

LEGISLATIVE BILL 7

Approved by the Governor November 21, 1989

Introduced by Warner, 25

AN ACT relating to revenue and taxation; to amend sections 77-628, 77-631.02 to 77-631.04, 77-1249.01, and 77-1342, Reissue Revised Statutes of Nebraska, 1943, and section 77-202, Revised Statutes Supplement, 1988; to state intent; to exempt railroad rolling stock from the personal property tax; to define a term; to transfer provisions relating to collection of delinquent taxes; to eliminate provisions relating to taxation of railroad rolling stock; to harmonize provisions; to provide an operative date; to provide severability; to repeal the original sections, and also sections 77-624 to 77-627, 77-629 to 77-631.01, and 77-633, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. (1) The Legislature finds and declares that the levy and collection of property taxes upon the personal property of car line companies, which is composed of railroad rolling stock, has been enjoined by federal court order as a discriminatory tax in violation of section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act, 49 U.S.C. 11503(b)(4).

(2) The Legislature finds and declares that, as a result of such court action, the Nebraska Supreme Court has ordered that the personal property of certain other taxpayers must be treated the same as that of such car line companies, which is in the same class for taxation purposes but not taxed by virtue of federal court order, thereby diminishing to a potentially substantial degree the property tax base of local governmental subdivisions and consequently jeopardizing the continued adequate funding of essential public services provided by those subdivisions.

(3) The Legislature further finds and declares that some types of agricultural and manufacturing products and natural resources must or can more efficiently be transported over rails due to size,

weight, and other restrictions or conditions and the transportation of such products is vital to the commerce and industry of the state and that therefor it is in the best interests of the state to enact legislation to encourage the maintenance in and through the state of railroad rolling stock which is the means of transporting such products.

(4) Therefor, the Legislature finds and declares that a rational basis exists to classify railroad rolling stock as a separate and distinct class of property and to exempt the class from property taxation pursuant to the authority granted under Article VIII, section 2, of the Constitution of Nebraska.

(5) It is the express intention of the Legislature that the changes made by this legislative bill shall affect all state litigation pending as of the effective date of this act.

Sec. 2. That section 77-202, Revised Statutes Supplement, 1988, be amended to read as follows:

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

(a) The property of the state and its governmental subdivisions;

(b) Property owned by and used exclusively for agricultural and horticultural societies;

(c) Property owned by educational, religious, charitable, or cemetery organizations and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization shall mean an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or a museum or historical society operated exclusively for the benefit and education of the public, and charitable organization shall mean an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(d) Household goods and personal effects when such property is not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway

shall not be taken into account in the assessment of such land.

(3) The premiums received by any insurance company authorized to do business in this state on all annuity contracts and pension, profit-sharing, and other employee benefit plans which are described in section 818(a) of the Internal Revenue Code of 1986, as amended, shall be exempt from taxes.

(4) Life insurance and life insurance annuity contracts and any payment connected therewith and any right to pension or retirement payments shall be exempt from the intangible tax.

(5) Vehicles registered under section 60-305.09 and paying the registration fees prescribed in such section shall be exempt from payment of ad valorem taxes.

(6) Agricultural income-producing machinery and equipment shall be exempt from the personal property tax except: (a) Motor vehicles, as defined in section 60-301; (b) property assessed by the Tax Commissioner as provided in sections 77-601 to 77-633 77-623; (c) property owned by parties deemed public service entities subject to the provisions of sections 77-801 to 77-803; and (d) any building or fixture, whether permanently attached to the land or not.

(7) Business inventory shall be exempt from the personal property tax.

(8) Feed, fertilizer, and farm inventory shall be exempt from the personal property tax.

(9) Grain, seed, livestock, poultry, fish, honeybees, and fur-bearing animals shall be exempt from the personal property tax.

(10) Any personal property exempt pursuant to subsection (2) of section 77-4105 shall be exempt from the personal property tax.

(11) Railroad rolling stock shall be exempt from the personal property tax. Railroad rolling stock shall mean locomotives, freight cars, and other flanged-wheel equipment operated solely on rails and owned, leased, or used for or in railroad transportation. For tax year 1989, this subsection shall apply to railroad rolling stock upon which no levy has been made or upon which no tax may lawfully be collected.

Sec. 3. That section 77-628, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-628. For the purpose of ascertaining the average rate of all general taxes provided for in

~~section 77-629;~~ The county official who prepares the tax list of each county shall certify to the Tax Commissioner, on or before December 1 of each year, the total valuation, the respective levies, the total amount of all general taxes, county, municipal, school, and local, and, for statistical purposes, any other information deemed necessary by the commissioner for the current year; on forms prescribed and furnished by the commissioner.

Sec. 4. That section 77-1249.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1249.01. One-half of the taxes levied and due under sections 77-1249 and 77-1250 shall become delinquent February 1, and the second half on July 1, next following the date the tax has become due.

All delinquent taxes shall draw interest from the date they become delinquent at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the interest shall be collected and distributed the same as the tax on which the interest accrues. If such taxes and interest due thereon shall not have been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the same by distress and sale of any property belonging to such delinquent person in like manner as provided in sections 77-631 to 77-631-04 required of county treasurers and county sheriffs in like cases.

Sec. 5. That section 77-631.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-631-02- If any such taxes levied on air carriers as defined in section 77-1244 and interest and penalties due thereon shall not have been paid on July 1, following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to such companies, firms, or individuals, air carriers until the liability therefor is satisfied or otherwise released or discharged, and it shall be lawful for the Tax Commissioner or his or her designated agent to collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such companies, firms, or individuals air carriers. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Sec. 6. That section 77-631.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

~~77-631-03-~~ Any person or corporation in possession of any such money and credits belonging to air carriers as defined in section 77-1244, upon which levy has been made shall, upon demand of the Tax Commissioner or his or her agent, surrender the same to the Tax Commissioner or his or her agent. If any person or corporation fails or refuses to surrender the same in accordance with the requirements of this section, such person shall be liable to the State of Nebraska in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Sec. 7. That section 77-631.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~77-631-04-~~ The money realized from any ~~such~~ levy under sections 5 and 6 of this act shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy, and next to the payment of such taxes, interest, and penalties, and any balance remaining shall then be paid over to the person entitled thereto.

Sec. 8. That section 77-1342, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1342. There is hereby created a fund to be known as the Tax Commissioner Revolving Fund to which shall be credited all money received by the agency for services performed to county and multicounty assessment districts and under the provisions of sections 60-305.15, 77-629, and 77-1250, which provisions shall be for the purpose of providing funds to be used to develop appraisal manuals and distribute them to the counties and to engage competent counsel. The county or multicounty assessment district shall be billed by the Tax Commissioner for services rendered. Reimbursements to the Tax Commissioner shall be credited to the fund and expenditures therefrom shall be made only when such funds are available. The Tax Commissioner shall only bill for the actual amount expended in performing the service.

This fund shall, at the close of each year, be lapsed to the General Fund, except that no part of the fees received under sections 60-305.15, 77-629, and 77-1250 shall be so lapsed. Any money in the Tax Commissioner Revolving Fund available for investment shall be invested by the state investment officer

pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.

Sec. 9. This act shall become operative on January 1, 1989.

Sec. 10. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 11. That original sections 77-628, 77-631.02 to 77-631.04, 77-1249.01, and 77-1342, Reissue Revised Statutes of Nebraska, 1943, and section 77-202, Revised Statutes Supplement, 1988, and also sections 77-624 to 77-627, 77-629 to 77-631.01, and 77-633, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.