

LEGISLATIVE BILL 166

Approved by the Governor March 7, 2007

Introduced by Revenue Committee; Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Raikes, 25

FOR AN ACT relating to revenue and taxation; to amend sections 72-258.03, 77-1233.04, and 77-1613.02, Reissue Revised Statutes of Nebraska, and sections 60-147, 77-201, 77-202.03, 77-1344, 77-1347.01, 77-1348, 77-1355, and 77-5018, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to mobile home transfer statements, educational lands appraisal, and property taxation and assessment; to repeal the original sections; to outright repeal section 77-1216, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 60-147, Revised Statutes Cumulative Supplement, 2006, is amended to read:

60-147 (1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county clerk or designated county official shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164 and delivery to the holder of the first lien.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Property Tax Administrator. The mobile home transfer statement shall be filed by the applicant with the county clerk or designated county official of the county of application for title. The county clerk or designated county official shall issue a certificate of title to a mobile home but shall not deliver the certificate of title unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall not prevent the notation of a lien on the certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien. ~~The county clerk or designated county official shall retain the original copy of the mobile home transfer statement, forward two copies to the county assessor, and provide a copy to the applicant.~~

Sec. 2. Section 72-258.03, Reissue Revised Statutes of Nebraska, is amended to read:

72-258.03 For purposes of sales of educational lands at public auction, appraised value is the adjusted value as determined by the Property Tax Administrator or his or her representative (1) for agricultural and horticultural land, multiplied by one and ~~twenty-five~~ thirty-three hundredths, or (2) for all other classes of real property, multiplied by one, unless the Board of Educational Lands and Funds establishes a higher value pursuant to section 72-257 or 72-258, in which case that value shall be the appraised value for purposes of sale.

Sec. 3. Section 77-201, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

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

actual value when the land is disqualified for special valuation under section 77-1347.

(4) Commencing January 1, 2006, historically significant real property which meets the qualifications for historic rehabilitation valuation under sections 77-1385 to 77-1394 shall be valued for taxation as provided in such sections.

(5) Tangible personal property, not including motor vehicles registered for operation on the highways of this state, shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal property transferred as a gift or devise or as part of a transaction which is not a purchase shall be subject to taxation based upon the date the property was acquired by the previous owner and at the previous owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation based upon the date the converted property was acquired and at the Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this subsection, (a) converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or in part, theft, seizure, requisition, or condemnation, or the threat or imminence thereof, and no gain or loss is recognized for federal or state income tax purposes by the holder of the property as a result of the conversion and (b) replacement property means tangible personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which is, except for date of construction or manufacture, substantially the same as the converted property.

Sec. 4. Section 77-202.03, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-202.03 (1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.

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

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

(b) If an organization as described in subdivision (1)(c) or (d) of section 77-202 purchases, between August 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before ~~December 1~~

November 15 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

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

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

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

Sec. 5. Section 77-1233.04, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) Any valuation added to a personal property return or added through the filing of a personal property return, after May 1 and on or before July 31 of the year the property is required to be reported, shall be subject to a penalty of ten percent of the tax due on the value added.

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

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

(6) Whenever valuation changes are made to a personal property return or a personal property return is filed pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes. Such corrections shall be made for the current taxing period and the three previous taxing periods or any taxing period included therein. If the change results in a decreased taxable valuation on the personal property return and the personal property tax has been paid prior to a correction pursuant to this section, the taxpayer may request a refund or credit of the tax in the same manner prescribed in section 77-1734.01, except that such request shall be made within three years after the date the tax was

due.

Sec. 6. Section 77-1344, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-1344 (1) Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land.

(2) Special valuation may be applicable to agricultural or horticultural land included within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement.

(3) The eligibility of land for the special valuation provisions of this section shall be determined each year as of January 1, but if the land so qualified becomes disqualified on or before December 31 of that year, it shall be valued at its recapture value. ~~upon notice from the county assessor that the land is disqualified pursuant to section 77-1347 prior to July 25 of the same year, it shall be valued and carried on the assessment roll according to section 77-201. If the land becomes disqualified after the date of levy, its valuation for that year shall continue as provided in this section.~~

(4) The special valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

(5) ~~Recapture value shall be determined only through tax year 2009-2008.~~ The recapture valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

Sec. 7. Section 77-1347.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-1347.01 ~~(1)~~ At any time, the county assessor may make a determination determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. ~~If the county assessor's disqualification determination is made on or before March 19 of the year for which the land is deemed disqualified, the county assessor shall send a written notice of the determination to the applicant or owner within fifteen days after his or her determination, including the reason for the disqualification. A protest of the county assessor's determination may be filed with the county board of equalization within thirty days after the mailing of the notice. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of equalization's final decision, mail to the protester written notification of the board's decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision. The valuation notice relating to the land subject to the county assessor's disqualification notice shall be sent in accordance with subsection (2) of section 77-1315 and the valuation may be protested pursuant to section 77-1502.~~

~~(2) If the county assessor's disqualification determination is made after March 19 and on or before July 25 of the year for which the land is deemed disqualified, the county assessor shall prepare a report for the county board of equalization setting forth the parcel the county assessor believes should be disqualified, the reason for the disqualification, and the valuation of the property after disqualification. The county board of equalization may meet on or after June 1 and on or before July 25 to consider the question of the disqualification and valuation of a parcel or parcels reported to the county board of equalization pursuant to this section. Upon review of the report from the county assessor, the county board of equalization may issue a written notice to the taxpayer determining that the parcel should be disqualified and determining the valuation of the parcel after disqualification. A protest of either the disqualification determination or the valuation of the parcel, or both, may be filed with the county board of equalization within thirty days after the mailing of the notice. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of equalization's final decision, mail to the protester written~~

notification of the board's decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the date of the decision.

Sec. 8. Section 77-1348, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-1348 (1) Whenever For tax years 2007 and 2008, whenever land which has received special valuation becomes disqualified for such special valuation pursuant to section 77-1347.01, the land shall be subject to taxation at its recapture value for the year in which it became disqualified, except that a parcel disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808, shall be subject to taxation at its actual value for the year in which it became disqualified. Additionally, the assessor shall notify the applicant and there shall be added add to the tax extended against the land on the respective property tax roll or rolls, to be collected and distributed in the same manner as other taxes levied upon real property, an a tax amount equal to the sum of the following:

~~(a)(i) For tax year 2007, if the land was disqualified before July 25 of the year of disqualification, the total amount by which the taxes assessed against the land would have been increased if it had been valued at its recapture value during the last two or lesser number of years in which such special valuation was in effect for the land, and, if the land was disqualified on or after July 25 of the year of disqualification, the total amount by which the taxes assessed against the land would have increased if it had been valued at its recapture value during the last three or lesser number of years in which special valuation was in effect;~~

~~(ii) For tax year 2008, if the land was disqualified before July 25 of the year of disqualification, the total amount by which the taxes assessed against the land would have been increased if it had been valued at its recapture value during the last year in which such special valuation was in effect for the land, and, if the land was disqualified on or after July 25 of the year of disqualification, the total amount by which the taxes assessed against the land would have increased if it had been valued at its recapture value during the last two or lesser number of years in which special valuation was in effect; and~~

~~(iii) For tax year 2009, if the land was disqualified before July 25 of the year of disqualification, the total amount by which taxes assessed against the land would have been increased if it had been valued at its recapture value during the current tax year, and, if the land was disqualified on or after July 25 of the year of disqualification, the total amount by which the taxes assessed against the land would have increased if it had been valued at its recapture value during the last year in which special valuation was in effect.~~

(a)(i) If the land becomes disqualified in 2007, the total amount of additional tax had the land been valued at eighty percent of its actual value for the preceding two years or the number of years in which special valuation was in effect if fewer than two years, except that no additional tax shall be added to the tax roll for any preceding years if the parcel was disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808; and

(ii) If the land becomes disqualified in 2008, the total amount of additional tax had the land been valued at seventy-five percent of its recapture value for the preceding year if special valuation was in effect, except that no additional tax shall be added to the tax roll for any preceding years if the parcel was disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808.

For tax years beginning in 2010, 2009, the disqualification of land for special valuation shall not result in additional taxes; and

(b) Interest upon the amounts of additional tax from each year included in subdivision (1)(a) of this section at the rate of six percent from the dates at which such additional taxes would have been payable if no special valuation had been in effect through sixty days after the notice sent pursuant to subsection (1) of this section. Upon expiration of the sixty days, the additional taxes and interest shall be delinquent and interest shall accrue at the rate provided in section 45-104.01 until paid.

(2) In cases when the designation of special valuation is removed as a result of a sale or transfer described in subdivision (2) or (3) of section 77-1347 other than an acquisition described in subsection (3) of this section, the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(3) The provisions of subsection (1) of this section do not apply if:

(a) The land was acquired by eminent domain;

(b) The land is owned by a public entity and is disqualified from special valuation because it is being used or is being developed for use in a public purpose or is exchanged for other property to be used or developed for use in a public purpose; or

(c) The land is donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code or to the state or its political subdivisions and will be used by the organization, state, or political subdivision for a public, educational, religious, charitable, or cemetery purpose under section 77-202.

Sec. 9. Section 77-1355, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-1355 (1) The Greenbelt Advisory Committee is established to assist and advise the Property Tax Administrator in developing uniform and proportionate special valuation of agricultural ~~real property~~ land and horticultural land which is subject to land-use controls provided for in sections 77-1343 to 77-1348. The advisory committee shall provide advice to the Property Tax Administrator and the Legislature on rules and regulations under section 77-1346 and methods and practices of state and local assessing officials for such special valuation. The Property Tax Administrator shall respond to the recommendations of the advisory committee and explain the basis for approval or rejection of recommendations.

(2) The advisory committee shall consist of the following members appointed by the Governor:

(a) Two active farmers;

(b) An active rancher;

(c) A real property appraiser with expertise in the appraisal of agricultural ~~real estate,~~ land and horticultural land;

(d) A professor of agricultural economics at the University of Nebraska Institute of Agriculture and Natural Resources;

(e) An elected county assessor or a designee of the county assessor;

and

(f) An elected county commissioner or supervisor.

~~(f) A local planning and zoning official;~~

~~(g) An elected county official who has served on an agricultural and horticultural land valuation board; and~~

~~(h) A county attorney who has an understanding of appraisal processes and problems encountered in the valuation of real property.~~

The members shall serve for terms of four years, except that the Governor shall designate three of the initial members to serve for two-year terms. The members shall select a chairperson from the advisory committee's membership. The advisory committee shall meet at least once annually.

(3) The advisory committee shall develop recommendations on:

(a) When using comparable sales analysis for purposes of establishing the special valuation under sections 77-1343 to 77-1348, how such information may be gathered from other counties and locations within a county;

(b) When using an income capitalization approach for such special valuation, the income and expense information to be used and the appropriate method of gathering such information;

(c) When using the income capitalization approach, the approved methods of determining the capitalization rate, including methods of gathering valid comparable sales for purposes of determining the capitalization rate on comparable agricultural land and horticultural land; and

(d) Any further revisions to sections 77-1343 to 77-1348 as the committee deems important for uniform enforcement of such sections and uniform special valuation of agricultural ~~real property,~~ land and horticultural land.

(4) Methods and recommendations developed by the advisory committee shall provide for an annually updated analysis based on a three-year average of the information used. The advisory committee may develop recommendations for valuation methods which provide for special valuation of land used for specialized agricultural and horticultural crop production which is unique or localized to a specific area. The recommendations shall be provided by October 1 each year.

(5) The Property Tax Administrator shall provide administrative staff support and information as requested by the advisory committee so long as provision of staff support and information does not impair the ability of the Property Tax Administrator to carry out other statutory obligations.

(6) Members shall be reimbursed for actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

Sec. 10. Section 77-1613.02, Reissue Revised Statutes of Nebraska,

is amended to read:

77-1613.02 The county assessor or county clerk shall correct the assessment and tax rolls after action of the county board of equalization. ~~The county board shall provide the county assessor or county clerk with a firmly bound book for the entry of corrections, each~~ Each correction being shall be made in triplicate, each set of triplicate forms being consecutively numbered, and there shall be entered upon such form all data pertaining to the assessment which is to be corrected. The correction ~~book~~ shall show all additions and reductions, the amount of tax added or reduced, with the reason therefor, and the page or pages of the tax rolls upon which such change is to be made. The original copy shall be delivered to the county treasurer, the duplicate copy to the county clerk, and the triplicate copy shall remain ~~in the firmly bound book~~ in the office of the county assessor. ~~The correction book and the journal for recording each entry shall be kept by the county assessor or county clerk.~~ The county assessor or county clerk shall provide upon demand a listing showing each entry and sorted by tax year. The county treasurer shall thereupon correct the tax roll to conform to the correction copy and all changes shall be made in red ink, drawing a line through the original or erroneous figures, but not erasing the same. No county assessor shall reduce or increase the valuation of any property, real or personal, without the approval of the county board of equalization. Any county assessor who shall willfully reduce or increase the valuation of any property, without the approval of the county board of equalization, as provided in this section, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty dollars nor more than one hundred dollars.

Sec. 11. Section 77-5018, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5018 (1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed upon request to each party or his or her attorney of record. Any decision rendered by the commission shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly and the tax list pursuant to section 77-1613.02.

(2) The commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order.

Sec. 12. Original sections 72-258.03, 77-1233.04, and 77-1613.02, Reissue Revised Statutes of Nebraska, and sections 60-147, 77-201, 77-202.03, 77-1344, 77-1347.01, 77-1348, 77-1355, and 77-5018, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 13. The following section is outright repealed: Section 77-1216, Reissue Revised Statutes of Nebraska.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.