

LEGISLATIVE BILL 1207

Approved by the Governor April 8, 1988

Introduced by Landis, 46

AN ACT relating to revenue and taxation; to amend sections 77-1358, 77-1359, 77-1363, 77-1368, and 77-1510, Reissue Revised Statutes of Nebraska, 1943, and sections 77-508.01, 77-1362, 77-1364, 77-1504, and 77-1506.02, Revised Statutes Supplement, 1987; to provide for intercounty equalization; to change provisions relating to certain legislative findings; to redefine a term; to change a provision relating to adjustments to actual value; to provide for the use of soil classifications as prescribed; to provide duties for the Tax Commissioner; to provide procedures for the development of new agricultural land valuation manuals; to provide powers and duties for the county board of equalization; to provide appeal procedures; to harmonize provisions; to eliminate appeal provisions relating to changes of valuation by county boards of equalization; to provide an operative date; to repeal the original sections, and also section 77-1506.03, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 77-508.01, Revised Statutes Supplement, 1987, be amended to read as follows:

77-508.01. (1) The State Board of Equalization and Assessment shall, pursuant to section 77-508, raise or lower the valuation of any class or subclass of property in a county when it is necessary to achieve intercounty equalization. ~~In~~ Except as provided in subsection (2) of this section, in determining the necessity for such intercounty equalization and for the purposes of advising the board, the Tax Commissioner shall employ the valuation factors in section 77-112, when applicable, as well as a sales assessment ratio study. In those counties where the number of valid or bona fide sales of real estate is not considered sufficient to furnish conclusive evidence as to the

ratio of assessed values to sales values, the Tax Commissioner may conduct and use an appraisal to determine sales assessment ratio. In addition to the authority to conduct and use an appraisal in any ratio determination, the Tax Commissioner may employ transfers of comparable real estate in surrounding counties as indicators of value in the sales assessment ratio. When an appraisal does not reflect current values to use in such ratio computation, the Tax Commissioner shall have the necessary appraisals conducted by qualified appraisers, and such appraisals shall be used in the ratio computation. The Tax Commissioner may use any other relevant matter in considering intercounty equalization.

(2) To achieve intercounty equalization of agricultural land and horticultural land as defined in section 77-1359, the Tax Commissioner and the board shall use the agricultural land valuation manual developed and implemented pursuant to sections 77-1358 to 77-1368.

Sec. 2. That section 77-1358, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1358. (1) The Legislature finds that the historical system of valuation of agricultural land and horticultural land for purposes of taxation has been rejected by a Supreme Court decision and that subsequently the voters have adopted a constitutional amendment authorizing the Legislature to place agricultural land and horticultural land in a separate class of property for purposes of taxation. The Legislature finds that the effect of Amendment 4 of 1984 to Article VIII, section 1, of the Constitution of Nebraska is to permit the Legislature to adopt a valuation method which values agricultural land and horticultural land in a nonuniform manner relative to other classes of property. The legislature finds that it is desirable to adopt a different method of valuing agricultural land and horticultural land in order to preserve the historical relationship between agricultural land and horticultural land and all other real property.

(2) The Legislature finds that such different method is necessary because: (a) Speculation in agricultural land and horticultural land creates excessive and speculative values for land used for agricultural and horticultural purposes; (b) farmers must own large amounts of land to generate adequate incomes and the ability to pay property taxes is a

function of both land value and income; (c) farmers in other states, including adjoining states, selling on the same markets as Nebraska farmers, pay property taxes that reflect the earning capacity of agricultural land and horticultural land; (d) agricultural land and horticultural land values based upon a market approach would impose a heavy tax burden upon agricultural and horticultural properties which would harm the economy of the state; and (e) in order to preserve land for agricultural and horticultural use, it is in the public interest to value agricultural land and horticultural land using a valuation method based on the earning capacity of such land-

(3) (2) The Legislature finds that the earning capacity valuation method is an accurate and fair measure of actual value of agricultural land and horticultural land. It is the intent of the Legislature that the earning capacity valuation method used to value agricultural land and horticultural land shall be rationally based on accurate crop yields, prices, and patterns, expenses, and rate of return data. The income calculations used in the method may reflect income from federal crop support program payments when the Tax Commissioner determines that the use of such program payments and adjustments would significantly alter the values derived from calculations based on the current valuation formula. The method shall use nominal interest rates and average income data in order to maintain the historical valuation relationship between agricultural land and horticultural land and all other real property-

Sec. 3. That section 77-1359, Reissue Revised Statutes of Nebraska, 1943, 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, as

certified on or before March 1 of each the assessment year using a form prescribed by the Department of Revenue. Land 7 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 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 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. 4. That section 77-1362, Revised Statutes Supplement, 1987, be amended to read as follows:

77-1362. (1) An agricultural land valuation manual shall be developed by the Tax Commissioner using the following method to determine actual value of agricultural land and horticultural land for taxable years beginning on or after January 1, 1986. Except as otherwise provided in subsection (4) of section 77-1364, the actual value of agricultural land and horticultural land shall be determined by: (a) Dividing agricultural land and horticultural land into major use categories and such categories into subclasses based on soil classifications; (b) computing a typical income stream based on historical gross receipts and landowner share determined using the method described in section 77-1364; and (c) dividing the derived income stream by a capitalization rate determined using the method described in section 77-1365. All data used to determine actual value of agricultural land and horticultural land shall be that data available on January 1 of the year prior to the year of assessment.

(2) The agricultural land valuation manual shall contain allowances to adjust actual values for irrigation costs and land productivity cost variations. Adjustments shall be based on empirical data and apply to areas with uniform characteristics which are within or which cross county lines. Upon written application

to and approval from the Tax Commissioner a county assessor may apply such adjustments to specific parcels of agricultural land and horticultural land. ~~No other site specific adjustments shall be made.~~ The provisions of this subsection shall be strictly construed to maintain the concept of statewide mass appraisal of agricultural land and horticultural land.

(3) The Tax Commissioner may adjust the value of a class or subclass of agricultural land and horticultural land, as determined pursuant to subsection (1) of this section, so as to secure the uniform and proportionate valuation of the class or subclass of agricultural land and horticultural land between adjoining counties.

(4) The Tax Commissioner may recognize geographic differences that exist within the county and issue separate values for a class or subclass of agricultural land and horticultural land for those distinct areas in the county.

Sec. 5. That section 77-1363, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1363. Agricultural land and horticultural land shall be divided into five major categories including irrigated cropland, dryland cropland, pasture, rangeland, 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. 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. 6. That section 77-1364, Revised Statutes Supplement, 1987, be amended to read as follows:

77-1364. (1) Income streams for irrigated and dryland cropland shall be computed by multiplying gross receipts by landowner share by county. Gross receipts shall be computed by multiplying the most recent five-year average price of a crop by the most recent

five-year average yield of a crop and weighting the result by the most recent five-year average cropping pattern. The cropping pattern shall, as data is available, include, but not be limited to, the following crops: Continuous cropland wheat, summer fallow wheat, corn for grain, dry beans, sorghum for grain, sugar beets, soybeans for beans, oats, and alfalfa. The source of cropping patterns and yields by county and prices by crop reporting district shall be as reported by the Nebraska Crop and Livestock Reporting Service or as published by other state or federal agencies and as selected and applied by the Tax Commissioner.

For purposes of this section, landowner share shall mean the proportion of the gross receipts less landowner expenses paid by the landowner. Landowner share shall be computed based on representative leasing arrangements as determined from surveys conducted or authorized by the Department of Revenue or as published by other state or federal agencies and as selected and applied by the Tax Commissioner. Landowner share shall be derived at least at each crop reporting district for each of the following: (a) Gravity irrigated cropland; (b) center pivot irrigated cropland; and (c) dryland cropland.

(2)(a) Income streams for rangeland and pastureland shall be computed as follows: (i) By multiplying the carrying capacity in terms of animal-unit months by representative rental value per animal-unit month; or (ii) by forage production less landowner expenses paid by the landowner. Carrying capacity and forage production, by subclass, shall be based on productivity estimates published by the United States Soil Conservation Service or other state or federal agencies and as selected and applied by the Tax Commissioner. Rental values per animal-unit month shall be based on the most recent five-year average published by the Department of Agricultural Economics of the University of Nebraska or other state or federal agencies or developed from surveys performed by or for the Department of Revenue. Landowner expenses shall be computed based on representative leasing arrangements as determined from surveys conducted or authorized by the Department of Revenue or as published by other state or federal agencies and as selected and applied by the Tax Commissioner.

(b) For counties or subclasses where animal-unit-month data is not available, the income stream shall be computed by using the average of the most recent five-year prevailing cash rental rates per

acre less representative landowner expenses. The annual prevailing cash rental rates per acre shall be based on data developed by the Department of Agricultural Economics of the University of Nebraska or as published by other state or federal agencies and as selected and applied by the Tax Commissioner.

(3) When making the computations prescribed in subsections (1) and (2) of this section, the same five-year period shall be used.

(4) Actual values for wasteland, including, but not limited to, forest land and shelterbelts, shall be computed based on five percent of the average actual value of all agricultural land and horticultural land in the crop reporting district within which such wasteland is located.

Sec. 7. That section 77-1368, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1368. The Tax Commissioner shall adopt and promulgate the agricultural land valuation manual in accordance with the procedures set forth in the Administrative Procedure Act.

The Department of Revenue shall update the information used in the agricultural land valuation manual annually. Commencing January 1, 1987, a new statewide agricultural land valuation manual shall be prepared and adopted by the Tax Commissioner when the commissioner determines that the actual value of all agricultural land and horticultural land in any crop reporting district exceeds one hundred five percent or is less than ninety-five percent of the actual value of all such land as determined using the most recently adopted and promulgated version of the agricultural land valuation manual.

When a new agricultural land valuation manual is prepared and a change in valuations is proposed, the Tax Commissioner shall hold a series of four meetings to explain the information used to calculate the new values and to take under advisement any information presented at the meetings. The meetings shall be held pursuant to Chapter 84, article 14, except that notice shall be issued as set out in this section. The meetings shall be held in four different locations in this state convenient to the county officials and the residents of the state. The meetings shall be conducted before the Tax Commissioner issues notice pursuant to the Administrative Procedure Act for the adoption and promulgation of the manual, allowing sufficient time to consider and act upon any information received at any

meeting. One of the four meetings shall be designated and conducted as an official meeting of the Agricultural Land Valuation Advisory Board. Notice of the meetings shall be issued to each county assessor and county board of equalization and by news release at least ten days prior to the first meeting in the series. The notice shall state the date, time, and location of the four meetings. The Tax Commissioner shall provide the copy of the proposed agricultural land valuation manual to each county assessor at least twenty-one days prior to the first meeting in the series.

Sec. 8. That section 77-1504, Revised Statutes Supplement, 1987, be amended to read as follows:

77-1504. The county board of equalization shall fairly and impartially equalize the valuation 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.

Sec. 9. That section 77-1506.02, Revised Statutes Supplement, 1987, 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 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 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. No action shall be taken by the county board of equalization pursuant to this section after June 15 of each year. Upon completion of equalization of assessments of individual parcels of lands and improvements and of assessments of personal property of individuals, pursuant to sections 77-1502 and 77-1504, the county board of equalization shall have authority to raise or lower by percentage the valuation of all of a class or all of a subclass, as defined by the Tax Commissioner by rule and regulation, of property within the county if public notice shall be given by publication in a newspaper of general circulation within the county stating the intention of the board. Such notice shall be given ten days before final action is taken by the board in regard to such matters. Nonresidents of the county in which such real estate is situated shall be notified by mail of increases in valuation if such nonresident owners shall have an address of record on file with the county assessor as of January 1 annually. No action shall be taken by the county board of equalization pursuant to this section after June 15 of each year.

Sec. 10. That section 77-1510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1510. Appeals may be taken from any action of the county board of equalization to the district court in the following manner:

(1) The appeal shall be filed within forty-five days after adjournment of the board which shall be deemed to be May 31 of the year in which the action is taken;

(2) The appeal shall be deemed to be filed for purposes of granting jurisdiction with the filing of the petition in district court; and

(3) A bond of no less than fifty dollars and no more than two hundred dollars, as determined by the district court, shall be filed with the petition in the form of a cash deposit or signature bond, property bond, or other bond approved by the county clerk.

After an appeal has been initiated, the board shall have no power or authority to compromise, settle, or otherwise change the action it has taken with respect to such assessment, and exclusive jurisdiction thereof shall be vested in the district court. No appeal shall in any manner suspend the collection of any tax, or the duties of officers relating thereto, during the pendency of the same, and all taxes affected thereby, which may be collected, shall be distributed as though no appeal were pending. If by final order of a court it is thereafter determined that such tax or a part thereof should be refunded, the county treasurer is authorized to make the refund upon receiving a certified copy of such final order, the refund to be made from funds in his or her possession or accruing to the various taxing districts to the extent which they profited from the original overpayment.

The county may cross appeal, without giving bond, for the reason that the actual value of the owner's property is too low and should be increased in value as of the assessment date from which the appeal was taken.

In the event that the taxpayer as a part of his or her appeal challenges the values as determined by the agricultural land valuation manual as issued by the Tax Commissioner, the taxpayer shall at the time of filing his or her petition give notice to the Tax Commissioner of any such challenge and serve a copy of the petition upon the Tax Commissioner by certified mail within three days of the filing of the petition, and thereafter the Tax Commissioner shall be considered a party defendant in the appeal. Notwithstanding the denominating of the Tax Commissioner as a party defendant, the Tax Commissioner shall not be required to further plead in the cause but shall have the privilege of participating in the action without the necessity of intervention. The burden of proof shall be on the taxpayer to show the defect of the values as established in the agricultural land valuation manual. The court in its final order may, if the taxpayer has sustained his or her burden of proof, alter the valuation as established in the agricultural land valuation manual, in which case the court shall as a part of its findings set out specifically the defect found and the factual

basis supporting such finding.

Any party may appeal the final order of the district court entered pursuant to this section to the Supreme Court in the manner provided for appeals in equity cases, and the Supreme Court shall thereafter review the case de novo on the record.

Sec. 11. This act shall become operative for all tax years beginning or deemed to begin on or after January 1, 1988.

Sec. 12. That original sections 77-1358, 77-1359, 77-1363, 77-1368, and 77-1510, Reissue Revised Statutes of Nebraska, 1943, and sections 77-508.01, 77-1362, 77-1364, 77-1504, and 77-1506.02, Revised Statutes Supplement 1987, and also section 77-1506.03, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.