

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1027

FINAL READING

Introduced by Erdman, 47; Burling, 33; Dubas, 34; Fulton, 29; Hudkins, 21; Karpisek, 32; Louden, 49; McDonald, 41.

Read first time January 17, 2008

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend section 77-5204,  
2 Reissue Revised Statutes of Nebraska, and sections  
3 77-202, 77-5201, 77-5203, 77-5208, 77-5209, 77-5211, and  
4 77-5215, Revised Statutes Cumulative Supplement, 2006; to  
5 exempt certain agricultural and horticultural machinery  
6 and equipment from property taxation; to redefine a term;  
7 to provide exemption procedures; to change provisions  
8 of the Beginning Farmer Tax Credit Act; to provide for  
9 applicability; to harmonize provisions; and to repeal the  
10 original sections.

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

1           Section 1. Section 77-202, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           77-202 (1) The following property shall be exempt from  
4 property taxes:

5           (a) Property of the state and its governmental  
6 subdivisions to the extent used or being developed for use by  
7 the state or governmental subdivision for a public purpose. For  
8 purposes of this subdivision, public purpose means use of the  
9 property (i) to provide public services with or without cost to the  
10 recipient, including the general operation of government, public  
11 education, public safety, transportation, public works, civil and  
12 criminal justice, public health and welfare, developments by a  
13 public housing authority, parks, culture, recreation, community  
14 development, and cemetery purposes, or (ii) to carry out the  
15 duties and responsibilities conferred by law with or without  
16 consideration. Public purpose does not include leasing of property  
17 to a private party unless the lease of the property is at fair  
18 market value for a public purpose. Leases of property by a public  
19 housing authority to low-income individuals as a place of residence  
20 are for the authority's public purpose;

21           (b) Unleased property of the state or its governmental  
22 subdivisions which is not being used or developed for use for  
23 a public purpose but upon which a payment in lieu of taxes is  
24 paid for public safety, rescue, and emergency services and road  
25 or street construction or maintenance services to all governmental

1 units providing such services to the property. Except as provided  
2 in Article VIII, section 11, of the Constitution of Nebraska,  
3 the payment in lieu of taxes shall be based on the proportionate  
4 share of the cost of providing public safety, rescue, or emergency  
5 services and road or street construction or maintenance services  
6 unless a general policy is adopted by the governing body of the  
7 governmental subdivision providing such services which provides for  
8 a different method of determining the amount of the payment in  
9 lieu of taxes. The governing body may adopt a general policy by  
10 ordinance or resolution for determining the amount of payment in  
11 lieu of taxes by majority vote after a hearing on the ordinance  
12 or resolution. Such ordinance or resolution shall nevertheless  
13 result in an equitable contribution for the cost of providing such  
14 services to the exempt property;

15 (c) Property owned by and used exclusively for  
16 agricultural and horticultural societies;

17 (d) Property owned by educational, religious, charitable,  
18 or cemetery organizations, or any organization for the exclusive  
19 benefit of any such educational, religious, charitable, or cemetery  
20 organization, and used exclusively for educational, religious,  
21 charitable, or cemetery purposes, when such property is not  
22 (i) owned or used for financial gain or profit to either the  
23 owner or user, (ii) used for the sale of alcoholic liquors for  
24 more than twenty hours per week, or (iii) owned or used by  
25 an organization which discriminates in membership or employment

1 based on race, color, or national origin. For purposes of this  
2 subdivision, educational organization means (A) an institution  
3 operated exclusively for the purpose of offering regular courses  
4 with systematic instruction in academic, vocational, or technical  
5 subjects or assisting students through services relating to the  
6 origination, processing, or guarantying of federally reinsured  
7 student loans for higher education or (B) a museum or historical  
8 society operated exclusively for the benefit and education of the  
9 public. For purposes of this subdivision, charitable organization  
10 means an organization operated exclusively for the purpose of the  
11 mental, social, or physical benefit of the public or an indefinite  
12 number of persons; and

13 (e) Household goods and personal effects not owned or  
14 used for financial gain or profit to either the owner or user.

15 (2) The increased value of land by reason of shade and  
16 ornamental trees planted along the highway shall not be taken into  
17 account in the valuation of land.

18 (3) Tangible personal property which is not depreciable  
19 tangible personal property as defined in section 77-119 shall be  
20 exempt from property tax.

21 (4) Motor vehicles required to be registered for  
22 operation on the highways of this state shall be exempt from  
23 payment of property taxes.

24 (5) Business and agricultural inventory shall be exempt  
25 from the personal property tax. For purposes of this subsection,

1 business inventory includes personal property owned for purposes  
2 of leasing or renting such property to others for financial gain  
3 only if the personal property is of a type which in the ordinary  
4 course of business is leased or rented thirty days or less and  
5 may be returned at the option of the lessee or renter at any time  
6 and the personal property is of a type which would be considered  
7 household goods or personal effects if owned by an individual. All  
8 other personal property owned for purposes of leasing or renting  
9 such property to others for financial gain shall not be considered  
10 business inventory.

11 (6) Any personal property exempt pursuant to subsection  
12 (2) of section 77-4105 or section 4 of this act shall be exempt  
13 from the personal property tax.

14 (7) Livestock shall be exempt from the personal property  
15 tax.

16 (8) Any personal property exempt pursuant to the Nebraska  
17 Advantage Act shall be exempt from the personal property tax.

18 Sec. 2. Section 77-5201, Revised Statutes Cumulative  
19 Supplement, 2006, is amended to read:

20 77-5201 Sections 77-5201 to 77-5215 and section 4 of this  
21 act shall be known and may be cited as the Beginning Farmer Tax  
22 Credit Act.

23 Sec. 3. Section 77-5203, Revised Statutes Cumulative  
24 Supplement, 2006, is amended to read:

25 77-5203 For purposes of the Beginning Farmer Tax Credit

1 Act:

2 (1) Agricultural assets means agricultural land,  
3 livestock, farming, or livestock production facilities or buildings  
4 and machinery used for farming or livestock production located in  
5 Nebraska;

6 (2) Board means the Beginning Farmer Board created by  
7 section 77-5204;

8 (3) Farm means any tract of land over ten acres in area  
9 used for or devoted to the commercial production of farm products;

10 (4) Farm product means those plants and animals useful  
11 to man and includes, but is not limited to, forages and sod  
12 crops, grains and feed crops, dairy and dairy products, poultry  
13 and poultry products, livestock, including breeding and grazing  
14 livestock, fruits, and vegetables;

15 (5) Farming or livestock production means the active use,  
16 management, and operation of real and personal property for the  
17 production of a farm product;

18 (6) Financial management program means a program for  
19 beginning farmers or livestock producers which includes, but  
20 is not limited to, assistance in the creation and proper use  
21 of record-keeping systems, periodic private consultations with  
22 licensed financial management personnel, year-end monthly cash flow  
23 analysis, and detailed enterprise analysis;

24 (7) Owner of agricultural assets means:

25 (a) An individual or a trustee having an ownership

1 interest in an agricultural asset located within the State of  
2 Nebraska who ~~(i)~~ is a resident individual as defined in section  
3 ~~77-2714.01~~, ~~(ii)~~ in the case of an individual, has derived at least  
4 fifty percent of his or her gross annual income for income tax  
5 purposes from farming or livestock production, or in the case of a  
6 trustee, the trust has derived at least fifty percent of its income  
7 for income tax purposes from farming or livestock production, ~~(iii)~~  
8 has provided the majority of the day-to-day physical labor and  
9 management of a farm over a period of time deemed sufficient to  
10 qualify for the granting of tax credits under the act by the board,  
11 and ~~(iv)~~ has ~~other such~~ meets any qualifications as determined by  
12 the board;

13 (b) A spouse, child, or sibling who acquires an ownership  
14 interest in agricultural assets as a joint tenant, heir, or devisee  
15 of an individual or trustee who would qualify as an owner of  
16 agricultural assets under subdivision (7)(a) of this section; or

17 (c) A partnership, corporation, limited liability  
18 company, or other business entity having an ownership interest  
19 in an agricultural asset located within the State of Nebraska  
20 which meets any additional qualifications determined by the board;  
21 ~~(i)~~ which has at least one general partner that is a resident  
22 individual as defined in section ~~77-2714.01~~, ~~(ii)~~ which derives  
23 at least fifty percent of its income from farming or livestock  
24 production, and ~~(iii)~~ in which one or more partners have provided  
25 the majority of the day-to-day physical labor and management of a

1 farm over a period of time deemed sufficient to qualify for the  
 2 granting of tax credits by the board; or

3 ~~(d) A corporation or syndicate qualified to own  
 4 agricultural land under Article XII, section 8, of the Constitution  
 5 of Nebraska;~~

6 (8) Qualified beginning farmer or livestock producer  
 7 means an individual who is a resident individual as defined in  
 8 section 77-2714.01, who has entered farming or livestock production  
 9 or is seeking entry into farming or livestock production, who  
 10 intends to farm or raise crops or livestock on land located  
 11 within the state borders of Nebraska, and who meets the  
 12 eligibility guidelines established in section 77-5209 and such  
 13 other qualifications as determined by the board; and

14 (9) Share-rent agreement means a rental agreement  
 15 in which the principal consideration given to the owner of  
 16 agricultural assets is a predetermined portion of the production of  
 17 farm products from the rented agricultural assets.

18 Sec. 4. (1) Agricultural and horticultural machinery  
 19 and equipment of a qualified beginning farmer or livestock  
 20 producer utilized in the beginning farmer's or livestock producer's  
 21 operation may be exempt from tangible personal property tax to the  
 22 extent provided in this section.

23 (2) A qualified beginning farmer or livestock producer  
 24 seeking an exemption of taxable agricultural and horticultural  
 25 machinery and equipment from tangible personal property tax under

1 this section shall apply for an exemption to the county assessor  
2 on or before December 31 of the year preceding the year for  
3 which the exemption is to begin. Application shall be on forms  
4 prescribed by the Tax Commissioner. For the initial year of  
5 application, an applicant shall provide the original documentation  
6 of certification provided by the board pursuant to section 77-5208  
7 with the application. Failure to provide the required documentation  
8 shall result in a denial of the exemption for the following year  
9 but shall be considered as an application for the year thereafter.

10 (3) The county assessor shall approve or deny the  
11 application for exemption. On or before February 1, the county  
12 assessor shall issue notice of approval or denial to the applicant.  
13 If the application is approved, the county assessor shall exempt  
14 no more than one hundred thousand dollars of taxable value of  
15 agricultural or horticultural machinery and equipment for each  
16 year. If the application is denied by the county assessor, a  
17 written protest of the denial of the application may be filed  
18 within thirty days after the mailing of the denial to the county  
19 board of equalization.

20 (4) All provisions of section 77-1502 except dates for  
21 filing of a protest, the period for hearing protests, and the  
22 date for mailing notice of the county board of equalization's  
23 decision are applicable to any protest filed pursuant to this  
24 section. The county board of equalization shall decide any protest  
25 filed pursuant to this section within thirty days after the

1 filing of the protest. The county clerk shall mail a copy of any  
2 decision made by the county board of equalization on a protest  
3 filed pursuant to this section to the applicant within seven days  
4 after the board's decision. Any decision of the county board of  
5 equalization may be appealed to the Tax Equalization and Review  
6 Commission, in accordance with section 77-5013, within thirty days  
7 after the date of the decision. Any applicant may petition the  
8 Tax Equalization and Review Commission in accordance with section  
9 77-5013, on or before December 31 of each year, to determine  
10 whether the agricultural and horticultural machinery and equipment  
11 will receive the exemption for that year if a failure to give  
12 notice as prescribed by this section prevented timely filing of a  
13 protest or appeal provided for in this section.

14 (5) A properly granted exemption for taxable agricultural  
15 and horticultural machinery and equipment under this section  
16 shall continue for a period of three years if each year a  
17 Nebraska personal property tax return and supporting schedules  
18 and depreciation worksheet, showing a list and value of all  
19 taxable tangible personal property, are provided and filed by the  
20 beginning farmer or livestock producer with the county assessor  
21 when due. The value of taxable agricultural and horticultural  
22 machinery and equipment exempted in any year shall not exceed  
23 one hundred thousand dollars. The exemption allowed under this  
24 section shall continue irrespective of whether the person claiming  
25 the exemption no longer meets the qualification of a beginning

1 farmer or livestock producer pursuant to section 77-5209 during the  
2 exemption period unless the beginning farmer or livestock producer  
3 discontinues farming or livestock production.

4 (6) Any person whose agricultural and horticultural  
5 machinery and equipment has been exempted from tangible personal  
6 property tax pursuant to this section shall be permanently  
7 disqualified from any further exemption of agricultural and  
8 horticultural machinery and equipment from tangible personal  
9 property tax as a qualified beginning farmer or livestock producer.

10 Sec. 5. Section 77-5204, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 77-5204 For the purpose of developing and directing  
13 programs to provide increased and enhanced opportunities for  
14 beginning farmers and livestock producers, the Beginning Farmer  
15 Board is created. For administrative and budgetary purposes  
16 only, the board shall be housed within the Department of  
17 Agriculture. The board shall be vested with the following duties  
18 and responsibilities:

19 (1) To approve and certify beginning farmers and  
20 livestock producers as eligible for the programs provided by the  
21 board, for eligibility to claim tax credits authorized by section  
22 77-5209.01, and for eligibility to claim an exemption of taxable  
23 tangible personal property tax as provided by section 4 of this  
24 act;

25 (2) To approve and certify owners of agricultural assets

1 as eligible for the tax credits authorized by sections 77-5211 to  
2 77-5213;

3 (3) To advocate joint ventures between beginning farmers  
4 or livestock producers and existing private and public credit  
5 and banking licensed institutions, as well as to advocate joint  
6 ventures with owners of agricultural assets desiring to assist  
7 beginning farmers and livestock producers seeking entry into  
8 farming or livestock production;

9 (4) To provide necessary and reasonable assistance  
10 and support to beginning farmers and livestock producers for  
11 qualification and participation in financial management programs  
12 approved by the board;

13 (5) To advocate appropriate changes in policies and  
14 programs of other public and private institutions or agencies which  
15 will directly benefit beginning farmers and livestock producers  
16 and may include changes regarding financing, taxation, and any  
17 other existing policies which prohibit or impede individuals from  
18 entering into farming or livestock production;

19 (6) To provide adequate explanations of facts and aspects  
20 of available programs offered or recommended by the board intended  
21 for beginning farmers and livestock producers;

22 (7) To assist and educate beginning farmers and livestock  
23 producers by acting as a liaison between beginning farmers or  
24 livestock producers and the Nebraska Investment Finance Authority;

25 (8) To encourage licensed financial institutions and

1 individuals to use alternative amortization schedules for loans  
2 and land contracts granted to beginning farmers and livestock  
3 producers;

4 (9) To refer beginning farmers and livestock producers to  
5 agencies and organizations which may provide additional pertinent  
6 information and assistance;

7 (10) To provide any other assistance and support the  
8 board deems necessary and appropriate in order for entry into  
9 farming or livestock production;

10 (11) To adopt and promulgate rules and regulations  
11 necessary to carry out the purposes of the Beginning Farmer Tax  
12 Credit Act, including criteria required for tax credit eligibility  
13 and financial management program certification and guidelines which  
14 constitute a viably sized farm that is necessary to adequately  
15 support a beginning farmer or livestock producer. Such guidelines  
16 shall vary and take into account the region of the state, number  
17 of acres, land quality and type, type of operation, type of crops  
18 or livestock raised, and other factors of farming or livestock  
19 production; and

20 (12) To keep minutes of the board's meetings and other  
21 books and records which will adequately reflect actions and  
22 decisions of the board and to provide an annual report to the  
23 Governor, the Legislative Fiscal Analyst, and the Clerk of the  
24 Legislature by December 1.

25 Sec. 6. Section 77-5208, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2           77-5208 The board shall meet at least twice during the  
3 year. The board shall review pending applications in order to  
4 approve and certify beginning farmers and livestock producers as  
5 eligible for the programs provided by the board, ~~and~~ to approve  
6 and certify owners of agricultural assets as eligible for the tax  
7 credits authorized by sections 77-5211 to 77-5213, ~~and to approve~~  
8 and certify qualified beginning farmers and livestock producers  
9 as eligible for the tax credit authorized by section 77-5209.01  
10 and for qualification to claim an exemption of taxable tangible  
11 personal property as provided by section 4 of this act. Any action  
12 taken by the board regarding approval and certification of program  
13 eligibility, granting of tax credits, or termination of rental  
14 agreements shall require the affirmative vote of at least four  
15 members of the board.

16           Sec. 7. Section 77-5209, Revised Statutes Cumulative  
17 Supplement, 2006, is amended to read:

18           77-5209 The board shall determine who is qualified as a  
19 beginning farmer or livestock producer based on the qualifications  
20 found in this section. A qualified beginning farmer or livestock  
21 producer shall be an individual who: (1) Has a net worth of not  
22 more than two hundred thousand dollars, including any holdings by  
23 a spouse or dependent, based on fair market value; (2) provides  
24 the majority of the day-to-day physical labor and management of  
25 ~~the farm,~~ his or her farming or livestock production operations;

1 (3) has, by the judgment of the board, adequate farming or  
2 livestock production experience or demonstrates knowledge in the  
3 type of farming or livestock production for which he or she  
4 seeks assistance from the board; (4) demonstrates to the board a  
5 profit potential by submitting board-approved projected earnings  
6 statements and agrees that farming or livestock production is  
7 intended to become his or her principal source of income; (5)  
8 demonstrates to the board a need for assistance; (6) participates  
9 in a financial management program approved by the board; (7)  
10 submits a nutrient management plan and a soil conservation plan to  
11 the board on any applicable agricultural assets purchased or rented  
12 from an owner of agricultural assets; and (8) ~~is not a relative~~  
13 ~~as defined in section 36-702 of the owner of agricultural assets~~  
14 ~~or of a partner, member, shareholder, or trustee of the owner~~  
15 ~~of agricultural assets in which the beginning farmer or livestock~~  
16 ~~producer is seeking to enter into a rental agreement; and (9) has~~  
17 such other qualifications as specified by the board. A qualified  
18 beginning farmer or livestock producer who has participated in  
19 a board approved and certified three-year rental agreement with  
20 an owner of agricultural assets shall not be eligible to file  
21 a subsequent application with the board but may refer to the  
22 board for additional support and participate in programs, including  
23 educational and financial programs and seminars, established or  
24 recommended by the board that are applicable to the continued  
25 success of such farmer or livestock producer.

1           Sec. 8. Section 77-5211, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           77-5211 (1) ~~An~~ Except as otherwise disallowed under  
4 subsection (5) of this section, an owner of agricultural assets  
5 shall be allowed a credit to be applied against the state income  
6 tax liability of such owner for agricultural assets rented on a  
7 rental agreement basis, including cash rent of agricultural assets  
8 or cash equivalent of a share-rent rental, to qualified beginning  
9 farmers or livestock producers. Such asset shall be rented at  
10 prevailing community rates as determined by the board.

11           (2) The credit allowed shall be for renting agricultural  
12 assets used for farming or livestock production. Such credit  
13 shall be granted by the Department of Revenue only after approval  
14 and certification by the board and a written three-year rental  
15 agreement for such assets is entered into between an owner of  
16 agricultural assets and a qualified beginning farmer or livestock  
17 producer. An owner of agricultural assets or qualified beginning  
18 farmer or livestock producer may terminate such agreement for  
19 reasonable cause upon approval by the board. If an agreement is  
20 terminated without fault on the part of the owner of agricultural  
21 assets as determined by the board, the tax credit shall not be  
22 retroactively disallowed. If an agreement is terminated with fault  
23 on the part of the owner of agricultural assets as determined by  
24 the board, any prior tax credits claimed by such owner shall be  
25 disallowed and recaptured and shall be immediately due and payable

1 to the State of Nebraska.

2 (3) A credit may be granted to an owner of agricultural  
3 assets for renting agricultural assets, including cash rent of  
4 agricultural assets or cash equivalent of a share-rent agreement,  
5 to any qualified beginning farmer or livestock producer for a  
6 period of three years. An owner of agricultural assets shall not be  
7 eligible for further credits under the Beginning Farmer Tax Credit  
8 Act unless the rental agreement is terminated prior to the end of  
9 the three-year period through no fault of the owner of agricultural  
10 assets. If the board finds that such a termination was not the  
11 fault of the owner of agricultural assets, it may approve the owner  
12 for credits arising from a subsequent qualifying rental agreement  
13 with a different qualified beginning farmer or livestock producer.

14 (4) Any credit allowable to a partnership, a corporation,  
15 a syndicate, or an estate or trust may be distributed to the  
16 partners, members, shareholders, or beneficiaries. Any credit  
17 distributed shall be distributed in the same manner as income  
18 is distributed.

19 (5) The credit allowed under this section shall not be  
20 allowed to an owner of agricultural assets for a rental agreement  
21 with a beginning farmer or livestock producer who is a relative,  
22 as defined in section 36-702, of the owner of agricultural assets  
23 or of a partner, member, shareholder, or trustee of the owner  
24 of agricultural assets unless the rental agreement is included in  
25 a written succession plan. Such succession plan shall be in the

1 form of a written contract or other instrument legally binding the  
2 parties to a process and timetable for the transfer of agricultural  
3 assets from the owner of agricultural assets to the beginning  
4 farmer or livestock producer. The succession plan shall provide  
5 for the transfer of assets to be completed within a period of  
6 no longer than thirty years, except that when the asset to be  
7 transferred is land owned by an individual, the period of transfer  
8 may be for a period up to the date of death of the owner. The  
9 owner of agricultural assets shall be allowed the credit provided  
10 for qualified rental agreements under this section if the board  
11 certifies the plan as providing a reasonable manner and probability  
12 of successful transfer.

13           Sec. 9. Section 77-5215, Revised Statutes Cumulative  
14 Supplement, 2006, is amended to read:

15           77-5215 (1) The changes made in sections 77-5201,  
16 77-5203, 77-5208, 77-5209, and 77-5211 to 77-5213 by Laws 2006, LB  
17 990, shall become operative for all credits earned in tax years  
18 beginning or deemed to begin on and after January 1, 2007, under  
19 the Internal Revenue Code of 1986, as amended. For all credits  
20 earned in tax years beginning or deemed to begin prior to January  
21 1, 2007, under the code, the provisions of the Beginning Farmer Tax  
22 Credit Act as they existed prior to such date shall apply.

23           (2) The changes made in sections 77-5203, 77-5209, and  
24 77-5211 by this legislative bill shall become operative for all  
25 credits earned in tax years beginning or deemed to begin on and

1 after January 1, 2008, under the Internal Revenue Code of 1986, as  
2 amended. For all credits earned in tax years beginning or deemed to  
3 begin prior to January 1, 2008, under the code, the provisions of  
4 the Beginning Farmer Tax Credit Act as they existed prior to such  
5 date shall apply.

6           Sec. 10. Original section 77-5204, Reissue Revised  
7 Statutes of Nebraska, and sections 77-202, 77-5201, 77-5203,  
8 77-5208, 77-5209, 77-5211, and 77-5215, Revised Statutes Cumulative  
9 Supplement, 2006, are repealed.