

LEGISLATIVE BILL 320

Approved by the Governor June 7, 1991

Introduced by Landis, 46; Lamb, 43; Warner, 25;
Rogers, 41; Wehrbein, 2; Schellpeper, 18;
Coordsen, 32; Robak, 22

AN ACT relating to revenue and taxation; to amend sections 77-1301.01, 77-1301.13, 77-1344, 77-1359, 77-1361, 77-1363, 77-1367, 77-1504, and 77-1506.02, Reissue Revised Statutes of Nebraska, 1943, and section 77-112 and 77-201, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 1 and 2, respectively, Legislative Bill 404, Ninety-second Legislature, First Session, 1991; to change the method of measuring the actual value of agricultural and horticultural land; to change and eliminate provisions relating to adjustments to valuations; to change provisions relating to classification of certain land; to change powers and duties of county boards of equalization; to harmonize provisions; to eliminate findings and a duty of the Tax Commissioner; and to repeal the original sections, and also sections 77-506.01, 77-1369, and 77-1370, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 77-112, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 404, Ninety-second Legislature, First Session, 1991, be amended to read as follows:

77-112. (1) Except as provided in subsection (2) of this section, actual value of property for purposes of taxation shall mean the market value of property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal techniques, including, but not limited to:

(a) Comparison with sales of property of known or recognized value, taking into account location, zoning, and current functional use;

(b) Earning capacity of the property; and

(c) Reproduction cost less depreciation.

(2) Actual value when applied to of

agricultural land and horticultural land for purposes of taxation shall mean the value determined pursuant to sections 77-201, 77-1359 to 77-1367, and 77-1371 and section 6 of this act.

Sec. 2. That section 77-201, Reissue Revised Statutes of Nebraska, 1943, as amended by section 2, Legislative Bill 404, Ninety-second Legislature, First Session, 1991, be amended to read as follows:

77-201. (1) Except as provided in subsection (2) of this section and sections 77-1239, 77-1359 to 77-1367, and 77-1371 and section 6 of this act, all tangible property and real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value. Such actual value shall be taken and considered as the taxable value on which the levy shall be made.

(2) Agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of property taxation. For tax year 1991, agricultural land and horticultural land shall be valued using the agricultural land valuation manual issued pursuant to section 77-1330 for use in tax year 1990. Land values contained in such manual shall be correlated to the assessed values established by counties in tax year 1990. For purposes of this subsection, agricultural land and horticultural land shall mean any parcel of land valued by the county assessor as agricultural land or horticultural land in tax year 1990 unless the principal use, zoning, or ownership of the land changes, at which time the classification of the land shall be reviewed by the county assessor. This section shall not be construed as eliminating the requirement that county assessors utilize and implement soil surveys completed for tax year 1991.

Sec. 3. That section 77-1301.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1301.01. The Tax Commissioner shall adopt and promulgate rules and regulations to establish standards for the reappraisal of all lands and improvements in the various counties. The standards established shall require that all reappraisals shall be based upon the use of appraisal manuals developed pursuant to section 77-1330 and shall be such as to assure the determination of actual value on a consistent basis in accordance with the methods prescribed in sections 77-112 and 77-201 and the equalization of

values. The Tax Commissioner shall also establish standards for reappraisal contracts which shall, among other provisions, require that all such contracts shall require the use of appraisal manuals developed pursuant to section 77-1330. No reappraisal contract shall be valid until approved in writing by the Tax Commissioner.

Sec. 4. That section 77-1301.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1301.13. (1) The agreement for reappraisal shall be such as to assure the determination of actual values on a consistent basis in accordance with the methods prescribed in sections 77-112 and 77-201.

(2) The agreement shall contain at least the following provisions:

(a) Procedures under which reappraisal shall be conducted;

(b) Qualifications for all persons performing the reappraisal;

(c) Type and amount of work which may be performed by county officials and their employees;

(d) Type and amount of work which may be performed by independent contractors under the direction and control of one of the parties to the agreement;

(e) The time period in which work shall be performed by all parties;

(f) That a cadastral map and parcel numbering system pursuant to section 77-1301.04 be adopted;

(g) That payment for actual cost of any work performed under the agreement by independent contractors pursuant to the direction and control of the Tax Commissioner or state employees be made to the Tax Commissioner; and

(h) That the reappraisal be based upon the appraisal manuals developed pursuant to section 77-1330.

Sec. 5. That section 77-1344, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1344. (1) Any land which has an actual value as defined in subsection (1) of section 77-112 reflecting a potential use other than agricultural or horticultural use, is located outside the corporate boundaries of any sanitary and improvement district, city, or village, is used exclusively for agricultural or horticultural use, and is zoned for agricultural or horticultural use shall be valued at its actual value for agricultural or horticultural use pursuant to sections 77-1359 to ~~77-1365~~ 77-1367 and 77-1371 and section 6 of this act and not at the actual value it

would have if applied to other than agricultural or horticultural use if application for such special valuation is made pursuant to sections 77-1343 to 77-1348, except that the special valuation provisions shall not be applicable to that portion of lands zoned predominantly for agricultural or horticultural use if such lands have been subdivided for residential use. No land which has an actual value as defined in subsection (1) of section 77-112 reflecting a potential use other than agricultural or horticultural use shall be valued as agricultural land or horticultural land unless it receives the special valuation pursuant to sections 77-1343 to 77-1348.

(2) The eligibility of land for the special valuation provisions of this section shall be determined as of January 1, but if land so qualified becomes disqualified prior to July 1 of the same year, it shall be valued at its actual value as defined by subsection (1) of section 77-112 without regard to this section. If the land becomes disqualified after July 1, its valuation for that year shall continue as provided in this section.

Sec. 6. The Legislature prescribes the method described in this section as an accurate and fair measure of the actual value of agricultural land and horticultural land for purposes of property taxation. The Department of Revenue shall collect market information of actual sales of agricultural land and horticultural land and shall collect information to determine net income per acre pursuant to section 77-1364. A market value as determined by the market information collected shall be divided into the net income per acre, which shall include price support programs, the Acreage Conservation Reserve Program, the Conserving Uses Program, wetlands and wildlife programs, and the Conservation Reserve Program, producing a market-derived capitalization rate. The department shall adjust the market-derived capitalization rates. The adjustment shall be an equal percentage across all categories of agricultural land and horticultural land. Beginning in tax year 1992, the adjustment shall be one hundred twenty-five percent of the market-derived capitalization rate so that the assessed value of agricultural land and horticultural land shall be eighty percent of market value. The actual value per acre shall be determined by taking the net income per acre and dividing it by the adjusted market-derived capitalization rate. The valuation of agricultural land and horticultural land shall be uniform and

proportionate within the class of agricultural land and horticultural land.

Sec. 7. That section 77-1359, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1359. For purposes of sections 77-1359 to 77-1367 and 77-1371 and section 6 of this act:

(1) Agricultural land and horticultural land shall mean a parcel of land (a) over twenty acres in size which is used for the production of agricultural or horticultural products, (b) which is wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products, or (c) of twenty acres or less in size when such land (i) is managed in conjunction with other agricultural land or horticultural land which when totaled exceeds twenty acres in size or (ii) meets the requirements of section 77-1360. Such land shall have been used for production of agricultural or horticultural products in at least two of the last three previous years as certified on or before March 1 of the assessment year using a form prescribed by the Department of Revenue. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land; and

(2) Agricultural or horticultural products shall include; ~~but not be limited to:~~ Grain grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, and other horticultural crops.

Sec. 8. That section 77-1361, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1361. (1) Agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of property taxation. ~~For tax year 1986 and each year thereafter;~~

~~agricultural~~ Agricultural land and horticultural land shall be valued using the agricultural land valuation manual issued by the Tax Commissioner pursuant to section 77-1330 which shall be developed using the methods prescribed in sections 77-1359 to 77-1367 and 77-1371 and section 6 of this act.

(2) No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as agricultural land or horticultural land.

(3) No area of land directly associated with an improvement or structure described in subsection (2) of this section shall apply in determining compliance with the twenty-acre requirement of sections 77-1359 and 77-1360.

Sec. 9. That section 77-1363, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1363. For assessment year 1989, ~~agricultural land and horticultural land shall be divided into five major categories, including irrigated cropland, dryland cropland, pasture, rangeland, and wasteland.~~ For assessment year 1990 and each year thereafter, agricultural Agricultural land and horticultural land shall be divided into four major categories, including irrigated cropland, dryland cropland, grassland, and wasteland. Intensive agricultural uses, such as nurseries, feedlots, and orchards, shall be categorized as either irrigated cropland or dryland cropland. Such categories shall be divided into subclasses based on soil classification standards developed by the United States Department of Agriculture Soil Conservation Service. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be classified according to its use in the assessment year prior to its enrollment in such program actual value as determined in section 6 of this act. County assessors shall utilize and implement soil surveys in the tax year after the soil survey maps become available. County assessors shall utilize and implement soil classifications as converted into land valuation groups provided by the Tax Commissioner.

Sec. 10. That section 77-1367, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1367. The Agricultural Land Valuation

Advisory Board shall:

- (1) Review the agricultural land valuation manual developed by the Department of Revenue;
- (2) Review the data sources used by the Department of Revenue;
- (3) Review the values for agricultural land and horticultural land developed by the Department of Revenue for implementation in the agricultural land valuation manual;
- (4) Make written recommendations to the Tax Commissioner as to improvements or refinements in the data used in developing and updating the agricultural land valuation manual;
- (5) Make a written report to the Tax Commissioner stating whether the method used to value agricultural land and horticultural land set forth in sections 77-1362 to ~~77-1365~~ 77-1367 and 77-1371 and section 6 of this act was properly applied in developing and updating the agricultural land manual; and
- (6) Make recommendations to the Legislature as to improvements or refinements in the method of valuing agricultural land and horticultural land.

Sec. 11. That section 77-1504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1504. The county board of equalization shall fairly and impartially equalize the valuation of individual tracts, lots, or parcels of real and personal property in the county except agricultural land and horticultural land as defined in section 77-1359 so that all real and personal property is assessed uniformly and proportionately. The county board of equalization may consider and correct the assessment of any tract, lot, or parcel of real property or the assessment of any or all items of personal property by raising, after due notice has been given to the owner or agent at his or her last-known address, or by lowering the assessment of such property. No action shall be taken by the county board of equalization pursuant to this section before April 1 nor after May 31 of each year.

For agricultural land or horticultural land as defined in section 77-1359, the county board of equalization may make the following corrections:

- (1) Descriptions of ownership;
- (2) Land-use categorization;
- (3) Conversion of soil classification into land valuation groups only if such conversion is at variance with the most current conversion legend issued by the Tax Commissioner; and

(4) Such other adjustments as are provided for in the agricultural land valuation manual developed under section 77-1362 without the approval of the Tax Commissioner.

For purposes of equalization of the valuation of any protested real or personal property, the county board of equalization shall make its adjustment so that the valuation of the protested property compares to the aggregate level of value of all taxable property in the county the class or subclass of property in which the protested property is categorized.

Sec. 12. That section 77-1506.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1506.02. Upon the completion of the equalization of individual assessments of real or personal property pursuant to sections 77-1502 and 77-1504, the county board of equalization may increase or decrease by a percentage the valuation of all of a class or subclass of property, as defined by the Tax Commissioner, except that the county board of equalization may increase or decrease by a percentage the valuation of a subclass of agricultural land or horticultural land but may not increase or decrease the valuation of the class of agricultural land or horticultural land. ~~7 except on and after assessment year 1991 agricultural land or horticultural land as defined in section 77-1359.~~ Any adjustment made pursuant to this section shall be made to achieve the uniform and proportionate valuation of the classes or subclasses within the county.

Notice shall be given by publication in a newspaper of general circulation within the county. ~~Such notice shall be given at least ten days before the final action of the county board of equalization is taken.~~ Nonresident owners of real property affected by such action whose valuation is adjusted by the action of the county board of equalization shall be notified by mail of any changes in the valuation if the nonresident owner has an address of record on file with the county assessor as of January 1 of each year. The notice shall be mailed within ten days from the date on which the county board of equalization took final action pursuant to this section.

No action shall be taken by the county board of equalization pursuant to this section after June 15 of each year.

When making percentage adjustments to classes or subclasses of property pursuant to this section, the

county board of equalization shall make such adjustments so that the valuation of the classes or subclasses is adjusted to the aggregate level of values of all taxable property in the county, except that any adjustment to a subclass of agricultural land or horticultural land shall be to the aggregate level of value of all agricultural land or horticultural land in the county.

For assessment year 1989, the Department of Revenue shall calculate an adjustment factor for all subclasses within each land-use category of agricultural land and horticultural land. On or before May 17, 1989, the department shall provide such adjustment factors to each county board of equalization. The adjustment factors shall be calculated in order to adjust the values found in the 1989 agricultural land valuation manual to comply with the actual-value standard prescribed in section 77-112. The county board of equalization shall use such adjustment factors to determine the actual value of agricultural land and horticultural land.

For assessment years 1989 and 1990, the county board of equalization shall adjust the actual value of agricultural land and horticultural land in order to correlate and equalize agricultural land and horticultural land value with that of all other property classes.

Sec. 13. That original sections 77-1301.01, 77-1301.13, 77-1344, 77-1359, 77-1361, 77-1363, 77-1367, 77-1504, and 77-1506.02, Reissue Revised Statutes of Nebraska, 1943, and sections 77-112 and 77-201, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 1 and 2, respectively, Legislative Bill 404, Ninety-second Legislature, First Session, 1991, and also sections 77-506.01, 77-1369, and 77-1370, Reissue Revised Statutes of Nebraska, 1943, are repealed.