

LEGISLATIVE BILL 817

Approved by the Governor April 17, 1986

Introduced by Revenue Committee, V. Johnson, 8,
Chairperson; Sieck, 24; Rogers, 41;
Hefner, 19; Miller, 37; Landis, 46;
Pirsch, 10; Hartnett, 45

AN ACT relating to revenue and taxation; to amend sections 77-507.01, 77-803, 77-1211, 77-1247, 77-1337, and 77-1718, Reissue Revised Statutes of Nebraska, 1943, sections 77-202.01, 77-202.03, and 77-1502, Revised Statutes Supplement, 1984, and sections 77-605, 77-627, 77-1301.01, 77-1359, and 77-1360, Revised Statutes Supplement, 1985; to change provisions relating to tax exemptions, review of changes in valuations, and reappraisal contracts; to change certain penalties; to eliminate a reference to repealed statutes; to change requirements relating to assessor certification; to redefine a term; to change provisions relating to certification of land and protests and equalization of assessments; to eliminate a filing requirement relating to distress warrants; to eliminate provisions relating to tax levy certification, listing of certain personal property, assessor certification and training, and a penalty for car companies; and to repeal the original sections, and also sections 77-202.33, 77-1203 to 77-1206, 77-1326, and 77-1335, Reissue Revised Statutes of Nebraska, 1943, and section 77-632, Revised Statutes Supplement, 1985.

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

Section 1. That section 77-202.01, Revised Statutes Supplement, 1984, be amended to read as follows:

77-202.01. Any person, corporation, or organization or society seeking the tax exemptions a tax exemption provided in subdivisions (1)(b) and (1)(c) of section 77-202 for any real or personal property, except motor vehicles, shall apply for exemption to the county assessor by before January 1 of the year following adoption of sections 77-202-01 to 77-202-07 for which

the exemption is sought on forms prescribed by the Tax Commissioner. Any person, corporation, or organization seeking the tax exemptions provided in subdivisions (1)(b) and (1)(c) of section 77-202 for any tangible personal property except motor vehicles shall apply for exemption to the county assessor by January 1, 1970. The county assessor shall examine the application and recommend either taxable or exempt status for the real property or tangible personal property, except motor vehicles, to the county board of equalization by on or before February 1 following.

Sec. 2. That section 77-202.03, Revised Statutes Supplement, 1984, be amended to read as follows:

77-202.03. (1) When real or tangible personal property except motor vehicles has been exempted from taxation as provided by sections 77-202-01 to 77-202-07, it shall continue to be exempt for a period of four years from January 1 of the year following adoption of sections 77-202-01 to 77-202-07, PROVIDED, that each owner of real or tangible personal property except motor vehicles so exempt shall file an affidavit with the county assessor by January 1 of each intervening year certifying that the use of each exempted real or tangible personal property except motor vehicles has not changed during the year. On or before the expiration of such exemption, a new application shall be filed on which the procedure shall be the same as provided for other applications under the provisions of sections 77-202-01 to 77-202-07. If any person, corporation, or organization shall seek a new tax exemption for any real or tangible personal property except motor vehicles in any year, he, she, or it shall apply on or before September 15 of the year of application as provided in section 77-202-01 and procedure thereon shall be the same as provided for other applications under the provisions of sections 77-202-01 to 77-202-07, except that for the new exemption the exempt use shall be determined as of the date of levy in the year of application, and the exemption shall continue for the same period and under the same conditions as if it had been granted on an application which had been filed in accordance with the second sentence of this section, on or before the expiration of an exemption previously granted. The county assessor and the county board may cause any exemption to be reviewed in any year to determine whether the exemption should be continued and may do so even if the use of the property has not changed from when a previous exemption may have been

granted, which review shall proceed as on an application under section 77-202-02 and in any year after a hearing on the matter, the county board upon recommendation by the county assessor shall have the authority to place any property on the tax rolls retroactive to January 1 of that year if, on the levy date of that year, such property no longer qualifies for an exemption. Such hearing shall proceed as an application under section 77-202-02. (1) A properly granted exemption of real or tangible personal property, except motor vehicles, provided for in subdivisions (1)(b) and (1)(c) of section 77-202 shall continue for a period of four years except as provided in subsection (2) of this section. 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 motor vehicles, shall file an affidavit with the county assessor before January 1, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year.

(3) Prior to January 1 of any application year, a new application shall be filed with the county assessor as provided in section 77-202.01.

(4) If any organization or society seeks a tax exemption for any real or tangible personal property, except motor vehicles, acquired after January 1 of any year or converted to exempt use after January 1 of any year, the organization or society shall make application for exemption on or before August 15 of that year as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.07, except that the exempt use shall be determined as of the date of application. The exemption shall continue for the same period and under the same conditions as if it had been granted on an application which had been filed in accordance with subsections (1) and (2) of this section and section 77-202.01.

(5) In any year, the county assessor or the county board 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. The review shall follow the procedure set out in section 77-202.02. If it is determined that a change in exempt status is warranted, the procedure

for hearing set out in section 77-202.02 shall be followed. If an exemption is denied, the county board shall place the property on the tax rolls retroactive to January 1 of that year if on August 15 of that year the property no longer qualifies for an exemption.

(2) (6) During the month of September of each year, the county board 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 in for that year pursuant to sections subdivisions (1)(b) and (1)(c) of section 77-202. to 77-202-07, except real estate owned by the state or its governmental subdivisions. Such list shall be grouped into categories as provided by the Tax Commissioner, 7 which categories shall identify the type of ownership and such list shall identify the organization, the municipality, if any, in which the property is located, and the number of parcels of real estate exempted. A copy of the list and proof of publication shall be forwarded to the Department of Revenue.

Sec. 3. That section 77-507.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-507.01. In addition to the authority conferred by sections 77-506 and 77-507, the State Board of Equalization and Assessment, in cases brought to its attention by the Tax Commissioner, shall have authority to direct the Tax Commissioner to review any changes made by the county board of equalization in valuations established by any general reappraisal of all lands and improvements of real and personal property in the county, and, on the recommendation of the Tax Commissioner after such review, to make such corrections and adjustments as such changes shall necessitate whether for classes or subclasses of property, or for individual parcels thereof.

Sec. 4. That section 77-605, Revised Statutes Supplement, 1985, be amended to read as follows:

77-605. For each day's failure to furnish the statement required by section 77-603 or for each day's failure to furnish the information as required on those statements, the company may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section. In case of failure to make such statement or schedule to the Tax Commissioner, such person, company, or corporation so

failing to make a return shall be guilty of a Class I misdemeanor. In such case the commissioner shall proceed upon the best information obtainable, and in the manner directed in section 77-604, to ascertain the actual valuation of all the operating property of such corporation, and to the actual valuation the commissioner may add fifty per cent as a penalty for such failure.

Sec. 5. That section 77-627, Revised Statutes Supplement, 1985, be amended to read as follows:

77-627. (1) For each day's failure to furnish the statement required by section 77-624 or for each day's failure to furnish the information as required on the statement, the company may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section. In case any such car company, mercantile or other company, firm, or individual shall fail or refuse to make the statement required under section 77-624, the Tax Commissioner shall fix the value of such cars, adding fifty per cent, as provided.

(2) In determining the number of such cars, the commissioner, insofar as may be practicable, shall harmonize the statements of the railroad companies, car companies, mercantile or other companies, firms, or individuals. Such assessment shall be included in the records of the commissioner.

Sec. 6. That section 77-803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-803. For each day's failure to furnish the statement required by section 77-801 or for each day's failure to furnish the information as required on those statements, the public service entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section. For each day's neglect or refusal to furnish the statement required by section 77-801, or for each day's refusal to furnish its books for inspection, if demand is made by the Tax Commissioner, the company shall forfeit the sum of twenty-five dollars, to be recovered in an action in the name of the state.

Sec. 7. That section 77-1211, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

77-1211. Except as provided in sections 77-1265 to 77-1267, when When any person shall bring brings personal property into the state or from one county thereof to another county after 12:01 a.m. on January 1 and prior to July 1 in any year, it shall be the duty of the owner to list and return such property for taxation that year, unless he or she shows shall show to the county assessor or county clerk, where he or she is ex officio county assessor, under oath and by producing a copy of the assessment duly certified to, by the proper officer of the state or county in which said the property was assessed, that the property has been listed for taxation for that year in some other county in this state, or in some other state or territory of the United States, or that such property has been received by him or her in exchange for money or property already listed for taxation during that year. If such property is brought into any county, after the assessor or county clerk, as the case may be, has made his or her return for that year to the Tax Commissioner, the assessor or county clerk, as the case may be, shall at once assess such property and shall enter the same on the tax books as in other cases. The persons so assessed shall have the right to appear before the county assessor or county clerk, as the case may be, at any time before the taxes become due, and the county assessor or county clerk, as the case may be, shall equalize such persons' assessment.

Sec. 8. That section 77-1247, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1247. (1) Each air carrier, as defined in section 77-1244, shall on or before June 1 in each year make to the Tax Commissioner a report, in such form as may be prescribed by the Tax Commissioner, containing the information necessary to determine the value of its flight equipment and the proportion allocated to this state for purposes of taxation as provided in section 77-1246.

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

waive all or part of the penalty provided in this section.

Sec. 9. That section 77-1301.01, Revised Statutes Supplement, 1985, be amended to read as follows:

77-1301.01. The Tax Commissioner shall by rule 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 formulas 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, and that payment of the final ten per cent of the contract price shall not be made until the reappraisal has been approved by the Tax Commissioner. The approval of the reappraisal by the Tax Commissioner shall be made only after the Tax Commissioner has held a public hearing regarding such approval. Such hearing shall be held in accordance with Chapter 84, article 9.~~

Sec. 10. That section 77-1337, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1337- (1) No person shall be eligible to assume the office of county assessor or county clerk acting as ex officio county assessor who does not hold an a county assessor's certificate, issued by the Tax Commissioner pursuant to section 77-1326, PROVIDED, that in those counties having a county clerk acting as ex officio county assessor, the county board may appoint a person holding an assessor's certificate issued by the Tax Commissioner pursuant to section 77-1326 to assist the county clerk acting as ex officio county assessor in his property tax duties when the county clerk acting as ex officio county assessor does not hold an assessor's certificate issued by the Tax Commissioner pursuant to section 77-1326.

(2) A county assessor may be removed from office by the Tax Commissioner. The Tax Commissioner may remove such assessor for failure to comply with the laws regarding property taxation and the rules and

regulations promulgated by the Tax Commissioner. Review of such removal shall be subject to the provisions of the Administrative Procedures Act.

(3) Notwithstanding any provision of this section, any county assessor holding office on April 11, 1969, by virtue of election by the people shall be entitled to complete the term for which he was elected.

Sec. 11. That section 77-1359, Revised Statutes Supplement, 1985, be amended to read as follows:

77-1359. As used in sections 77-1358 to 77-1368, unless the context otherwise requires:

(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 products, (b) which is wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural 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 products in at least two of the last three previous years, unless such land is certified, on or before March 1 of each year using a form prescribed by the Department of Revenue, as participating in an agricultural land-use retirement program authorized by federal law or as land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act. 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 products shall include, but not be limited to, 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. 12. That section 77-1360, Revised Statutes Supplement, 1985, be amended to read as follows:

77-1360. A parcel of land of twenty acres or less in size that is not managed as part of an agricultural or horticultural operation exceeding twenty acres in size shall qualify for assessment as agricultural land or horticultural land only upon

submission of proof by the owner that sales of agricultural products of a gross value of more than one thousand dollars were produced from the land or from feeding products grown upon such land in two of the three previous years or upon submission of proof that such land is under the land-use requirements or restrictions required in subsection subdivision (1) of section 77-1359. The owner shall annually certify on or before March 1 of each year on a form prescribed and subject to audit by the Department of Revenue that the land meets the requirements of this section.

Sec. 13. That section 77-1502, Revised Statutes Supplement, 1984, be amended to read as follows:

77-1502. The county board of equalization shall hold a session of not less than three and not more than sixty days, for the purpose of reviewing and deciding the protests filed pursuant to sections 77-1502 to 77-1507, commencing on April 1 of each year and ending on May 31. Protests shall be written in triplicate and filed with the board within thirty days of the assessor's filing of the assessment roll with the county clerk in order to receive review. The dates for the filing of protests shall be included by the county clerk in the notice described in section 77-1315. Attached to each copy of such protest shall be a written statement of the reason or reasons why the requested reduction in assessment should be made or the protest shall be automatically dismissed. If the protest relies in any manner whatsoever on the earning capacity of the property factor as referred to in section 77-112, then there shall be attached to each copy of such protest a written statement independently certified or executed under oath demonstrating in detail that such earning capacity of the property is lower than that determined by the county assessor. If the protest involves a stock of merchandise, an inventory of such stock made by the owner or his or her agent as of the assessment date or the most recent physical inventory plus the amount of purchases less the cost of goods sold from the close of the last fiscal year to January 1 shall be filed with and shall be a part of the protest.

The board may meet at any time upon the call of the chairperson or any three members of the board for the purpose of equalizing assessments of any omitted or undervalued property. The board shall maintain a written record of all proceedings and actions taken and shall show the vote of the members of the board and shall also show the justification and basis for such

action which shall be available for inspection in the office of the county assessor.

In equalizing assessments during regular sessions, the board shall prepare a separate report as to each action taken by it with respect to equalization, and such report shall include a description of the property affected by such action, the recommendation of the county assessor with respect to the action proposed or taken, the names of witnesses whose testimony was heard in connection with the action, a summary of their testimony, and a statement by the board of the basis upon which it took such action. Such report shall be signed by identify by name the members of the board favoring the action taken, be signed by the chairperson of the board, and ~~shall~~ contain a certification over their his or her signature that a copy thereof is being mailed to the Tax Commissioner. One copy of the report shall be given to the officer charged with the duty of preparing the tax list, and such officer shall have no authority to make a change in the valuations prepared and submitted by the county assessor until he or she has such report in his or her possession, completed, signed, and certified in the manner herein specified, and if he or she deems it incomplete, er if not signed by the requisite number of members of the board or if they have failed to certify that a copy thereof has been mailed to the Tax Commissioner, he or she shall return the same to the board for proper preparation and execution.

Sec. 14. That section 77-1718, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1718. On or before October 1 of each year, the county treasurer ~~must~~ shall issue and deliver to the sheriff of the county, distress warrant against all persons having delinquent personal tax for that year (1) unless such a person shall have paid such delinquent personal taxes in full, on or before July 1, with interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, or (2) unless such person shall, on or before July 1, file with the treasurer an affidavit that he or she is unable by reason of poverty to pay any such tax, in which case a distress warrant shall not be issued until ordered by the county board. At least thirty days prior to the issuance of a distress warrant, the county treasurer shall mail a notice to the delinquent taxpayer that, unless payment of the delinquent tax is made within thirty days, a distress warrant will be issued. Each such distress warrant

shall include all delinquent personal taxes of the person against whom issued. When distress warrants have been issued and turned over to the sheriff, the county treasurer shall report and certify to the county board the total number of distress warrants issued and the total amount of money involved. ~~A copy of this report shall be filed with the Tax Commissioner-~~

Sec. 15. That original sections 77-507.01, 77-803, 77-1211, 77-1247, 77-1337, and 77-1718, Reissue Revised Statutes of Nebraska, 1943, sections 77-202.01, 77-202.03, and 77-1502, Revised Statutes Supplement, 1984, and sections 77-605, 77-627, 77-1301.01, 77-1359, and 77-1360, Revised Statutes Supplement, 1985, and also sections 77-202.33, 77-1203 to 77-1206, 77-1326, and 77-1335, Reissue Revised Statutes of Nebraska, 1943, and section 77-632, Revised Statutes Supplement, 1985, are repealed.