later than March 16 of each year, or March 22 for counties with at least 150,000 inhabitants. A request for extension with a postmark of the applicable filing date will be considered timely filed. Extension requests that are not timely filed will be denied absent exceptional circumstances. Exceptional circumstances are limited to natural disasters, catastrophic technology failures, or personnel occurrences of which the county assessor or the county had no notice on or before the applicable filing date.

Grant of Extension. The PTA, if satisfied with the written explanation provided by the county assessor or the county, may grant the extension without holding a hearing. If the request is granted

without a hearing, the county assessor, county board of equalization, and county attorney will be notified of the PTA's decision and the date the abstract will be due. If the PTA determines that the deadline for submission of the report and opinion for that county should be affected, notice will also be sent to the Commission.

Show Cause Hearing. If the PTA is not satisfied with the written explanation provided by the county assessor, a hearing on the request for extension will be scheduled. The Department will issue a notice of hearing, scheduling a time and place for a hearing on the request for extension. The notice will be issued to the county assessor, county board of equalization, county attorney, and the Commission.

Any hearing ordered by the Department may be held by phone conference at the Department's offices in Lincoln, Nebraska, no later than March 19. The Department is responsible for contacting the county assessor or the county at the time and date of the hearing.

Following the hearing, a written order will be issued indicating whether or not the extension was granted and setting the time by which the abstract must be filed. The written order will be mailed to the county assessor, county board of equalization, county attorney, and the Commission.

Appeal. A county assessor or county whose request for an extension has been denied may appeal that denial to the Commission.

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
March 10, 2015

APPROVED:

/s

Len Sloup
Acting Tax Commissioner
March 10, 2015

October 15, 2012

LEVEL OF VALUE AND QUALITY OF ASSESSMENT MEASUREMENT

Purpose

To inform county assessors of the methods the Nebraska Department of Revenue, Property Assessment Division (Department) will use to measure each county's level of assessed value relative to the market value and the quality of the processes used by the county assessor to develop uniform and proportionate assessments each assessment year in preparation for the statewide equalization proceedings. This Directive does not provide advice on how county assessors should value property.

Development of the Sales File

The Property Tax Administrator (PTA) maintains a database that contains sales used to measure the level of value and the quality of assessment for each county pursuant to [Neb. Rev. Stat. § 77-1327](#). The sales file database is developed using the following criteria:

1. All [Real Estate Transfer Statements, Forms 521](#), with a documentary stamp tax greater than \$2.25, or consideration greater than \$100, are considered sales;
2. Sales are deemed to be arm's-length transactions unless sufficient information proves otherwise. The county assessor will indicate his or her opinion regarding the inclusion or exclusion of the sale as an arm's-length transaction. If the county assessor indicates no opinion about the inclusion or exclusion of a sale, the sale will be included in the sales file, unless further review by the Department or the county assessor indicates the sale is not an arm's-length transaction; and
3. Sales within the study period contain current assessment information provided by county assessors. Once the county assessor has established the assessed values for the assessment year, the values must be updated for each sale in the state sales file on or before March 19. Beginning in 2014, for counties with at least 150,000 inhabitants, the assessed values for the assessment year must be updated for each sale in the state sales file on or before March 25 each year.

Statistical Studies

The PTA annually develops statistical studies of residential, commercial, and agricultural real property. These studies are based on the sales file developed by the Department, and include the following:

1. Residential - Includes qualified improved sales of residential and recreational real property for a 2-year period between October 1 and September 30. This 2-year period ends the year prior to the assessment year for which values are established;
2. Commercial - Includes qualified improved sales of commercial, industrial, and multi-family real property for a 3-year period between October 1 and September 30. This 3-year period ends the year prior to the assessment year for which values are established;
3. Agricultural and Horticultural Land - Includes qualified unimproved and minimally improved sales of agricultural and horticultural land for a 3-year period between October 1 and September 30. This 3-year period ends the year prior to the assessment year for which values are established. Minimally-improved sales are defined as sales in which the assessed value of the non-agricultural component (improvements and directly-associated land) is less than 5% of the sale price; and
4. Special Valuation of Agricultural and Horticultural Land in Fully-Influenced Counties - Includes qualified unimproved and minimally-improved sales of agricultural and horticultural land for a 3-year period between October 1 and September 30. This 3-year period ends the year prior to the assessment year for which values are established.

Sales Analysis

Using the qualified sales identified above, the Department will determine if the sales collectively represent the class or subclass of real property being measured. This analysis ensures the margin of error is minimal when determining the level of value. Groups of residential or commercial sales identified as non-representative (for example, small numbers of sales, statistical variability caused by outlier ratios, influx of unique sales, etc.) will be analyzed to determine if the sample can be made representative by excluding over-represented areas, or outlier sales.

For agricultural land, the Department will remedy non-representative samples by including comparable sales from common market areas existing outside of the county boundary, if possible. Analysis will include the review of the sales by study year and majority land use. The number of sales in each of the three study period years will be analyzed to ensure the levels of value are equalized between counties. Additionally, the assessed values between bordering counties that share similar markets will be analyzed.

Non-representative samples in any property class incapable of being made representative through professionally-accepted means will not be used as an indicator of a level of value. In these occurrences, there may be no determination of a level of value for that class of property. However, the quality of assessment may be determined based on a working knowledge of the county assessor's efforts to review and inspect properties, and implement processes that aid in achieving market value.

When determining a county-wide level of value by property type, the Department will ensure equalization exists by measuring subclasses of property. Valuation groupings are the primary subclasses measured for the residential and commercial property classes. These are groups of economically-similar areas (typically grouped neighborhoods or small villages) defined on the basis that the properties within its boundaries contain one or more economic forces that largely influence the market value. Market areas are the primary subclasses used for the measurement of agricultural land. The Department will work with county assessors to ensure the valuation groupings and market areas used for measurement purposes are appropriately defined as economically-similar areas.

Timeline

Preliminary statistical reports represent the sales ratios calculated using the prior year assessed values. The following required deadlines give the Department adequate time to prepare the preliminary measurements:

On or before December 1 each year - County assessors must ensure the sales data contained in the state sales file is accurate and all sales received by the county are transferred into the state sales file;

On or before January 15 each year - The Department will provide county assessors with a preliminary indication of the level of value by property class and the sales information used to make those determinations; and

On or before March 19 or 25 each year - County assessors must electronically file the Real Property Abstract of Assessment, including Form 45 and the Assessed Value Update, with the Department on or before March 19. Beginning in 2014, for counties with at least 150,000 inhabitants, the Real Property Abstract of Assessment, including Form 45 and the Assessed Value Update, must be electronically filed on or before March 25.

Deviation from Directive

A county assessor may request a deviation from specific requirements of this directive. The request must be in writing to the PTA, state the reasons for the deviation, and be filed at least 30 days prior to the date from which the county assessor is requesting deviation. The PTA will grant or deny the request for deviation in writing within 15 days of receipt of the request stating the reasons for his or her action.

Enforcement of the Directive

The Department may take corrective action if any county assessor violates any directive of the Department pursuant to [Neb. Rev. Stat. § 77-1330](#).

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
October 15, 2012

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner
October 15, 2012

August 23, 2012

Section 1031 Like-kind Exchanges of Real Property

Purpose

Guidance has been requested regarding how a Register of Deeds (Register) should treat transfers of real property under Section 1031 of the Internal Revenue Code (IRC). This kind of transfer provides property owners the ability to not recognize any gain on the transfer of the property.

Statutory Authority

IRC § 1031 provides that an exchange of “like-kind” real property will not require recognition of gain for income tax purposes. These exchanges are termed “like-kind exchanges” or “tax-free exchanges,” and are tax-free only in the context of the income tax, not the documentary stamp tax.

Procedure and Implementation

General Procedures for 1031 Exchanges

IRC § 1031(a) provides that gains and losses realized from a transfer of certain real property will not be recognized for income tax purposes at the time of the transfer. A typical 1031 exchange will not affect the Register’s duty to collect documentary stamp tax on the transfer of real property.

In its most basic form, a typical 1031 exchange is as follows:

Smith owns Blackacre (with a value of \$100,000). Jones owns Whiteacre (with a value of \$100,000). Smith deeds Blackacre to Jones. Jones deeds Whiteacre to Smith.

The Register will collect documentary stamp tax of \$225 on the transfer from Smith to Jones based on consideration of \$100,000 (the value of Whiteacre). The Register will also collect documentary stamp tax of \$225 on the transfer from Jones to Smith based on consideration of \$100,000 (the value of Blackacre).

Reverse 1031 Exchanges

In 2004, the Internal Revenue Service (IRS) announced a “safe harbor” for transfers of property to what is typically referred to as an Accommodation Titleholder (AT). This entity may also be known as a Qualified Intermediary, or some other similar designation. This safe harbor is also referred to as a Reverse 1031 Exchange.

A property owner will deed property to the AT, and find a replacement property within a prescribed time period. The AT will look for someone to purchase the original property, and once all the properties and buyers have been identified, the AT will transfer the properties to their respective buyers.

From the perspective of administering the documentary stamp tax, there are four transactions at issue, each of which would *ordinarily* require the collection of documentary stamp tax:

1. The transfer from the property owner to the AT;
2. The transfer of the replacement property to the AT;
3. The transfer of the replacement property to the property owner; and
4. The transfer of the original property to the replacement buyer.

Ordinarily, each of these transactions would require the collection of documentary stamp tax, as each transfer is a bona fide transfer of interest (and is required to be a bona fide transfer, per the IRS, in order to qualify for the safe harbor). However, but for the AT, there would only be two transfers of property: the transfer of the old property to the new owner; and the transfer of the new property to the taxpayer.

The IRS issued [Private Letter Ruling 200148042](#), which provides a safe harbor for titleholders that include the following language in the agreement with the AT: “[AT] is acting solely as [titleholder]’s agent for all purposes, except for federal income tax purposes.”

For the Department of Revenue’s purposes, this language allows a titleholder to claim the exemption provided in [Neb. Rev. Stat. § 76-902\(4\)](#) which exempts: “Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest.”

In a Reverse 1031 Exchange, the transfers from the original owners to the AT qualify for this exemption. However, the language above must be used in the qualified exchange accommodation agreement, and the filer must claim exemption #4 on the [Real Estate Transfer Statement, Form 521](#), in order to qualify for this exemption. It is advised that the Register not presume all Reverse 1031 Exchanges automatically qualify for exemption from documentary stamp tax. A copy of the exchange agreement is not required to be recorded with the deed.

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner

August 6, 2012

DETERMINING WHETHER A SITE IS A “FARM HOME SITE”

Purpose

This directive provides guidance in determining whether a site is a farm home site; and if it is, how to classify and assess the farm home site.

Statutory Authority

[Neb. Rev. Stat. § 77-1359](#) states, in relevant part, as follows:

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;

...

- (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.

Procedure and Implementation

Farm home sites are a subclass of residential real property which must be valued uniformly and proportionately at actual value.

To classify a farm home site correctly, the county assessor must answer the following questions:

1. Is the home site contiguous to a farm site?
2. Is the farm site contiguous to agricultural or horticultural land?

3. Does the home site include an inhabitable residence and improvements used for residential purposes?
4. Is the home site located outside of urban areas or platted and zoned subdivisions?

If any one of these conditions is not met (not contiguous to a farm site, is not inhabitable, is not located outside of urban areas or platted and zoned subdivisions), the site cannot be classified as a farm home site.

County assessors have an obligation to determine the actual value of real property associated with a farm home site. In many cases, determining what real property is associated with the farm home site can be readily accomplished by a physical review and inspection of the property. This will allow the county assessor to determine what land is not actively devoted to agricultural or horticultural purposes and should be considered as part of the farm site and farm home site.

Because sales of parcels located in urban areas or in platted and zoned subdivisions do not contain farm home sites, those sales cannot be considered in determining the actual value of the farm home site. Determining the actual value of farm sites and farm home sites will require an analysis by the county assessor of how parcels of different sizes containing farm sites or farm home sites are selling.

Although this legislative change removes the one acre limitation for a farm home site, all home sites continue to be limited to one acre for purposes of the homestead exemption.

Enforcement

Pursuant to [Neb. Rev. Stat. § 77-1330](#) (2009), the Nebraska Department of Revenue may take corrective action if any county official violates any directive of the Department.

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
August 6, 2012

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner
August 6, 2012

May 9, 2012

**DEEDS TO TRUSTEES – DOCUMENTARY STAMP TAX FOR TRUSTS
AND CERTIFICATE OF EXEMPTION**

Purpose

These definitions are provided to aid in the determination of whether a transaction is subject to the documentary stamp tax. This directive provides guidance on the determination of the taxability or exemption of real estate transfers involving trusts. The register of deeds is advised to consult the county attorney for specific situations which are outside the scope of this Directive.

Definitions

Trust. A trust is a fiduciary arrangement in which property is turned over to a trustee to be held and administered for the profit and/or advantage of a beneficiary. The grantor setting up the trust is the trustor. A trust agreement is the written contract establishing the terms of the trust arrangement. Benefits offered by a trust arrangement allow the trust to postpone certain taxes, and avoid probate (a court procedure to prove or validate a will left by a decedent).

Charitable Remainder Trust or Unitrust (CRUT). A CRUT features a charitable organization as the beneficiary, an income stream for the grantor, and income tax advantages.

Irrevocable Trust. An irrevocable trust is a trust that cannot be changed or canceled without the consent of the beneficiary. Contributions cannot be taken out of the trust by the grantor. Irrevocable trusts offer tax advantages that revocable trusts do not (for example, enabling a person to give money and assets away even before he or she dies). **If unstated in the trust agreement, the trust is considered irrevocable.**

Living or Inter Vivos Trusts. A living trust is created during the lifetime of the trustor typically for the trustor's benefit. These trusts are usually revocable.

Revocable Trust. A revocable trust is a trust that can be altered or terminated during the grantor's lifetime. These trusts are considered part of the grantor's estate and are subject to certain taxes. The property is passed on to the beneficiaries only after the grantor's death, and the revocable trust then becomes irrevocable.

Testamentary Trust. A testamentary trust is created as part of a will or testament to assist in tax planning, charitable giving, and preservation of assets for future generations of an individual's family.

Statutory and Regulatory Authority

The Documentary Stamp Tax imposed by [Neb. Rev. Stat. § 76-901](#) does not apply in several instances as provided in [Neb. Rev. Stat. § 76-902](#). The relevant sections of §76-902 are:

. . . (4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;

(5)(a) Deeds between husband and wife, or parent and child, without actual consideration therefor, and (b) deeds to or from a family corporation, partnership, or limited liability company when all the shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members;

. . .

(17) Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue;

(18) Deeds transferring property from a trustee to a beneficiary of a trust;

. . . .

Documentary Stamp Tax Regulation, [REG-52-003.02D](#) provides:

. . . 003.02D Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest. Deeds transferring property into a grantor's trust are entitled to this exemption. Deeds transferring property to or from owners as tenants in common from or to the same owners as joint tenants are not entitled to this exemption.

Procedure and Instructions

Deeds transferring property to a trustee of the grantor's revocable trust are exempt from documentary stamp tax under [REG-52-003.02D](#). In these situations, a signed statement or certification of exemption is not required, but the register of deeds must be satisfied that the trust is indeed revocable.

Deeds transferring property to a trustee of a revocable trust, which is not the grantor's trust, may be taxable; a Certificate of Exemption is then required to verify a valid exemption.

Deeds being filed to change the name of the trustee are exempt from documentary stamp tax under [§ 76-902\(4\)](#). This is true of any kind of trust.

Deeds transferring property to a trustee of the grantor's irrevocable trust are subject to the documentary stamp tax. The filer must provide a valid Certificate of Exemption to be considered exempt from the tax. [§ 76-902\(17\)](#).

Certificate of Exemption

A [Certificate of Exemption – Deeds to Trustees](#) (certification) must be completed and signed by any filer claiming an exemption under § 76-902(17). The filer must indicate on the certification **the specific exemption that would apply if the transfer was made directly from grantor to the beneficiary**.

For example, if the beneficiary is the child of the grantor, the transfer is exempt from documentary stamp tax under [§ 76-902\(5\)](#). However, if the beneficiary is a grandchild of the grantor, the transfer is taxable and a certification is not applicable. If the beneficiary and the grantor are the same person (grantor trust), the transfer is exempt from documentary stamp tax under § 76-902(4); grantor trusts are usually revocable. For exemption purposes, the primary beneficiary determines the tax exemption and any contingent beneficiaries may be disregarded.

Claiming exemption under § 76-902(17) alone is **NOT** acceptable on the certification. A certification is required if claiming exemption number 17 and the specific underlying exemption must be stated by the filer.

The certification should be retained by the register of deeds for three years after the property is distributed from the trust. If the register of deeds suspects that the transfer does not qualify for documentary stamp tax exemption, even if signed and attested to by the filer, the transfer should be reported to the Nebraska Department of Revenue, Property Assessment Division (Department). The Department will review the transaction and request further documentation or information, if necessary.

Real Estate Transfer Statement, Form 521

On the [Real Estate Transfer Statement, Form 521](#), ([Form 521](#)), the grantor's name should be that of the trustor-settlor and the grantee's name should be that of the trustee(s) of the trust.

The Type of Deed, item 8, should be "Trust." The Type of Transfer, item 10, should be either "Revocable Trust" or "Irrevocable Trust," depending on the trust document. The applicable block in item 13 should indicate the relationship between the trustor and the beneficiary. For irrevocable trusts, a notation of "family trust" in the "Other" block of item 13 is not acceptable; **the specific relationship between relatives is required**. If the beneficiary and the trustor are the same person, then "grantor trust" should be indicated in the "Other" block of item 13 on the Form 521.

If the deed is transferring property into a trust and would be exempt if it was made directly from the grantor to the beneficiary, it will be exempt from documentary stamp tax and exemption number 17 may be indicated in fields 25 and 27 on the Form 521. If claiming exemption number 17, a certification must be submitted with the deed and the Form 521.

Deeds transferring property to a nonbeneficiary are subject to the documentary stamp tax whether or not the proceeds of the sale are for the benefit of the beneficiaries. When a deed distributing property out of the trust is offered for recording, refer to the certification that was filed when the subject property was placed into the trust to verify the beneficiaries and to substantiate that the transfer qualifies for exemption (number 18) from the documentary stamp tax.

Documentary Stamp Tax – Exemption of Property Transferred Into a Trust – Neb. Rev. Stat. § 76-902(5)(a) and (b)

All certifications that are filed indicating the transfer qualifies for exemption because it is a trust created for the benefit of a member of the family corporation, partnership, or limited liability company (LLC), should indicate the family entity referenced in the trust document.

The grantor may deed property into an irrevocable trust, the beneficiaries of which are related to one another within the fourth degree of kindred, but are not husband and wife, parent, or child of the grantor. The deed will be exempt from documentary stamp tax only if the irrevocable trust is created for the benefit of a member of a family corporation, partnership, or LLC, in which all the members are related to one another within the fourth degree of kindred. *See*, [Neb. Rev. Stat. § 76-902\(5\)](#).

In analyzing exemptions, the statutes exempting property from taxation are strictly construed and the property must clearly come within the statutory provisions granting these exemptions. *See, Fort Calhoun Baptist Church v. Washington County Bd. of Equalization*, 277 Neb. 25 (2009); *Nebraska State Bar Foundation v. Lancaster County Bd. of Equalization*, 237 Neb. 1 (1991). While these cases dealt with the exemption of property from taxation, the principles established with respect to the interpretation of an exemption are applicable to the documentary stamp tax exemptions. Two distinct exemptions exist in § 76-902(5): 1. Deeds between husband and wife, or parent and child; and 2. Deeds involving family corporations, partnerships, or LLCs.

The second exemption contains a reference to trusts. This reference states that "a trust created for the

benefit of a member of *that* family” (emphasis added), which indicates that the beneficiary of the trust must be a member of the family corporation, partnership, or LLC.

The Department has been asked, if when construing the exemption provided in [§ 76-902\(17\)](#), an exemption for property transferred into an irrevocable trust exists. The exemption exists only if a direct transfer from the grantor to the beneficiary would be exempt from documentary stamp tax as well. It is inconsistent to say that [§ 76-902\(5\)](#) would provide an exemption for property transferred into an irrevocable trust when the same transaction would not be eligible for exemption if the transfer occurred directly from the grantor to a beneficiary. Therefore, the exemption from documentary stamp tax provided by § 76-902(5), as it relates to trusts, is applicable only for trusts created for the benefit of a member of a family corporation, partnership, or LLC.

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
May 9, 2012

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner
May 9, 2012

August 16, 2011

**STATE SALES FILE
PROCEDURE FOR ADJUSTING AND REPORTING
THE ASSESSED VALUE OF AGRICULTURAL LAND
INCLUDED IN SALES OF NON-AGRICULTURAL LAND**

Purpose. This directive advises county assessors of the requirement for adjustments to agricultural and horticultural land values on sold parcels classified as non-agricultural that occur in the state sales file.

Procedure and Implementation. A land sale of non-agricultural property may contain agricultural and horticultural land as part of the sale. To calculate an assessment to sales ratio that represents the full value of the sale, the portion of the assessed value for the agricultural and horticultural land must be adjusted to 100% of market value in the state sales file, as defined in [Chapter 12 – Sales File Regulations](#) of the Nebraska Administrative Code, Title 350. This adjustment is necessary to ensure the assessed value of the parcel is an appropriate comparison to the sales price. This is accomplished by multiplying the assessed value portion of the agricultural and horticultural land by 133%. The total of the adjusted land value attributable to agricultural and horticultural land, plus the valuation of the non-agricultural land within the sold parcel, will be the assessed value of the land as reported in the state sales file.

The adjustment to these sales in the state sales file must be coordinated with your field liaison to ensure correct reporting for the Reports and Opinions. Your field liaison will assist the county assessor in identifying these sales records.

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
August 16, 2011

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner
August 16, 2011

August 16, 2011

**FIXTURES AND TRADE FIXTURES
CLASSIFICATION AS REAL OR PERSONAL PROPERTY**

Purpose. To advise county assessors of the duty to classify property as real or personal property and the analysis to use in determining the classification. An analysis of the item of property must be made to determine whether it is a fixture (real property) or a trade fixture (personal property).

Definitions.

Fixture. A fixture is real property. Real property includes all buildings, improvements, and fixtures, except trade fixtures. [Neb. Rev. Stat. § 77-103\(2\)](#). A fixture includes an item of property that is annexed, physically attached to, or incorporated into the real property. The item supports, enhances, or adds to the use of the real property to which it is annexed. Once annexed, the item loses the characteristic of being personal property and should be classified as real property. Fixtures are items used in the maintenance and operation of structures such as capital improvements (for example, central air conditioning, heating system, common lighting, and plumbing) and which add to the value of a structure, or appreciably prolong the useful life of the structure.

Trade Fixture. A trade fixture is tangible personal property. Trade fixtures include machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property. [Neb. Rev. Stat. § 77-105](#). This is true whether the trade fixture (personal property) is owned or leased. A trade fixture includes any item of property that is placed upon or affixed to real property for the sole purpose of carrying on a trade or business. An example of trade fixtures are irrigation pumps. Trade fixtures do not become part of, or constitute capital improvements to the real property.

Procedure and Implementation. In *Vandenberg v. Butler County*, 281 Neb. 437 (2011), the Nebraska Supreme Court held that an irrigation pump was a trade fixture within the meaning of [§ 77-105](#). The application of the three-part test found in *Northern Natural Gas Co. v. State Bd. of Equal.*, 232 Neb. 806 (1989), was expressly overruled for taxation purposes. The Court stated that "...[§ 77-105](#) clearly controls the issue of classifications of fixtures for taxation purposes." There are three considerations in determining whether an item of property is a trade fixture.

Machinery or Equipment. The first consideration is whether the item is "machinery or equipment." "Machinery" has moving parts that transmit power or force. "Equipment" is a tool used for the performance of some operation. An example would be underground pipe used to irrigate agricultural or horticultural land. Since this underground pipe is used to deliver water from one location to

another, it can be considered machinery and/or equipment.

Used in Commercial, Manufacturing, or Processing Activities. The second consideration is whether the item is used in commercial, manufacturing, or processing activities. The county assessor will inspect the item to determine the specific purpose for which the item is used. Using the underground pipe in the prior paragraph as an example, the pipe is being used to move water inputs or water outputs for a commercial activity.

Used Directly. The final consideration is whether the item is being used *directly* in the commercial, manufacturing, or processing activities. “Directly” means that the machinery or equipment item is in immediate use for the commercial, manufacturing, or processing activities, without any intervening application. The example of the underground pipe used to irrigate agricultural or horticultural land is a trade fixture and is tangible personal property for property assessment purposes. Underground pipe used in a lawn sprinkler system is considered real property since it is not being used directly in a commercial, manufacturing, or processing activity. An exception would be if the lawn sprinkler system was being used by a sod farm, or for demonstration purposes by a sprinkler system installer.

Center pivots, pumps, and motors are tangible personal property. See, *Vandenberg v. Butler County*. The well and the well casing are attached to real property, are not trade fixtures, and are real property.

Conclusion. The analysis of whether an item of property is a fixture (real property), or a trade fixture (personal property), begins with an analysis under [§ 77-105](#). If an item of property is neither a trade fixture nor a fixture, the analysis reverts to whether the property fits within the definition of real property as defined by [§ 77-103](#) or personal property as defined by [§ 77-105](#).

APPROVED:

/s

Ruth A. Sorensen
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August 16, 2011

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Douglas A. Ewald
Tax Commissioner
August 16, 2011



DIRECTIVE 10-1

March 29, 2010

CARLINE COMPANY TIME/SPEED STUDY PROCEDURE

Purpose. To clarify information that is necessary for the Property Tax Administrator to consider a time/speed study when determining the allocation of the net book value of the cars of the carline companies.

Statutory and Regulatory Authority. Neb. Rev. Stat. §77-680 (2009) provides, in relevant part:

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 a true, full, and accurate statement, verified by the affidavit of the officer or person making it, 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.

Title 350, Neb. Admin. R. & Regs. 30-004.01B (2008) provides, in relevant part:

004.01B(1) A car line company requesting the Property Tax Administrator to consider the use of a time/speed study shall submit such study at the time of filing the reports required in REG-30-004.01A.

004.01B(2) Any time/speed study submitted pursuant to REG-30-004.01B(1) shall be applicable for three (3) years. The use of a time/speed study may be extended at the discretion of the Property Tax Administrator beyond three (3) years if the carline company requesting the use of the time/speed study provides information to the Property Assessment Division that indicates, in the opinion of the Property Tax Administrator, that the time/speed study continues to reflect traffic patterns in the state.

Procedure. Carline companies must file statutorily required reports which detail the number of miles traveled in Nebraska in the preceding year by each class of car, the total number of miles traveled in the preceding year by each class of car, the total number of each type of car, and the

taxable value (net book value) of its cars that entered Nebraska. A carline company may submit a time/speed study with the statutorily required reports. The Property Tax Administrator will review the time/speed study to determine whether it will be accepted or rejected.

Submission of Time/Speed Study

A time/speed study submitted by a carline company shall be submitted by June 1 of each year and is to include all relevant information, including:

1. Car identification information – car mark and car number;
2. Departure location;
3. Departure date;
4. Departure time, using the 24-hour clock format;
5. Arrival location;
6. Arrival date;
7. Arrival time, using the 24-hour clock format;
8. Elapsed time, in hours (computed to two decimal places);
9. Trip miles between the departure location and the arrival location; and
10. Computation of average daily speed, as follows:
 - a. Total elapsed time, in hours, for all cars;
 - b. Total trip miles for all cars;
 - c. Average speed, in miles per hour, which is found by dividing the total trip miles for all cars by total elapsed time for all cars;
 - d. Average miles per day, which is found by multiplying the average speed by 24, rounded to the nearest whole number.

A separate time/speed study is to be submitted for each type of car to be considered by the Property Tax Administrator, and must be representative of the total traffic patterns of the carline company. Additional documentation may be requested to support the use of the time/speed study.

The use of a time/speed study is at the discretion of the Property Tax Administrator. Should the Property Tax Administrator reject the use of a time/speed study, a notice of such rejection shall be sent to the carline company. A time/speed study submitted and approved shall be applicable for three years.

Use of a current time/speed study may be extended at the discretion of the Property Tax Administrator. A carline company may request an extension of the use of a submitted time/speed study beyond the initial three year period. Any extension requests must be in writing and must include documentation that demonstrates the traffic patterns in the state are similar to the traffic patterns established in the original time/speed study. If the Property Tax Administrator is dissatisfied with the documentation provided, the request for extension of the time/speed study will be rejected.

Property Tax Directive 10-1

March 29, 2010

Page 3 of 3

APPROVED:

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Property Tax Administrator

March 29, 2010

APPROVED:

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Douglas A. Ewald

Tax Commissioner

March 29, 2010

This is a PDF document from the Nebraska Dept. of Revenue Property Assessment Division's Web site www.pat.ne.gov.



DIRECTIVE 09-4

Supersedes Directives 06-3 and 07-03

August 25, 2009

CLASSIFICATION OF IRRIGATED CROPLAND SUBJECT TO WATER USE AGREEMENTS

Purpose. To advise county assessors on the classification and valuation of land subject to provisions of a Water Use Agreement under integrated management plans of a natural resource district (NRD).

Statutory language. Neb. Rev. Stat. §46-294.03 Appropriation; temporary transfer or change; effect on classification and valuation.

“For purpose of assessment pursuant to sections 77-1343 to 77-1363, neither the temporary transfer or change of an appropriation nor any resulting land-use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause the land to be reclassified to a lower value use or the valuation of the land to be reduced, but the land may be reclassified to a higher value use and its valuation may be increased if a higher value use is made of the land while the temporary transfer or change is in effect. Land from which an appropriation has been permanently transferred shall be classified and valued for tax purposes in accordance with the use of the land after the transfer.”

Definitions. The following definitions are provided to assist county assessors in determining whether a parcel qualifies as agricultural and horticultural land:

Allocation. Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time. Neb. Rev. Stat. §46-706 (15).

Appropriation. Determination of priority and amount of appropriation is the duty of the Department of Natural Resources (DNR). The DNR shall make proper arrangements for the determination of priorities of right to use the public waters of the state. The method of determining the priority and amount of appropriation shall be fixed by the DNR. Neb. Rev. Stat. §46-226.

Irrigable Lands means those lands having soil, topographic, drainage, and climatic conditions favorable for irrigation and located in a position where water supply is or can be made available. Specifically, this directive applies to that land that would be capable of being

irrigated except for the restrictions specified in a Water Use Agreement between the producer and the NRD or DNR. Lands with a well or a pivot which serve the parcel can be considered “irrigable.” Irrigable land can be a sub-class of either dry or irrigated cropland.

Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production – See Attachment

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel. Neb. Rev. Stat. §77-132.

Production means the act or process of producing.

Temporary transfer means a transfer of the water right for one year or less.

Procedure and Implementation. It is the duty of each assessor to assess the agricultural and horticultural land class of real property, uniformly and proportionately.

Overview. The Environmental Quality Incentives Program (EQIP) addresses locally identified problems with natural resources. High priority is given to assistance where establishing specific practices will help meet water and soil conservation quality objectives. EQIP offers contracts that provide incentive payments and cost sharing for establishing conservation practices (CPs), such as manure management systems, pest management, erosion control, and other practices to improve and maintain the health of natural resources.

In 2004, the U.S.D.A. Natural Resources Conservation Service (NRCS) and the DNR announced availability of state and federal funds to convert irrigated cropland to some other land use as, “...part of the action needed to reduce Nebraska’s water usage to comply with the Republican River Compact.”

EQIP 2005-Participants received a one-time \$100 per acre payment, plus \$50 per acre per year for the next three years for irrigated land conversions. This would equal a total payment of \$250 per acre. Early enrollers received an additional \$100 incentive for a total of \$350 per acre. The land is subject to irrigation restrictions for **four years**. Contracts that convert land to grass cover would be maintained without irrigation for ten years. Applications were opened in January 2005, with additional application deadlines ending in March, May and July, until the targeted number of 10,000 acres was enrolled.

EQIP 2006-Participants received a one-time payment of \$375 per acre plus \$100 per acre per year for the next three years for permanent irrigated land conversions. This would equal a total payment of \$675 per acre. The land is subject to irrigation restrictions **permanently**. The land may be used for dry land cropping or establishing grazing land. This program targets 2,400 acres in the Lower Republican River NRD.

The Lower Republican NRD's Ground Water Management Rules and Regulations Rule 6-6.8, states that the acres are not to be changed from irrigated to non-irrigated in the county assessor's office so that the water rights are preserved for future use. In order to meet this rule, it is advised that the assessor classify the land as irrigable; however, the taxable value of the land should reflect 75% of the market value as determined using professionally accepted mass appraisal methods including, but not limited to, the sales comparison approach, income approach or cost approach.

Agricultural and horticultural land. Agricultural and horticultural land is defined in Neb. Rev. Stat. §77-1359 and includes land that is enrolled in a federal or state program in which payments are received for removing the land from agricultural or horticultural production. The land shall be divided into classes and subclasses and inventoried by subclasses based on soil classifications as converted into land capability groups by the Property Tax Administrator in Directive 99-8 issued December 30, 1999. Neb. Rev. Stat. §77-1363.

Classification. The assessor shall classify the land by its present land use: irrigated cropland, dry cropland, or grass land based on the observed use of the land. Because the use will be subject to the contract for participation, there needs to be a way to discover the terms of the contract and whether the land has been changed to dry cropland for four years, grass land for ten years, or permanently as defined by the contract. Water restriction agreements should be on file in the clerk/register of deeds office, or the assessor may rely on the property owner to supply contract information, or have signed permission to receive this information from the local NRCS or Farm Service Agency (FSA) office.

It is also recommended that the assessor identify this land as being enrolled in the EQIP program so that the valuation can be applied equitably within the class of land enrolled in the government program subject to the terms and conditions of the contract.

Valuation. The actual value of property is defined in Neb. Rev. Stat. §77-112 as the market value of the property in the ordinary course of trade. Agricultural and horticultural land is a distinct class of property for purposes of property taxation to be valued at 75% of its actual value. Neb. Rev. Stat. §77-201(2).

Initially it is recommended that the land enrolled in EQIP should be classified at its current use and valued as other land in the same classification. Sales of the property should be monitored so that if the market value for this land is indicated to be different from the similarly classified land, the value may reflect 75% of the market value for land subject to the contract for enrollment in EQIP.

Example

Year 1—Assessor classifies the land as continued use in irrigation, but 'flags' the property record card for land enrolled in EQIP (e.g. 3A1 land would be classified as 3A1EQ).

Land is valued as other 3A1 land.

Year 2—Assessor reviews the land for continued use and value remains the same.

Year 3—Assessor observes sale of other 3A1EQ land at a value less than 3A1 land, but more than 3D1 land. The value is adjusted to reflect the market indication and is assessed at 75% of the actual market value.

Years 4-10—Assessor continues to monitor the market for the EQ land and annually makes the required adjustments to reflect 75% of actual value.

Special Valuation. Enrollment in the EQIP program does not prohibit other non-agricultural uses on the property, only the right to irrigate crops or pasture. Because this land adjoins rivers and tributaries in the Republican River Basin, the market value may reflect the value the land has for uses other than agricultural, such as recreational activities and development. It is recommended that the county assessor accept applications for special valuation pursuant to Neb. Rev. Stat. §§77-1344 through 77-1348 so long as the land continues to qualify, that is, to allow for the continued assessment of the land for agricultural purposes as long as the contract for participation in the EQIP program is in force. At the termination of this compliance period, the assessor should review the land for compliance with the special valuation requirements. All other applicable statutes, rules, regulations, and directives pertaining to special valuation would apply to this land.

Conclusion. The statutes provide a valuation preference for agricultural and horticultural land that is enrolled in state or federal programs that encourage conservation of the state's land and water resources while preserving the right to use the land for agricultural and horticultural purposes. The Department's recommendations recognize these conservation efforts while maintaining compliance with the constitutional and statutory requirements to fairly and equitably assess agricultural and horticultural land for property tax purposes while preserving the property tax base for local government. For land which is capable of being irrigated but is not currently having any water applied to it subject to a Water Use Agreement with the local NRD, the Department recommends that the assessor classify such land as "irrigable."

Land that meets the definition of agricultural land or horticultural land is to be valued at 75% of its market value for property assessment purposes. That portion of a parcel which is directly related to a building or structure is disregarded when the primary purpose of the remaining land in a parcel is being considered to determine if a parcel qualifies as agricultural land or horticultural land.

APPROVED:

/s

Douglas A. Ewald
Tax Commissioner
August 25, 2009

Attachments

This is a PDF document from the Nebraska Dept. of Revenue Property Assessment Division's website www.pat.ne.gov.

Land enrolled in a federal or state program in which payments are received for removing land from agricultural or horticultural production.

Federal or State Programs

- It is recommended that when land has been used either under the wetlands reserve program or the Conservation and Preservation Easements Act, that the assessor read and understand the allowed practices and the restrictions imposed by the conservation easement to determine whether or not the land is being preserved for agricultural or horticultural purposes, or whether it is being preserved for other uses, such as wildlife habitat or wetlands.
- The assessor must carefully review the language incorporated in all Conservation Easement Deeds is imperative.

The following includes, but is not limited to, a list of examples of federal or state programs referred to in Neb. Rev. Stat. §77-1359(2)(b):

A Considered agricultural and horticultural

1. Conservation Reserve Program (CRP)

The CRP is a voluntary program for agricultural landowners. Through CRP, annual rental payments and cost-share assistance are received to establish long-term, resource conserving covers on eligible farmland. The Commodity Credit Corporation (CCC) makes annual rental payments based on the agriculture rental value of the land, and it provides cost-share assistance for up to 50 percent of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years. The program is administered by the CCC through the Farm Service Agency (FSA), and program support is provided by Natural Resources Conservation Service (NRCS), Cooperative State Research and Education Extension Service, state forestry agencies, and local Soil and Water Conservation Districts.

►The CRP is a voluntary program for which a farm is left fallow for a term of years in return for an annual rental payment. The land may be returned to farming after the contract expires. This would still be considered agricultural and horticultural land.

2. Conservation Reserve Enhancement Program (CREP)

The purpose of the NPRRA CREP is to enhance the water quality and quantity of three major Nebraska watersheds (North Platte, Platte, and Republican River basins) by reducing the amount of nutrients, sediments, and chemical runoff from agriculture sources, while increasing wildlife and wetland habitat for birds, migrating waterfowl, and other aquatic

organisms. The NRPPA plays a uniquely important water quality function in the United States because of the large number of separate rivers, streams, and lakes of national priority that receive water from Nebraska's watersheds.

The NPRRA CREP targets 100,000 acres (0.22 percent of the State's agricultural land and 2.9 percent of the proposed CREP project area) for the installation and maintenance of selected conservation practices (CPs). In order to maximize benefits, acreage will be split equally between the Republican and Platte River (including the North Platte) basins (50,000 acres each). Land placed under CREP contracts is retired from crop production and irrigation for 10-15 years. CREP would provide the financial and technical assistance necessary to assist eligible Nebraska farmers and ranchers in establishing CPs that would conserve soil and water; filter nutrients and pesticides; and enhance and restore wildlife habitat. In return, the landowner would receive annual payments equal to the irrigated cropland rental rate for the county.

3. Environmental Quality Incentives Program (EQIP)

EQIP provides technical assistance, cost-share payments, incentive payments, and training to producers who enter into contracts based on an EQIP plan of operations. EQIP offers contracts with a minimum term that ends one year after the implementation of the last scheduled practices and a maximum term of ten years. These contracts provide incentive payments and cost-shares to implement conservation practices. Persons who are engaged in livestock or agricultural production on eligible land may participate in the EQIP program.

EQIP activities are carried out according to an environmental quality incentives program plan of operations developed in conjunction with the producer that identifies the appropriate conservation practice or practices to address the resource concerns. The practices are subject to NRCS technical standards adapted for local conditions. The local conservation district approves the plan. EQIP may cost-share up to 75% of the costs of certain conservation practices. Incentive payments may be provided for up to three years to encourage producers to carry out management practices they may not otherwise use without the incentive; however, limited resource producers and beginning farmers and ranchers may be eligible for cost-shares up to 90%. Farmers and ranchers may elect to use a certified third-party provider for technical assistance. An individual or entity may not receive, directly or indirectly, cost-share or incentive payments that, in the aggregate, exceed \$450,000 for all EQIP contracts entered during the term of the Farm Bill.

The Republican River Basin EQIP program ("Nebraska Ground and Surface Water Conservation Special Incentive") will be funded to pay irrigators not to irrigate for four years. Payments of \$50 per acre for three years will be funded through the federal government and the State of Nebraska. Payments from the federal government are \$50 per acre at the end of irrigation seasons in 2005, 2006, and 2007 with no payment in 2008, the fourth year.

The DNR will pay \$100 per acre before the 2005 irrigation season ends. The total payment over the four years is equal to \$250 per acre.

B. Not considered agricultural and horticultural land

● **In August, 2006, the Tax Equalization and Review Commission issued a Decision in *Wetland Renovations, LLC v. Adams County Board of Equalization*, (Case Nos. 05A083 and 05A084), in which the Commission ruled that the land encumbered by the Wetlands Reserve Program easement could not be used for agricultural purposes, and therefore CAN NOT be characterized as agricultural and horticultural land as defined in Nebraska law. Therefore such land CAN NOT be valued as agricultural and horticultural land.**

1. Wetlands Reserve Program (WRP)

The WRP is administered by the NRCS in agreement with the FSA and in consultation with the U.S. Fish and Wildlife Service and other cooperating agencies and organizations.

WRP program objectives are to:

- purchase conservation easements from, or enter into cost-share agreements with, willing owners of eligible land; the duration of a WRP easement is either permanent or 30 years, and restoration cost-share agreement is generally 10 years;
- help eligible landowners, protect, restore, and enhance the original hydrology, native vegetation, and natural topography of eligible lands;
- restore and protect the functions and values of wetlands in the agricultural landscape;
- help achieve the national goal of no net loss of wetlands; and
- improve the general environment of the country.

► WRP land is land which is voluntarily converted to wetlands and habitat and almost always includes a Conservation Warranty Easement Deed which transfers all farming, grazing, and development rights to a third party for a perpetual term.

2. Conservation Warranty Easement Deed

This deed transfers the right to farm, hay, or graze land that has been enrolled in one of the conservation programs. The deed transfers these rights for 30 years or “permanently” depending on the landowner’s agreement. The landowner reserves the rights to fishing, hunting, egress, ingress, and mineral interests. They also may be granted other limited haying, grazing, or timber harvesting provided it is not inconsistent with the conservation practices on the parcel. The document itself is usually the permanent or thirty year deed through the CCC or a permanent easement to the NRCS.